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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2014-0108
Idaho Transportation Department, Rigby, Idaho	)	**CONSENT AGREEMENT AND FINAL ORDER**
Respondent.	)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Idaho Transportation Department ("Respondent") agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

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2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant"), has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA has adopted National Emission Standards for Hazardous Air Pollutants for asbestos, which are codified at 40 C.F.R. Part 61, Subpart M.

3.2. 40 C.F.R. § 61.145 applies to any person who is the owner or operator of a demolition or renovation activity.

3.3. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" as including, *inter alia*, a State.

3.4. 40 C.F.R. § 61.141 defines "owner or operator of a demolition or renovation activity" to include 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.

3.5. 40 C.F.R. § 61.141 defines "renovation" 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.

3.6. 40 C.F.R. § 61.141 defines "facility" to include, *inter alia*, any institutional, commercial, public, industrial, or residential structure, installation, or building, and "facility component" as any part of a facility including equipment.

3.7. 40 C.F.R. § 61.145(a) requires the owner or operator of a renovation activity to thoroughly inspect the facility, prior to the commencement of the renovation, for the presence of asbestos.

3.8. 40 C.F.R. § 61.145(b)(1) requires the owner or operator of a renovation activity to provide EPA with written notice of intent to renovate a facility.

3.9. 40 C.F.R. § 61.145(c)(1) requires the owner or operator of a renovation activity to remove all regulated asbestos-containing material from a facility before any activity begins that would break up, dislodge, or similarly disturb the material.

3.10. 40 C.F.R. § 61.145(c)(8) requires the owner or operator of a renovation activity to have at least one representative trained in the provisions of 40 C.F.R. § 61.145 present on-site during the removal of regulated asbestos-containing material from a facility.

3.11. 40 C.F.R. § 61.150(b) requires the owner or operator of a renovation activity to deposit all asbestos-containing waste material in a waste disposal site operated in accordance with 40 C.F.R. § 61.154 or at an EPA-approved site that operates according to 40 C.F.R. § 61.155.

3.12. 40 C.F.R. § 61.150(c) requires the owner or operator of a renovation activity to mark vehicles used to transport asbestos-containing waste material in accordance with 40 C.F.R. § 61.149(d)(1).

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3.13. 40 C.F.R. § 61.150(d)(1) requires the owner or operator of a renovation activity to maintain waste shipment records for all asbestos-contaminated waste material transported off the facility site.

3.14. Respondent is a "person" as defined in CAA § 302(e).

3.15. Respondent owns the maintenance building located at 206 N. Yellowstone Highway, Rigby, Idaho ("Maintenance Building").

3.16. The Maintenance Building is a "facility" as defined in 40 C.F.R. § 61.141.

3.17. Respondent renovated the flooring of the Maintenance Building in late April and/or early May, 2013.

3.18. Samples taken from the Maintenance Building and the flooring renovation waste indicate the presence of asbestos at regulated levels.

3.19. Respondent failed to thoroughly inspect the Maintenance Building for asbestos, prior to its renovation, in violation of 40 C.F.R. § 61.145(a).

3.20. Respondent failed to provide EPA with written notice of intent to renovate the Maintenance Building, in violation of 40 C.F.R. § 61.145(b)(1).

3.21. Respondent failed to remove regulated asbestos-containing material from the Maintenance Building before activities began which broke up, dislodged, or disturbed the regulated asbestos-containing material, in violation of 40 C.F.R. § 61.145(c)(1).

3.22. Respondent failed to have a representative on-site during the removal of regulated asbestos-containing material who was trained in the provisions of 40 C.F.R. § 61.145, in violation of 40 C.F.R. § 61.145(c)(8).

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3.23. Respondent failed to dispose of asbestos-containing waste material in a waste disposal site operated in accordance with 40 C.F.R. § 61.154 or at an EPA-approved site that operates according to 40 C.F.R. § 61.155, in violation of 40 C.F.R. § 61.150(b).

3.24. Respondent failed to mark vehicles used to transport asbestos-containing waste material in accordance with 40 C.F.R. § 61.149(d)(1), in violation of 40 C.F.R. § 61.150(c).

3.25. Respondent failed to maintain waste shipment records for all asbestos-contaminated waste material transported off the facility site, in violation of 40 C.F.R. § 61.150(d)(1).

3.26. Under Section 113(d) of CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $37,500 per violation per day.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Part III of this CAFO, nor is it an admission of guilt or liability on the part of Respondent.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $55,800.

4.4. Respondent agrees to pay the total civil penalty set forth in paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check Respondent's name and the docket number of this case.

4.6. Respondent must serve photocopies of the check, or proof of alternative method of payment, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

John Pavitt
U.S. Environmental Protection Agency
Alaska Operations Office
222 W 7th Ave., #19
Anchorage, Alaska 99513-7588

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. If Respondent fails to pay any

portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.7.1. Interest. Any unpaid portion of the assessed penalty policy shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement 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 penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties accrued from the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

4.12. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: 6/2/14

FOR RESPONDENT:

Signature

Print Name: James Carpenter

Title: Chief Operations Officer

DATED: 6/12/2014

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
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V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. Respondent shall pay a civil penalty in the amount of $55,800, as provided in Part IV.

5.4. The Final Order is effective upon filing.

SO ORDERED this 18th day of June, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Idaho Transportation Department, Docket No.: CAA-10-2014-0108**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Sue Sullivan, Environmental Manager
Idaho Transportation Department
P.O. Box 7129
Boise, Idaho 83707-1129

DATED this 20th day of June, 2014

Candace H. Smith
Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10