



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 29 PM 1:56
REGIONAL HEARING
CLERK

August 28, 2008

Thomas H, Ward, Esquire
Ward & Shoemaker, LLC
Counselors at Law
36 Euclid Street
Woodbury, New Jersey 08096

Re: Phil Franchi Demolition & Gloucester Point
CAA-02-2007-1213

Dear Mr. Ward:

I am enclosing a copy of the fully executed Consent Agreement and Final Order in the above matter. Please have your client pay the penalty as appropriate. I thank you for your professionalism and courtesy during the settlement process.

Very truly yours,

A handwritten signature in black ink that reads "John F. Dolinar".

John F. Dolinar
Assistant Regional Counsel

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

August 28, 2008

Walter B. Dennen, Esquire
Aimino & Dennen, LLC
Attorneys at Law
40 Newton Avenue
Woodbury, New Jersey 08096

Re: Phil Franchi Demolition & Gloucester Point
CAA-02-2007-1213

Dear Mr. Dennen:

I am enclosing a copy of the fully executed Consent Agreement and Final Order in the above matter. Please have your client pay the penalty as appropriate. I thank you for your professionalism and courtesy during the settlement process.

Very truly yours,

A handwritten signature in black ink that reads "John F. Dolinar".

John F. Dolinar
Assistant Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2008 AUG 29 PM 1:55

REGIONAL HEARING
CLERK

In the Matter of:

Phil Franchi Demolition & Excavating,
Inc.

&

Gloucester Point, Inc.

Respondents

CONSENT AGREEMENT
AND
FINAL ORDER

CAA 02-2007-1213

In a proceeding under
§ 113(d) of the Clean Air Act

PRELIMINARY STATEMENT

On April 5, 2007, the U.S. Environmental Protection Agency (EPA) issued an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint), CAA 02-2007-1213, to Phil Franchi Demolition & Excavating, Inc. (Respondent Franchi) and Gloucester Point, Inc. (Respondent Gloucester). The Complaint alleged violations of the Clean Air Act, 42 U.S.C. § 7401, *et seq.* (the CAA or Act), Sections 7412 and 7414, Sections 112 and 114 of the Act, and proposed penalties, pursuant to Section 7413(d), Section 113 of the Act. The Complainant in this matter, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, is duly delegated the authority to issue Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 112 of the Act, authorizes the Administrator to issue and require compliance with emission or work practice standards for hazardous air pollutants. Pursuant to Sections 112 and 114 of the Act, the Administrator promulgated 40 C.F.R. Part 61, Subpart M, entitled "National Emission Standard for Asbestos" (Asbestos NESHAP).

Section 114(a)(1) of the Act, authorizes the EPA Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

Complainant and Respondents have agreed to resolve the Complaint by entering into this Consent Agreement.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Each of the Respondents is a "person" as that term is defined in 42 U.S.C. § 7602(e), Section 302(e) of the Act, and as such is subject to the assessment of administrative penalties under Section 113(d) of the Act.
2. At all times relevant to this proceeding, Respondents were either the "owners or operators of a renovation or demolition activity," as those terms are defined at 40 C.F.R. §§ 61.02 and 61.141, subject to the Asbestos NESHAP.
3. The Complaint alleged Respondents violated 40 C.F.R. § 61.145(b), 40 C.F.R. § 61.145(c)(1), 40 C.F.R. § 61.145(c)(6)(i) and 40 C.F.R. § 61.150(a)(iii), by failing to notify EPA of the intention to demolish a facility at least 10 days prior to commencement, by failing to remove all asbestos containing material prior to demolition, by failing to ensure that RACM remained wet until collected and contained for disposal and by failing to seal all RACM in leak tight containers while adequately wet.
4. Pursuant to 40 C.F.R. § 61.145(b), (c)(1), (c)(6)(i), and § 61.150(a)(iii), all provisions of the Asbestos NESHAP, Respondents are required to notify EPA at least 10 days prior to a demolition, remove all RACM prior to demolition, maintain RACM in a wet condition until collected and contained for disposal and seal all RACM in a leak tight container while still adequately wet.
5. Failure to notify EPA at least 10 days prior to demolition is a violation of the Asbestos NESHAP and Sections 112 and 114 of the CAA.
6. Failure to remove all RACM prior to demolition, failure to ensure that all RACM remains wet until collected and contained for disposal and failure to seal all RACM in leak tight containers while still adequately wet are violations of the Asbestos NESHAP and Section 112 of the Act.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

7. For the purpose of this proceeding, only, and to avoid the expense of protracted litigation, Respondents: (1) admit to the jurisdictional allegations of the Complaint; (2) neither admit nor deny specific factual allegations contained in the Complaint and in this Consent Agreement; and (3) consent to the assessment of the civil penalties stated herein.

