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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Precision Demolition and
Abatement, LLC,

Respondent.

DOCKET NO. CAA-10-2009-0264

CONSENT AGREEMENT AND
FINAL ORDER

I. AUTHORITIES

1.1. This Consent Agreement and Final Order (CAFO) is issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Part V of the CAFO to the Regional Administrator, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA (Complainant) hereby issues, and Precision Demolition and Abatement, LLC (Respondent) hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

1.3. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator to promulgate regulations establishing emission standards or work practice standards for listed hazardous air pollutants, including asbestos. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

1.4. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that govern the emissions, handling, and disposal of asbestos. These asbestos NESHAP regulations are found at 40 C.F.R. Part 61, Subpart M (asbestos NESHAP).

1.5. Under 40 C.F.R. § 61.145, each owner or operator of a demolition or renovation activity, as defined at 40 C.F.R. § 61.141, must comply with certain notification and work practice standards applicable to demolition and renovation activities. The purpose of these requirements is to limit or prevent emissions of the hazardous air pollutant asbestos during demolition and renovation activities.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.34(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order in Part V of this CAFO becomes effective.

2.2. A concise statement of the factual basis for the alleged violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Respondent is a limited liability company organized under the laws of Idaho engaged in the business of asbestos abatement and removal, renovation, and demolition, with its principal place of business located at 2399 South Orchard, Suite 211, Boise, Idaho. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.2 The premises of the business formerly known as Body Shop Aerobics, located at 4806 Emerald Street, Boise, Idaho, 83760, is a "facility," as defined at 40 C.F.R. § 61.141.

3.3. Respondent conducted "renovation" activities at the former Body Shop Aerobics facility (Facility), and was the "operator of a renovation activity," as these terms are defined at 40 C.F.R. § 61.141.

3.4. At the start of the renovation activities, the Facility contained at least 260 linear feet or at least 160 square feet of "Category I or Category II nonfriable asbestos-containing material" or "regulated asbestos-containing material," as these terms are defined at 40 C.F.R. § 61.141.

3.5. On October 7, 2008, Complainant's asbestos NESHAP contract inspectors, Industrial Hygiene Resources (IHR), received notification of planned renovation activities at the Facility from Respondent. The notification provided that renovation activities to be conducted at the Facility would involve the removal of approximately 2,500 square feet of ceiling texture classified as Regulated Asbestos-Containing Material (RACM) and 2,500 square feet of vinyl asbestos tile classified as Category II nonfriable material. The renovation notification listed start and completion dates for the removal of asbestos-containing material, but did not include scheduled start or completion dates for the renovation activities.

3.6. On October 22, 2009, two IHR inspectors, Mr. E.C. Cullen and Mr. Steve Mabe, arrived at the Facility at approximately 10:30 am to perform a routine inspection for the purpose of assessing compliance with asbestos NESHAP requirements. The inspection occurred one day after the start date for asbestos removal listed in the October 7, 2009 notification. During the inspection, IHR inspectors made visual observations, took written notes, collected samples of suspected asbestos-containing material, photographed the Facility and work area, and interviewed Respondent's site supervisor, Mr. Doyle Sudduth, and owner, Mr. Dan Hommel. IHR prepared a detailed report based on the information collected during the inspection. This inspection report was provided to Complainant on October 23, 2008.

3.7 When the IHR inspectors first arrived at the Facility they observed three open dumpsters, one open trailer, and one closed trailer on the sidewalk immediately outside the front entrance to the Facility and adjacent to the parking lot. The open trailer was lined with a polyethylene sheet and surrounded by two-inch barrier tape marked "Danger" that separated it from the other trailer, dumpsters, and parking lot. No additional signage or markings were present on or around the open trailer.

3.8 The IHR inspectors observed a worker using a wheelbarrow to move drywall and ceiling texture debris from inside the Facility to the polyethylene-lined open trailer on the sidewalk outside the front entrance. The debris in the wheelbarrow was not in a bag or otherwise enclosed in a container.

3.9 Mr. Sudduth told Inspector Cullen that the ceiling debris being transferred by wheelbarrow from the interior of the Facility to the polyethylene-lined open trailer was the same material categorized as RACM in the October 7, 2009 notification.

3.10 Inspector Mabe entered the polyethylene-lined open trailer located outside the Facility and identified the debris as loose, uncontained drywall and ceiling texture. Pieces of the ceiling texture were visibly detached and separated from the drywall and had crumbled into small pieces. Inspector Mabe observed that the drywall and ceiling texture, as well as the polyethylene liner, was dry. The IHR inspectors did not observe a water source outside near the polyethylene-lined open trailer.

3.11 Inspector Mabe collected three bulk samples of the ceiling texture material from the polyethylene-lined open trailer. The samples contained between three and five percent Chrysotile asbestos in the three samples.

3.12 Respondent established a containment area to remove the ceiling texture material and vinyl asbestos tile, identified in the October 7, 2008 notification as asbestos-containing

materials, from the interior of the Facility. The containment area consisted of a polyethylene flap to cover the front entrance, additional polyethylene to seal vents and windows, and two negative air machines to control the flow of air.

3.13 Inspector Mabe entered the containment area and observed one worker on scaffolding using hand tools to remove pieces of drywall covered with ceiling texture from the ceiling trusses. Prior to removing a section of the ceiling drywall, the worker on the scaffolding sprayed the section with water from a hose with a spray nozzle. Once dislodged from the ceiling trusses, the drywall and ceiling texture dropped approximately nine feet to the ground where two workers placed the downed material in a wheelbarrow. The wheelbarrow was used to deliver the removed drywall and ceiling texture from inside the containment area to the polyethylene-lined open trailer outside.

