

1 ELLEN M. MAHAN
Deputy Section Chief
2 Environmental Enforcement Section
Environment & Natural Resources Division
3 U.S. Department of Justice
Post Office Box 7611
4 Washington, DC 20044-7611

5 ELISE S. FELDMAN
Trial Attorney
6 Environmental Enforcement Section
Environment & Natural Resources Division
7 U.S. Department of Justice
301 Howard Street, Suite 1050
8 San Francisco, CA 94105
Telephone: (415) 744-6470
9 E-mail: elise.feldman@usdoj.gov

10 DIANE J. HUMETEWA
United States Attorney
11 District of Arizona

12 SUE KLEIN
Assistant United States Attorney
13 District of Arizona
State Bar No.: 11253
14 Two Renaissance Square
40 North Central Avenue, Suite 1200
15 Phoenix, AZ 85004-4408
Telephone: (602) 514-7500
16 E-mail: Sue.Klein@usdoj.gov

17 Attorneys for Plaintiff

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA

20 UNITED STATES OF AMERICA,)

21 Plaintiff,)

22 v.)

23)
24 CITY OF WINSLOW, et al.,)

25 Defendants.)
26
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Civil Action No. 07-8024-PCT-SMM

CONSENT DECREE

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2 Plaintiff United States of America, on behalf of the United States Environmental
3 Protection Agency ("EPA"), filed a Complaint in this action on June 1, 2007 alleging that
4 defendants City of Winslow, William Christie and John Roche ("Defendants"), are liable for
5 civil penalties pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b),
6 for violations of the Act, 42 U.S.C. §§ 7401 *et seq.*, and of the asbestos National Emission
7 Standard for Hazardous Pollutants (the "asbestos NESHAP"), 40 C.F.R. Part 61, Subpart M,
8 promulgated by EPA pursuant to Section 112 of the Act, 42 U.S.C. § 7412.

9 The violations pertained to the demolition of the Apache Apartments, a nine-building
10 apartment complex located at the 1100 Block of Apache Avenue, Winslow, Arizona ("Facility").
11 The Complaint alleges that John Roche, as the City Administrator who supervised and controlled
12 the demolition, transport, and disposal of the Facility, and the City of Winslow, which undertook
13 the demolition and disposal of asbestos containing materials ("ACM") from the Facility, were
14 owners or operators of the Facility and that their activities violated the Act and the asbestos
15 NESHAP. The Complaint also alleged that William Christie was liable as the owner of the
16 Facility at the time of the demolition.

17 The Complaint specifically alleges that the Defendants failed to provide prior notice of
18 the demolition of the Facility that began on June 3, 2002, in violation of 40 C.F.R. § 61.145(b).
19 Further, the Complaint alleges that the Defendants failed to remove regulated asbestos-
20 containing material ("RACM") from the Facility in advance of the demolition activities, in
21 violation of 40 C.F.R. § 61.145(c)(1), and that the demolition debris, which included RACM,
22 was transported to an open field (the "Burn Site") to be burned by city employees. The
23 Complaint also alleges that from September 5, 2002 until October 25, 2002, at the Burn Site,
24 Defendants failed to adequately wet piles of burned RACM from the Facility and failed to
25 ensure that the RACM remained wet until collected and contained or treated for disposal in
26 violation of 40 C.F.R. § 61.145(c)(6). In addition, the Complaint alleges that from September 5,
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2 2002 until October 25, 2002, at the Burn Site, Defendants failed to ensure that no visible
3 emissions of asbestos were discharged to the outside air from piles of burned asbestos-containing
4 waste material ("ACWM") from the Facility in violation of 40 C.F.R. § 61.150(a). Lastly, the
5 Complaint alleges that Defendants failed to make and keep the required waste shipment records
6 in relation to the transfer of ACWM from the Facility to the Painted Desert Landfill or from the
7 Facility to the Burn Site in violation of 40 C.F.R. § 61.150(d).

