

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of:

Kennesaw Hotel Partners, LLC

Respondent.

Docket No.  
CAA-04-2019-1756(b)

HEARINGS CLERK  
2019 MAR 21 11 17:01  
U.S. ENVIRONMENTAL  
OFFICE REGIONAL

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), as codified at 40 C.F.R. Part 22.
2. Complainant is the Administrator of the United States Environmental Protection Agency (the “EPA”). On the EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA.
3. Respondent is Kennesaw Hotel Partners, LLC. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without

adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

## **B. JURISDICTION**

5. This Consent Agreement is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice. 40 C.F.R. Part 22.
6. EPA and the United States Department of Justice jointly determined 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 assessment. 42 U.S.C. § 7413(d).
7. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).
8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

## **C. GOVERNING LAW**

9. 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. The State has adopted rules for asbestos that are at least as or more stringent than EPA's asbestos regulations located at 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA. 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.

10. 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.
11. 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.
12. 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.
13. “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.
14. “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.
15. 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.

16. Since the EPA has delegated the Administrator's authorities and responsibilities for asbestos under Section 112 of the CAA to the State of Georgia, owners or operators of demolition or renovation activity occurring in the State must notify the Georgia Department of Natural Resources, Georgia Environmental Protection Division (Georgia EPD), Lead-Based Paint and Asbestos Program of any such activity pursuant to 40 C.F.R. § 61.145(b).
17. Any person who violates Section 112 of the CAA, or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation. Civil penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), may be assessed by administrative order.

#### **D. EPA's FACTUAL ALLEGATIONS**

18. Respondent is a limited-liability corporation doing business in the State of Georgia and meets the definition of a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
19. Respondent conducted renovation activity at the Holiday Inn Express hotel from approximately October 1, 2017, through September 30, 2018, located at 2485 George Busbee Parkway, Northwest in Kennesaw, Georgia 30144
20. At the time of the renovation activity, the building referenced in paragraphs 19 met the definition of a "Facility."

21. The Respondent is the owner of the Facility. Therefore, Respondent meets the definition of an “owner or operator of a renovation or demolition activity.”
22. Based on an investigation which included, but was not limited to, an inspection conducted by the EPA on July 10, 2018, and subsequent discussions with the Respondent, the EPA determined that the Respondent did not thoroughly inspect the Facility or portion of the Facility affected for asbestos-containing materials prior to beginning the renovation activity, as required by the regulations pertaining to asbestos found at 40 C.F.R. Part 61, Subpart M, and as described more particularly below.

#### **E. ALLEGED VIOLATIONS OF LAW**

23. Pursuant to 40 C.F.R. § 61.145(a), each owner or operator of a renovation or demolition activity is required to thoroughly inspect the Facility or portion of the Facility affected for asbestos-containing materials prior to beginning the demolition or renovation activity.
24. Based on the factual allegations set forth above in Section D, the EPA alleges that Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a) by failing to conduct a thorough asbestos inspection of the Facility prior to conducting the renovation activity.

#### **F. TERMS OF CONSENT AGREEMENT**

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;

- (c) consents to the assessment of a civil penalty as stated below with the understanding that the Respondent is liable for payment of the full civil penalty amount identified in paragraph 27;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement;
- (g) waives any rights to appeal the Order accompanying this Agreement; and
- (h) certifies that as of its execution of this Agreement, Respondent is in compliance with all the relevant requirements of 40 C.F.R. Part 61 Subpart M.

26. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Northern District of Georgia; and
- (e) waives any rights that the Respondent may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

27. Penalty Payment. Respondent agrees to:

- (a) Pay the civil penalty of **Twelve Thousand One Hundred and Seventy-Seven Dollars (\$12,177)** (“EPA Penalty”) within 30 calendar days of the Effective Date of this Agreement.
- (b) Pay the EPA Penalty by forwarding a cashier’s check or certified check payable to the “Treasurer, United States of America,” or by electronic transfers to one of the addresses below. (The checks shall reference on its face the name and the Docket Number of the CAFO (**In the Matter of Kennesaw Hotel Partners, LLC, Docket No. CAA-04-2019-1756(b)**):

For Payment via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account Number = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: “U.S. Environmental Protection Agency”;

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, Missouri 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency

Government Lockbox 979077

1005 Convention Plaza

SL-MO-C2GL

St. Louis, Missouri 63101

Delivery Location Phone Number: 314-425-1819;

- (c) Send proof of payment within 24 hours of payment of the EPA Penalty to the following persons at the following addresses:

Pamela Storm  
U.S. EPA Region 4,  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
storm.pamela@epa.gov

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

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements.

28. If Respondent fails to timely pay the penalty assessed under this Agreement, the EPA may
- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement



expenses; and a ten percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

- 29. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
- 30. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agree that this Agreement does not contain any confidential business information or personally identifiable information.
- 31. By signing this Agreement, the undersigned representative of the Respondent certified that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind Respondent to this Agreement.
- 32. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for

each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information under 18 U.S.C. § 1001.

33. Except as qualified by Paragraph 28, each party shall bear its own attorney's fees, costs and disbursements in this proceeding.

**G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL  
ORDER**

34. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
35. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
36. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
37. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Judicial Officer.
38. Any violation of this Order may result in a civil judicial action for civil penalties as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may

- use any information submitted under this Order in an administrative, civil judicial, or criminal action.
39. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
40. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
41. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

#### **H. EFFECTIVE DATE**

42. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become

effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**The remainder of this page is intentionally left blank.**

The foregoing Consent Agreement in the Matter of Kennesaw Hotel Partners, LLC; Docket No. CAA-04-2019-1756(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Kennesaw Hotel Partners, LLC

  
Signature

7/15/19  
Date

Printed Name: ANDY CHOPRA

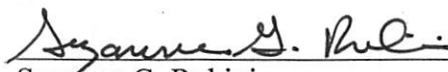
Title: AUTHORIZED SIGNATORY

Address: 3384 PEACHTREE RD SUITE 875 ATL, GA 30326

The foregoing Consent Agreement in the Matter of Kennesaw Hotel Partners, LLC; Docket No. CAA-04-2019-1756(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

8/13/2019  
DATE

  
Suzanne G. Rubini  
Acting Director  
Enforcement and Compliance Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of:

Kennesaw Hotel Partners, LLC

Respondent.

Docket No.  
CAA-04-2019-1756(b)

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

**So ordered.**

August 20, 2019  
DATE

Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Kennesaw Hotel Partners, LLC; Docket No. CAA-04-2019-1756(b), were filed and copies of the same were mailed to the parties as indicated below.

Via Certified Mail, Return Receipt Requested


Mr. Jonathan E. Wells  
Kazmerek Mowrey Cloud Laseter LLP  
1230 Street, Suite 900  
Atlanta, Georgia 30309

Via EPA's internal mail

Pamela Storm  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Lucia Mendez  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

8-21-19  
DATE

  
\_\_\_\_\_  
Patricia Bullock  
Regional Hearing Clerk