

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

In the Matter of:

Eastern Sod Farms LLC  
525 Black Diamond Road  
Smyrna DE 19977-9669

Consent Agreement

William H. Radford Landscape Contractors  
525 Black Diamond Road  
Smyrna DE 19977-9669

Docket No. CAA-03-2017-0197

**RESPONDENTS**

Old Farmhouse Nursery  
525 Black Diamond Road  
Smyrna DE 19977-9669

Proceeding under Section 113 of the  
Clean Air Act, 42 U.S.C. § 7413

**FACILITY**

**RECEIVED**  
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EPA REGION III, PHILA., PA.

**CONSENT AGREEMENT**

1. Pursuant to Section 113(a) and (d) of the Clean Act (“CAA”), as amended, 42 U.S.C. § 7413(a)(3) and (d), the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“Complainant”), initiated this administrative proceeding for the assessment of civil penalties against Eastern Sod Farms LLC and William H. Radford Landscape Contractors (collectively, “Respondents”), by issuing a Complaint and Notice of Opportunity for Hearing (“Complaint”) on September 28, 2017. The Complaint, incorporated herein by reference, alleges that Respondents violated Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412, and the National Emission Standard for Asbestos, 40 C.F.R Part 61, Subpart M, in connection with removal of regulated asbestos-containing material at Old Farmhouse Nursery, 525 Black Diamond Road, Smyrna DE 19977-9669 in 2014. This Consent Agreement (“CA”) and accompanying Final Order (collectively, “CAFO”), when filed, will resolve Complainant’s claims for civil penalties for the violations alleged in the Complaint.
2. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth in the Complaint, in this CA and the attached Final Order (“FO”).
3. Except as provided in paragraph 2 herein Respondents neither admit nor deny the specific factual allegations and legal conclusions set forth in this CA.

4. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this CA, the issuance of the attached Final Order, and the enforcement of this CAFO.
5. For purposes of this proceeding only, Respondents hereby expressly waive any right to contest any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
6. Respondents consent to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. Each party to this CA shall bear its own costs and attorney's fees.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. Complainant incorporates by reference all findings of fact contained in the Complaint.
9. Complainant incorporates by reference all conclusions of law contained in the Complaint.

## **III. SETTLEMENT RECITATION**

10. In settlement of EPA's claims for civil penalties assessable for the violations alleged in the Complaint, and incorporated by reference herein, Respondents consent to the assessment of a civil penalty of **EIGHTEEN THOUSAND NINE HUNDRED DOLLARS** (\$18,900) which Respondents agree to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondents of a true and correct copy of the fully executed and filed CAFO. If Respondents pay the entire penalty within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondents, no interest will be assessed pursuant to 40 C.F.R. § 13.11(a)(1).
11. The aforesaid settlement amount is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors of Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, and Appendix III thereto, *Asbestos Demolition and Renovation Civil Penalty Policy*, revised May 5, 1992, as amended, and the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19.
12. Respondents have certified that they will be unable to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. Accordingly, Respondents have agreed to pay the civil penalty set forth in paragraph 10 herein plus interest of 1% per annum on the outstanding principal balance according to the following schedule:

1<sup>st</sup> payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

2<sup>nd</sup> payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

3<sup>rd</sup> payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

4<sup>th</sup> payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

5<sup>th</sup> payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

6<sup>th</sup> payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

7<sup>th</sup> payment is due within 210 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

8<sup>th</sup> payment is due within 240 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

9<sup>th</sup> payment is due within 270 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

10<sup>th</sup> payment is due within 300 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32;

11<sup>th</sup> payment is due within 330 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32; and

12<sup>th</sup> payment is due within 360 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$1,582.32.

Under this repayment schedule, Respondent will pay a civil penalty of \$18,900 plus interest of \$87.84 as outlined in the chart below:

Payment #	Principal Payment	Interest Payment	Installment Payment Due
1	\$1,582.32	\$0.00	\$1,582.32
2	\$1,567.41	\$14.91	\$1,582.32
3	\$1,568.76	\$13.56	\$1,582.32
4	\$1,571.29	\$11.03	\$1,582.32
5	\$1,571.46	\$10.86	\$1,582.32
6	\$1,573.12	\$ 9.20	\$1,582.32

7	\$1,574.17	\$ 8.15	\$1,582.32
8	\$1,575.74	\$ 6.58	\$1,582.32
9	\$1,576.88	\$ 5.44	\$1,582.32
10	\$1,578.24	\$ 4.08	\$1,582.32
11	\$1,579.69	\$ 2.63	\$1,582.32
12	\$1,580.92	\$ 1.40	\$1,582.32
<b>Total</b>	<b>\$18,900.00</b>	<b>\$87.84</b>	<b>\$18,987.84</b>

13. Respondents shall remit payment of the civil penalty described in paragraph 10 herein and any interest, administrative fees and late payment penalties identified in paragraphs 14, 15, and 16 herein as follows:

- a. By mailing (*via first class U.S. Postal Service mail*) a certified check or cashier’s check payable to the “United States Treasury” to:

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

Contacts: Craig Steffen 513-487-2091  
 Jessica Henderson 513-487-2718 [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov)

- b. By overnight delivery of a certified check or cashier’s check payable to the “United States Treasury” to:

U.S. Environmental Protection Agency  
 Government Lockbox 979077  
 US EPA Fines & Penalties  
 1005 Convention Plaza  
 SL-MO-C2-GL  
 St. Louis, MO 63101

Contacts: Craig Steffen 513-487-2091  
 Jessica Henderson 513-487-2718 [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov)

- c. By delivery of a certified check or cashier’s check payable to the “United States Treasury” in any currency drawn on a bank with no USA branches to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W ML King Drive  
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York  
ABA: 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”

- e. By automated clearinghouse (“ACH”) to the following account:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 -checking

- f. Online at: [WWW.PAY.GOV/paygov/](http://WWW.PAY.GOV/paygov/)  
Search for SFO 1.1 (for correct form).

