

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Cynthia Catri 9/29/14
Name of Case Attorney Date

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

Case Docket Number CAA-01-2014-0058

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:

DuBrul Family, LLC et al.
Route 7 South
Shelburne, VT 05482

Total Dollar Amount of Receivable \$ 20,000 Due Date: 10/29/14

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
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

SEP 29 2014

EPA ORC WS
Office of Regional Hearing Clerk

BY HAND

September 29, 2014

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

Re: *In the Matter of DuBrul Family, LLC et al.*
Docket No. CAA-01-2014-0058
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) resolving the above-referenced pre-filing enforcement case. Also enclosed is the original and one copy of a Certificate of Service document that, on this date, a copy of the CAFO and this cover letter were sent to respondents DuBrul Family, LLC, John A. DuBrul II, and John A. DuBrul III.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Catri".

Cynthia Catri
Senior Enforcement Counsel

Enclosure

cc: John A. DuBrul III
John A. DuBrul II
DuBrul Family, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____))
In the Matter of:))
) Docket No. CAA-01-2014-0058
DuBrul Family, LLC))
Route 7, South))
Shelburne, VT 05482))
) CONSENT AGREEMENT
) AND FINAL ORDER
John A. DuBrul II))
Manager, DuBrul Family, LLC))
Route 7, South))
Shelburne, VT 05482))
))
John A. DuBrul III, individually, and as))
Chief Executive Officer,))
DuBrul Family, LLC))
Route 7, South))
Shelburne, VT 05482))
))
For the Facility Located at))
3342 Shelburne Road))
Shelburne, VT 05482))
))
Proceeding under Section 113 of the))
Clean Air Act, 42 U.S.C. § 7413))
_____))

RECEIVED
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Office of Regional Hearing Clerk

I. INTRODUCTION

The United States Environmental Protection Agency, Region 1 (“EPA”), as Complainant, and DuBrul Family, LLC; John A. DuBrul II, Manager of DuBrul Family, LLC; and John A. DuBrul III, individually, and as Chief Executive Officer of the DuBrul Family, LLC as Respondents, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent.

The CAFO notifies Respondents that EPA intends to assess penalties for violation of Section 112 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112, the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondents. The CAFO also informs Respondents of their rights to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, 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 Respondents (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. DuBrul Family, LLC is a limited liability company which owns the properties located at 3342 Shelburne Road in Shelburne, Vermont, and owned former structures, including the former Danform Shoes and the former Hide-A-Way Restaurant buildings and the former residential brick building and garage, on those properties (altogether referred to as "the Facility"). DuBrul Family, LLC principal business office address is listed with the Vermont Secretary of State as Route 7 South, Shelburne, Vermont. The Registered Agent for DuBrul Family, LLC is John A DuBrul II, Automasters, Route 7 South, Shelburne, VT 05482.

2. John A. DuBrul II is the Manager of DuBrul Family, LLC and is an owner or

operator of the Facility.

3. John A. DuBrul III, is an individual and is the chief executive officer of the DuBrul Family, LLC, and is an owner or operator of the Facility. Mr. DuBrul resides at 78 Thrush Way, Shelburne, Vermont 05482.

4. Each Respondent is a "person," as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

5. 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 a certain violation 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).

6. Pursuant to the Asbestos NESHAP, at 40 C.F.R. § 61.145(a), an *owner or operator of a demolition or renovation activity*¹ must, among other things, inspect the affected *facility* or part of the facility where the *demolition or renovation* operation will occur for the presence of *asbestos*. Pursuant to 40 C.F.R. §§ 61.145(a)(2) and 61.145(b), for scheduled demolitions, including those where no *regulated asbestos-containing material (RACM)* is believed to be present,² owners or operators must provide EPA with prior written notice of

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 .

² See 40 C.F.R. § 61.145(a)(2)(ii).

intention to demolish at least 10 *working days* before work begins, in the manner specified by 40 C.F.R. § 61.145(b).

7. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondents waive any defenses they might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, consent to the terms of this CAFO.

8. Respondents acknowledge that they have been informed of the right to request a hearing and hereby waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondents also waive their right to appeal the Final Order accompanying the Consent Agreement.

9. By signing this CAFO, Respondents certify that they are presently operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

III. EPA FINDINGS

10. EPA makes these findings that Respondents violated Section 112 of the Act and applicable Asbestos NESHAP notification requirements based on the investigation of facts and circumstances underlying Respondents' participation, as an owner or operator of a demolition or renovation activity, in the demolition of the structures located at the Facility (the "Demolition").

