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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

United States Department of  
Energy and CH2M HILL Plateau  
Remediation Company,

Respondents.

United States Department of  
Energy Hanford (WA) facility

DOCKET NO. CAA-10-2014-0072

**CONSENT AGREEMENT AND  
FINAL ORDER**

**I. STATUTORY AUTHORITY**

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).

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 redelegated this authority to the Regional Judicial Officer in Region 10.

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 hereby issues, and the United States Department of Energy

("DOE" or "Respondent") and CH2M HILL Plateau Remediation Company ("CHPRC" or "Respondent") agree to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

4. 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.

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

6. EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. 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 EPA alleges Respondents violated.

## III. ALLEGATIONS

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that govern the emissions, handling, and disposal of asbestos. These asbestos National Emission Standards for Hazardous Air Pollutants regulations are found at 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP").

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, established an operating permit program for certain sources, including “major sources” of air pollution, as defined in §7661(2).

10. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source, and certain other sources, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

11. EPA granted full approval of Washington’s Title V permit program on December 2, 2002 and the program became effective on January 2, 2003. [67 FR 71479 (December 2, 2002)].

12. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42 U.S.C. §7413(a)(3).

13. DOE is the owner of 586 square miles of real property located in Benton and Franklin Counties, Washington, known as the Hanford Site (“Hanford”).

14. In December 2006, Washington issued the 2006 Renewal of the Hanford Site Air Operating Permit No. 00-05-006 to DOE (“Hanford Title V Permit”). In April 2013, Washington issued Renewal 2 of the Hanford Title V Permit.

15. The Hanford Title V Permit Attachment 3 incorporates the Asbestos NESHAP.

16. The requirements of 40 C.F.R. § 61.145 of the Asbestos NESHAP apply to each owner or operator of a demolition or renovation activity. 40 C.F.R. § 61.145(a).

17. “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.”

18. “Demolition” is defined at 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.”

19. A “facility” is defined at 40 C.F.R. § 61.141 as “any institutional, commercial, public, industrial, or residential structure, installation, or building . . . and any active or inactive waste disposal site.”

20. Each structure, installation, or building located at Hanford is or was a “facility” as defined at 40 C.F.R. § 61.141.

21. Respondent DOE is the owner of a demolition or renovation activity as defined at 40 C.F.R. § 61.141.

22. Respondent DOE entered into a contract with Respondent CHPRC effective October 1, 2008, to conduct remediation of Hanford facilities and contaminated sites, including decontamination and demolition of nuclear materials production facilities, which had been constructed with Asbestos Containing Materials (“ACM”) components.

23. Respondent CHPRC conducted these demolition activities, as defined at 40 C.F.R. § 61.141, at a number of structures at Hanford, including Buildings 272W, 277W, 2704W, 2707W, 2723W, 2728W, and MO215 (“200 West Area Industrial Buildings”) in 2009, and the 200 West Area Steam Lines from approximately May 2012 through September 2012.

24. Respondent CHPRC is an operator of a demolition or renovation activity as defined at 40 C.F.R. § 61.141.

25. Asbestos-Containing Waste Material (“ACWM”) is defined at 40 C.F.R. § 61.141 as any waste that contains commercial asbestos and is generated by a source covered by the Asbestos NESHAP.

26. Regulated Asbestos-Containing Material (“RACM”) is defined at 40 C.F.R. § 61.141 as friable asbestos material, Category I nonfriable ACM that has become friable or that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder during the demolition or renovation.

27. On August 7-8, 2012, an EPA inspector conducted an inspection of Hanford to determine compliance with the Asbestos NESHAP. The inspection covered 13 sites at Hanford

where buildings or structures had been demolished or where asbestos work was underway. A total of 22 samples were collected at six of the 13 sites. Of those samples, 19 tested positive for chrysotile asbestos.

### **Count I**

#### **(Failure to Provide Accurate Waste Disposal and Transporter Information)**

28. 40 C.F.R. § 61.145(b) requires that an owner or operator of a demolition or renovation operation provide notification to the EPA Administrator or her delegatee of its intention to demolish or renovate a facility prior to the commencement of the demolition or renovation.

29. 40 C.F.R. § 61.145(b)(4)(xii) and (xvii) require that the notice include the name and location of the waste disposal site where the ACWM will be deposited as well as the name, address, and telephone number of the waste transporter.

