

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

RECEIVED *JL*
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EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF:)
)
United States Naval Station – Newport)
690 Peary Street)
Newport, RI 02841)
)
and)
)
Goel Services, Inc.)
6211 Dix Street NE)
Washington, DC 20019-2880)
)
and)
)
A.A. Asbestos Abatement Co., Inc.)
1307 (Rear) Hartford Avenue)
Johnston, RI 029192)
)
Respondents.)
_____)

**EPA Docket No. CAA-01-2009-0095
CONSENT AGREEMENT and
FINAL ORDER**

I. INTRODUCTION

The United States Environmental Protection Agency - Region 1 (“EPA”), as Complainant, and United States Naval Station – Newport (“NAVSTA Newport”), Goel Services, Inc. (“Goel Services”), and A.A. Asbestos Abatement Co., Inc. (“A.A. Asbestos”), as Respondents, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondents of EPA's intention to assess a penalty against NAVSTA Newport, Goel Services, and A.A. Asbestos for their alleged violation of Section 112 of the Clean Air Act (“Act” or “CAA”), 42 U.S.C. § 7412, and of regulations promulgated under Section 112 known as the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”). The CAFO also informs Respondents of their right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Complainant and Respondents (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. United States Naval Station - Newport is a federal military installation located at 690 Peary Street in Newport, Rhode Island and is a “person,” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. Goel Services, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 6211 Dix Street, NE in Washington, D.C. and is a “person” as defined in Section 302(e) of the Act.

3. A.A. Asbestos Abatement Co., Inc. is a corporation organized under the laws of Rhode Island with its principal place of business at 1307 (Rear) Hartford Avenue in Johnston, Rhode Island and is a “person” as defined in Section 302(e) of the Act.

4. On January 30, 2008, EPA issued an Immediate Compliance Order [No. CAA/ASB-ICO-2008-002] to NAVSTA Newport, pursuant to Section 113(a)(3) of the CAA, 42 U.S.C.

§ 7413(a)(3), citing a violation of Asbestos NESHAP notification requirements arising out of a regulated *renovation*¹ NAVSTA Newport performed on a portion of the extensive system of aboveground, out-of-service steam and condensate lines located throughout the Newport, Rhode Island base, in July, 2007. EPA issued the Immediate Compliance Order based upon a determination by EPA that NAVSTA Newport failed to provide EPA with proper prior, written notification, as required by the Asbestos NESHAP, at 40 C.F.R. § 61.145(b)(3).

5. On November 24, 2008, EPA issued an Immediate Compliance Order [No. CAA/ASB-ICO-2009-002] to NAVSTA Newport, pursuant to Section 113(a)(3) of the CAA, citing a violation of Asbestos NESHAP notification requirements arising out of a regulated *demolition* NAVSTA Newport performed on Building # 112 at the Newport, Rhode Island base, in October, 2008. EPA issued the Immediate Compliance Order based upon a determination by EPA that NAVSTA Newport failed to provide EPA with proper prior, written notification, as required by 40 C.F.R. § 61.145(b)(3).

6. On February 10, 2009, EPA issued an Immediate Compliance Order [No. CAA/ASB-ICO-2009-007] to A.A. Asbestos, pursuant to Section 113(a)(3) of the Act, citing a violation of Asbestos NESHAP notification requirements arising out of a regulated *renovation* A.A. Asbestos performed at the Rhode Island State Police Academy in Scituate, Rhode Island, in January, 2009. EPA issued the Immediate Compliance Order based upon a determination by EPA that A.A. Asbestos failed

1. Words that appear in italics upon first use herein indicate terms defined in the Asbestos NESHAP and are intended to be used as defined therein, at 40 C.F.R. § 61.141.

to provide EPA with proper prior, written notification, as required by 40 C.F.R. § 61.145(b)(3).

7. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, each Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, each Respondent consents to the terms of this CAFO.

8. Respondents acknowledge that they have been informed of the right to request a hearing and each Respondent hereby waives the right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Each Respondent also waives the right to appeal the Final Order accompanying the Consent Agreement.

