



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 25 2010

Certified Mail – Return Receipt Requested

Mr. Rob McKerrow
Vice-President of Development / Partner
CDP Johnson Ferry LR, LLC
12030 Etris Road, Suite 200
Roswell, GA 30075

Re: CDP Johnson Ferry LR, LLC
Docket No. CAA-04-2010-1510(b)

Dear Mr. McKerrow:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

We have received your payment for the entire penalty amount of \$680.00. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Pamela McIlvaine at (404) 562-9197.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
CDP Johnson Ferry LR, LLC.)
)
)
Respondent.)
_____)

Docket No. CAA-04-2010-1510(b)

RECEIVED
EPA REGION 4
28 FEB 25 PM 1:30
HEARINGS SECTION

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation/Termination or Suspension of Permits; Final Rule (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is CDP Johnson Ferry LR, LLC.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Asbestos is a “hazardous air pollutant” as that term is defined in Sections 112(a)(6) and 112(b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and 7412(b)(1), and is the subject of regulations codified at 40 C.F.R. Part 61, Subpart M, “National Emission Standard for Asbestos,” promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. Any person who violates Section 112 of the CAA may be assessed a penalty of up to \$25,000 for each such violation, in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The statutory penalty of \$25,000 has been adjusted for inflation. For a violation occurring after January 31, 1997, and through March 15, 2004, a penalty of up to \$27,500 may be assessed. For a violation occurring after March 15, 2004, and through January 12, 2009, a penalty of up to \$32,500 may be assessed. For a violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. In December 1977, pursuant to Section 112(l) of the CAA, EPA delegated the Administrator’s authorities and responsibilities to implement and enforce emission standards and prevention requirements for asbestos under Section 112 of the CAA, 42 U.S.C. § 7412, to the State of Georgia. Pursuant to Georgia Department of Natural Resources Rules for Air Quality Control, Chapter 391-3-1-.02(9)(b)7, the State has incorporated and adopted EPA’s rules for asbestos located at 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA, by reference. As indicated in Section 112(l)(7) of the CAA, nothing in Section 112(l) of the CAA shall prohibit the Administrator from enforcing any applicable emission standard or requirement under Section 112 of the CAA.

5. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to the aforementioned delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.
6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9197.

III. Specific Allegations

7. Respondent is CDP Johnson Ferry LR, LLC. Respondent's place of business is located at 12030 Etris Road Suite 200, in Roswell, Georgia. Respondent is the owner of a facility where a proposed CVS drugstore is to be built. At this site, buildings previously located at 681, 685, 689, and 703 Johnson Ferry Road and 4473 Lower Roswell Road in Marietta, Georgia (the facility) were demolished.
8. A facility is defined at 40 C.F.R. § 61.141 in part as 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).

9. Respondent is a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
10. Respondent is an owner or operator of a demolition activity.
11. An owner or operator of a demolition or renovation activity is defined at 40 C.F.R. § 61.141 as 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.
12. Sometime between April 27, 2009, and May 6, 2009, buildings previously utilized for commercial purposes at the facility were demolished by Forsyth Grading and Hauling, Inc., a subcontractor hired by Young Contracting, Inc., the contractor hired by the Respondent.
13. Demolition is defined in 40 C.F.R. § 61.141 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.
14. On May 6, 2009, EPA performed an inspection at the facility and discovered that buildings had been demolished. The project notification for the site dated April 23, 2009, listed the dates of demolition as April 27, 2009, through May 22, 2009. The notification did not include the name, address, and phone number of the demolition contractor.
15. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b)(1), by failing to provide written notice of intention to demolish or renovate a regulated facility 10 working days before demolition begins.

16. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b)(4)(ii), by failing to provide the name, address, and telephone number of the facility operator in the written notice of intention to demolish a regulated facility.

IV. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations as set forth above.
18. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
19. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M.
21. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
22. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

23. Respondent is assessed a civil penalty of Six Hundred and Eighty Dollars (\$680.00).
which shall be paid within 30 days from the effective date of this CAFO.
24. Respondent shall remit the civil penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.) use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

25. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960,

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960,

and


Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

26. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
27. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
29. This CAFO shall be binding upon the Respondent, its successors and assigns.

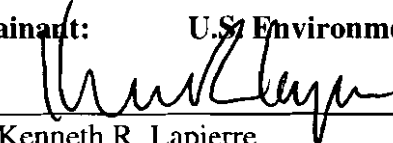
51. The effective date of this CAPO shall be the date on which the CAPO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Respondent: CDP Johnson Ferry LR, LLC
Docket No.: CAA-04-2010-1510(b)

By:  (Signature) Date: 12/15/09
Name: Robert O. McKerran (Typed or Printed)
Title: Member (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 2/10/2010
Kenneth R. Lapierre
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 18th day of February, 2010.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: CDP Johnson Ferry LR, LLC, Docket Number: CAA-04-2010-1510(b), to the addressees listed below.

Mr. Rob McKerrow
Vice-President of Development / Partner
CDP Johnson Ferry LR, LLC
12030 Etris Road, Suite 200
Roswell, GA 30075

(via Certified Mail, Return Receipt Requested)

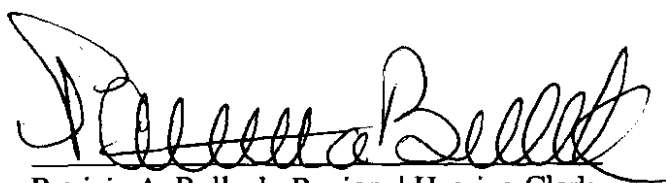
Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Date: 2-25-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 2/16/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9904
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: CDP Johnson Ferry LR LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 680 -
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA (14) 2010 1570(6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |