

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2016 FEB 18 AM 9:16  
HEARING CLERK

In the Matter of: )  
 )  
Board of Regents of the University )  
System of Georgia )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CAA-04-2016-1750(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is Board of Regents of the University System of Georgia ("Respondent"). The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 7-6-A. Pursuant to the aforementioned Delegations, the Director of the Air, Pesticides and Toxics Management

Division has the authority to commence an enforcement action as the Complainant in this matter (“EPA” or “Complainant”).

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. In December 1977, pursuant to Section 112(l) of the CAA, 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 Georgia. Pursuant to Georgia Department of Natural Resources Rules for Air Quality Control, Chapter 391-3-1-.02(9)(b)(7), 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.
4. 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.

5. 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.
6. 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.
7. “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.
8. “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.
9. 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.
10. 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).

11. 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.

### **III. Specific Allegations**

12. Respondent is a state educational institution operating in the State of Georgia. Therefore, Respondent is a “person” as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
13. “Renovation” occurred on or about March 16, 2015, at a “facility” located at 170 East Green Street in Athens, Georgia on the campus of the University of Georgia (the “Facility”).
14. At the time of renovation, the Facility was a classroom building identified as the Forestry Resources 3 building. Therefore, the Facility met the definition of a “facility” by being an institutional building.
15. Respondent owned the Facility and controlled the renovation operation at the Facility at the time of the renovation operation. Therefore, Respondent is an “owner or operator of a renovation or demolition activity.”
16. The EPA determined Respondent’s compliance through a review of Respondent’s June 8, 2015, response to the EPA’s May 20, 2015, Information Request.

17. Respondent's response to the EPA's Information Request indicated that the renovation activity that took place involved the removal of ceiling material in rooms 217, 219, and 220 of the Forestry Resources 3 building without an inspection for the presence of asbestos being conducted prior to the beginning of the renovation activity on March 16, 2015.
18. Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a) require the owner or operator to conduct a thorough inspection for the presence of asbestos prior to beginning renovation activity at a regulated facility.
19. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a), by failing to ensure that the Facility was inspected for the presence of asbestos prior to the commencement of demolition or renovation activity.

#### **IV. Consent Agreement**

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
21. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
22. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M.
24. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United

States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

25. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.
26. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Pamela McIlvaine  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9197.

#### **V. Final Order**

27. Respondent is assessed a civil penalty of **TEN THOUSAND FOUR HUNDRED and THIRTY DOLLARS (\$10,430)** which shall be paid within thirty (30) days of the effective date.
28. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS)  
(excluding USPS overnight mail):

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Contact Phone Number: (513) 487-2091

29. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Pamela McIlvaine  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960; and

Saundi Wilson  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960.

30. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a),

interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon Respondent and its successors and assigns.
34. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

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**VI. Effective Date**

35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent: Board of Regents of the University System of Georgia**

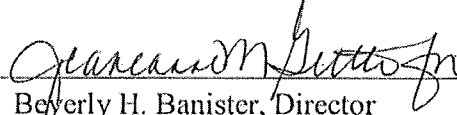
**Docket No.: CAA-04-2016-1750(b)**

By:  Date: 2/3/16

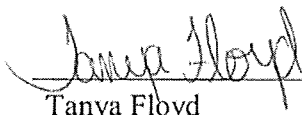
Name: Ryan Nesbit

Title: Vice President for Finance and Administration

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

By:  Date: 2-12-16  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 16<sup>th</sup> day of February, 2016.

By:   
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Board of Regents of the University System of Georgia, Docket Number: CAA-04-2016-1750(b), to the addressees listed below.

Mr. Adam Sowatzka  
King and Spalding, LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309

(via Certified Mail, Return Receipt Requested)

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

(via EPA's internal mail)

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

(via EPA's internal mail)

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

(via EPA's internal mail)

By:



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Date:

2-18-16

(404) 562-9511