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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

'99 APR -9 12:09

IN THE MATTER OF: )  
)  
Billmax Properties, )  
Farmington Hills, Michigan )  
and )  
Upright Wrecking, )  
Detroit, Michigan )  
)  
)  
Respondents. )

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION V

Docket No. 5-CAA-029-98

**PARTIAL CONSENT AGREEMENT AND CONSENT ORDER  
FOR UPRIGHT WRECKING**

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, by issuing and filing an Administrative Complaint (Complaint) against Respondents, Billmax Properties (Billmax) and Upright Wrecking (Upright) on September 25, 1998.

**I. PRELIMINARY STATEMENT**

1. The Complaint alleges that Respondent, Upright violated 40 C.F.R. Section 61.145(a) and (b). Specifically, the Complaint alleges that Upright, the operator of the site located at 14841 W. McNichols in Detroit, Michigan ("site")<sup>1</sup>, failed to inspect the affected facility where the demolition occurred for the presence of asbestos, prior to the commencement of the demolition in violation of 40 C.F.R. Section 61.145(a); and failed to provide the Administrator with a written notice of intent to demolish, at least 10 working days before demolition of the site began, in violation of 40 C.F.R. Section 61.145(b).
2. Complainant and Upright have determined that this matter should be settled without a hearing or further proceedings, upon the terms set forth in this Partial Consent Agreement and Consent Order. For the purposes of this Partial Consent Agreement and Consent Order, Upright admits the jurisdictional allegations set forth in the Complaint and neither admits nor denies the factual allegations set forth in the Complaint.
3. Upright waives its right to a hearing on the allegations of the Complaint.

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<sup>1</sup> Billmax, the owner of 14841 W. McNichols in Detroit Michigan ("site"), entered into a demolition contract with Upright to demolish the site. Therefore, Upright was the operator of the site.

4. This Partial Consent Agreement and Consent Order shall apply to and be binding upon U.S. EPA and Upright, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.
5. Upright certifies that it is in full compliance with the asbestos NESHAP regulations.
6. Upright and Complainant consent to the terms of settlement forth below.

## **II. TERMS OF SETTLEMENT**

7. Based on the foregoing stipulations and findings, and having taken into account the seriousness and duration of the alleged violations, Upright's full compliance history, degree of culpability, economic benefit or savings resulting from the alleged violations, the size of Respondent's business and the economic impact of the penalty on the business, Complainant agrees to mitigate, exclusively for Upright, the penalty to \$1,000.00.
8. Upright consents to the issuance of this Partial Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.
9. Within thirty (30) days after receiving a copy of this Partial Consent Agreement and Consent Order signed by the U.S. EPA Regional Administrator, Region 5, Respondent shall

submit a cashier's or certified check in the amount of one thousand dollars (\$1,000.00) payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

10. A transmittal letter, indicating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. The case docket number and the billing document number shall also be included on the face of the check. Respondent shall send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Nidhi K. O'Meara, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

11. The penalty specified in Paragraph 7 above, shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.
12. Interest shall accrue on any amounts overdue under the terms of this Partial Consent Agreement and Consent Order at the

rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be imposed if payment is not made within sixty (60) days after the Complainant files a fully executed copy of this Partial Consent Agreement and Consent Order with the Regional Hearing Clerk, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains.

13. This Partial Consent Agreement and Consent Order constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the CAA, for the violations alleged in the September 25, 1998 Complaint against Upright and its officers, directors and employees, only. Nothing in this Partial Consent Agreement and Consent Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Upright. Except as provided in the first sentence of this paragraph, compliance with this Partial Consent Agreement and Consent Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Upright to comply with such laws and regulations.
14. Upright's failure to comply with any provision of this Partial Consent Agreement and Consent Order may subject Upright to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid

portion of the civil penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 13 above. In any such collection action, the validity, amount, and appropriateness of this Partial Consent Agreement and Consent Order or the penalty assessed hereunder are not subject to review.

15. Except as provided in Paragraph 14, nothing in this Partial Consent Agreement and Consent Order shall be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Upright's violation of this Partial Consent Agreement and Consent Order or of the statutes and regulations upon which this Partial Consent Agreement and Consent Order is based, or for Upright's violation of any applicable provision of law.
16. Nothing in this Partial Consent Agreement and Consent Order shall relieve Upright of the duty to comply with all applicable provisions of the Clean Air Act and other Federal, State and local laws and statutes.
17. Each undersigned representative of each party to this Partial Consent Agreement and Consent Order certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms of this Partial Consent Agreement and Consent Order and to bind that party to such terms.

18. This Partial Consent Agreement and Consent Order constitutes the entire agreement between Complainant and Upright.
19. The parties hereto consent to the entry of this Partial Consent Agreement and Consent Order without further notice.
20. Each party shall bear its own costs, fees and disbursements in this action.
21. This is a "final order" for purposes of the "enforcement response" policy set forth in U.S. EPA penalty policies.

**U.S. Environmental Protection  
Agency, Complainant**

Date: \_\_\_\_\_

4-7-99

By: \_\_\_\_\_

*Richard C Karl*

Richard C. Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Upright Wrecking, Respondent

Date: 4-6-99

By: Henrietta Reed  
Henrietta Reed  
Upright Wrecking

PARTIAL CONSENT AGREEMENT AND CONSENT ORDER  
Billmax Properties and Upright Wrecking  
Docket No. 5-CAA-029-98

III. ORDER

The foregoing Partial Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent, Upright, is hereby ordered to comply with the terms of the above Partial Consent Agreement, effective immediately.

Date:

April 8, 1999

David A. Ullrich  
DAVID A. ULLRICH  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

IN THE MATTER OF BILLMAX PROPERTIES AND UPRIGHT WRECKING

Docket No. 5-CAA-029-98

CERTIFICATE OF SERVICE

I certify that the foregoing Partial Consent Agreement and Consent Order for Upright Wrecking, dated APR 09 1999, was sent in the following manner to the addresses listed below.

Original by hand delivery to: Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Copy by Overnight delivery to: Chief Administrative Judge  
Susan L. Biro  
401 M Street, S.W.  
Room 1900  
U.S. EPA  
Washington D.C. 20460

Copy by Certified Mail to:

Respondent  
Upright Wrecking: Henrietta Reed  
Upright Wrecking  
5758 Coplin  
Detroit, Michigan 48213

Copy by Regular Mail to:

Respondent  
Billmax Properties: Mr. Ken Gold  
Honigan, Miller,  
Schwartz & Cohn  
2290 First National Building  
Detroit, Michigan 40226

CERTIFIED MAIL NUMBER: P664 397 105

4-9-99  
Date

Shanee Rucker  
Shanee Rucker, Secretary  
AECAS (MI/WI)

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