

2. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 113(a)(3) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. §§ 22.1(a)(2) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. The Facility is an “installation” and a “facility” as those terms are defined at 40 C.F.R. § 61.141.

12. Mid-Atlantic Construction, Inc., is a corporation established under the laws of the Commonwealth of Pennsylvania with its offices located at 925 Harvest Drive, Suite 220, Blue Bell, Pennsylvania 19422.
13. The Respondent, is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Sections 113(a) and 114(a) of the Act, 42 U.S.C. §§ 7413(a) and 7414(a).
14. Respondent is and, at the time of the violations described herein, has been, the “operator of a demolition or renovation activity” with respect to the Facility, as those terms are defined in 40 C.F.R. § 61.141.
15. 40 C.F.R Section 61.145(a) provides, in pertinent part, and with exceptions not relevant to this matter, that the requirements of 40 C.F.R § 61.145(b) and (c) apply to each owner or operator of a demolition or renovation activity, including the removal of regulated asbestos-containing material (“RACM”), as follows:
 - (4) In a facility being renovated, all of the requirements of paragraphs (b) and (c) if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:
 - (i) at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or
 - (ii) at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measure previously.
16. 40 C.F.R § 61.145(b) provides, with exceptions not relevant to this matter, that each owner or operator of a demolition or renovation activity shall provide EPA with notice of its intention to demolish or renovate. The notice must be postmarked or delivered at least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge, or similarly disturb asbestos material).
17. 40 C.F.R § 61.145(c)(1) provides, with exceptions not relevant to this matter that each owner or operator of a demolition or renovation activity shall remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
18. 40 C.F.R § 61.145(c)(6)(i) provides, with an exception not relevant to this matter, that for all RACM, including material that has been removed or stripped, the owner or operator of a demolition or renovation activity must adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R § 61.150.

19. 40 C.F.R § 61.145(c)(8) provides that no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by 40 C.F.R § 61.145 unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.
20. On April 24, 2014, April 30, 2014, May 20, 2014 and June 26, 2014, Richard Ponak, an authorized inspector with the Pesticide and Asbestos Programs Branch of EPA Region III, performed an inspection of an on-going asbestos removal project at the Facility in order to investigate compliance with the asbestos NESHAP regulations, 40 C.F.R. §§ 61.141 *et seq.* (collectively the “ Inspection”).
21. During the Inspection, asbestos-containing transite debris, which is categorized as Category II nonfriable ACM, and which had become crumbled, pulverized, or reduced to powder in the course of demolition, was present at the Facility.
22. The crumbled asbestos-containing transite debris was RACM, as that term is defined at 40 C.F.R. § 61.141.
23. During the Inspection, RACM was present in and around the Facility, including in the parking lot, debris pile, as well in the buildings located at the Facility.
24. During the June 26, 2014 Inspection, Mr. Ponak took photographs of the RACM at the Facility and samples of the RACM from the Facility.
25. The samples taken during the June 26, 2014 Inspection were sent to Criterion Laboratories, Inc. (“Criterion”), 3370 Progress Drive, Suite J, Bensalem, Pennsylvania 19020, for analysis to determine the percentage of asbestos in each sample.
26. Criterion is certified by the National Institutes of Standards and Technology, National Voluntary Laboratory Accreditation Program (“NVLAP”).
27. Criterion analyzed the samples collected during the June 26, 2014 Inspection using Polarized Light Microscopy with Dispersion Staining in accordance with EPA Interim Method (EPA-600/M4-82-020, or 40 C.F.R. Part 763, Appendix E).
28. Analysis of the samples taken during the June 26, 2014 Inspection from the Facility showed that the samples contained more than one (1) percent asbestos.
29. During the Inspection, Respondent was engaged in the demolition of the Facility and, pursuant to 40 C.F.R. § 61.145(a)(1), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145

applied to the Respondent and its “demolition” activity as that term is defined at 40 C.F.R § 61.141.

30. On or about April 24, 2014, Respondent’s demolition activity, stripped, removed, dislodged, cut, drilled or similarly disturbed “asbestos” and “asbestos-containing waste material” at the Facility that was “RACM” as these terms are defined at 40 C.F.R § 61.141.
31. The combined amount of RACM, described in Paragraph 30, above, which has, is being, and is to be stripped, removed, dislodged, cut, drilled, or similarly disturbed at the Facility as part of the demolition activity at the Facility by Respondent was at least 15 square meters (160 square feet) on facility components.
32. The Respondent was a “waste generator,” as defined at 40 C.F.R. § 61.141, of the “RACM” as described in Paragraphs 20 and 21, above.

