



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

SEP 29 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jeff Smith, Esq.
2200 Jack Warner Parkway, Suite 200 (35401)
Post Office Box 2727
Tuscaloosa, Alabama 35403-2727

Re: Alabama Environmental, Inc.
Consent Agreement and Final Order
Docket No. CAA-04-2016-1751(b)

Dear Mr. Smith:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified checks submitted in payment of the penalty.

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 your client on notice of his potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Pamela McIlvaine of the U. S. Environmental Protection Agency Region 4 staff at (404) 562-9197.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL
2016 SEP 29 PM 1:48
HEARING CLERK

In the Matter of:

Alabama Environmental, Inc.,

Respondent.

Docket No.
CAA-04-2016-1751(b)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act" or "CAA"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). On the EPA's behalf, the Director of the Air, Pesticides and Toxics Management Division, Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act, 42 U.S.C. § 7413(d).
3. Respondent is Alabama Environmental, Inc., a corporation doing business in the state of Alabama. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication

of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.
7. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).
8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. Pursuant to Section 112(l) of the CAA, 42 U.S.C. § 7412(l), the 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 Alabama. The State has incorporated and adopted the 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(l)(7) of the CAA, nothing in Section 112(l) of the CAA shall prohibit the Administrator from enforcing any applicable emission standard or requirement under Section 112 of the CAA.

10. Asbestos is a “hazardous air pollutant” as that term is defined in Section 112(a) of the CAA, 42 U.S.C. § 7412(a), 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.
11. A “person” is defined in Section 302 of the CAA, 42 U.S.C. § 7602 as an individual, corporation, partnership, association, state, municipality, political subdivision of a state and any agency, department or instrumentality of the United States and any officer, agent or employee thereof.
12. A “facility” is defined in 40 C.F.R. § 61.141, in part, as any institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.
13. “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.
14. “Renovation” is defined in 40 C.F.R. § 61.141 as altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component.
15. An “owner or operator of a demolition or renovation activity” is defined in 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.

16. An "installation" is defined in 40 C.F.R. § 61.141 as any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).
17. Since the EPA has delegated the Administrator's authorities and responsibilities for asbestos under Section 112 of the CAA to the State of Alabama, owners or operators of demolition or renovation activity occurring in the State must notify the Alabama Department of Environmental Management of any such activity pursuant to 40 C.F.R. § 61.145(b).
18. 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 Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the current revised maximum penalty for each violation occurring after January 12, 2009, is \$37,500. Each day a violation continues may constitute a separate violation.

D. FACTUAL ALLEGATIONS

19. "Renovation" occurred on or about April 9, 2013, at a "facility" formerly known as the Saints Apartments located at 103 West Powell Street in Dothan, Alabama (the Facility).
20. At the time of renovation, the Facility was an apartment complex. Therefore, the Facility met the definition of a "facility" by being a multi-unit residential building with more than four units under one roof.
21. Respondent controlled the renovation operation at the Facility. Therefore, Respondent is an "owner or operator of a renovation or demolition activity."
22. The EPA investigated Respondent's compliance through inspections conducted at the Facility, the Dothan Downtown Redevelopment Authority (DDRA), Alabama Environmental,

Inc., the City of Dothan Landfill and the Black Warrior Solid Waste Landfill. The Region's investigation also included discussions with the Alabama Department of Environmental Management (ADEM), the Facility owner, the Dothan Downtown Redevelopment Authority, and the project manager and inspector who inspected the Facility for asbestos-containing materials prior to the renovation.

23. (a) Respondent did not provide written notice of intention to renovate postmarked at least 10 days prior to renovation. Respondent provided a notification dated April 5, 2013, for a renovation that the notification indicated would start on April 9, 2013.
- (b) Respondent did not include the correct type of operation, demolition or renovation, in the notification. The aforementioned notification incorrectly indicated that the operation was a demolition when in fact it was a renovation.
- (c) Respondent did not describe the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility in the notification.
- (d) Respondent did not estimate the appropriate amount of regulated asbestos-containing material (RACM) to be removed from the facility in the notification. Although removal techniques did render the asbestos-containing material to be friable and thus RACM, the notification incorrectly indicated that the asbestos-containing material to be removed was not friable and thus not RACM.
- (e) Respondent did not provide the street address of the facility being renovated in the notification.
- (f) Respondent did not correctly describe the planned renovation techniques to be used in the renovation operation in the notification. Respondent indicated that the wet method

would be used to conduct a demolition involving non-friable asbestos-containing material (non-RACM). The Respondent actually stripped regulated asbestos-containing material (RACM) rendering it to be friable during a renovation involving the removal of RACM.

(g) Respondent did not provide the name and location of the waste disposal site where the asbestos-containing waste would be deposited in the notification. The notification indicated that the waste would be deposited at the City of Dothan Landfill. No asbestos-containing waste from the renovation activity at this facility was deposited at the City of Dothan Landfill.

