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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HEARINGS CLERK
EPA - REGION 10

In the Matter of:)	DOCKET NO. CAA-10-2012-0069
Husch & Husch, Inc.)	CONSENT AGREEMENT AND
8031 Branch Road)	FINAL ORDER
Harrah, Washington 98933)	
)	
C.I. Lovell, Inc.)	
12585 Progressive Road)	
Harrah, Washington 98933)	
)	
Respondents.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under 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).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Husch & Husch, Inc. and C.I. Lovell, Inc. ("Respondents") agree to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes 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 (NESHAPs).

3.2. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, the 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).

3.3. The requirements of 40 C.F.R. § 61.145 of the Asbestos NESHAP apply to each owner and operator of a demolition activity.

3.4. 40 C.F.R. § 61.145(a)(2)(ii) and (b) provide that when an owner or operator intends to demolish a facility, the EPA must be provided with written notice at least ten (10) working days before demolition begins. Notification of the planned demolition of a facility containing zero or minimal asbestos must meet the requirements of 40 C.F.R. § 61.145(b)(1), (2), (3)(i) and (iv), and (4)(i)-(vii), (ix), and (xvi).

3.5. 40 C.F.R. § 61.141 defines "demolition" as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

3.6. 40 C.F.R. § 61.141 defines “structural member” as any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

3.7. Pursuant to Section 301(a) and (d)(4) of the CAA, 42 U.S.C. § 7601(a) and 7601(d)(4), EPA has adopted air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the Federal Air Rules for Reservations (“FARR”) and became effective on June 7, 2005.

3.8. The FARR provisions that apply on the Yakama Nation Indian Reservation are incorporated by reference at 40 C.F.R. § 49.11110(a)-(k), and specifically include 40 C.F.R. §§ 49.123, 49.126, and 49.131.

3.9. 40 C.F.R. § 49.126, the Rule for Limiting Fugitive Particulate Matter Emissions, applies to the owner or operator of any source of fugitive particulate matter emissions.

3.10. 40 C.F.R. § 49.126(d) requires that the owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

3.11. 40 C.F.R. § 49.126(e)(1)(ii) and (iii) provide that, if sources of fugitive particulate matter emissions are present, the owner or operator shall: (a) determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions; and (b) prepare, and update as necessary following each survey, a written plan that specifies the reasonable precautions that will be taken and the procedures to be followed to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping. For construction or

demolition activities, a written plan must be prepared prior to commencing construction or demolition.

3.12. 40 C.F.R. § 49.126(e)(1)(iv) requires the owner or operator to implement the written plan, and maintain and operate all sources to minimize fugitive particulate matter emissions.

3.13. 40 C.F.R. § 49.126(e)(1)(v) requires the owner or operator to maintain records for five years that document the surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

3.14. 40 C.F.R. § 49.131(d)(1) prohibits the open burning of "...asphalt or composition roofing ... construction debris or demolition waste; or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned."

3.15. 40 C.F.R. § 49.123(a) defines "open burning" as the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack.

3.16. 40 C.F.R. § 49.131, the General Rule for Open Burning, applies to any person who conducts open burning and to the owner of any property on which open burning is conducted.

3.17. Respondents are "persons" as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.18. Respondents are "owners or operators" as that term is defined by the FARR, 40 C.F.R. § 49.123, and the Asbestos NESHAP, 40 C.F.R. § 61.141.

3.19. Respondent Husch & Husch, Inc. hired Respondent C.I. Lovell, Inc. to demolish a storage building owned and operated by Husch & Husch, Inc., located at 8031 Branch Road, Harrah, Washington, which is located within the exterior boundaries of the Yakama Nation Indian Reservation.

3.20. No written plan was prepared prior to commencing demolition setting forth reasonable precautions that would be taken and procedures to be followed to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping. In addition, no records were kept regarding fugitive particulate matter emissions.

3.21. Demolition of the structure began on February 4, 2011. The building was removed February 7, 2011.

3.22. On February 10, 2011, employees of Respondent C.I. Lovell, Inc. burned prohibited materials on or near Respondent Husch & Husch, Inc.'s property.

3.23. The materials burned included, among other things, demolition waste, plywood, composition roof shingles, and metal.