- g. Additional payment penalty guidance is available at:

<https://www.epa.gov/financial/makepayment>

- h. All payments by Respondents shall reference the name and address of Respondents and the EPA Docket Number of this CAFO (CAA-03-2017-0197). At the same time that any payment is made, Respondents shall send a copy of each check or written confirmation of each EFT, ACH or online payment to:

Janet E. Sharke  
Senior Asst. Regional Counsel  
U.S. EPA, Region III (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Regional Hearing Clerk  
U.S. EPA, Region III (3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. 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. Accordingly, any failure by Respondents to make timely payments or to comply with the conditions in this CA and the attached FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

15. The costs of the EPA'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.

16. A late penalty payment of six percent (6%) 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).

17. If Respondents fail to make timely payment of any one of the required installment payments in accordance with the schedule set forth in paragraph 12 herein the entire unpaid balance of the penalty and all accrued interest shall become due immediately, and Respondents 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, Respondents shall be liable for, and shall pay, administrative handling charges and late payment penalty charges as described in paragraphs 14, 15, and 16 herein in the event of any such failure or default.

18. Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this CA and the accompanying FO.

#### **IV. FULL AND FINAL SATISFACTION**

19. This CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondents for the specific violations alleged in the Complaint and incorporated by referenced herein.

#### **V. OTHER APPLICABLE LAWS**

20. Nothing in this CAFO shall relieve Respondents of the obligation to comply with all applicable federal, state, and local laws and regulations. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

## **VI. RESERVATION OF RIGHTS**

21. EPA reserves the right to commence action against any person, including Respondents, 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*, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

## **VII. CERTIFICATION OF COMPLIANCE**

22. Respondents certify to EPA, upon personal investigation and to the best of their knowledge and belief, that they are currently in compliance with applicable provisions of the CAA and 40 C.F.R. Part 61, Subpart M.

## **VIII. PARTIES BOUND**

23. This CA and the accompanying FO shall apply to and be binding upon EPA, Respondents and Respondents' successors, agents and assigns.

## **IX. EFFECTIVE DATE**

24. The effective date of this CA and the accompanying FO (after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer,) is the date on which such CAFO is filed with the Regional Hearing Clerk.

## **X. ENTIRE AGREEMENT**

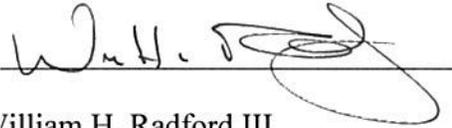
25. This CA and the accompanying FO constitute the entire agreement and understanding of the Parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

## **XI. EXECUTION**

26. The person signing this CA on behalf of Respondents acknowledges and certifies by his signature that he is fully authorized to enter into this CA and to legally bind Respondents to the terms and conditions of this CA and the accompanying FO.

For Respondents:

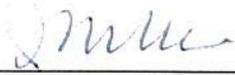
Date: 2-2-18

By: 

William H. Radford III  
Owner/Member, Eastern Sod Farms LLC  
William H. Radford Landscape Contractors

For Complainant:

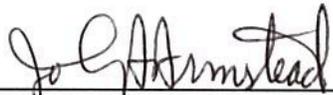
Date: 2/7/2018

By: 

Janet E. Sharke  
Sr. Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region III

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

Date: 2.16.18

By: 

John A. Armstead, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region III

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

In the Matter of:	:	
	:	
Eastern Sod Farms LLC	:	
525 Black Diamond Road	:	Final Order
Smyrna DE 19977-9669	:	
	:	
William H. Radford Landscape Contractors	:	
525 Black Diamond Road	:	
Smyrna DE 19977-9669	:	
	:	Docket No. CAA-03-2017-0197
RESPONDENTS	:	
	:	
Old Farmhouse Nursery	:	
525 Black Diamond Road	:	Proceeding under Section 113 of the
Smyrna DE 19977-9669	:	Clean Air Act, 42 U.S.C. § 7413
	:	
FACILITY	:	
	:	

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondents, Eastern Sod Farms LLC and William H. Radford Landscape Contractors, 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 (with specific reference to Sections 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors of Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, and Appendix III thereto, *Asbestos Demolition and Renovation Civil Penalty Policy*, revised May 5, 1992, as amended, and the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19.

**NOW, THEREFORE, PURSUANT TO** Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY**

**ORDERED** that Respondent pay a civil penalty in the amount of **Eighteen Thousand Nine Hundred Dollars (\$18,900.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Feb. 22, 2018  
Date



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Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. CAA-03-2017-0197 ("CAFO"), and further, that I caused true and correct copies of the foregoing CAFO to be transmitted via United Parcel Service overnight delivery to:

William H. Radford  
President, Eastern Sod Farms LLC  
William H. Radford Landscape Contractors  
525 Black Diamond Road  
Smyrna, DE 19977-9669

Thomas H. Kovach, Esq.  
A.M. Saccullo Legal LLC  
27 Crimson King Drive  
Bear, DE 19701

2/22/2018  
Date



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Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
Office of Regional Counsel (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029