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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)
)
T. Bradley Lam)
d/b/a Lam's Lumber Company)
4761 Constitution Highway) U.S. EPA Docket Number
Barboursville, Virginia 22923) RCRA-03-2008-0354
)
RESPONDENT)
)
D's Market) Consent Agreement
5515 Spotswood Trail)
Barboursville, Virginia 22923)
)
and)
)
Lam's Lumber)
4761 Constitution Highway)
Barboursville, Virginia 22923)
)
FACILITIES)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. On June 18, 2008, the Director, Land and Chemicals Division (formerly the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") issued an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") against T. Bradley Lam, d/b/a Lam's Lumber Company ("Respondent"), pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a).

2. This Consent Agreement is entered into by Complainant and Respondent in settlement of EPA's claims against Respondent for civil penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in the Complaint.
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint.
4. Respondent neither admits nor denies the Findings of Fact contained in the Complaint, except as provided in Paragraph 3, above.
5. Respondent neither admits nor denies the Conclusions of Law contained in the Complaint, except as provided in Paragraph 3, above.
6. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in the Complaint, and any right to appeal the accompanying Final Order.
7. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
8. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
9. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged in the Complaint. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines

may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice.

10. EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

11. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

12. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

13. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. EPA's Findings of Fact and Conclusions of Law set forth in the Complaint are hereby incorporated into this Consent Agreement as if set forth fully herein.

III. CERTIFICATION OF COMPLIANCE

15. As to all relevant provisions of RCRA and the Commonwealth of Virginia Authorized UST management program allegedly violated as set forth in the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all such relevant provisions and regulations.

IV. CIVIL PENALTIES

16. Respondent agrees to pay a civil penalty in the amount of seventy thousand dollars (\$70,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this Consent Agreement and Final Order fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and Final Order, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. Respondent agrees to pay the above civil penalty in full plus accrued interest by remitting installment payments in accordance with Paragraph 19, below.

17. Complainant finds that the aforesaid settlement amount is reasonable, based upon a consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e). These factors were applied to the particular facts and circumstances of this case with specific reference to the *U.S. EPA Penalty Guidance For Violations of UST Regulations* (November 1990) and to 40 C.F.R. Part 19. EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in the Complaint.

18. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

- a. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Accordingly, interest payments on the outstanding portion of the civil penalty to be paid in installments as set forth in the payment schedule, to which Respondent agrees, are shown in Paragraph 19, below.

- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
- c. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
- d. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth in Paragraph 19, below. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all payments not later than 90 days after they become delinquent.

19. The civil penalty of seventy thousand dollars (\$70,000.00) set forth in Paragraph 16, above, shall be paid in nine (9) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of seven thousand seven hundred seventy-seven dollars and seventy-eight cents (\$7,777.78), consisting of a principal payment of \$7,777.78 and an interest payment of \$0.00, shall be paid within thirty (30) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- b. 2nd Payment: The second payment in the amount of eight thousand eighty-four dollars and sixty-three cents (\$8,084.63), consisting of a principal payment of \$7,777.78 and an interest payment of \$306.85, shall be paid within sixty (60) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- c. 3rd Payment: The third payment in the amount of seven thousand nine hundred twelve dollars and three cents (\$7,912.03), consisting of a principal payment of \$7,777.78 and an interest payment of \$134.25, shall be paid within ninety (90) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- d. 4th Payment: The fourth payment in the amount of seven thousand eight hundred ninety-two dollars and eighty-five cents (\$7,892.85), consisting of a principal payment of \$7,777.78 and an interest payment of

\$115.07, shall be paid within one hundred twenty (120) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

