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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

1 NANCY J. MARVEL
Regional Counsel

2 CAROL BUSSEY
3 Assistant Regional Counsel
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3950

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

10 In the Matter of:)
11) Docket No. CAA-09-2011-0003
12 BUTTE-GLENN COMMUNITY COLLEGE)
13 DISTRICT AND BETH'S CONSTRUCTION, INC.,)
14 Respondents.) CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 and 22.18

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region
17 IX ("EPA"), and the Butte-Glenn Community College District
18 ("District") and Beth's Construction, Inc. ("BCI")
19 (collectively "Respondents") agree to settle this matter and
20 consent to the entry of this Consent Agreement and Final Order
21 ("CAFO"), which simultaneously commences and concludes this
22 matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

23 A. AUTHORITY AND PARTIES

24 1. This is a civil administrative penalty action
25 instituted against Respondents pursuant to Section 113(d) of
26 the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §
27 7413(d), for violation of Sections 112 and 114 of the Act, 42
28 U.S.C. §§ 7412 and 7414, and implementing federal regulations

1 at 40 C.F.R. Part 61, Subpart M.

2 2. Complainant is the Director of the Air Division, EPA,
3 Region IX, who has been duly delegated the authority to
4 initiate this action and to sign a consent agreement settling
5 this action.

6 3. Respondent District is a community college district
7 with offices located on the Butte College campus at 3536 Butte
8 Campus Drive in Oroville, California and Respondent BCI is a
9 California corporation located at 1158 Boole Road in Applegate,
10 California.

11 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

12 4. Pursuant to Sections 112 and 114 of the Act, 42 U.S.C.
13 §§ 7412 and 7414, the EPA Administrator promulgated regulations
14 that govern the emission, handling, and disposal of asbestos
15 and associated record-keeping and notification requirements,
16 which are known as the National Emission Standards for
17 Hazardous Air Pollutants ("NESHAP") for asbestos and codified
18 at 40 C.F.R. Part 61, Subpart M.

19 5. Section 302(e) of CAA, 42 U.S.C. § 7602(e), defines
20 "person" as an individual, corporation, partnership,
21 association, state, municipality, political subdivision of a
22 State, and any agency, department, and instrumentality of the
23 United States and any officer, agent, or employee thereof.

24 6. "Facility" means any institutional, commercial,
25 public, industrial, or residential structure, installation, or
26 building (including any structure, installation, or building

1 containing condominiums or individual dwelling units operated
2 as a residential cooperative, but excluding residential
3 buildings having four or fewer dwelling units). 40 C.F.R. §
4 61.141.

5 7. "Demolition" means the wrecking or taking out of any
6 load-supporting structural member of a facility together with
7 any related handling operations or the intentional burning of
8 any facility. 40 C.F.R. § 61.141.

9 8. "Owner or operator of a demolition or renovation
10 activity" means any person who owns, leases, operates,
11 controls, or supervises the facility being demolished or
12 renovated or any person who owns, leases, operates, controls,
13 or supervises the demolition or renovation, or both. 40 C.F.R.
14 § 61.141.

15 9. An owner or operator of a demolition activity must
16 provide EPA with a written notice of intention to demolish at
17 least ten working days before demolition begins. 40 C.F.R. §
18 61.145(b)(1)(i).

19 10. In a facility being demolished, the notification
20 requirements of § 61.145(b) apply even if there is no asbestos.
21 40 C.F.R. §§ 61.145(a)(1) and (2).

22 C. ALLEGATIONS

23 11. Respondents are each a "person" as that term is
24 defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25 12. At all times relevant to this CAFO, Respondent
26 District owned the Butte College Administrative Annex Building

1 located on the Butte College campus in Oroville, California (the
2 "Building").

3 13. The Building is a "facility" as defined at 40 C.F.R.
4 §61.141.

5 14. Respondent District hired Respondent BCI to remove
6 the Building from its foundation and relocate it to another
7 part of the Butte College campus, which Respondent BCI did in
8 or around early-January 2010.

9 15. The movement of the Building from its foundation to a
10 new location constitutes a "demolition," as that term is
11 defined at 40 C.F.R. § 61.141.

12 16. On January 13, 2010, inspectors from the California
13 Air Resources Board and EPA conducted an inspection at the
14 Butte College campus and discovered that the Building had been
15 moved.

16 17. Respondents are each an "owner or operator of a
17 demolition activity," as defined at 40 C.F.R. §61.141.

18 18. Respondents did not submit a written notice of their
19 intention to "demolish" the Building to EPA before demolition
20 began.

21 19. Respondents' failure to submit a written notice of
22 their intention to "demolish" the Building to EPA before
23 demolition began constitutes a violation of 40 C.F.R.
24 §61.145(b)(1)(i).

