UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

June 7, 2010

Dr. James Riviere
City Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145

Re: City of Marco Island and Quality Enterprises USA
Docket No. CAA-04-2010-1531(b)

Dear Dr. Riviere:

Enclosed is the final Consent Agreement and Final Order (CAFO) resulting from settlement discussions to resolve the alleged violations by the City of Marco Island (the City) and Quality Enterprises USA (Quality) of Section 112 of the Clean Air Act (CAA) (42 U.S.C. § 7412) and the regulations promulgated at 40 C.F.R. Part 61, Subpart M, the "National Emission Standard for Asbestos." The original, signed and dated CAFO should be returned to Pam Mcilvaine at the above address within seven (7) calendar days after your receipt of this letter. Please coordinate with Quality Enterprises to ensure that signatures of both parties are affixed to the CAFO before it is returned to EPA.

When EPA receives the CAFO signed by the City and Quality Enterprises, it will be forwarded for the approval and signature of the Air, Pesticides and Toxics Management Division Director and the Regional Judicial Officer. Once signed and filed, a copy of the CAFO will be sent to you.

EPA appreciates the City's cooperation in this matter and its efforts to ensure that required cleanup actions were conducted. By way of background, in 2006, EPA received information from the Florida Department of Environmental Protection (FDEP) and other sources indicating that fragments, pieces, and sections of asbestos-containing (AC) cement piping had been disposed and/or otherwise had come to be located on several parcels of property on Marco Island, Florida. Two of these parcels, known as Site A and Site B, were being used for various construction-related purposes during the City's Collier Boulevard sewer and road-widening project. Site A contained a 10,000 cubic yard debris pile comingled with AC pipe fragments, and Site B was being used as an equipment and vehicle storage area where AC pipe fragments were found. The third parcel, Site C, is located in the vicinity of the project and had become contaminated with AC pipe fragments after AC pipe was deposited there to secure mulch piles prior to a hurricane.

Based on our review of available documents and all the surrounding facts and circumstances, as well as discussions with FDEP, the City, and Quality, EPA determined that cleanup action needed to be undertaken at Sites A, B, and C to remove the asbestos contamination. The City and Quality fully cooperated with EPA to address the contamination concerns, and, pursuant to EPA's directives, developed and implemented EPA-approved sampling and cleanup plans at all three sites. Based on reports and information submitted to EPA by the City and Quality, EPA has determined that the cleanup actions were satisfactorily completed in accordance with the work plans. Site C cleanup was completed in May 2007, Site A was completed in April 2008, and Site B was completed in November 2008. All required confirmatory sampling and additional follow-up cleanup work and additional confirmatory sampling were also satisfactorily completed.

Based on currently available information, EPA is not aware of any additional asbestos concerns at this time with regard to Sites A, B, and C, stemming from the Collier Boulevard project. EPA has placed no restrictions on the use of the property under the provisions of the Asbestos NESHAP regulations found at 40 C.F.R. Part 61, Subpart M.

If you have any questions, please contact either Pam Mcilvaine at 404-562-9197, or Robert Caplan, at 404-562-9520.

Sincerely,

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosure

cc: Frank Recker, Chairman
Alan Gabriel, City Attorney

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:	)	
	)	
City of Marco Island, Florida	)	Docket No. CAA-04-2010-1531(b)
	)	
and	)	
	)	
Quality Enterprises USA, Inc.,	)	
	)	
Respondents.	)	
	)	

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, Issuance of Compliance or Corrective Action Orders and the Revocation/Termination or Suspension of Permits; Final Rule (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondents are the City of Marco Island, Florida (the City), and Quality Enterprises USA, Inc. (Quality).

2. Complainant and Respondents 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. Asbestos is a "hazardous air pollutant" as that term is defined in Sections 112(a)(6) and 112(b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and 7412(b)(1), 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. 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 statutory penalty of $25,000 has been adjusted for inflation. For a violation occurring after January 31, 1997, and through March 15, 2004, a penalty of up to $27,500 may be assessed. For a violation occurring after March 15, 2004, and through January 12, 2009, a penalty of up to $32,500 may be assessed. For a violation occurring after January 12, 2009, a penalty of up to $37,500 may be assessed. Each day a violation continues may constitute a separate violation.

4. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d) is vested in the Administrator of EPA. The Administrator of 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, Air, Pesticides and Toxics Management Division, by 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.

5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

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

III. EPA's Statement of Facts and Allegations of Violations

6. The City retained Quality as the general contractor to conduct the Collier Boulevard road-widening and sewer and drinking water pipe installation project (the Project) in the City of Marco Island, Florida.

7. The sewer and drinking water pipelines are owned by the City and constitute a "facility component" as that term is defined in 40 C.F.R. §61.141.

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 at 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. EPA alleges that Respondents are owners and operators of a renovation activity.

11. EPA alleges that between approximately March 2005 and March 2006, as a part of the implementation of the Project, a portion of the existing asbestos-containing cement piping was excavated and the remainder was abandoned in place and grouted. As a result

of the handling of the excavated asbestos-containing cement piping, EPA alleges that a portion of it became "regulated asbestos containing material" (RACM) as that term is defined in 40 C.F.R. § 61.141. EPA alleges that the excavation and disposal of RACM at various locations around the Project site qualifies the project as a renovation pursuant to the Asbestos NESHAP.

12. As a renovation project that involved the excavation, handling, and disposal of RACM, EPA alleges that the Project was subject to the notification and work practices requirements of the Asbestos NESHAP.

13. EPA alleges that Respondents failed to comply with the applicable Asbestos NESHAP requirements as follows:

   a. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a) by failing to inspect the facility for the presence of asbestos prior to the initiation of renovation activities.

   b. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b) by failing to provide written notice of intention to renovate the facility component prior to the initiation of renovation activities involving at least 260 linear feet of regulated asbestos-containing material (RACM) on a facility component.

   c. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(1) by failing to remove all regulated asbestos-containing material (RACM) from a facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material.

   d. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(6)(i) by failing to adequately wet all RACM including material that has

been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

e. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(8) by failing to have an on-site representative trained in the provisions of 40 C.F.R. Part 61, Subpart M (the Asbestos NESHAP) and the means of complying with them.

f. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.150(b)(1) by failing to deposit all asbestos-containing waste material (ACWM) as soon as practical at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations and allegations of violations, and the applicability of the Asbestos NESHAP to the Respondents' activities as set forth above in Paragraphs 6 through 13. Further, Respondents are entering into this CAFO to avoid the risk, time, and cost of litigation with EPA.

15. Respondents waive their right to a hearing on the allegations contained herein and their right to appeal the proposed Final Order accompanying the Consent Agreement.

16. Respondents consent to the assessment of the penalty proposed by EPA and agree that Quality shall pay the civil penalty as set forth in this CAFO, pursuant to a separate agreement between the Respondents.

17. Respondents certify that as of the date of their execution of this CAFO, they are in compliance with all relevant requirements of the Asbestos NESHAP.

18. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged herein or for any other violations of the asbestos NESHAP which could have been alleged arising out of the facts alleged by EPA herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the Respondents' responsibility to comply with said laws and regulations.

19. Complainant and Respondents 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.

V. Final Order

20. Respondents are assessed a civil penalty of Eighty-One Thousand, Seven Hundred and Seventy-Two Dollars ($81,772.00) which shall be paid by Quality, pursuant to a separate agreement between the Respondents, within 30 days from the effective date of this CAFO.

21. Payment of the penalty shall be remitted by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Respondents and Docket Number of this CAFO.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.) use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087.

22. At the time of payment, Respondents shall send a copy of the check and a written statement that payment has been made in accordance with this CAFO, to each of 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
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960,

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

23. For the purposes of state and federal income taxation, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by a Respondent to deduct any such payments shall

constitute a violation of this CAFO by the Respondent attempting such a deduction.

24. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. 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.

25. Complainant and Respondents shall bear their own costs and attorney fees in this matter.

26. This CAFO shall be binding upon the Respondents, their successors and assigns.

27. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party each represents to enter into this CAFO and legally bind their respective party to this CAFO.

