

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 AUG 15 P 3:29
REGIONAL HEARING
CLERK

In the Matter of:

First Lakewood Forest Associates, LLC
and
Bil-Jim Construction Company, Inc.,

Respondents

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)

PARTIAL
CONSENT AGREEMENT
AND
FINAL ORDER

CAA-02-2007-1217

Preliminary Statement

This Consent Agreement and Final Order (CAFO) resolves an administrative penalty proceeding against Bil-Jim Construction Company, Inc. (Bil-Jim), one of two respondents named in an administrative complaint filed in August 2007 by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency (EPA) Region 2 pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq.*, and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 C.F.R. Part 22. The CAFO does not resolve the proceeding as to the other respondent, First Lakewood Forest Associates, LLC.

The Consent Agreement portion of this CAFO is signed by Complainant and Bil-Jim, while the Final Order portion is to be executed by the EPA Region 2 Regional Administrator. Pursuant to EPA Region 2 Delegation of Authority 7-6-A, the Complainant is delegated the authority, in Region 2, to issue CAA Section 113(d)

administrative penalty complaints, and to agree to settlements and sign consent agreements memorializing those settlements. Pursuant to EPA Delegation of Authority 7-6-C, the Regional Administrator of EPA Region 2 is delegated the authority, in Region 2, to execute CAA Section 113(d) Final Orders.

Consent Agreement

General Provisions

1. The Complainant and Bil-Jim enter into this Consent Agreement and propose the attached Final Order to resolve an administrative civil penalty proceeding that was commenced by EPA's Complaint and Notice of Opportunity to Be Heard (Complaint), dated August 13, 2007.
2. Consistent with CROP 22.18(c), this Consent Agreement and the attached Final Order only resolve Bil-Jim's liability for Federal civil penalties for the violations and facts alleged in the Complaint.
3. As required by CROP 22.18(b), for the purposes of this administrative civil penalty proceeding, and to avoid the expense of protracted litigation, Bil-Jim:
 - a. Admits the jurisdictional allegations of the Complaint (namely, the allegations found in the first three paragraphs on page 1 of the Complaint and the allegations found in Paragraphs 1, 2 and 20 of the Complaint);
 - b. Neither admits nor denies the factual allegations found in the Findings of Fact section of the Complaint;
 - c. Consents to the payment of the civil penalty specified below in the "Settlement" section of this Consent Agreement, on the terms specified in that section;
 - d. Consents to the issuance of the attached Final Order; and
 - e. Waives any right to contest the Complaint's allegations and any right to appeal the attached Final Order.

Settlement

4. Pursuant to Section 113(d) of the Act, Bil-Jim shall pay a civil penalty of **\$38,500.00**. Bil-Jim shall pay the entire amount in 4 payments, the first payment of \$10,000 within thirty (30) days from the date of issuance of the attached Final Order (the Due Date), the second payment of \$10,000 shall be submitted 60 days after the first, the third payment of 10,000 shall be submitted within 60 days of the second and the last payment of \$8,500 shall be submitted within 60 days of the third. Respondent shall have the choice of paying by corporate, cashiers' or certified check. Bil-Jim shall: (1) clearly type or write the docket number (**CAA-02-2007-1217**) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Bil-Jim shall send notice of payment to the following:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

John Dolinar, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

5. If Bil-Jim fails to make full and complete payment of the civil penalty that it is required to pay by this CAFO, this case may be referred by EPA to the United States

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Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Bil-Jim shall pay the following amounts:

- a. Interest. If Bil-Jim fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Bil-Jim fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Bil-Jim shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Bil-Jim's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

6. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Bil-Jim's alleged violations of the Act set forth in the Complaint.

7. Nothing in this Consent Agreement and attached Final Order shall relieve Bil-Jim of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Bil-Jim to comply with such laws and regulations.

8. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

10. Bil-Jim explicitly waives any right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

11. Bil-Jim waives any right they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

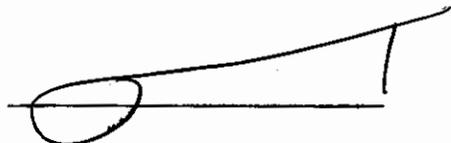
12. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

13. The Consent Agreement and attached Final Order shall be binding on Bil-Jim and their successors and assignees.

14. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures

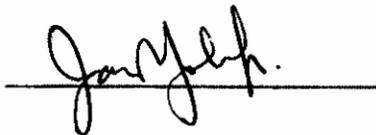
For Complainant:

A handwritten signature in black ink, appearing to read 'Dore LaPosta', written over a horizontal line.

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date NOV 20 10, 2012

For Respondent Bil-Jim:

A handwritten signature in black ink, appearing to read 'Bil-Jim', written over a horizontal line.

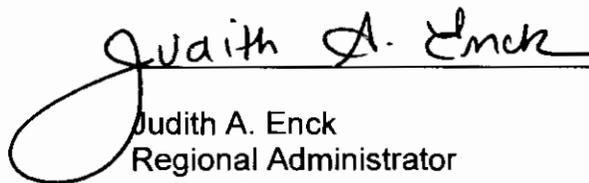
Date 6/26/12

***In the First Lakewood Forest Associates, LLC
and Bil-Jim Construction Company, Inc.,
CAA-02-2007-1217***

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of *In the First Lakewood Forest Associates, LLC and Bil-Jim Construction Company, Inc., CAA-02-2007-1217*. The Consent Agreement, entered into by Complainant and Respondent Bil-Jim-Construction Company, Inc. (Bil-Jim), is hereby approved and issued, as a Final Order, effective immediately, as to the claims against Bil-Jim. The Consent Agreement and Final Order do not effect or resolve the claims against Respondent First Lakewood Forest Associates, LLC. (Lakewood).

DATE: 8/13/12


Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency, Region 2

CERTIFICATE OF SERVICE

I certify that the attached Partial Consent Agreement and Final Order (CAFO), dated 08/13/2012 was sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

✓ Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Hand to:

John F. Dolinar
Assistant Regional Counsel
U.S. Environmental Protection Agency
Air Branch, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by (*Overnight*) Mail to:

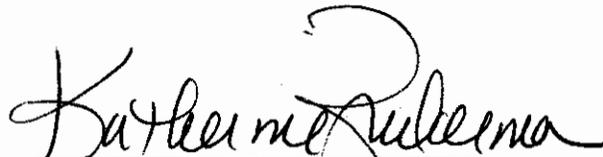
Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-2001

And Copies to:

Bil-Jim Construction Company, Inc.
C/o James Stewart, Esquire
Lowenstein & Sandler
Attorneys at Law
65 Livingston Avenue
Roseland, New Jersey 07068

First Lakewood Forest Associates, LLC
C/o Afyfa H. Ellington, Esquire
Giordano, Halleran & Ciesla
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777

Dated: August 15, 2012



Katherine Zuckerman
Air Branch Secretary
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2