8. Respondent Franchi shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of twenty four thousand dollars (\$24,000.00), in \$6,000 quarterly payments. Respondent Gloucester shall pay a civil penalty pursuant to Section 113(d) of the Act, in the amount of \$6,000, in \$1,500 quarterly payments. Both Respondents shall pay either by cashiers' or certified check. The first payment is due within thirty (30) days of issuance of the attached Final Order (due date). Subsequent payments are due on the thirtieth day of the third month of each of the following three calendar quarters. Respondents shall: (1) clearly type or write the docket number on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer of the United States of America;" and (3) send the check to:

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

9. Respondents shall send notice of payment, along with a copy each check to the following:

John F. Dolinar
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

10. Failure to remit the penalty in full in accordance with the above provisions may result in referral of this matter to the United States Attorney for collection. In such an action, pursuant to Section 113(d)(5) of the Clean Air Act, and 31 U.S.C. §§ 3717 and 3731, Respondents shall pay the following amounts:

i. Interest. If Respondents fail to make payment, any unpaid installment portion of the assessed penalty shall bear interest, at the rate established pursuant to Section 113(d)(5) and 31 U.S.C. § 3731, from the payment due date specified in this Consent Agreement.

ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars \$15.00 will be assessed for each thirty (30) day period (or portion thereof) following the due date in which any payment remains unpaid.

iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondents fail to pay the amount of an assessed penalty on time, pursuant to Section 112 (d)(5) of the Act, in addition to such assessed penalty, interest and handling charges, Respondents shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment of penalty shall be

ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

11. This Consent Agreement is being entered into voluntarily and knowingly by the undersigned parties in full settlement of all enumerated civil liabilities that might have attached as a result of Respondents alleged failure to comply with the Asbestos NESHAP.

12. Respondents have read the Consent Agreement, find it reasonable, and consent to its terms and issuance as a Final Order.

13. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their duty to comply with all applicable provisions of the CAA and other environmental laws.

14. Respondents explicitly waive their rights to request a hearing on the Complaint, this Consent Agreement, and/or the attached Final Order and explicitly waive their rights to contest allegations in the Complaint and their rights to appeal the attached Final Order.

15. Respondents waive any rights they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Consent Order.

16. Each party to this agreement shall bear the responsibility for its own costs and attorney fees in the procedure resolved by this Consent Agreement.

17. This Consent Agreement shall be binding on all parties to this action, and upon their officers, directors, employees, successors, and assigns.

18. Each of the undersigned representative(s) certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to bind that party to it.

FOR RESPONDENT

Phil Franchi Demolition & Excavating, Inc.

DATE: _____

FOR RESPONDENT

Gloucester Point, Inc.



President

DATE: 7/25/08

ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

11. This Consent Agreement is being entered into voluntarily and knowingly by the undersigned parties in full settlement of all enumerated civil liabilities that might have attached as a result of Respondents alleged failure to comply with the Asbestos NESHAP.

12. Respondents have read the Consent Agreement, find it reasonable, and consent to its terms and issuance as a Final Order.

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16. Each party to this agreement shall bear the responsibility for its own costs and attorney fees in the procedure resolved by this Consent Agreement.

17. This Consent Agreement shall be binding on all parties to this action, and upon their officers, directors, employees, successors, and assigns.

18. Each of the undersigned representative(s) certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to bind that party to it.

FOR RESPONDENT

Phil Franchi Demolition & Excavating, Inc.



DATE: 7-21-08

FOR RESPONDENT


Gloucester Point, Inc.



DATE: _____

FOR COMPLAINANT


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S Environmental Protection Agency, Region 2


DATE: AUGUST 8, 2008 PATRICIA DURNELL for D

CONSENT ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in re: Phil Franchi Demolition & Excavating, Inc. & Gloucester Point, Inc., CAA 02-2007-1213. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE 08-14-08


For Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2

CERTIFICATE OF SERVICE

In re: **Phil Franchi Demolition & Excavating, Inc. & Gloucester Point, Inc.**
CAA-02-2007-1213

I certify that I have this day, August 28, 2008, caused to be sent the foregoing fully executed CONSENT AGREEMENT AND FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand To:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency – Region 2
Office of Regional Counsel
290 Broadway – 16th Floor
New York, New York 10007

Copy by Certified Mail
Return Receipt Requested To:

Thomas H. Ward, Esq.
Ward and Shoemaker, LLC
Counselors at Law
36 Euclid Avenue
Woodbury, New Jersey 08096

Walter B. Dennen, Esq.
Aimino & Dennen, LLC
Attorneys at Law
40 Newton Avenue
Woodbury, NJ 08096

Dated: August 28, 2008
New York, New York


Orelia Lewis, Secretary