

REF

99-007-5 2332

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:) **DOCKET No. 5-CAA-023-'98**
)
Neal A. Sweebe, Inc.) Proceeding to Assess Administrative
Midland, Michigan) Penalty under Section 113(d) of the
) Clean Air Act 42 U.S.C. § 7413(d)
_____)

CONSENT AGREEMENT AND CONSENT ORDER

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, (U.S. EPA) instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 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, 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992).

I. PRELIMINARY STATEMENT

1. Respondent Neal A. Sweebe, Inc. (Sweebe) is a corporation incorporated under the laws of the State of Michigan, with its principal place of business located at 3632 N. Sturgeon Road, Midland, Michigan.

2. The Complainant instituted this civil administrative proceeding for the assessment of a civil penalty by issuing an Administrative Complaint and Notice of Proposed Order Assessing a Penalty against the Respondent on September 18, 1998.

3. The Complaint alleged that the Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos (40 C.F.R. Part 61, Subpart M).

4. The Complaint proposed a civil penalty of \$44,000.00 which was to be apportioned among the two Respondents (the other Respondent is Northporte Development, Inc., Docket No. 5-CAA-024-'98). The Agency mitigated the portion of the penalty attributable to Neal A. Sweebe, Inc. due to its good faith in resolving this matter and other factors as justice required. The final penalty of **\$8,000.00** has been agreed to by the Complainant and the Respondent.

5. The parties agree that resolution of this matter through entry of this Consent Agreement and Consent Order (CACO) is an appropriate means of resolving this matter.

II. CONSENT AGREEMENT

6. Before taking any of the testimony, without adjudication of any issues of law or fact, the Complainant and Respondent consent to the entry of, and agree to comply with, the terms of this CACO.

7. The Respondent admits the jurisdictional allegations in the Complaint.

8. The Respondent neither admits nor denies the factual allegations in the Complaint.

9. The Respondent, without admitting liability and for the purpose of settling the above referenced Complaint against Respondent, consents to assessment of civil penalties provided in the Order below.

10. The Respondent withdraws its request for a hearing and waives any and all rights under any provisions of law to a hearing on the allegations in the Complaint or to challenge the terms and conditions of this CACO.

III. CONSENT ORDER

IT IS HEREBY ORDERED AND ADJUDGED as follows:

11. Respondent Neal Sweebe, Inc. shall pay the United States a civil penalty in the amount of **\$8,000.00**. Respondent shall pay the \$8,000.00 within 30 calendar days of the date that U.S. EPA files a fully executed copy of this CACO with the Regional Hearing Clerk.

12. The civil penalties payable hereunder shall be made by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

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

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

- a. Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (P-19J)
Chicago, Illinois 60604-3590; and
- b. Jennifer Darrow
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604-3590; and

- c. Karl A. Karg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590.

13. The Respondent's failure to comply with any provision of this CACO may subject it 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 civil penalty, together with interest, handling charges and nonpayment penalties as set forth in Paragraph 14 below. In any such collection action, the validity, amount and appropriateness of this order or the penalty assessed hereunder are not subject to review.

14. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, the Respondent shall pay the following amounts if the civil penalty is not paid pursuant to the terms of this CACO:

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) from the date a fully executed copy of this CACO is received by the Respondent provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within the times described in Paragraph 11 above.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for each month that 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 the Respondent fail to pay on a timely basis

the full amount due under this CACO, including interest and handling charges, the Respondent shall pay the United States' enforcement and collection expenses, including but not limited to attorneys' 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 shall be ten percent (10%) of the aggregate amount of the Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

IV. GENERAL PROVISIONS

15. The Respondent certifies, to the best of its knowledge, that the violations of law alleged in the Complaint have been remedied in accordance with the Clean Air Act and regulations promulgated as the Asbestos NESHAP, and that Neal A. Sweebe, Inc., is now operating in compliance with the Clean Air Act and the regulations promulgated as the Asbestos NESHAP.

16. This CACO constitutes a settlement and release of all claims for civil penalties pursuant to Section 113 of the Clean Air Act for the civil violations alleged in the Complaint against the Respondent. Nothing in this CACO is intended to nor shall be construed to resolve any criminal liability of the Respondent, nor shall it be construed to resolve any other civil liability arising outside the scope of the Complaint. Compliance with the terms of this CACO shall not be a defense to any actions subsequently commenced pursuant to Federal law and regulations administered by Complainant, and it is the responsibility of the Respondent to comply with such laws and regulations.

17. The Respondent knowingly and explicitly waives its rights, including those pursuant to Section 113(d)(2) and (4) of the CAA, 42 U.S.C. § 7413(d)(2) and (4), to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint or this CACO.

18. This document constitutes an "enforcement response" as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent's "full compliance history" as addressed in Section 113(e) of the Clean Air Act. 42 U.S.C. § 7413(e).

19. The provisions of this CACO shall be binding on the Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

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

21. The Respondent certifies that it is duly authorized to execute this CACO and that the party signing this CACO on its behalf is duly authorized to bind it to the terms of this document.

22. The parties agree to issuance of the accompanying Final Order.

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

In the Matter of: Neal A. Sweebe, Inc.
Docket No. 5-CAA-023-'98

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

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

Date: October 29, 1999

By: 
Margaret M. Guerriero, Acting Director
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency

**Neal A. Sweebe, Inc.
RESPONDENT**

Date: Oct 15, 99

By: 
Neal A. Sweebe, President
Neal A. Sweebe, Inc.

In the Matter of: Neal A. Sweebe, Inc.
Docket No. 5-CAA-23-'98

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent, Neal A. Sweebe, 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: _____

11/3/99



Francis X. Lyons
Regional Administrator
Region 5
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that I filed the original of the foregoing Consent Agreement and Consent Order (CACO) Assessing Administrative Civil Penalties Against Neal A. Sweebe, Inc., Docket No. **5-CAA-023-98** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the CACO to:

Mr. Neal A. Sweebe, President
Neal A. Sweebe, Inc.
3632 N. Sturgeon Road
Midland, Michigan 48640

2199026448

Certified Mail Number

on the 5th day of NOVEMBER, 1999.

Shanee Rucker

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

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