25 D. RESPONDENT'S ADMISSIONS

26 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for
27 the purpose of this proceeding, Respondents (i) admit that EPA

1 has jurisdiction over the subject matter of this CAFO and over
2 Respondents; (ii) neither admit nor deny the specific factual
3 allegations contained in Section I.C of this CAFO; (iii)
4 consent to any and all conditions specified in this CAFO and to
5 the assessment of the civil administrative penalty under
6 Section I.E of this CAFO; (iv) waive any right to contest the
7 allegations contained in Section I.C of this CAFO; and
8 (v) waive the right to appeal the proposed final order
9 contained in this CAFO.

10 E. CIVIL ADMINISTRATIVE PENALTY

11 21. Respondents agree to the assessment of a penalty in
12 the amount of NINE THOUSAND, NINE HUNDRED AND FORTY DOLLARS
13 (\$9,940) as final settlement of the civil claims against
14 Respondents arising under the Act as alleged in Section I.C of
15 this CAFO.

16 22. Respondents shall pay the assessed penalty no later
17 than thirty (30) days from the effective date of this CAFO.
18 Payment shall be made by cashier's or certified check payable
19 to the "Treasurer, United States of America," accompanied by a
20 transmittal letter indicating Respondents' names, the case
21 title, and the docket number, or paid by one of the other
22 methods listed below and sent as follows:

23 Regular Mail:

24 U.S. Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077
28 St. Louis, MO 63197-9000

Wire Transfers:

In the Matter of Butte-Glenn Community
College District and Beth's Construction,
Inc.

1 Wire transfers must be sent directly to the Federal Reserve
Bank in New York City with the following information:

2 Federal Reserve Bank of New York
3 ABA = 021030004
4 Account = 68010727
5 SWIFT address = FRNYUS33
6 33 Liberty Street
7 New York, NY 10045
8 Field Tag 4200 of the Fedwire message should read "D 68010727
9 Environmental Protection Agency"

10 ///
11 ///

12 Overnight Mail:

13 U.S. Bank
14 1005 Convention Plaza
15 Mail Station SL-MO-C2GL
16 ATTN Box 979077
17 St. Louis, MO 63101

18 ACH (also known as REX or remittance express):

19 Automated Clearinghouse (ACH) for receiving US currency
20 PNC Bank
21 808 17th Street, NW
22 Washington, DC 20074
23 ABA = 051036706
24 Transaction Code 22 - checking
25 Environmental Protection Agency
26 Account 31006
27 CTX Format

28 On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment
remittance is needed, contact the EPA Cincinnati Finance Center
at 513-487-2091.

In addition, concurrent with delivery of the payment of the
penalty, a copy of each check and transmittal letter or
notification that the payment has been made by one of the other

1 methods listed above, including proof of the date payment was
2 made, shall be sent to:

3 Regional Hearing Clerk
4 Office of Regional Counsel (ORC-1)
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Chief, Air Enforcement Office
9 Air Division (AIR-5)
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, CA 94105

13 Carol Bussey
14 Assistant Regional Counsel
15 Office of Regional Counsel (ORC-2)
16 U.S. Environmental Protection Agency, Region 9
17 75 Hawthorne Street
18 San Francisco, California 94105

19 23. Payment of the above civil administrative penalty
20 shall not be used by Respondents or any other person as a tax
21 deduction from Respondents' federal, state, or local taxes.

22 24. If Respondents fail to pay the assessed civil
23 administrative penalty specified in Paragraph 21 by the
24 deadline specified in Paragraph 22, then Respondents shall pay
25 to EPA the stipulated penalty of FOURTEEN THOUSAND, TWO HUNDRED
26 DOLLARS (\$14,200) rather than the assessed penalty, which shall
27 become due and payable upon EPA's written request. Such
28 failure by Respondents may also subject Respondents to a civil
action to collect any unpaid portion of the assessed penalty,
together with interest, handling charges, and nonpayment
penalties as set forth in Paragraph 25 below. In any such
collection action, the validity, amount, and appropriateness of
this CAFO or the penalty assessed hereunder are not subject to
review.

1 Section I.C of this CAFO. Nothing in this CAFO is intended to
2 or shall be construed to resolve (i) any civil liability for
3 violations of any provision of any federal, state, or local
4 law, statute, regulation, rule, ordinance, or permit not
5 specifically alleged in Section I.C of this CAFO; or (ii) any
6 criminal liability. EPA specifically reserves any and all
7 authorities, rights, and remedies available to it (including,
8 but not limited to, injunctive or other equitable relief or
9 criminal sanctions) to address any violation of this CAFO or
10 any violation not specifically alleged in Section I.C of this
11 CAFO.

12 27. This CAFO does not exempt, relieve, modify, or affect
13 in any way Respondents' duty to comply with all applicable
14 federal, state, and local laws, regulations, rules, ordinances,
15 and permits.

16 G. ATTORNEYS' FEES AND COSTS

17 28. Except as set forth in Paragraph 25(c) above, each
18 party shall bear its own attorneys' fees, costs, and
19 disbursements incurred in this proceeding.

20 H. EFFECTIVE DATE

21 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
22 22.31(b), this CAFO shall be effective on the date that the
23 final order contained in this CAFO, having been approved and
24 issued by either the Regional Judicial Officer or Regional
25 Administrator, is filed.