8 Defendants deny the allegations in the Complaint. Further, by entering into this
9 settlement, Defendants do not admit any liability to the United States or to any third party arising
10 out of the transactions or occurrences alleged in the Complaint.

11 The United States and Defendants ("Parties") recognize, and the Court by entering this
12 Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith
13 and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and
14 in the public interest.

15 NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
16 ADJUDGED, ORDERED, AND DECREED as follows:

17 **I. JURISDICTION AND VENUE**

- 18 1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C.
19 §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over
20 the Parties.
- 21 2. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), (c), 1395(a), and Section
22 113(b) of the Act, 42 U.S.C. § 7413(b), because it is the judicial district in which the
23 alleged violations occurred. For purposes of this Decree, or any action to enforce this
24 Decree, Defendants consent to the Court's jurisdiction over this Decree and any such
25 action and over Defendants and consent to venue in this judicial district.
- 26 3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims
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2 upon which relief may be granted pursuant to Section 42 U.S.C. § 7412 and the asbestos
3 NESHAP.

4 II. APPLICABILITY

- 5 4. The obligations of this Consent Decree apply to and are binding upon the United States,
6 and upon Defendants and any successors, assigns, or other entities or persons otherwise
7 bound by law.

8 III. DEFINITIONS

- 9 5. Except as otherwise set forth herein, terms used in this Consent Decree that are defined in
10 42 U.S.C. §§ 7412(a), 7602, and in 40 C.F.R. §§ 61.02 and 61.141, shall have the
11 meanings contained therein. References to the Act and the asbestos NESHAP shall also
12 include any amendments thereto. Whenever the terms set forth below are used in this
13 Consent Decree, the following definitions shall apply.

- 14 a. "Complaint" shall mean the complaint filed by the United States in
15 this action;
- 16 b. "Consent Decree" or "Decree" shall mean this Decree;
- 17 c. "Day" shall mean a calendar day unless expressly stated to be a
18 working day. In computing any period of time under this Consent Decree, where the last day
19 would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of
20 business of the next working day;
- 21 d. "Paragraph" shall mean a portion of this Decree identified by an
22 arabic numeral;
- 23 e. "Section" shall mean a portion of this Decree identified by a roman
24 numeral; and
- 25 f. "United States" shall mean the United States of America, acting on
26 behalf of EPA.

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IV. CIVIL PENALTY

6. Within thirty (30) Days after the entry of this Consent Decree, Defendants shall pay the sum of two hundred forty thousand, four hundred dollars (\$240,400) as a civil penalty. Interest at the rate specified in 28 U.S.C. § 1961 shall accrue on any outstanding amount of the civil penalty beginning thirty one (31) days after the date of entry of the Consent Decree.

7. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Arizona, Two Renaissance Square, 40 N. Central Avenue, Suite 1200, Phoenix, AZ 85004-4408, (602) 514-7500. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. City of Winslow, et al.*, CV 07-0824-PCT-SMM and shall reference the civil action number and DOJ case number 90-5-2-1-09144, to the United States in accordance with Section VIII (Notices) of this Decree, by e-mail to acctsreceivable.CINWD@epa.gov and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

8. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section V (Stipulated Penalties) in calculating their federal income tax.

V. STIPULATED PENALTIES

9. If Defendants fail to pay the civil penalty required to be paid under Section IV (Civil

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2 Penalty) of this Decree when due, Defendants shall pay a stipulated penalty of \$ 500 per
3 Day for each Day that the payment is late.

4 **VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

5 10. This Consent Decree resolves the civil claims of the United States for the violations
6 alleged in the Complaint filed in this action.

7 11. The United States reserves all legal and equitable remedies available to enforce the
8 provisions of this Consent Decree. This Consent Decree shall not be construed to limit
9 the rights of the United States to seek penalties or injunctive relief under the Act or
10 implementing regulations, or under other federal laws, regulations, or permit conditions,
11 for violations other than those alleged in the Complaint and settled in this Consent
12 Decree.