30. The requirements of 40 C.F.R. § 61.145(b) are incorporated into the Hanford Title V Permit.

31. On or about December 4, 2008, CHPRC submitted a "Notification of Intent to Remove Asbestos Containing Materials, or to Demolish" to Benton Clean Air Agency ("BCAA") for the 200 West Area Industrial Buildings.

32. In the December 4, 2008 notification, CHPRC listed the name of the waste disposal site as "Basin Disposal, Inc." located at 2021 Commercial Avenue, Pasco, Washington.

33. "Basin Disposal, Inc." is not a waste disposal site, but is a transporter of ACWM hired by CHPRC to transport the ACWM generated at the demolition site to a facility licensed for disposal of ACWM.



34. On or about May 2, 2012, CHPRC submitted a "Notification of Demolition and Renovation" to BCAA for asbestos abatement work associated with the 200 West Area Steam Lines, primarily the removal of asbestos-containing thermal system insulation from abandoned steam lines.

35. On or about July 19, 2012, CHPRC submitted another "Notification of Demolition and Renovation" to BCAA for asbestos abatement work associated with the 200 West Area Steam Lines.

36. The May 2, 2012 and July 19, 2012 notifications identified "CH2M Hill Plateau Remediation Company" as the waste transporter. However, CHPRC hired MP Environmental Services to transport the ACWM to the licensed waste disposal site.

37. Respondents DOE and CHPRC violated the Hanford Title V Permit and 40 C.F.R. § 61.145(b)(4) by providing erroneous waste disposal site or transporter information on three demolition notifications to BCAA.

## **Count II**

### **(Failure to Remove RACM Prior to Demolition Activities)**

38. 40 C.F.R. § 61.145(c)(1) requires the owner or operator of a demolition or renovation activity to remove all RACM from a facility prior to beginning any activity that would break up, dislodge, or similarly disturb the material, provided that the combined amount of RACM is at least 260 linear feet on pipes or at least 160 square feet on other facility components or at least 35 cubic feet off facility components where the length or area could not be measured.

39. The requirements of 40 C.F.R. § 61.145(c) are incorporated into the Hanford Title V Permit, Attachment 3.



40. The December 4, 2008 notification to BCAA stated that CHPRC planned to first abate all thermal insulation containing asbestos from the interior of the 200 West Area Industrial Buildings, then commence demolition with Category II cement asbestos panels in place on the exterior of the buildings. The notification stated the exterior cement asbestos panels would be removed from the structure using “standard heavy equipment equipped with a thumb and bucket or shear attachment.”

41. CHPRC began demolition activities at the 200 West Area Industrial Buildings in 2009.

42. The combined amount of RACM that CHPRC failed to remove from the 200 West Area Industrial Buildings prior to demolition activities exceeded 260 linear feet or 160 square feet.

43. As a result of the heavy equipment used to demolish the 200 West Area Industrial Buildings, the Category II cement asbestos panels had a high probability of becoming or became crumbled, pulverized, or reduced to powder.

44. Respondents DOE and CHPRC violated the Hanford Title V Permit and 40 C.F.R. § 61.145(c)(1) by not removing all RACM at the 200 West Area Industrial Buildings prior to demolition activities which included using heavy equipment that may have broken up, dislodged, or disturbed the material.

### **Count III**

#### **(Failure to Adequately Wet RACM)**

45. 40 C.F.R. § 61.145(c)(6)(i) requires that all RACM removed or stripped from a facility be adequately wet and remain adequately wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150, provided that the combined

amount of RACM is at least 260 linear feet on pipes or at least 160 square feet on other facility components or at least 35 cubic feet off facility components where the length or area could not be measured.

46. The requirements of 40 C.F.R. § 61.145(c) are incorporated into the Hanford Title V Permit, Attachment 3.

47. Beginning on or around May 17, 2012, and continuing until on or around September 30, 2012, over 260 linear feet of RACM was removed from the 200 West Area Steam Lines. This RACM was stored in bags in a trailer.

48. On August 7, 2012 at least one bag which tested positive for chrysotile asbestos, with a content of eight percent, had numerous small tears on the bottom of the bag and contained broken pieces of material and soil which were not adequately wet.

49. Respondents DOE and CHPRC violated the Hanford Title V Permit and 40 C.F.R. § 61.145(c)(6) by not adequately wetting the RACM and ensuring that it remained wet until collected and contained or treated in preparation for disposal in accordance with § 61.150.