26 I. BINDING EFFECT

27 30. The undersigned representative of Complainant and the
28 undersigned representatives of Respondents each certifies that

1 he or she is fully authorized to enter into the terms and
2 conditions of this CAFO and to bind the party he or she
3 represents to this CAFO.

4 31. The provisions of this CAFO shall apply to and be
5 binding upon Respondents and their officers, directors,
6 employees, agents, trustees, servants, authorized
7 representatives, successors, and assigns.

8 32. This Consent Agreement constitutes the entire
9 agreement between the parties resolving this matter arising
10 under the CAA.

11 33. This document constitutes an "enforcement response"
12 as that term is used in EPA's Penalty Policy for the purposes
13 of determining Respondents' "full compliance history" as
14 provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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1 FOR RESPONDENT, BUTTE-GLENN COMMUNITY COLLEGE DISTRICT

2
3 Date: 9-8-11

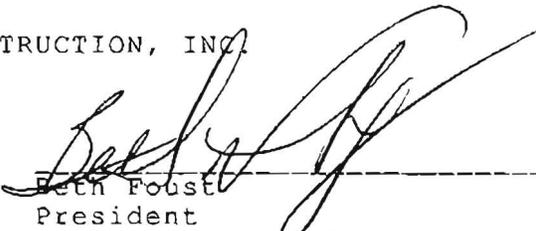
By:


Andrew Suleski

Vice-President for Administration
Butte-Glenn Community College District

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27 In the Matter of Butte-Glenn Community
28 College District and Beth's Construction,
Inc.

1 RESPONDENT, BETH'S CONSTRUCTION, INC.

2
3 Date: 9/3/2011 By: 
4 Beth Foust
5 President
6 Beth's Construction, Inc.

1 FOR COMPLAINANT, EPA REGION IX

2
3 Date: 9/27/11

By: 

4 Deborah Jordan
5 Director, Air Division
6 U.S. ENVIRONMENTAL PROTECTION
7 AGENCY, REGION IX

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In the Matter of Butte-Glenn Community
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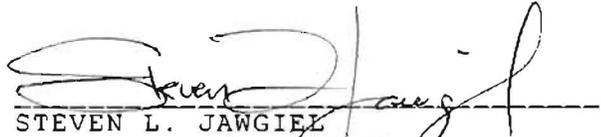
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II. FINAL ORDER

Complainant and Respondents, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2011-0003) be entered, and that Respondents shall pay a civil administrative penalty in the amount of NINE THOUSAND, NINE HUNDRED AND FORTY DOLLARS (\$9,940) and comply with the terms and conditions set forth in the Consent Agreement.

09/28/11
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original copy of the foregoing Consent Agreement and Final Order for Beth's Construction, Inc., and Butte-Glenn Community College was filed with the Regional Hearing Clerk, Region IX and that a copy was sent by U.S. Certified Mail, Return Receipt Requested, to:

Andrew Suleski
Vice President for Administration
Butte-Glenn Community College District
3536 Butte College Drive
Oroville, CA 95965

Att: Kimberly A. Jones
Facilities Planning and Management

Certified Mail No. 7010 1870 0001 5596 5760

Beth N. Foust
President
Beth's Construction, Inc.
P.O. Box 610
Applegate, CA 95703

Certified Mail No. 7010 1870 0001 5596 5753

Carol Bussey, Esq.
Office of Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

Date: 9/29/11


Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 29 2011

James Ryden
Director
Enforcement Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Ryden:

Enclosed for your information is a copy of a Consent Agreement and Final Order regarding Beth's Construction, Inc., and Butte-Glenn Community College District for a violation of the Asbestos NESHAP during demolition/relocation of a structure located at the Butte Community College in Oroville, California.

If you have any questions, please contact Bob Trotter of my staff at (415) 972-3989.

Sincerely,


Deborah Jordan
Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1870 0001 5596 5753
Return Receipt Requested

Docket No. CAA 09-2011- 0603

SEP 29 2011

Beth N. Foust
President
Beth's Construction, Inc.
P.O. Box 610
Applegate, CA 95703

Dear Ms. Foust:

Enclosed is your copy of the Consent Agreement and Final Order filed for the Butte-Glenn Community College District and Beths's Construction, Inc.

If you have any questions on the Agreement, please feel free to call Carol Bussey at (415)972-3950.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc: California Air Resources Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1870 0001 5596 5760
Return Receipt Requested

Docket No. CAA 09-2011- 1003

SEP 09 2011

Andrew Suleski
Vice President for Administration
Butte-Glenn Community College District
3536 Butte College Drive
Oroville, CA 95965

Dear Mr. Suleski:

Enclosed is your copy of the Consent Agreement and Final Order filed for the Butte-Glenn Community College District and Beths's Construction, Inc.

If you have any questions on the Agreement, please feel free to call Carol Bussey at (415)972-3950.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc: California Air Resources Board