

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2023-0116
)	
JENS SCHKADE)	CONSENT AGREEMENT
)	
Grand View, Idaho)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement 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. 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 issues, and Jens Schkade (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

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

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

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement 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 the 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 promulgated national emission standards for hazardous air pollutants, including standards for asbestos. These standards are codified at 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos (“Subpart M”).

3.2. Subpart M includes standards that apply to the owner or operator of a demolition or renovation activity. 40 C.F.R. § 61.145.

3.3. “Owner or operator of a demolition or renovation activity” means 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. 40 C.F.R. § 61.141.

3.4. “Demolition” means 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. 40 C.F.R. § 61.141.

3.5. “Facility” includes any institutional, commercial, public, industrial, or residential structure, installation, or building, subject to exclusions not relevant here. 40 C.F.R. § 61.141.

3.6. “Facility component” means any part of a facility including equipment. 40 C.F.R. § 61.141.

3.7. “Regulated asbestos-containing material” (“RACM”) means (a) Friable asbestos material, (b) Category I nonfriable asbestos-containing material (“ACM”) that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by Subpart M. 40 C.F.R. § 61.141.

3.8. “Category I nonfriable ACM” means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy. 40 C.F.R. § 61.141.

3.9. “Asbestos-containing waste materials” means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of Subpart M. The term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, the term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing. 40 C.F.R. § 61.141.

3.10. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term “person” includes an individual, corporation, partnership, or association.

3.11. Respondent Jens Schkade is an individual and is therefore a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.12. On or about October 5, 2021, Respondent wrecked a commercial building called the Square Deal Store located at 215 Main Street in Grand View, Idaho (the “Facility”) and transported the debris from its original building site to a nearby private property owned by Respondent, where it was intentionally burned (the “burn site”). These actions constitute a “demolition” under Subpart M.

3.13. The former Square Deal Store was a “facility” as defined in 40 C.F.R. § 61.141.

3.14. The burned debris was pushed into a drainage ditch on the same property (the “dump site”).

3.15. The demolition involved approximately 10,000 square feet of asphalt roofing material.

3.16. On or about January 12, 2022, Respondent took samples of materials found at the original building site and at the private property where the debris was burned and dumped.

3.17. Samples of roofing material found at the original building site and at the private property where the debris was burned and dumped contained 30% and 60% Chrysotile asbestos, respectively. Additionally, samples of vinyl composite tile (“VCT”) flooring and mastic from both locations tested positive for asbestos, with samples containing 3%–15% Chrysotile asbestos.

3.18. The asbestos-containing roof material was Category I nonfriable ACM that became friable through demolition by intentional burning, making this material RACM under Subpart M.

3.19. The burned asbestos-containing roof material, as well as the debris contaminated with the burned asbestos-containing roof material at the dump site, is “asbestos-containing waste material” under Subpart M.

3.20. Respondent operated, controlled, and supervised the demolition of the Facility, making Respondent the “operator” of a demolition activity under Subpart M.

COUNT 1

3.21. 40 C.F.R. § 61.145(a) requires the owner or operator of a demolition or renovation activity to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM, prior to commencing the demolition or renovation.

3.22. Respondent did not thoroughly inspect the Facility for the presence of asbestos and did not test the asphalt roof material or VTC flooring and mastic for asbestos prior to commencing demolition on or about October 5, 2021.

3.23. Respondent therefore violated 40 C.F.R. § 61.145(a) by failing to thoroughly inspect the Facility for the presence of asbestos prior to commencing demolition.

COUNT 2

3.24. 40 C.F.R. §§ 61.145(a)(1) and 61.145(b)(3)(i) require the owner or operator of a demolition activity to provide EPA with written notice of intention to demolish at least 10 working days before asbestos stripping or removal work or any other activity begins.

3.25. Respondent did not submit a written notice or any other notice to EPA prior to demolishing the Facility on or about October 5, 2021.

3.26. Respondent therefore violated 40 C.F.R. § 61.145(b)(3)(i) by failing to provide EPA written notice of their intent to demolish the Facility at least 10 working days before beginning demolition.

COUNT 3

3.27. 40 C.F.R. § 61.145(c)(10) requires the owner or operator of a subject demolition activity to remove all RACM including Category I and Category II nonfriable ACM from a facility in accordance with Subpart M prior to intentional burning.

3.28. Respondent did not remove approximately 10,000 square feet of Category I nonfriable asphalt roofing material, along with asbestos-containing floor tile and mastic, prior to demolition by intentional burning on or about October 5, 2021. When burned, the asbestos-containing roofing material became friable.

3.29. Respondent therefore violated 40 C.F.R. § 61.145(c)(10) by failing to remove all RACM including Category I and Category II nonfriable ACM in accordance with Subpart M before commencing intentional burning.

COUNT 4

3.30. 40 C.F.R. § 61.150(b) requires all asbestos-containing waste material to be deposited as soon as practicable at a waste disposal site operated in accordance with the

provisions of 40 C.F.R. § 61.154 or an EPA-approved site that converts RACM and asbestos-containing waste material into asbestos-free material.

3.31. On or about October 5, 2021, Respondent deposited the asbestos-containing waste material (asbestos-containing roofing material that Respondent failed to remove prior to burning, and other debris contaminated with the burned roofing material) into the dump site located on Respondent's property.

3.32. The dump site was not a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154 or an EPA-approved site that converts RACM and asbestos-containing waste material into asbestos-free material.

3.33. The asbestos-containing waste material remained at the dump site until removed and transported to a landfill in February and March, 2022.

3.34. Respondent therefore violated 40 C.F.R. § 61.150(b) by failing to deposit all asbestos-containing waste material as soon as practicable at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154 or an EPA-approved site that converts RACM and asbestos-containing waste material into asbestos-free material.

ENFORCEMENT AUTHORITY

3.35. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess administrative penalties for violations of Subpart M.

3.36. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$55,808 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$88,749 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order 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 a 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 979078
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, 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 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Alyson Skeens
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Skeens.Alyson@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of 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 pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of 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) 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 contained herein.

b. 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 and nonpayment penalties accrued from the beginning of such quarter.

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

4.10. The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and their agents, servants, employees, successors, and assigns.

4.15. Respondent consent to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

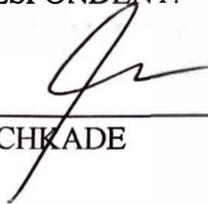
4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by

Respondent and EPA Region 10.

DATED:

8/1/23

FOR RESPONDENT:



JENS SCHKADE

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2023-0116
)	
JENS SCHKADE)	FINAL ORDER
)	
Grand View, Idaho)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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 and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2023.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: JENS SCHKADE, Docket No.: CAA-10-2023-0116**, 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 via electronic mail to:

Erin Tanimura
U.S. Environmental Protection Agency,
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Tanimura.Erin@epa.gov

Wade Foster
Stoel Rives LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Wade.Foster@stoel.com

DATED this ____ day of _____ 2023.

DANIEL MAUL
Regional Hearing Clerk
EPA Region 10