



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 01 2011

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED

Mr. Joseph P. Varley
President
Varley Construction, Inc.
16800 Shieldsville Blvd.
Fairbault, Minnesota 55021

Re: Bravo Food Group, LLC and Varley Construction, Inc.
Consent Agreement and Final Order
Docket No. CAA-04-2010-1518(b)

Dear Mr. Varley:

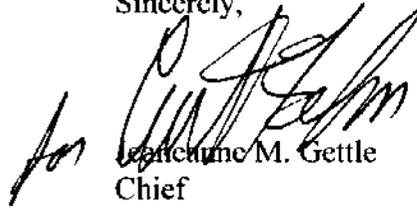
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the assessed penalty of \$6,374 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the respondent and the docket number of this case. Penalty payment questions should be directed to Ms. Jennifer Keene either by telephone at (513) 487-2103 or by written correspondence to her attention at U.S. Environmental Protection Agency, Cincinnati Accounting Operations at the address identified in the CAFO.

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.

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 Mellvaine of the EPA Region 4 staff at (404) 562-9197.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Gettle", written over the typed name.

Kenneth M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Bravo Food Group, LLC)
)
and)
)
Varley Construction, Inc.)
)
Respondents.)
_____)

Docket No. CAA-04-2010-1518(b)

2011 FEB -1 AM 7:16
OFFICE OF THE
DIRECTOR

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). Respondents are Bravo Food Group, LLC and Varley Construction, Inc.
2. Complainant and Respondents 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.

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(f) 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(f)(7) of the CAA, nothing in Section 112(f) 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, SW
Atlanta, GA 30303-8960
(404) 562-9197.

III. Specific Allegations

7. Respondent Bravo Food Group, LLC owned a facility that was previously a Taco Bell located at 302 Mall Boulevard in Savannah, Georgia. Respondent Varley Construction, Inc. is the general contractor that was responsible for the demolition of such facility.
8. Respondents are each a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
9. Respondents are the owner and operator of the demolition activity.

10. 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.
11. Between July 10, 2009, and September 18, 2009, the Respondent's facility located at 302 Mall Boulevard in Savannah, Georgia was demolished. The facility was a Taco Bell restaurant.
12. 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.
13. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b) by failing to provide written notice of intention to demolish the facility prior to the initiation of demolition activities.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations set forth above.
15. Respondents waive their right to a hearing on the allegations contained herein and their right to appeal the proposed Final Order accompanying the Consent Agreement.
16. Respondents consent to the assessment of the penalty proposed by EPA and agree that Varley Construction, Inc. shall pay the civil penalty as set forth in this CAFO, pursuant to a separate agreement between the Respondents.

17. Respondents certify that as of the date of their execution of this CAFO, they are in compliance with all relevant requirements of the Asbestos NESHAP regulations found at 40 C.F.R. Part 61, Subpart M.
18. 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 Respondents' responsibility to comply with said laws and regulations.
19. Complainant and Respondents 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

20. Respondents are assessed a civil penalty of **SIX THOUSAND THREE HUNDRED and SEVENTY-FOUR DOLLARS** (\$6,374) which shall be paid by Varley Construction, Inc., pursuant to a separate agreement between the Respondents, within 30 days from the effective date of this CAFO. In the event that Varley Construction, Inc. fails to pay the penalty as required in this CAFO, Bravo Food Group, LLC shall pay the penalty within 30 days after receipt of a written demand for payment from EPA. If the penalty is not paid by either party as required by this CAFO, EPA reserves its right to initiate action pursuant to Section 113(d) of the CAA against one or both parties to assess penalties for the violations of the Asbestos NESHAP alleged in this CAFO.

21. Payment of the penalty shall be remitted by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall be sent to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.) use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

22. At the time of payment, Respondent making the payment shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960,

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960,

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960.

23. For the purposes of state and federal income taxation, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondents to deduct any such payments shall constitute a violation of this CAFO.
24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
25. Complainant and Respondents shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon the Respondents, their successors and assigns.
27. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to this CAFO.

The remainder of this page is intentionally blank

VI. Effective Date

28. 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: Bravo Food Group, LLC
Docket No.: CAA-04-2010-1518(b)

By: [Signature] (Signature) Date: 12/16/10
Name: David Stiglitz (Typed or Printed)
Title: MANAGING MEMBER (Typed or Printed)

Respondent: Varley Construction, Inc.

By: [Signature] (Signature) Date: 1/6/11
Name: Joseph P. Varley (Typed or Printed)
Title: PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: [Signature] Date: 12/22/10
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street, SW
Atlanta, GA 30303-8960

APPROVED AND SO ORDERED this 28th day of January, 2011. SSS

By: [Signature]
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: Bravo Food Group, LLC, Docket Number: CAA-04-2010-1518(b), to the addressees listed below.

Ms. Patricia M. Weller
Attorney at Law
Krass Monroe, P.A.
8000 Norman Center Drive
Suite 1000
Minneapolis, Minnesota 55437-1178

(via Certified Mail, Return Receipt Requested)

Mr. Joseph P. Varley
President
Varley Construction, Inc.
16800 Shieldsville Boulevard
Fairhault, Minnesota 55021

(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: 2-1-11



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by Saundi Wilson on 1/27/16
(Name) (Date)

in the Region 4, ORC, OEA at (404) 582-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Bravo Food Group / Varley Construction Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable \$ 6,374
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAH-04-2010-1518(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7811, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|----------------------------------------------------|-----------------------------------------------------------|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|----------------------------------------------------|-----------------------------------------------------------|