3.14 Inspector Mabe examined the removed drywall and ceiling texture on the ground below the scaffolding and determined that the materials had visible evidence of water, but were not darkened or beaded with water to indicate that they were adequately wet.

3.15 Respondent did not have available at the Facility evidence that at least one of the employees present at the Facility had been trained in the provisions of the asbestos NESHAP regulations and means of compliance.

Alleged Violations

3.16. Complainant alleges that Respondent:

(a) failed to provide scheduled starting and completion dates for the renovation activities at the Facility in the October 7, 2009 notification in violation of 40 C.F.R. § 61.145(b)(4)(ix);

(b) failed to adequately wet RACM that was removed or stripped from the ceiling of the Facility and ensure that the material remained adequately wet until collected and contained or treated in preparation for disposal in violation of 40 C.F.R. § 61.145(e)(6)(i);

(c) failed to carefully lower RACM removed or stripped from the ceiling of the Facility to the ground and floor, not dropping or otherwise damaging or disturbing the material in violation of 40 C.F.R. § 61.145(c)(6)(ii);

(d) visibly discharged emissions to the outside air during the collection and transport of asbestos-containing waste material removed or stripped from the ceiling of the Facility in violation of 40 C.F.R. § 61.150(a);

(e) failed to post or make available at the Facility evidence that at least one on-site representative was trained in the provisions of, and means for complying with, the asbestos NESHAP in violation of 40 C.F.R. § 61.145(c)(8); and

(f) failed to mark the polyethylene-lined open trailer as it was being loaded with asbestos-containing waste material with any visible signs that conformed with the requirements of 40 C.F.R. § 61.149(d)(1)(i)-(iii) in violation of 40 C.F.R. § 61.150(e).

VI. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.10, below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Complainant has determined, and Respondent agrees, that an appropriate penalty to settle this action is THIRTY-SIX THOUSAND DOLLARS (\$36,000). This penalty amount is based on the statutory penalty criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's *Clean Air Act Stationary Source Penalty Policy*, and other relevant factors including consideration of Respondent's ability to pay. Respondent consents to payment of the civil penalty, with interest, according to the following schedule:

Installment Payment Due Date	Principal	Interest	Total
Installment 1: 30 days from effective date	\$6,000		\$6,000
Installment 2: 1 year from effective date	\$10,000	\$900	\$10,900
Installment 3: 2 years from effective date	\$10,000	\$600	\$10,600
Installment 4: 3 years from effective date	\$10,000	\$300	\$10,300

If any installment payment is received more than 30 days after it is due, the entire amount of this debt will become immediately due and payable, with interest thereon from the effective date of the CAFO, at the option and sole discretion of Complainant. If Respondent is sold or ownership interests are transferred during the period of the above-described installment payment schedule, the remaining principal and accrued interest shall be due and payable as of the effective date of the sale or transfer. Respondent may pay any portion of the civil penalty earlier than the payment schedule set forth in this paragraph.

4.7 Respondent consents to the issuance of the Final Order recited herein and to the

payment of the penalty cited in Paragraph 4.6.

4.8 Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case.

4.9 Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Mr. John Pavitt
U.S. Environmental Protection Agency
222 West 7th Avenue, #19
Anchorage, Alaska 99513

4.10 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the

effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

(b) Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty in full by the due date, Respondent shall pay (in addition to the assessed penalty and any interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.12 This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, and local law.

4.13 Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.14 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15 Respondent explicitly waives its right to contest the allegations contained in this CAFO and to appeal the Final Order contained herein.

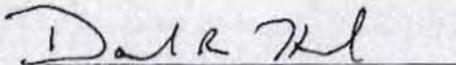
4.16 Respondent certifies that, to the best of its knowledge and belief, the financial information submitted to Complainant fairly and accurately sets forth its financial circumstances, and those circumstances have not materially changed between the time the financial information was submitted to Complainant and Respondent's signing of this CAFO.

4.17 Compliance with all the terms and conditions of this CAFO shall result in full

settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

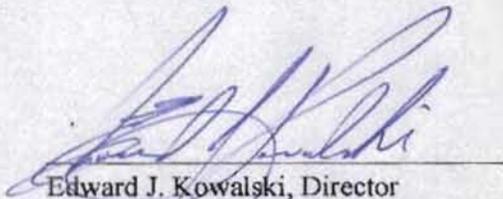
FOR RESPONDENT PRECISION DEMOLITION AND ABATEMENT, LLC



Mr. Dan Hommel
President
Precision Demolition and Abatement, LLC

Dated: 9-23-09

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency Region 10

Dated: 9/30/09

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to the Clean Air Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

5.3 Respondent shall pay a civil penalty of THIRTY SIX THOUSAND DOLLARS (\$36,000) as provided in Paragraph 4.6 above.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 30th day of September, 2009.



Thomas M. Jahuke
Regional Judicial Officer
U.S. Environmental Protection Agency Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Precision Demolition and Abatement, LLC, DOCKET NO.: CAA-10-2009-0264** was filed with the Regional Hearing Clerk on September 30, 2009.

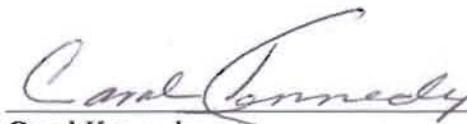
On September 30, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 30, 2009, to:

Precision Demolition and Abatement, LLC
4806 Emerald Street
Boise, Idaho 83760

DATED this 30th day of September 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10