#### **IV. CONSENT AGREEMENT**

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

51. Respondents neither admit nor deny the specific factual allegations or legal conclusions set forth in Part III of this CAFO. Respondents are entering this CAFO to save the risk, time, and cost of litigation with EPA.

52. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), 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 violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondents accept that an appropriate penalty to settle this action is \$131,594.

53. Respondents agree to pay the total civil penalty set forth in paragraph 52 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

54. 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 one of the following addresses based on the method of delivery:

By U.S. Postal Mail:  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

By UPS, Federal Express, or overnight mail:  
U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
St. Louis, MO 63101  
314-418-1028

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

55. Respondents must deliver photocopies of the check described in Paragraph 54 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

John Pavitt  
U.S. Environmental Protection Agency  
Alaska Operations Office  
222 W 7<sup>th</sup> Ave., #19

56. If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 53, the entire unpaid balance of the penalty and applicable accrued interest shall become immediately due and owing. Such failure to make payment may also subject Respondent CHPRC to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. If Respondent CHPRC fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent CHPRC shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent CHPRC fails to pay the assessed penalty and interest on a timely basis, Respondent CHPRC shall also be required to pay the United States' enforcement expenses, including but not limited to attorney's 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 ten percent of the aggregate amount of Respondents' outstanding penalties accrued from the beginning of such quarter.

57. The penalty described in Paragraph 52, including any additional costs incurred under Paragraph 56, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

58. The undersigned representatives of Respondents certify that they are authorized to enter into the terms and conditions of this CAFO and to bind their respective Respondents to this document.

59. Except as described in Paragraph 56, each party shall bear its own fees and costs in bringing or defending this action.

60. Respondents expressly waive any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case.

Respondents expressly waive the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

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

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

DATED:

3/18/14

FOR RESPONDENT DOE:

  
\_\_\_\_\_  
Matt McCormick, Manager  
Richland Operations Office

DATED:

3/17/2014

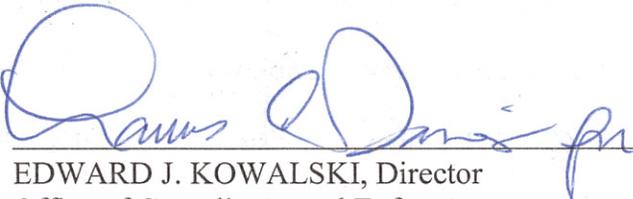
FOR RESPONDENT CHPRC:

  
\_\_\_\_\_  
JOHN FULTON, President  
CH2M HILL Plateau Remediation Company

DATED:

3/21/2014

FOR COMPLAINANT:

  
\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

V. FINAL ORDER

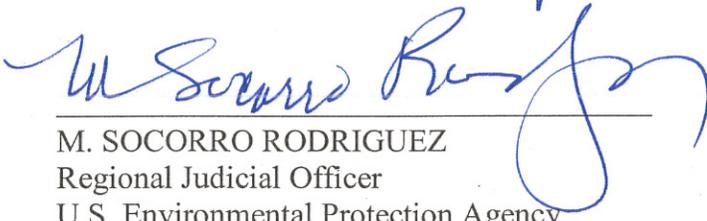
63. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with these terms of settlement.

64. 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.

65. Respondents shall pay a civil penalty in the amount of \$131,594 as provided in Part IV.

66. The Final Order is effective upon filing.

SO ORDERED this 18<sup>th</sup> day of April, 2014

  
M. SOCORRO RODRIGUEZ  
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 the Matter of: United States Department of Energy and CH2M HILL Plateau Remediation Company, Docket No.: CAA-10-2014-0072**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

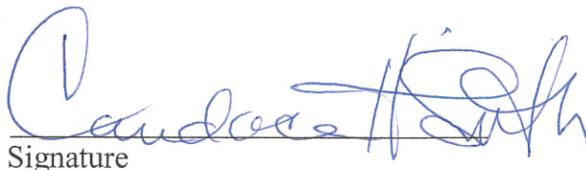
Dale McKenney  
Director  
CH2M HILL Plateau Remediation Company  
P.O. Box 1600, MS H8-43  
Richland, Washington 99352

Mr. Matthew S. McCormick  
Manager  
U.S. Department of Energy  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kathleen Doster, Esq.  
U.S. Environmental Protection Agency  
Federal Facilities Enforcement Office  
1200 Pennsylvania Ave., N.W., MC 2261A  
Washington, DC 20460

DATED this 2nd day of April, 2014

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