9. By signing this CAFO, each Respondent certifies that it is now operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

III. EPA FINDINGS

10. EPA makes these findings based on its investigation of facts and circumstances underlying each Respondent's participation, as an *owner or operator of a demolition or renovation activity*, in a demolition carried out at the *facility* known as Building # 1121 located on the NAVSTA Newport base in Newport, RI (the "Demolition"), in or around February 2009. EPA finds that the Demolition involved the *stripping or removal of regulated asbestos-containing material ("RACM")* in an amount of at least 260 linear feet on pipes, 160 square feet on other *facility components* or 35 cubic feet off facility components where the length or area could not be measured previously and,

accordingly, that the Demolition was subject to the Asbestos NESHAP.

11. On February 24, 2009, a duly authorized EPA representative conducted an on-site inspection of the Demolition (the "Inspection"). Based on observations made during the Inspection and EPA's investigation of the Demolition, EPA finds that Respondents failed to seal *asbestos-containing waste materials* in leak-tight containers while wet, as required by 40 C.F.R. § 61.150(a)(1)(iii), and that Respondents, accordingly, are subject to penalties under Section 113(d) of the Act.

IV. TERMS OF SETTLEMENT

12. In light of the above, and taking into account the factors enumerated in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy and Appendix III thereto (the May 5, 1992 Asbestos Demolition and Renovation Civil Penalty Policy), and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondents pay a civil penalty in the amount of fourteen thousand, two hundred, thirty-eight dollars (\$14,238) in settlement of the violation alleged herein.

13. Respondents shall pay the penalty of \$14,238 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

14. Respondents shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$14,238, to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code RAA)
One Congress Street, Suite 1100
Boston, MA 02114-2023

and

Sharon Hayes, Senior Enforcement Coordinator
U.S. Environmental Protection Agency
Region 1 (Mail Code SEP)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Respondents shall include the case name and docket number (*In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.*, CAA-01-2009-0095) on the face of the check.

15. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty, Respondent will be subject to an action to compel payment plus interest, enforcement expenses (including attorneys' fees and costs for collection proceedings), and a nonpayment penalty. Interest will be assessed on any past due civil penalty amount if the penalty is not paid within thirty (30) calendar days of the date this Consent Agreement and Final Order is signed by the Regional Judicial Officer. Interest on the civil penalty amount will accrue from the date this Consent Agreement and Final Order was signed by the Regional Judicial Officer and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty will also

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
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CONSENT AGREEMENT AND FINAL ORDER

be assessed for each calendar quarter during which the failure to pay persists. The nonpayment penalty will be 10 percent of the total amount of any penalties, interest, enforcement expenses, and nonpayment penalties which are unpaid as of the beginning of each calendar quarter. If a collection action is necessary, the validity, amount, and appropriateness of the penalty shall not be subject to review.

16. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this Consent Agreement and Final Order as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law. To meet any of its obligations arising under this CAFO, including any penalties owed, Respondent NAVSTA Newport shall seek all existing funds by the most expeditious means possible or, if necessary, shall request new Naval budget authorizations to ensure the most expeditious schedule for complying. Failure to obtain adequate funds or appropriations from Congress does not release Respondent NAVSTA Newport from its obligation to comply with the Clean Air Act, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

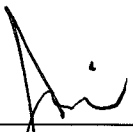
17. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violation alleged in Section III of this CAFO. Except as

otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with said laws and regulations.

18. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and each Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

19. Each respective undersigned representative of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind the respective Respondent to it.

For Respondent, United States Naval Station – Newport:



(Name)
United States Naval Station – Newport
690 Peary Street
Newport, RI 02841

CO

(Title)


9 Nov 09

(Date)

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
Docket No. CAA-01-2009-0095

CONSENT AGREEMENT AND FINAL ORDER

For Respondent, Goel Services, Inc.:



A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

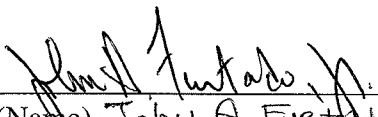
(Name)
Goel Services, Inc.
6211 Dix Street NE
Washington, DC 20019-2880

PRESIDENT
(Title)

11/6/09
(Date)

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
Docket No. CAA-01-2009-0095
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For Respondent, A.A. Asbestos Abatement Co., Inc.:


(Name) John A. Furtado Jr.
A.A. Asbestos Abatement Co., Inc.
1307 (Rear) Hartford Avenue
Johnston, RI 029192

President
(Title)

10-29-09
(Date)

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
Docket No. CAA-01-2009-0095
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For Complainant, EPA Region 1:

Jan Silverman, acting for
Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1

Date: 11-23-09

Peter Kudarauskas for
Peter Kudarauskas, Asbestos NESHAP Coordinator
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA Region 1

Date: 11/23/09

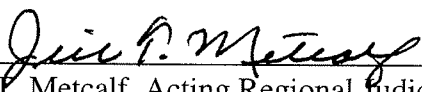
Of Counsel:
Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
EPA Region 1

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondents, United States Naval Station – Newport, Goel Services, Inc., and A.A. Asbestos Abatement Co., Inc. are ordered to comply with the terms of the above Consent Agreement, effective immediately.