11. Respondents' demolition of several buildings, including the former Danform Shoes and the former Hide-A-Way Restaurant buildings and the former residential brick building and garage, together a "facility" as defined at 40 C.F.R. § 61.141, commenced on or about September 10, 2012. The Demolition included, without limitation, the wrecking or taking out of

load-supporting *structural members* at the Facility and was a “demolition” as defined at 40 C.F.R. § 61.141. Subsequent to the Demolition, Respondents constructed a parking lot, including landscaping, pedestrian walkways and sidewalks on the same properties where the Facility had been located.

12. On or about September 17, 2012, Vermont Department of Health (“VTDOH”), and on or about September 25, 2012, EPA received information indicating that the Demolition began without prior notification to EPA, as required under the Asbestos NESHAP. Respondents’ first attempt to notify EPA was on or about September 21, 2012, later corrected by a letter dated September 25, 2012, by which time the Demolition was finished or almost finished.

13. Respondents failed to inspect the Facility and/or failed to provide EPA with prior written notification of intention to demolish at least ten (10) working days prior to the start of the operation, as required by 40 C.F.R. § 61.145(b).

14. Based on the above-referenced violation of the Asbestos NESHAP and Section 112 of the CAA, Respondents are 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

15. 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 Respondents pay a civil penalty in the amount of

Twenty Thousand dollars (\$20,000) in settlement of the violation alleged in Section III, above.

16. Respondent shall pay the civil penalty of Twenty Thousand dollars (\$20,000) in the manner described below:

a. Payment shall be in a single payment of Twenty Thousand dollars (\$20,000) **due no later than 30 calendar days from the date of the Final Order.** If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by US Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard time to be considered as received that day.

b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case ("*In re: Dubrul Family LLC*, Docket No. CAA-01-2014-0058), be in the amount stated in part "a" above, and be payable to "Treasurer, United States of America". The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

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

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
800-234-5681

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

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

Cynthia Catri, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-2)
Boston, Massachusetts 02109-3912

17. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondents fails to pay the civil penalty, Respondents 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 from the date of the Final Order. Interest on the civil penalty amount will accrue from the date of the Final Order and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). In the event that a payment is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. 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 is 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.

18. 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, Respondents agree 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 agree not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

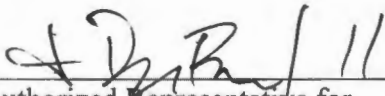
19. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged in Section III of this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves 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 Respondents to comply with said laws and regulations.

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

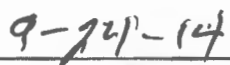
21. Respondents certify that each is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondents to it.

Consent Agreement and Final Order
In Re: DuBrul Family, LLC
CAA No.

For Respondent:



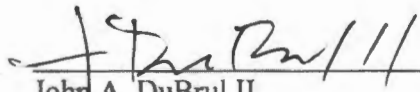
Authorized Representative for
DuBrul Family, LLC



Date

Consent Agreement and Final Order
In Re: DuBrul Family, LLC
CAA No.

For Respondent:

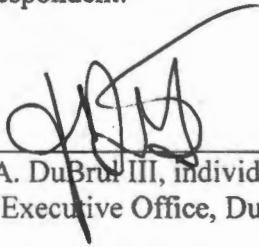


John A. DuBrul II
Manager, DuBrul Family, LLC

9-24-14
Date

Consent Agreement and Final Order
In Re: DuBrul Family, LLC
CAA No.

For Respondent:



John A. DuBrul III, individually, and as
Chief Executive Office, DuBrul Family, LLC

9/25/14

Date

For Complainant:

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

Date: 09/26/14

Cynthia Catri
Cynthia Catri, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 9/26/14

V. **FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondents are 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

9/29/14
Date

CERTIFICATE OF SERVICE

I hereby certify that this Certificate of Service and the foregoing Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were delivered in the following manner to the addressees listed below:

Originals and One Copy by Hand Delivery to: Wanda I. Santiago
Regional Hearing Clerk
Environmental Protection Agency
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

One Copy by Certified Mail – Return Receipt Requested each to:

DuBrul Family, LLC
Registered Agent: John A. DuBrul II
Route 7 South
Shelburne, VT 05482

John A. DuBrul II
Manager, DuBrul Family, LLC
Route 7 South
Shelburne, VT 05482

John A. DuBrul III
Chief Executive Officer,
DuBrul Family, LLC
Route 7, South
Shelburne, VT 05482

And individually at
78 Thrush Way
Shelburne, VT 05482

Date: 9/29/14

Signed: Cynthia Catri
Cynthia Catri, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES 04-2)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (617) 918-1888
Fax (617) 918-0888
catri.cynthia@epa.gov