VI. Effective Date

28. 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:

Docket No.: **CAA-04-2010-1531(b)**

Respondent: **City of Marco Island**

By: ______________________________(Signature) Date: ______________

Name: ______________________________(Typed or Printed)

Title: ______________________________(Typed or Printed)

Respondent: **Quality Enterprises USA, Inc.**

By: ______________________________(Signature) Date: June 8, 2010

Name: Louis J. Gaudio (Typed or Printed)

Title: Vice President (Typed or Printed)

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

By: ______________________________ Date: ______________

Kenneth R. Lapierre
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this ______ day of ____________, 2010.

By: ______________________________

Susan B. Schub
Regional Judicial Officer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN THE CITY OF MARCO ISLAND, FLORIDA, AND QUALITY ENTERPRISES USA, INC.,

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is made effective on the 8th day of June, 2010, by and between **THE CITY OF MARCO ISLAND, FLORIDA**, a Florida municipality whose address is 50 Bald Eagle Drive, Marco Island, Florida 34145 (hereinafter, the "City"), and **QUALITY ENTERPRISES USA, INC.**, a Virginia Corporation whose address is 3894 Mannix Drive, Suite 216, Naples, Florida 34114 (hereinafter, "Quality"), in order to settle certain issues between the parties.

WITNESSETH:

WHEREAS, the City contracted with Quality to construct infrastructure improvements, including underground utility work, to South Collier Boulevard and North Collier Boulevard (collectively hereinafter, the "Collier Boulevard Project"); and

WHEREAS, the Florida Department of Environmental Protection (FDEP) and the United States Environmental Protection Agency (EPA) raised concerns about the alleged mishandling of asbestos-cement pipe as part of the Collier Boulevard Project and debris piles located on Marco Island, including on Site "C" which was not part of the Collier Boulevard Project Contracts between the City and Quality, which allegedly included asbestos-containing materials; and

WHEREAS, the City and Quality entered into a Contract in March of 2007 in order to address several outstanding issues between the parties including the removal of the debris piles and remediation activities required by the FDEP and EPA on the City's properties identified in that Contract and throughout this proceeding as Sites "A", "B", and "C"; and

WHEREAS, the removal of the debris piles and site remediation activities referenced above were completed to the satisfaction of both the FDEP and EPA; and

WHEREAS, on March 29, 2010, both the City and Quality received letters from the EPA alleging violations of Section 112 of the Clean Air Act and the "National Emission Standard for Asbestos" regarding the "excavation, handling, and disposal of asbestos-containing cement pipe ..."; and

WHEREAS, Quality hereby affirms its position, as stated to the EPA throughout these proceedings, that neither Quality nor its subcontractors on the Collier Boulevard Project, crushed any asbestos-cement pipe or removed more than 260 linear feet of asbestos-cement pipe as part of the Collier Boulevard Project; and

WHEREAS, the EPA's letters notified the City and Quality of an opportunity to meet with EPA to discuss the alleged violations and explore opportunities for settlement of the matter without a formal enforcement action; and

WHEREAS, on May 18, 2010, the City and Quality met with EPA and were able to agree to the terms of a settlement contingent upon the City and Quality each receiving the proper authorization to enter into the proposed settlement with EPA; and

WHEREAS, the City and Quality desire to enter into this Agreement in order to resolve this matter with the EPA, to resolve any future claims between the City and Quality related to the Collier Boulevard project and Sites "A", "B", and "C", and set forth the relationship and obligations of the parties to each other in this regard.

NOW THEREFORE, in consideration of the mutual benefits to each party as more particularly stated herein, the City and Quality hereby state and agree to the following:

1. The Whereas clauses as set forth above are true and accurate statements and further express the intent of the City and Quality in entering into this Agreement and are hereby incorporated by reference as if more fully set forth herein.

2. The City and Quality agree that they will enter into a Consent Agreement with the EPA, consistent with the terms agreed to among the parties at the May 18, 2010, meeting, including the following:

    a. Payment of fines, penalties, costs, and expenses to the EPA not to exceed the amount of $81,772.00;
    b. No admission of liability by the City or Quality; and
    c. EPA will be required to issue a letter confirming the adequacy of the clean-up and remediation activities conducted on the City's properties (Sites "A", "B", and "C").