(h) Respondent did not adequately wet all RACM, including material that had been removed or stripped, and did not ensure that the RACM remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

(i) Respondent did not carefully lower removed RACM to the ground by not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(j) Respondent did not maintain waste shipment records for all asbestos-containing waste material (ACWM) transported off the facility site in accordance with the provisions of 40 C.F.R. § 61.150. Respondent indicated in discussions with EPA that it deposited all ACWM at the Black Warrior Landfill. At the time of EPA's inspection, the Black Warrior Landfill did not have any records indicating that any ACWM from the facility was deposited at the landfill.

E. ALLEGED VIOLATIONS OF LAW

24. Based on the facts alleged in Section D above, the EPA alleges that Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and the codified rules of 40 C.F.R. Part 61, Subpart M when it:

- (a) Failed to provide written notice of intention to renovate postmarked at least 10 days prior to renovation as required by 40 C.F.R. § 61.145(b)(3)(i).
- (b) Failed to indicate in the notification that the type of operation was a renovation as required by 40 C.F.R. § 61.145(b)(4)(iii).
- (c) Failed to describe the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility in the notification as required by 40 C.F.R. § 61.145(b)(4)(iv).
- (d) Failed to provide an estimate of the approximate amount of RACM to be removed from the facility in the notification as required by 40 C.F.R. § 61.145(b)(4)(vi).
- (e) Failed to provide the street address of the facility being renovated in the notification as required by 40 C.F.R. § 61.145(b)(4)(vii).
- (f) Failed to correctly describe the planned renovation techniques to be used in the renovation operation in the notification as required by 40 C.F.R. § 61.145(b)(4)(x).
- (g) Failed to correctly identify the name and location of the waste disposal site where the asbestos-containing waste would be deposited in the notification as required by 40 C.F.R. § 61.145(b)(4)(xii).
- (h) Failed to adequately wet all RACM, including material being removed or stripped, and failed to ensure that all RACM remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150 as required by 40 C.F.R. § 61.145(c)(6)(i).
- (i) Failed to carefully lower removed RACM to the ground by not dropping, throwing, sliding, or otherwise damaging or disturbing the material as required by 40 C.F.R. § 61.145(c)(6)(ii).

(j) Failed to maintain waste shipment records for all ACWM transported off the facility site as required by 40 C.F.R. § 61.150(d)(1).

F. TERMS OF CONSENT AGREEMENT

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) neither admits nor denies the factual allegations stated above;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the issuance of any specified compliance or corrective action order ;
 - (e) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
 - (f) waives its rights to appeal the Order accompanying this Agreement.
26. For the purpose of this proceeding, Respondent:
- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Middle District of Alabama; and

(e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

27. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of \$24,800 ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement.
- (b) pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with "Docket No. CAA-04-2016-1751(b)." Within 24 hours of payment of the EPA Penalty, send proof of payment to Pamela McIlvaine at U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303 and mcilvaine.pam@epa.gov. Also, send this proof of payment to Patricia Bullock, Regional Hearing Clerk, at the same address and bullock.patricia@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No. CAA-04-2016-1751(b)."

28. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C.

§ 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

(b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C.

§ 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

(c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

(d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

29. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
30. By signing this agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
31. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
32. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each

such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information under 18 U.S.C. § 1001.

33. Except as qualified by paragraph 57, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

34. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
35. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
36. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
37. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.
38. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

39. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
40. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
41. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

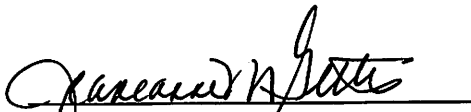
42. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement and Final Order to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Alabama Environmental, Inc., Docket No. CAA-04-2016-1751(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

9-19-16

DATE



Jeanne M. Gettle
Acting Director

Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

In the Matter of:

Alabama Environmental, Inc.,
Respondent.

Docket No.
CAA-04-2016-1751(b)

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

September 29, 2016

DATE

Tanya Floyd

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Alabama Environmental, Inc., Docket No. CAA-04-2016-1751(b), were filed and copies of the same were mailed to the parties as indicated below.

Via Certified Mail, Return Receipt Requested

Mr. Jeffrey Smith
2200 Jack Warner Parkway, Suite 200 (34501)
Post Office Box 2727
Tuscaloosa, Alabama 35403-2727

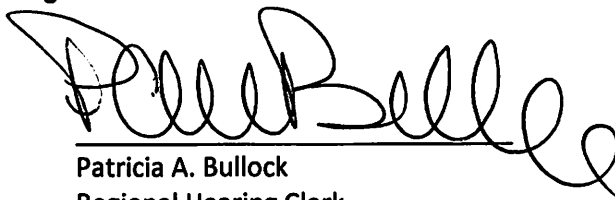
Via EPA's internal mail

Ms. Pamela McIlvaine
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Ms. Bonnie Sawyer
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. Bob Caplan
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

9-29-16
DATE


Patricia A. Bullock
Regional Hearing Clerk