- e. 5th Payment: The fifth payment in the amount of seven thousand eight hundred seventy-three dollars and sixty-seven cents (\$7,873.67), consisting of a principal payment of \$7,777.78 and an interest payment of \$95.89, shall be paid within one hundred fifty (150) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- f. 6th Payment: The sixth payment in the amount of seven thousand eight hundred fifty-four dollars and forty-nine cents (\$7,854.49), consisting of a principal payment of \$7,777.78 and an interest payment of \$76.71, shall be paid within one hundred eighty (180) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- g. 7th Payment: The seventh payment in the amount of seven thousand eight hundred thirty-five dollars and thirty-one cents (\$7,835.31), consisting of a principal payment of \$7,777.78 and an interest payment of \$57.53, shall be paid within two hundred ten (210) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

- h. 8th Payment: The eighth payment in the amount of seven thousand eight hundred sixteen dollars and fourteen cents (\$7,816.14), consisting of a principal payment of \$7,777.78 and an interest payment of \$38.36, shall be paid within two hundred forty (240) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- i. 9th Payment: The ninth and final payment in the amount of seven thousand seven hundred ninety-six dollars and ninety-four cents (\$7,796.94), consisting of a principal payment of \$7,777.76 and an interest payment of \$19.18, shall be paid within two hundred seventy (270) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principle payments for the civil penalty in the amount of seventy thousand dollars (\$70,000.00) and total interest payments in the amount of eight hundred forty-three dollars and eighty-four cents (\$843.84).

20. **If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 19, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be**

liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraph 18, above, in the event of any such failure or default.

21. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with Paragraph 19, above, Respondent may pay the entire civil penalty of seventy thousand dollars (\$70,000.00) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in Paragraph 18.a, above. Further, in lieu of any of the payments set forth in the payment schedule in Paragraph 19, above, Respondent may pay the entire remaining principal together with the accrued interest as of the date of the payment.

22. Respondent shall remit the full penalty, or each installment payment for the civil penalty and any interest, administrative fees and late payment penalties, in accordance with Paragraphs 16 through 21, via one of the following methods:

- a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

- b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

- c. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- d. Via automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), to the following account:

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, D.C. 20074.

The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.

- e. Via on-line payment (from bank account, credit card, debit card), access "www.pay.gov" and enter "sfo 1.1" in the search field. Open the form and complete the required fields.

23. All payments by the Respondent shall include the Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2008-0354).

24. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin D. Fields
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

25. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

V. PARTIES BOUND

26. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns.

VI. EFFECTIVE DATE

27. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent T. Bradley Lam:

Date: 12-10-08 By: 
T. Bradley Lam

For Complainant United States Environmental Protection Agency, Region III:

Date: 12-11-08 By: 
Benjamin D. Fields
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

12/19/08
Date By: 
Abraham Ferdas, Director
Land and Chemicals Division

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
T. Bradley Lam)	
d/b/a Lam's Lumber Company)	Final Order
4761 Constitution Highway)	
Barboursville, Virginia 22923)	U.S. EPA Docket Number
)	RCRA-03-2008-0354
RESPONDENT)	
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D's Market)	
5515 Spotswood Trail)	
Barboursville, Virginia 22923)	
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and)	
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Lam's Lumber)	
4761 Constitution Highway)	
Barboursville, Virginia 22923)	
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FACILITIES)	

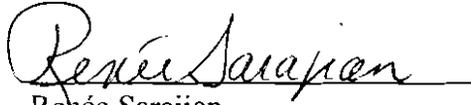
FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant"), and T. Bradley Lam, d/b/a Lam's Lumber Company ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), Respondent T. Bradley Lam, is hereby ordered to pay a civil penalty of seventy thousand dollars (\$70,000.00), as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 12/23/08


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Consent Agreement and Final Order to the Regional Hearing Clerk, and caused a true and correct copies to be sent as follows:

Va Federal Express to: T. Bradley Lam
d/b/a Lam's Lumber Company
4761 Constitution Highway
Barboursville, Virginia 22923

Via Pouch Mail to: Hon. Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
1200 Pennsylvania Ave., N.W.
Mail Code 1900L
Washington, D.C. 20005

12/22/08
Date



Benjamin D. Fields
Senior Assistant Regional Counsel