    Entry into an acceptable Consent Agreement with the EPA, which includes the terms stated in this paragraph, is material to the validity of this Settlement Agreement and Mutual Release, provided that any determination by the City regarding the adequacy of the EPA letter required pursuant to paragraph 2.c. must occur prior to Quality's execution of the Consent Agreement with the City and EPA.

3. Neither the City nor Quality shall unreasonably withhold from entering into a Consent Agreement with the EPA consistent with the terms set forth in Paragraph 2 of this Agreement.

4. In the event the EPA will not agree to a Consent Agreement with terms that are consistent with those terms set forth in Paragraph 2 of this Agreement or are otherwise unacceptable to either Quality or the City, then this Agreement shall be void.

5. Upon the City and Quality entering into a Consent Agreement with the EPA, Quality agrees to timely pay $81,772.00 in fines, penalties, costs, and expenses to the EPA. In the event that EPA assesses any additional interest, penalties, costs, or other charges due

to late payment by Quality, Quality agrees that it will be solely responsible for payment of these to EPA.

6. The City will not be required to reimburse Quality for any portion of the fines, penalties, costs, interest, expenses, or other charges paid by Quality to the EPA pursuant to the Consent Agreement.

7. Upon the execution with EPA of a Consent Agreement satisfactory to the Parties, and the payment required herein by Quality, the City hereby releases Quality and its predecessors, successors, heirs, executors, administrators, assigns, officers, employees, and agents from any and all claims, demands, damages, actions, or causes of actions arising out of or related to the Collier Boulevard Project or the activities on Site C, and including, without limitation, all actions or claims associated with the alleged mishandling of asbestos-cement pipe or disposal of asbestos-containing materials as part of that Project including the material storing, staging, clean-up and remediation activities conducted on the City's properties (Sites "A" and, "B"). Further, upon the execution with EPA of a Consent Agreement satisfactory to the Parties, Quality hereby releases the City and its predecessors, successors, heirs, executors, administrators, assigns, officers, employees, and agents from any claims, demands, damages, actions, or causes of actions related to the Collier Boulevard Project or the activities on Site C, including, without limitation, all actions associated with the alleged mishandling of asbestos-cement pipe or disposal of asbestos-containing materials as part of that Project including the material storing, staging, clean-up and remediation activities conducted on the City's properties (Sites "A" and, "B",).

8. The City and Quality hereby agree that the terms of this Agreement shall be binding on the parties' successors and assigns.

9. The City and Quality hereby agree that the terms of this Agreement have been completely read, are fully understood and are voluntarily accepted for the purpose of making a full settlement of any and all claims relating to the Collier Boulevard Project, or any of the properties referenced herein.

10. The City and Quality agree that this Agreement contains the entire agreement of the parties; accordingly, no agreement, statement, or promise made by any party, or to any employee, officer, or agent of any other party, which is not contained in this Agreement shall be binding or valid as to matters covered by this Agreement.

11. The City and Quality agree that the provisions of this Agreement are not severable. In the event any of the material provisions of this Agreement are deemed to be unenforceable, the Agreement shall be void.

12. The City and Quality agree this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida; and the parties agree that any action or litigation to enforce this Agreement shall be instituted only in the Circuit Court sitting in Collier County, Florida.

13. The City's release of Quality pursuant to paragraph 7 of this Agreement is subject to the condition subsequent of Quality's payment of all amounts due in accordance with this Agreement.

14. The City and Quality each represent that the person executing this document on behalf of such party has the power and authority to enter into this Agreement and such entity has the authority to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by each party of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which it is a party or by which it is bound. All proceedings required to be taken by or on behalf of each party to authorize it to make, deliver and carry out the terms of this Agreement have been or will be duly and properly taken by each party and this Agreement is the legal, valid and binding obligation of the parties and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

The City of Marco Island

By:

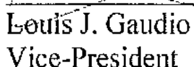
______________________ ______________________

Dr. James Riviere Date
City Manager

____
(Seal)

Quality Enterprises USA, Inc.

By:



______________________ 6/7/10

Louis J. Gaudio Date
Vice-President

____
(Seal)