Date: November 24, 2009



Jill T. Metcalf, Acting Regional Judicial Officer
EPA Region 1

In Re: United States Naval Station – Newport, Goel Services, Inc., A.A. Asbestos Abatement Co., Inc.,
Docket No. CAA-01-2009-0095
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In re: U.S. Naval Station – Newport et al., CAA-01-2009-0095

CERTIFICATE OF SERVICE

I, Hugh W. Martinez, hereby certify that on this 25th day of November 2009, I caused the foregoing Consent Agreement and Final Order, along with a cover letter to the Regional Hearing Clerk, to be served on the following persons in the manner indicated:

Original and One Copy, by Hand Delivery

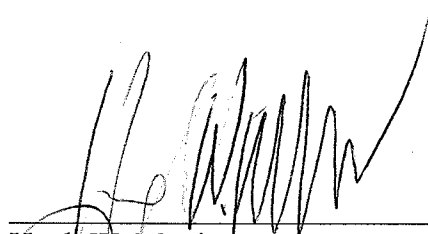
Judy Lao-Ruiz, Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

One Copy, Electronically (.pdf by e-mail) and by Federal Express

James P. Lukes, Esquire, Counsel for Goel Services and A.A. Asbestos
Waters & Wise
11325 Random Hills Road
Suite 350
Fairfax, VA 22030

One Copy, by Federal Express

Captain Joseph P. Voboril, Commanding Officer
U. S. Naval Station – Newport
690 Peary Street
Newport, RI 02841-1522



Hugh W. Martinez
Senior Enforcement Counsel
EPA Region 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
1 Congress Street, Suite 1100
Boston, MA 02114-2023

RECEIVED
NOV 25 2009
EPA ORC
Office of Regional Hearing Clerk
11:30a

HUGH W. MARTINEZ
Direct: 617-918-1867

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

BY HAND

November 25, 2009

Judy Lao-Ruiz, Acting Regional Hearing Clerk
EPA Region 1 - New England
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

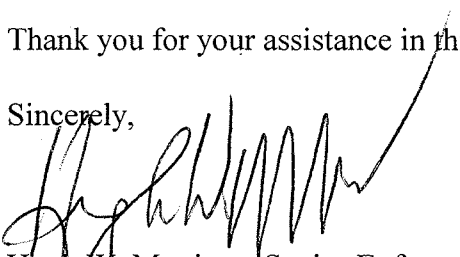
Re: In the Matter of: United States Naval Station – Newport, Goel Services, Inc., and A.A. Asbestos Abatement Co., Inc., Docket No. CAA-01-2009-0095
Consent Agreement and Final Order

Dear Ms. Lao-Ruiz:

Please find enclosed for filing the original and one copy of a fully executed Consent Agreement and Final Order (CAFO) to both initiate and conclude the above-entitled case, pursuant to 40 C.F.R. § 22.13(b). Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO was mailed to Respondents' representatives, in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: James P. Lukes, Counsel for Respondents Goel Services and A.A. Asbestos
J. P. Voboril, Commanding Officer, NAVSTA – Newport
Sharon M. Hayes, EPA Region 1 (by e-mail only)

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for Hugh W. Martinez 11/25/09
Name of Case Attorney Date

in the ORC (RAA) at 918-1454
Office & Mail Code Phone number

Case Docket Number CAA-01-2009-0095

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

US Naval Station - Newport,
Goel Services, Inc. 6211 Dix St. NE, Washington, DC 20019-2880;
and A.A. Asbestos Abatement Co., Inc.
1307 (Rear) Hartford Ave., Johnston, RI 02912

Total Dollar Amount of Receivable \$ 14,238.00 Due Date: 12/28/09

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number