

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez
Name of Case Attorney

7/16/12
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2011-0032

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:

AA Asbestos Abatement Co, Inc.
R-1307 Hartford Ave.
Johnston, RI 02919

Total Dollar Amount of Receivable \$ 18,122 Due Date: 8/15/12

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA REGION 1 - NEW ENGLAND

5 Post Office Square, Suite 100 (Mail Code OES 04-3)

Boston, MA 02109-3912

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
Direct: 617-918-1867

RECEIVED

JUL 16 2012

EPA ORC WS
Office of Regional Hearing Clerk

BY HAND

July 16, 2012

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

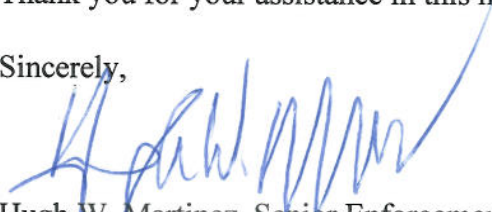
Re: *In the Matter of AA Asbestos Abatement Co., Inc.*, Docket No. CAA-01-2011-0032;
Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) to both initiate and resolve the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were mailed to Respondent's counsel in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant
U.S. EPA Region 1

Enclosures

cc: Thomas J. McAndrew, Attorney for AA Asbestos Abatement Co., Inc.
Alexander Aman, Asbestos NESHAP Enforcement Coordinator, EPA Region 1

In Re: AA Asbestos Abatement Co., Inc., CAA-01-2011-0032

CERTIFICATE OF SERVICE

I hereby certify that the foregoing cover letter and Consent Agreement and Final Order were delivered in the following manner to the addressees listed below:

Original and One Copy by
Hand Delivery to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912


One Copy by Overnight
Courier to:

Thomas J. McAndrew, Esquire
Thomas J. McAndrew & Associates
One Turks Head Place, Suite 205
Providence, RI 02903

Date:

7-16-12

Signed:



Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES 04-3)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (617) 918-1867
Fax (617) 918-0867
martinez.hugh@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
JUL 16 2012
EPA ORC
Office of Regional Hearing Clerk
djs

In the Matter of:)

A.A. Asbestos Abatement Co., Inc.)
R-1307 Hartford Ave.)
Johnston, RI 02919)

) Docket No. CAA-01-2011-0032

) CONSENT AGREEMENT
) AND FINAL ORDER

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

I. INTRODUCTION

The United States Environmental Protection Agency, Region 1 ("EPA"), as Complainant, and A.A. Asbestos Abatement Co., Inc. ("A.A."), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO notifies Respondent that EPA intends to assess penalties for violations of Section 112 of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112 entitled the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondent. The CAFO also informs Respondent of its right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described above, 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 Respondent (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. Respondent is a corporation organized under the laws of the State of Rhode Island and Providence Plantations (“Rhode Island”) with its principal place of business at 1307 Hartford Avenue in Johnston, Rhode Island and is a “person,” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. Section 113(d) of the Act provides authority for the assessment of penalties for violation of, among other things, regulations promulgated under Section 112 of the Act. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this action, which addresses certain alleged violations that commenced more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

3. Pursuant to 40 C.F.R. § 61.145(b), among other things, an *owner or operator of a demolition or renovation activity*¹ must provide EPA with prior written notice of intention to demolish or renovate, at least 10 *working days* before work begins, for any scheduled *renovation* at a regulated *facility* involving the *stripping* or *removal* of threshold quantities of *regulated asbestos-containing material* (“RACM”) (i.e., at least 160 square feet, 260 linear feet on pipes, or 35 cubic feet off *facility components* where length or area could not be measured previously) and for any scheduled *demolition* at a regulated facility, whether or not RACM is involved.

4. On February 10, 2009, EPA issued an Immediate Compliance Order (“ICO”) [No. CAA/ASB-ICO-2009-007] to A.A., pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), alleging a violation of Asbestos NESHAP notification requirements arising out of a scheduled renovation A.A. performed at the Rhode Island State Police Academy located in

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.

Scituate, Rhode Island, in January 2009. EPA issued the ICO based upon a determination by EPA that A.A. failed to provide EPA with proper prior written notification at least ten (10) working days before asbestos stripping, removal, or disturbance began, as required by the Asbestos NESHAP, at 40 C.F.R. § 61.145(b)(3).

5. On or about November 24, 2009, EPA entered into a Consent Agreement and Final Order (the "2009 CAFO") with A.A. and two other Respondents to settle, without any admission of liability, an enforcement action for penalties brought by EPA under Section 113(d) of the Clean Air Act. Under the 2009 CAFO, A.A. and the other Respondents agreed to pay a civil penalty of \$14,238 to resolve the Asbestos NESHAP work practice violation alleged by EPA in that case.

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

7. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order set forth in Section V of this CAFO.