3.24. Respondents violated the Asbestos NESHAP, 40 C.F.R. § 61.145(b), by failing to provide the EPA with written notice of intent to demolish the storage building on Respondent Husch & Husch, Inc.'s property at least ten (10) working days before demolition began on or about February 4, 2011.

3.25. Respondents failed to take reasonable precautions and prepare a written plan for preventing fugitive particulate matter emissions, in violation of the FARR, 40 C.F.R. § 49.126(e)(1)(ii) and (iii).

3.26. Respondents failed to implement a written plan and to maintain and operate the source to minimize fugitive particulate matter emissions, in violation of the FARR, 40 C.F.R. § 49.126(e)(1)(iv).

3.27. Respondents failed to maintain records that document the surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions, in violation of the FARR, 40 C.F.R. § 49.126(e)(1)(v).

3.28. Respondents violated 40 C.F.R. § 49.11110(g), which incorporates by reference 40 C.F.R. § 49.131(d)(1), by openly burning prohibited material on February 10, 2011.

IV. CONSENT AGREEMENT

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations set forth in Part III of this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondents' full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations, as well as other relevant factors. After considering these factors in accordance with "EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plan under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington," EPA has determined and Respondents agree that an appropriate penalty to settle this action is eleven thousand dollars (\$11,000).

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and 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

Respondents must note on the check Respondents' name and address, the case name and the docket number of the case.

4.6. Respondents must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Donald Dossett
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-184
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents shall pay (in addition to

any assessed penalty and interest) the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representatives of the Respondents certify that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

4.10. Except as described in Subparagraph 4.7.2 above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondents expressly waive any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondents and their officers, directors, agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

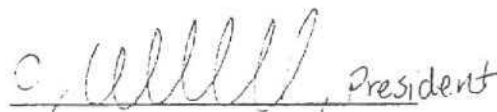
FOR RESPONDENT HUSCH & HUSCH, INC.:

DEANNA HUSCH, Secretary/Treasurer
Husch & Husch, Inc.

DATED:

FOR RESPONDENT C.I. LOVELL, INC.:

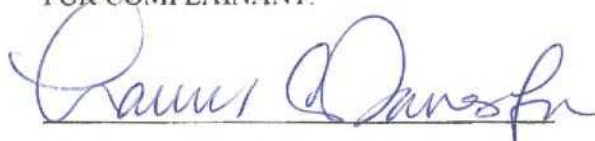
2-6-12

 President
CATHLEEN LOVELL, Owner
C.I. Lovell, Inc.

DATED:

FOR COMPLAINANT:

2-7-12


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

DATED:

February 3, 2012

FOR RESPONDENT HUSCH & HUSCH, INC.:

Deanna Husch, Secretary-Treasurer
DEANNA HUSCH, Secretary/Treasurer
Husch & Husch, Inc.

DATED:

FOR RESPONDENT C.I. LOVELL, INC.:

CATHLEEN LOVELL, Owner
C.I. Lovell, Inc.

DATED:

2-7-12

FOR COMPLAINANT:

Edward J. Kowalski for
EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with these terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. 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 Respondents' obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. Respondents shall pay a civil penalty in the amount of eleven thousand dollars (\$11,000), as provided in Part IV above.

5.4. In accordance with 40 C.F.R. § 22.34(b), issuance of this CAFO pursuant to 40 C.F.R. § 22.13 satisfies the notice requirement of that section and Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

5.5. This Final Order is effective upon filing.

SO ORDERED this 7th day of February, 2012.



THOMAS M. JAHNKE
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: Husch & Husch, Inc. and C.I.Lovell, Inc., DOCKET NO.: CAA-10-2012-0069**, was filed with the Regional Hearing Clerk on February 7, 2012.

On February 7, 2012 the undersigned certifies that a true and correct copy of the document was delivered to:


Jillian Bunyan
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 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 February 7, 2012 to:

Mr. Kelly Husch, Registered Agent
Husch & Husch, Inc.
8031 Branch Road
Harrah, Washington 98933

Ms. Cathleen Lovell
C.I. Lovell, Inc.
12585 Progressive Road
Harrah, Washington 98933

DATED this 7th day of February 2012.



Signature

Print Name: Candace H. Smith

Regional Hearing Clerk

EPA Region 10

Docket Number: CAA-10-2012-0069
Consent Agreement and Final Order
In re: Husch & Husch, Inc. and C.I. Lovell, Inc.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

