



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 06 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Lokey
President
Lokey Homebuilders Company, Inc.
3643 Walton Way Extension, Building #4
Augusta, Georgia 30909

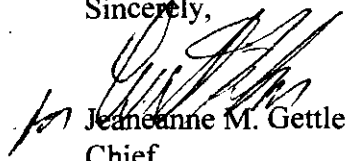
Re: Lokey Homebuilders Company, Inc.
Docket No. CAA-04-2010-1515(b)

Dear Mr. Lokey:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served upon all parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Pamela McIlvaine at (404) 562-9197.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,


Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2010 APR -6 PM 12:47
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ATLANTA, GA

In the Matter of:)
)
Lokey Homebuilders Company, Inc.)
)
)
Respondent.)
_____)

Docket No. CAA-04-2010-1515(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation/Termination or Suspension of Permits; Final Rule (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Lokey Homebuilders Company, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

Lokey Homebuilders Company, Inc.
Docket No. CAA-04-2010-1515(b)

II. Preliminary Statements

3. Asbestos is a “hazardous air pollutant” as that term is defined in Sections 112(a)(6) and 112(b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and 7412(b)(1), and is the subject of regulations codified at 40 C.F.R. Part 61, Subpart M, “National Emission Standard for Asbestos,” promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. Any person who violates Section 112 of the CAA may be assessed a penalty of up to \$25,000 for each such violation, in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The statutory penalty of \$25,000 has been adjusted for inflation. For a violation occurring after January 31, 1997, and through March 15, 2004, a penalty of up to \$27,500 may be assessed. For a violation occurring after March 15, 2004, and through January 12, 2009, a penalty of up to \$32,500 may be assessed. For a violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. In December 1977, pursuant to Section 112(l) of the CAA, EPA delegated the Administrator’s authorities and responsibilities to implement and enforce emission standards and prevention requirements for asbestos under Section 112 of the CAA, 42 U.S.C. § 7412, to the State of Georgia. Pursuant to Georgia Department of Natural Resources Rules for Air Quality Control, Chapter 391-3-1-.02(9)(b)7, the State has incorporated and adopted EPA’s rules for asbestos located at 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA, by reference. As indicated in Section 112(l)(7) of the CAA, nothing in Section 112(l) of the CAA shall prohibit the Administrator from enforcing any applicable emission standard or requirement under Section 112 of the CAA.

5. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to the aforementioned delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.
6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9197.

III. Specific Allegations

7. Respondent is a contractor that was hired by a facility owner to conduct demolition activities at a former nursing home known as The Place at Augusta (the facility), located at 820 Stevens Creek Road in Augusta, Georgia.
8. A facility is defined at 40 C.F.R. § 61.141, in part, as any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units).

9. Respondent is a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
10. Respondent is an owner or operator of a demolition activity.
11. An 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.
12. Sometime between September 29, 2008, and October 15, 2008, two structures at the facility, a laundry room and a supply room, were demolished by Kendrick Clearing and Hauling, Inc., a subcontractor hired by the Respondent to perform the demolition.
13. Demolition is defined in 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.
14. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a), by failing to inspect the facility for the presence of asbestos prior to the initiation of demolition activities.
15. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b)(1), by failing to provide written notice of intention to demolish or renovate a regulated facility.

IV. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations as set forth above.
17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M.
17. In settlement of this matter, Respondent agrees that any renovations or demolitions conducted in the future at any facilities for which the Respondent is an owner or operator will be conducted in accordance with all of the regulatory requirements contained in 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA.
20. An analysis of the Respondent's ability to pay a civil penalty conducted by EPA shows that the Respondent currently has no ability to pay a civil penalty.
21. Based on all of the facts and circumstances as set forth herein, and Respondent's agreement herein that he will not allow the renovation or demolition of any future facilities that he owns to be conducted unless all of the requirements contained in 40 C.F.R. Part 61, Subpart M are met, Complainant has determined that no penalty will be assessed to resolve this matter.
22. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

24. As set forth above, no civil penalty will be assessed to resolve this matter.
25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon the Respondent, its successors and assigns.
27. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

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VI. Effective Date

30. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Lokey Homebuilders Company, Inc.
Docket No.: CAA-04-2010-1515(b)

By: James Lokey (Signature) Date: 3/16/10
Name: James Lokey (Typed or Printed)
Title: owner / president (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Ken R. Lapierre Date: 3/31/2010
Kenneth R. Lapierre
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 5th day of April, 2010.

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Lokey Construction, Docket Number: CAA-04-2009-1525(b), to the addressees listed below.

Mr. James Lokey
President
Lokey Construction
3643 Walton Way Extension, Building #4
Augusta, GA 30909

(via Certified Mail, Return Receipt Requested)

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

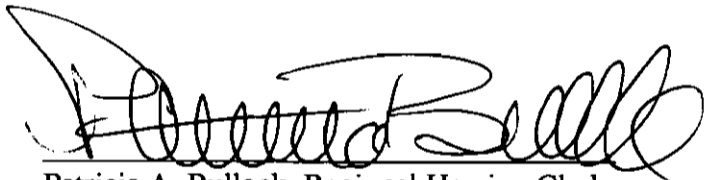
(via EPA's internal mail)

Robert Caplan, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Date:

4-6-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511