8. By signing this CAFO, Respondent certifies that it has addressed the violations alleged by EPA and, to the best of Respondent's information and belief, is presently operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

III. EPA FINDINGS

9. EPA makes these findings based on its investigation of facts and circumstances

underlying A.A.'s participation, as an owner or operator of a demolition or renovation activity, in one or more scheduled demolition or renovation operations for which Respondent submitted multiple Asbestos NESHAP notifications to EPA and during which Respondent violated Section 112 of the Act and the Asbestos NESHAP notification requirements applicable to the demolition or renovation operations described in subparagraphs 9(a) through 9(e), below. EPA finds that the demolition or renovation operations (collectively referred to herein as the "Regulated Operations") that provided the basis for the written notifications submitted by A.A., occurred at the following locations, and commenced on or about the dates shown:

- a. Newport Housing Authority, Buildings 83 and 84, Cowie St., Newport, RI (01/04/10);
- b. Newport Housing Authority, Building 28, Sims St., Newport, RI (04/21/10);
- c. Newport Housing Authority, Buildings 43, 44, 46, 52, 53, and 55, Evans St., Newport, RI (02/09/10);
- d. Newport Housing Authority, Buildings 66, 75, and 77, Chadwick St., Newport, RI (01/28/10); and,
- e. University of Rhode Island – College of Pharmacy, Biological Science Building, 100 Flagg Road in Kingston, RI (01/25/10).

10. Each of the Regulated Operations was subject to the Asbestos NESHAP notification requirements and each involved the stripping or removal of 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.

11. With respect to each of the Regulated Operations, A.A. failed to provide EPA with proper prior written notification of intent to demolish or renovate, as required by 40 C.F.R. §§ 61.145(b)(3) and 61.145(b)(4). Specifically, EPA alleges that, as to those operations referenced in subparagraph 9(a) – 9(d), above, Respondent violated Section 112 of the CAA and the Asbestos NESHAP notification requirements at 40 C.F.R. § 61.145(b)(3) by submitting written notification while asbestos removal was in progress and that, as to the operation

referenced in subparagraph 9(e), above, Respondent violated Section 112 and the Asbestos NESHAP requirements at 40 C.F.R. § 61.145(b)(4) by submitting written notification without including the scheduled starting and completion dates for the asbestos removal.

12. Based on the above-referenced violations, EPA finds that Respondent is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

IV. TERMS OF SETTLEMENT

13. 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 Respondent pay a civil penalty in the amount of eighteen thousand one hundred and twenty-two dollars (\$18,122) in settlement of the violations alleged herein.

14. Respondent shall pay the penalty of \$18,122 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

15. Respondent shall pay the penalty by submitting a bank or certified check, payable to the order of the "Treasurer, United States of America," in the amount of \$18,122, to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall include the case name and docket number (*In re: A.A. Asbestos Abatement Co., Inc.*, Docket No. CAA-01-2011-0032) on the check. In addition, at the time of payment, notice

of payment of the civil penalty and copies of the check and any cover letter shall be forwarded to both the Regional Hearing Clerk and the EPA attorney handling this case, at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, Massachusetts 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-3)
Boston, Massachusetts 02109-3912

16. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay all or any portion of 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 Respondent receives the CAFO signed by the Regional Judicial Officer. Interest on the civil penalty amount will accrue from the date of receipt and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty will also be assessed for each calendar quarter during which the failure to pay persists. The nonpayment penalty will be ten (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.

17. 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 the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal law.

18. Respondent shall designate one or more asbestos program managers (“APM”) responsible for, among other things, the procedures for providing EPA with the required notifications under the Asbestos NESHAP. The APM may be an independent consultant or an employee and shall report directly to Respondent’s President who shall be responsible for the APM’s performance of his or her duties. Among other duties and responsibilities, the APM also shall:

- a. Familiarize himself or herself with all federal laws and regulations governing asbestos notification, removal, handling, transporting and disposal requirements as well as general practices and procedures for detecting asbestos, sampling for asbestos, controlling asbestos fiber releases, worker protection and equipment decontamination procedures;
- b. Not later than 60 days after the Effective Date, successfully complete EPA-approved training courses for Inspectors and Contractor/Supervisors pursuant to Section 206 of AHERA, 15 U.S.C. § 2646, in asbestos handling, inspection, and the supervision of asbestos activities involving asbestos;
- c. Oversee compliance with all asbestos licensing, certification and training requirements required by state and local laws and regulations;
- d. Act as the primary liaison between Respondent and federal air pollution control agencies (or state delegates, as applicable) and provide them with the notifications and reports required under federal laws and regulations and this CAFO;
- e. Oversee compliance with all inspection requirements under the Asbestos NESHAP;
- f. Oversee compliance with all Asbestos NESHAP requirements to identify and assess any asbestos-containing material (ACM) or suspect ACM involved in a demolition or renovation operation and, as appropriate, to characterize it as RACM;
- g. Ensure that all asbestos demolition and renovation activities conducted by Respondent are accomplished in accordance with the Asbestos NESHAP and all other relevant federal asbestos laws and regulations; and,
- h. Maintain all records dealing with asbestos notification, handling, removal, and disposal

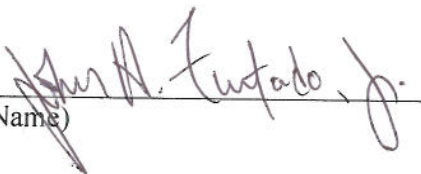
including all records required to be created or maintained by applicable federal laws and regulations governing asbestos.

19. 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 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 Respondent to comply with said laws and regulations.

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

21. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.


For Respondent:


(Name)


Pres.
(Title)

6/29/12
(Date)

For Complainant:


Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 7-3-12


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

Date: 7-2-12

V. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



LeAnn W. Jensen, Acting Regional Judicial Officer
U.S. EPA, Region 1



Date