V. VIOLATIONS ALLEGED

COUNT 1

FAILURE TO PROVIDE WRITTEN NOTIFICATION OF INTENTION TO DEMOLISH

33. The allegations contained in Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
34. Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(b).
35. Pursuant to 40 C.F.R. § 61.145(b), in relevant part only, each owner and operator of a regulated demolition activity must provide the EPA with written notice of its intention to demolish. The notice must be postmarked or delivered at least ten (10) working days before asbestos stripping and removal work or any other activity begins.
36. Respondent failed to provide written notice of its intention to demolish the Facility as required by 40 C.F.R. § 61.145(b).
37. Respondent’s failure to comply with the notice requirements of 40 C.F.R. § 61.145(b) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT II
FAILURE TO REMOVE RACM BEFORE DEMOLITION

38. The allegations contained in Paragraphs 1 through 37 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
39. Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(c).
40. 40 C.F.R. § 61.145(c)(1) provides, in pertinent part, that each owner or operator of a demolition activity must remove all RACM from a facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
41. On April 24, 2014, EPA's representative observed that Respondent did not remove all RACM from the Facility before activity began that would, and did, break up, dislodge, or similarly disturb the RACM.
42. Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(c)(1) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT III
FAILURE TO ADEQUATELY WET RACM

43. The allegations contained in Paragraphs 1 through 42 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
44. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), each owner and operator of a demolition activity must adequately wet all RACM, including material that has been removed or stripped, and ensure that the RACM remains wet until collected and contained or treated in preparation for disposal.
45. At the time of the May 20, 2014 and June 26, 2014 inspections, EPA's representative observed that RACM, in the form of transite tiles, was present in debris piles around the Facility. The uncollected RACM was friable and very dry, and therefore not "adequately wet" as that term is defined at 40 C.F.R. § 61.141.

46. Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) on May 20, 2014 and June 26, 2014 each constitute a separate "per day" violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT IV

FAILURE TO HAVE TRAINED REPRESENTATIVE PRESENT ON-SITE

47. The allegations contained in Paragraphs 1 through 46 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
48. Pursuant to 40 C.F.R. § 61.145(c)(8), in relevant part, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility unless at least one on site representative trained in the provisions of the asbestos NESHAP regulations, and the means of complying with them, is present.
49. During the April 24, 2014 inspection, EPA's representative observed that there was no asbestos NESHAP trained representative (such as a foreman or management level person) on site during asbestos handling operations.
50. Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(c)(8), by failing to have at least one on site representative trained in the provisions of the asbestos NESHAP present during the handling of RACM, constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

VI. CIVIL PENALTY

51. In settlement of the violations alleged in Sections IV and V of this Consent Agreement, Respondent consents to the assessment of a civil penalty of TWENTY NINE THOUSAND THREE HUNDRED THIRTY SIX dollars (\$29,336.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty of TWENTY NINE THOUSAND THREE HUNDRED THIRTY SIX dollars (\$29,336.00) no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
52. The aforesaid settlement amount is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in 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; Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992. Complainant

has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the July 27, 2016 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*.

53. Payment of the civil penalty amount required under the terms of Paragraph 51, above, shall be made as follows:
- a. by Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:
 - U.S. Environmental Protection Agency
 - Cincinnati Finance Center
 - P.O. Box 979077
 - St. Louis, MO, 63197-9000.
 - Contact: Craig Steffen 513-487-2091
 - Molly Williams 513-487-2076
 - b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:
 - U.S. Environmental Protection Agency
 - Government Lockbox 979077
 - 1005 Convention Plaza
 - SL-MO-C2-GL
 - St. Louis, MO 63101
 - 314-418-1028
 - c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:
 - Cincinnati Finance
 - US EPA, MS-NWD
 - 26 W. M.L. 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
 - NY, NY 10045
- (Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency")

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

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

The payment shall also reference the above case caption and docket number (Docket No.: CAA-03-2017-0020). At the same time that any payment is made, Respondent shall mail a copy of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy	Louis F. Ramalho (3RC50)
Regional Hearing Clerk (3RC00)	Senior Asst. Regional Counsel
U.S. EPA, Region III	U.S. EPA, Region III
1650 Arch Street	1650 Arch Street
Philadelphia, PA 19103-2029	Philadelphia, PA 19103-2029

54. 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 also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
55. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
56. The cost of the Agency’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.

57. A penalty charge of six percent 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).
58. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

VII. CERTIFICATION

59. Respondent certifies, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with all applicable requirements of the CAA and 40 C.F.R. Part 61, Subpart M.

VIII. OTHER APPLICABLE LAWS

60. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

IX. RESERVATION OF RIGHTS

61. This CAFO resolves only EPA's civil claims for penalties against Respondent for the specific violations alleged in the Complaint and herein. EPA reserves the right to commence action against any person, including Respondent, 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. 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.

X. FULL AND FINAL SATISFACTION

62. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondent under Sections 113(d) of the CAA, 42 U.S.C. § 7413(d), for the specific violations alleged in Sections IV and V of this Consent Agreement. 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.

XI. PARTIES BOUND

63. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

XII. EFFECTIVE DATE

64. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

65. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

Mid-Atlantic Construction, Inc.


10/26/2016
Date



Michael Van Saun
Executive Vice President

For EPA:

11-1-16
Date



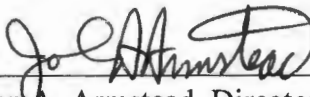
Louis F. Ramalho
Sr. Asst. Regional Counsel



Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

11.15.16

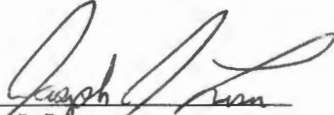
Date



John A. Armstead, Director
Land and Chemicals Division

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

Date: 11-16-2016



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

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, a true and correct copy of the attached Consent Agreement and Final Order, Docket No. CAA-03-2017-0220, was sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

Ed Paludi
Senior Project Manager
Mid-Atlantic Construction, Inc.
267.419.1736 direct dial
epaludi@midatl.net

Date

11/17/16



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

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