

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
**Poor Richard Enterprises, Inc.** )  
**St. Paul, Minnesota** )  
 )  
**Respondent** )

**DOCKET No. 5-CAA-95-019**

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

APR 28 4:09 PM '99

REGION 5

**CONSENT AGREEMENT AND CONSENT ORDER**

1. This civil administrative proceeding for the assessment of a penalty was initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(2) and 22.43.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, of the United States Environmental Protection Agency, Region 5. The Respondent is Poor Richard Enterprises, Inc., which owned and operated a waste transfer business located at 400 Whittall Street, St. Paul, Minnesota 55101.

3. The Complainant filed a three count Complainant and Notice of Opportunity For Hearing On Proposed Administrative Order Assessing Penalties (Complaint) on September 29, 1995 concerning Respondent's failure to comply with the regulations of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), promulgated under Section 112 of the CAA, as amended, 42 U.S.C. § 7412. Counts 1 and 2 of the Complaint alleged that Respondent violated 40 C.F.R. § 61.150 (a) because it discharged visible emissions to the outside air during the processing, packaging or transporting of asbestos containing waste material

generated by Respondent or because it did not use one of the emission treatment methods specified by the asbestos NESHAP. Count 3 of the Complaint alleged that Respondent violated 40 C.F.R. § 61.150(b)(1) because it failed to properly dispose certain asbestos containing material at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

4. The parties have agreed to settle this action by entering into this Consent Agreement and Consent Order (CACO) pursuant to 40 C.F.R. §§ 22.18(b) and (c).

NOW THEREFORE,

5. The Respondent admits the jurisdictional allegations in the Complaint, admits the remaining findings of fact and conclusions of law in the Complaint, and consents to the terms of this CACO.

6. This CACO constitutes full and final settlement of all civil and administrative claims and causes of action that were alleged in the Complaint.

7. The Respondent waives any and all rights to request a hearing on any issue of fact or law alleged in the Complaint, as provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A) and 40 C.F.R. §22.15(c). The Respondent also waives any and all rights to file a petition for judicial review of this CACO in the applicable United States District Court, as provided by Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4).

8. The Respondent certifies that to the best of its knowledge it is currently in compliance with the CAA regulations for asbestos NESHAP at 40 C.F.R. Part 61, Subpart M.

9. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and in accordance with the Clean Air Act Stationary Source Civil Penalty Policy (October 25, 1991) and based

upon the facts alleged in the Complaint, Complainant initially proposed a civil penalty of \$75,000.

10. As a result of settlement discussions, Respondent's cooperation in this matter and other factors as justice may require, Complainant has determined that \$47,000 is an appropriate and fair civil penalty to settle this action.

11. Respondent consents to the issuance of the Consent Order hereinafter recited and consents for purposes of settlement to the payment of the civil penalty cited in paragraph 10.

12. All civil penalties under this CACO shall be due no later than **May 16, 1999** and made payable to **Treasurer, United States of America** by certified or cashier's check. Such payment shall be sent to:

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

13. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of the check and transmittal letter to:

- 1) Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (R-19J)  
Chicago, Illinois 60604;
- 2) John Shepler  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (AE-17J)  
Chicago, Illinois 60604; and
- 3) Susan Perdomo  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5

77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604.

14. Respondent's failure to timely comply with any material and substantial provision of this CACO shall render the entire unpaid portion of the assessed penalty of \$75,000 immediately due and payable, together with all accrued interest. Such failure may also subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413 (d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below. In any such collection action, the validity, amount and appropriateness of this CACO or the penalty and charges assessed hereunder shall not be subject to review.

15. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. §§ 3717, 3731, Respondent shall pay interest and penalties on debts owed to the United States and a charge to cover the costs of debt collection, including processing and handling costs and attorneys fees. If the civil penalty is not paid pursuant to the terms of this CACO, Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) [see 4 C.F.R. § 102.13(c)] from the date a copy of this CACO as issued is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a such copy of this CACO is mailed to Respondent. In addition, no interest shall be payable on any portion of the assessed penalty that is suspended and deferred and is not subsequently required to be paid.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalty is more than 30 days past due.

c. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount of the

assessed penalty, interest and handling charges, Respondent shall be liable to pay the United States' enforcement and collection 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 penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

16. Nothing in this CACO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other Federal, state or local laws or statutes.

17. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting Complainant's ability to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

18. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

19. Nothing in this CACO shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

20. Nothing in this CACO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent.

21. This CACO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CACO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

22. Each party shall bear its own costs, attorney fees and disbursements in this action.

23. The parties to this agreement consent to the entry of this CACO without further

notice.

24. This CACO constitutes the entire agreement between the parties.

**In the Matter of: Poor Richard Enterprises, Inc.  
Docket No. CAA-95-019**

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

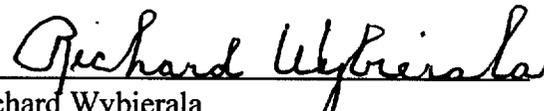
**U.S. ENVIRONMENTAL PROTECTION AGENCY,  
COMPLAINANT**

Date: 4/27/99

  
Richard Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency

**POOR RICHARD ENTERPRISES, INC.  
RESPONDENT**

Date: 4/20/99

  
Richard Wybierala  
d/b/a Poor Richard Enterprises, Inc.  
d/b/a Poor Richard, Inc.

**In the Matter of: Poor Richard Enterprises, Inc.**  
**Docket No. CAA-95-019**

**CONSENT ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent, Richard Wybierala, d/b/a Poor Richard Enterprises, Inc., is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: 4/27/89

  
\_\_\_\_\_  
David Ullrich  
Acting Regional Administrator  
U.S. Environmental Protection Agency

CERTIFICATE OF MAILING

**Re: Consent Agreement Consent Order Poor Richards  
Enterprises, Inc. Docket No. 5-CAA-95-019**

I hereby certify that on **APR 28 1999**, I filed an original of the Consent Agreement Consent Order Assessing Administrative Civil Penalties against Poor Richards Enterprises, Inc., Docket Number 5-CAA-95-019 with:

Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

I also certify that on this same day, a true and correct file stamped copy of the CACO was sent via Certified Mail, Return Receipt Requested, to:

John E. Daubney, Esquire  
500 Degree of Honor Building  
325 Cedar Street  
St. Paul, Minnesota 55101-1012

Certified Mail Number: P564 485 634

and by First Class mail to:

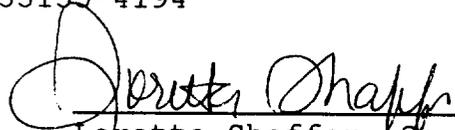
Honorable Carl C. Charneski  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Mail Code 1900  
401 M Street, S.W.  
Washington, D.C. 20460

and

Steven Giddings, PCS Principal Supervisor  
Metro Enforcement Unit  
Division of Air Quality  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, Minnesota 55155-4194

**APR 28 1999**

Date

  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

RECEIVED  
APR 28 1999  
P4:09  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460