

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2

2015 APR 28 PM 1: 56

REGIONAL HEARING  
CLERK

In the Matter of:

Wade Salvage, Inc.

Respondent,

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**CAA-02-2015-1205**

**PRELIMINARY STATEMENT**

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Respondent Wade Salvage, Inc. ("Wade" or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22.

The Consent Agreement portion of this CAFO is signed by the Complainant and duly authorized representatives of Respondent. The Final Order portion of the CAFO is issued by the Region 2 Regional Judicial Officer.

## CONSENT AGREEMENT

### A. General Provisions

1. The purpose of this Consent Agreement is to resolve alleged violations of the CAA and its implementing regulations by the Respondent at a former chemical facility (“the Facility”) in Gibbstown, New Jersey.
2. The specific alleged violation covered by this Consent Agreement is identified below in Paragraph 36. Consistent with Consolidated Rules 22.13(b) and 22.18(b), the execution and filing of this Consent Agreement and the accompanying Final Order will simultaneously commence and conclude EPA’s administrative penalty proceeding for those alleged violations.
3. Solely for the purposes of EPA’s administrative penalty proceeding, and consistent with Consolidated Rule 22.18(b), Respondent:
  - a. admits the jurisdictional allegations set forth below in Paragraphs 4-11;
  - b. neither admits nor denies the factual allegations set forth below in Paragraphs 32-35;
  - c. neither admits nor denies the legal conclusions set forth below in Paragraphs 37 and 38;
  - d. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled “F. Settlement,” on the terms specified in that section;
  - e. consents to the issuance of the attached Final Order; and
  - f. waives any right to contest the allegations set forth in Paragraph 36 below, and any right to appeal the attached Final Order.

### B. Jurisdictional Allegations

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or

prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

5. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the EPA Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements.

7. Pursuant to EPA Delegation of Authority 7-6-C and EPA Region 2 Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Judicial Officer, through the Region 2 Regional Administrator, the authority to execute CAA Section 113(d) Final Orders where the penalty does not exceed \$37,500.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding.

9. Respondent is a “person” within the meaning of Section 302(e) of the Act.

## **C. Legal Background**

### *Sections 112 and 114 of the CAA*

10. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.

11. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

12. Section 112(q) of the Act provides that any standard promulgated pursuant to Section 112 and in effect prior to the 1990 CAA amendments remains in force and effect after those amendments.

13. Section 112(c)(1)(B) of the Act as it existed prior to the 1990 CAA amendments, and Section 112(i)(3)(A) of the Act as it exists today, require new and existing sources to comply with standards promulgated pursuant to Section 112.

14. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under the Act.

### *The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M*

15. In general, the Asbestos NESHAP, which was promulgated by EPA pursuant to Sections 112 and 114 of the Act, contains work practice requirements that apply to the owners and operators of renovation or demolition activities in which the amount of RACM that is

stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity.

16. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

17. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are "demolitions."

18. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "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."

19. The term "facility" is defined by 40 C.F.R. § 61.141 to include, among other things, "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units)."

20. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

21. The term “regulated asbestos-containing material” (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

22. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

23. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

24. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.

25. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

26. 40 C.F.R. § 61.145(c)(3) provides that when RACM is stripped from a facility component while it remains in place in the facility, the owner and/or operator must adequately wet the RACM during the stripping operation.

27. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

28. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one onsite representative, trained in the Asbestos NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

29. 40 C.F.R. § 61.150(a)(1)(iii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

30. 40 C.F.R. § 61.150(d)(1) requires that for all the asbestos containing waste material transported off the facility site, the owner and/or operator must: Maintain waste shipment records, using a form similar to that shown in figure 4, and include the following information: (i) the name, address and telephone number of the waste generator; (ii) the name and address of the local, State or EPA Regional office responsible for administering the Asbestos NESHAP program; (iii) the approximate quantity in cubic meters (cubic yards); (iv) the name and telephone number of the disposal site operator; (v) the name and physical site location of the disposal site; (vi) the date transported; (vii) the name, address and telephone number of the transporter(s); and (viii) a certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

31. 40 C.F.R. § 61.145(b) requires that notification of the intent to renovate or demolish a facility be sent to EPA at least 10 days before a facility is demolished even if there is no asbestos present.

#### **D. Factual Background**

32. Respondent is a for profit corporation incorporated in the State of New Jersey. Respondent is in the wholesale scrap and waste material business, and is a privately held corporation.

33. Wade participated in the demolition of the Facility.

34. The Facility contained RACM at the time of Wade's participation in its demolition.

#### **E. Conclusions of Law**

35. Wade is an owner and/or operator of a demolition activity as that term is used in the Asbestos NESHAP.

36. Wade violated 40 C.F.R. § 61.145(b) by failing to submit the required notice.

37. Wade's violation of 40 C.F.R. § 61.145(b) is a violation of Section 112 and/or Section 114 of the CAA.

#### **F. Settlement**

38. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **\$5,000**. Respondent shall pay the **\$5,000**, either by corporate, cashiers' or certified checks, as follows (a) within thirty (30) days from the date of issuance of the attached Final Order (the "Initial Due Date") Respondent shall pay the amount of \$1,250; (b) within one hundred ten (110) days of the Initial Due Date Respondent shall make a second payment in the amount of \$1,250; (c) within two hundred twenty (220) days of the Initial Due Date Respondent shall make a third payment in the amount of \$1,250 and (d) within three hundred thirty days (330) of the Initial Due Date Respondent shall make a fourth and final payment in the amount of \$1,250.



Respondent shall: (1) clearly type or write the docket number (CAA-02-2015-1205) on the checks to ensure proper payment; (2) make the checks payable to the order of “Treasurer, United States of America;” and (3) send the checks to:

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

Respondent shall send notices of each payment to the following:

Robert Buettner, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 21st Floor  
New York, New York 10007

and

Liliana Villatora, Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, New York 10007

39. If Respondent fails to make full and complete payment of the **\$5,000** penalty that is required by this CAFO, EPA may pursue an action to compel payment, plus interest, handling charges, attorney fees, collection costs and a nonpayment penalty. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717: (i) interest shall accrue from the Due Date and shall be assessed at rates established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621; (ii) handling charges shall be those contemplated by 31 U.S.C. § 3717(e)(1); and (iii) the nonpayment penalty will be ten percent of the total amount of any penalties, interest, enforcement expenses and nonpayment penalties which are unpaid as of the beginning of each calendar quarter, and will be charged for each calendar quarter during which the failure to pay persists.

40. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

41. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

42. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

44. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

45. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

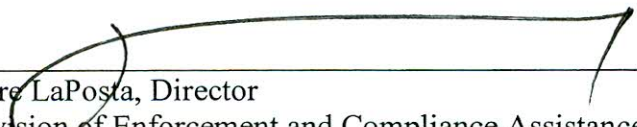
46. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

47. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

48. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

**G. Signatures**

For Complainant:

  
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Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2

January 7, 2015

For Respondent:

  
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Walter B. Dennen, Esq.  
Aimino & Dennen, LLC  
40 Newton Avenue  
Woodbury, New Jersey 08096

November 11, 2014

*In the Matter of Wade Salvage, Inc.*  
CAA-02-2015-1205

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of United States Department of Energy, EPA Index Number CAA-02-2015-1205, the Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: January 8, 2015

Helen S. Ferrara

Helen S. Ferrara  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region 2