

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)

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Docket No. CAA-01-2008-0105

EPA ORC  
CLERK

In the Matter of: )

Bilray Demolition Company, Inc. )

73 Mill Street )

Johnston, Rhode Island 02919 )

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

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region 1 ("EPA") filed a Complaint and Notice of Opportunity for Hearing ("Complaint"), on September 23, 2008, under Section 113(d) of the Clean Air Act ("the CAA"), 42 U.S.C. § 7413(d), and Section 22.14 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. § 22.14, against Respondent, Bilray Demolition Company, Inc. ("Bilray").

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing, without adjudication of any issue of fact or law upon the record, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

**I. PRELIMINARY STATEMENT**

1. The Complaint alleges that, from approximately December 2004 until approximately September 2005, Bilray conducted a demolition at the former Seaboard Foundry in Johnston, Rhode Island ("the Facility") involving a combined amount of at least 35 cubic feet of regulated

asbestos-containing material to be stripped, removed, dislodged, cut, drilled, or similarly disturbed.

2. The Complaint alleges that Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”), by failing to comply with various inspection, notification, work practice, and disposal requirements therein. The Complaint also proposes to assess a civil penalty pursuant to Sections 113(d) and 113(e) of the CAA, 42 U.S.C. §§ 7413(d) and 7413(e).

3. The provisions of this CAFO shall apply to, and be binding on EPA and Respondent, its officers, directors, successors and assigns.

4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the specific facts underlying the violations specified in the Complaint, consents to the terms of this CAFO.

5. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and to appeal the Final Order accompanying the Consent Agreement.

## **II. TERMS OF SETTLEMENT**

6. By signing the Consent Agreement, Respondent certifies that it has addressed the violations alleged in the Complaint. Respondent also certifies that it is presently operating in compliance with Section 112 of the CAA and the Asbestos NESHAP.

7. Based on the findings and allegations in the Complaint and on other relevant factors, including Respondent's demonstrated financial inability to pay more than certain penalty amounts, and taking into account the penalty assessment criteria of Section 113(e) of the CAA, EPA has determined that it is fair and proper that Respondent pay a civil penalty in the amount of \$10,000.

8. Respondent shall pay the civil penalty in accordance with the following schedule:

a. Five thousand dollars (**\$5,000**) within 45 calendar days of Respondent's receipt of a copy of this CAFO signed by the EPA Regional Judicial Officer ("RJO");

b. Two thousand five hundred dollars (\$2,500), plus interest of \$83, for a total payment of **\$2,583**, within one hundred eighty (180) calendar days of Respondent's receipt of this CAFO signed by the RJO [interest calculated pursuant to 31 U.S.C. § 3717 at the rate of the United States Treasury tax and loan rate specified at 31 C.F.R. § 901.9(b)(2) and accruing on the outstanding \$5,000 from the thirty-first day following Respondent's receipt of the CAFO signed by the RJO]; and

c. Two thousand five hundred dollars (\$2,500), plus interest of \$50, for a total payment of **\$2,550**, within three hundred sixty (360) calendar days of Respondent's receipt of this CAFO signed by the RJO [interest calculated pursuant to 31 U.S.C. § 3717 at the rate of the United States Treasury tax and loan rate specified at 31 C.F.R. § 901.9(b)(2) and accruing on the outstanding \$2,500 from the one hundred eighty-first day following Respondent's receipt of the CAFO signed by the RJO].

9. For each of the above-referenced penalty payments, Respondent shall make payment by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the appropriate amount, to:

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

Respondent shall note the case name and docket number of this action (*In the Matter of Bilray Demolition Company, Inc.*, CAA-01-2008-0105) on each check and in an accompanying cover letter, and shall provide copies of each check and letter to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
One Congress St., Suite 1100 (RAA)  
Boston, MA 02114-2023

and to

Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region 1  
One Congress St., Suite 1100 (SEL)  
Boston, MA 02114-2023

10. Pursuant to 31 U.S.C. § 3717, if Respondent fails to pay in full the penalty amount specified in Paragraph 8, Respondent may be subject to a civil action to collect the assessed penalty plus interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt that remains delinquent more than 90 days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

11. If Respondent fails to make any payment of the civil penalty due and payable under this CAFO by the required date, files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, is adjudicated as bankrupt under such Code, is the subject of a petition filed in Federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, then the full balance of all outstanding civil penalties, together with all interest and penalties accrued at the rates specified herein, shall automatically and immediately become due and payable. Upon the occurrence of any of the events or conditions described in the preceding sentence, Respondent shall give immediate notice to EPA at the following address:

Nancy Barmakian, Manager  
Toxics, Pesticides and Federal Programs Unit  
U.S. EPA, Region 1  
One Congress St., Suite 1100 (SEP)  
Boston, MA 02114-2023  
Attention: Peter Kudarauskas, Asbestos Enforcement Coordinator

12. All penalties, interest, and charges shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

13. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the Clean Air Act for the specific violations alleged in the Complaint. 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

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federal laws and regulations administered by EPA, and it is Respondent's responsibility to  
comply with said laws and regulations.

14. Each party shall bear its own costs and fees in this proceeding and Respondent  
specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5  
U.S.C. § 504.

15. The undersigned representative of Bilray certifies that he or she is fully authorized to  
enter into the terms and conditions of this CAFO, execute the CAFO, and legally bind  
Respondent to it.

For Bilray Demolition Company, Inc.:

*David Santanelli, President*  
David Santanelli, President  
Bilray Demolition Company, Inc.

Date: 5-8-09

For U.S. EPA, Region 1:

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

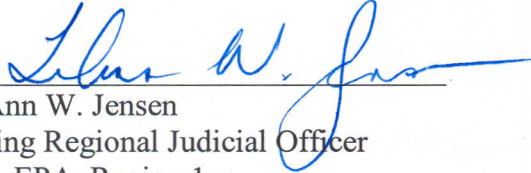
Date: 05/19/09

Amanda J. Helwig  
Amanda J. Helwig, Enforcement Counsel  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 5/13/09

### III. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Bilray Demolition Company, Inc., is ordered to comply with the terms of the above Consent Agreement, effective upon filing with the Regional Hearing Clerk.

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

Date: 5/20/09



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

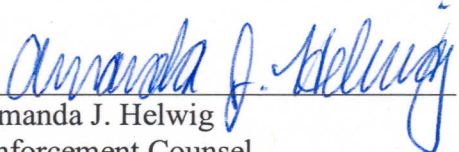
Original and one copy,  
by hand:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

One copy, by certified mail:

Fred J. Volpe, Esq.  
Mosca and Volpe  
P.O. Box 444  
130 Tower Hill Road  
North Kingstown, RI 02852

Date: 5/21/09

  
\_\_\_\_\_  
Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023  
Phone: (617) 918-1180  
Fax: (617) 918-0180