13 12. This Consent Decree shall not be construed to limit the rights of the Defendants to assert
14 any defense one or all of them may have against any future claim by the United States to
15 obtain penalties or injunctive relief under the Act or implementing regulations, or under
16 other federal laws, regulations, or permit conditions for violations other than those
17 alleged in the Complaint and settled in this Consent Decree.

18 13. This Consent Decree does not limit or affect the rights of Defendants or of the United
19 States against any third parties not party to this Consent Decree, nor does it grant,
20 expand, limit or otherwise affect the rights of third parties not party to this Consent
21 Decree, against Defendants, except as otherwise provided by law.

22 14. This Consent Decree shall not be construed to create rights in, or grant any cause of
23 action to, any third party not party to this Consent Decree.

24 **VII. COSTS**

25 15. Each Party shall bear its own costs associated with this action, including attorneys' fees,
26 except that the United States shall be entitled to collect the costs (including attorneys'
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1 fees) incurred in any action necessary to collect any portion of the civil penalty or any
2 stipulated penalties due but not paid by Defendants brought in accordance with Sections
3 IV and V herein.
4

5 **VIII. NOTICES**

- 6 16. Unless otherwise specified herein, whenever notifications, submissions, or
7 communications are required by this Consent Decree, they shall be made in writing and
8 addressed as follows:

9 To the United States:

10 Chief, Environmental Enforcement Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 Box 7611 Ben Franklin Station
14 Washington, D.C. 20044-7611
15 Re: DOJ No. 90-5-2-1-09144

16 Robert Trotter
17 U.S. Environmental Protection Agency
18 Region 9, Air-5
19 75 Hawthorne Street
20 San Francisco, CA 94105

21 M. Grady Mathai-Jackson
22 U.S. Environmental Protection Agency
23 Region 9, ORC-2
24 75 Hawthorne Street
25 San Francisco, CA 94105

26 To Defendant(s):

27 City Administrator
City of Winslow
21 Williamson Avenue
Winslow, AZ 86047

City Attorney
City of Winslow
21 Williamson Avenue
Winslow, AZ 86047

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2 17. Any Party may, by written notice to the other Parties, change its designated notice
3 recipient or notice address provided above.
4 18. Notices submitted pursuant to this Section shall be deemed submitted upon mailing,
5 unless otherwise provided in this Consent Decree or by mutual agreement of the Parties
6 in writing.

7 **IX. EFFECTIVE DATE**

- 8 19. The Effective Date of this Consent Decree shall be the date upon which this Consent
9 Decree is entered by the Court or a motion to enter the Consent Decree is granted,
10 whichever occurs first, as recorded on the Court's docket.

11 **X. TERMINATION**

- 12 20. This Consent Decree shall terminate upon the payment of all civil penalties, and
13 stipulated penalties, if any are due and owing, by Defendants to the United States as set
14 forth in Sections IV and V.

15 **XI. RETENTION OF JURISDICTION**

- 16 21. The Court shall retain jurisdiction over this case until termination of this Consent Decree,
17 for the purpose of resolving disputes arising under this Decree or entering orders
18 modifying this Decree, pursuant to Section XII (Modification), or effectuating or
19 enforcing compliance with the terms of this Decree.

20 **XII. MODIFICATION**

- 21 22. The terms of this Consent Decree may be modified only by a subsequent written
22 agreement signed by all of the Parties. Where the modification constitutes a material
23 change to this Decree, it shall be effective only upon approval by the Court.

24 **XIII. PUBLIC PARTICIPATION**

- 25 23. This Consent Decree shall be lodged with the Court for a period of not less than thirty
26 (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The
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United States reserves the right to withdraw or withhold its consent to the entry of this Decree if the comments disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, inadequate or not in the public interest. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIV. SIGNATORIES/SERVICE

- 24. Each undersigned representative of Defendants, the United States Attorney for the District of Arizona, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.
- 25. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

XV. INTEGRATION

- 26. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

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XVI. FINAL JUDGMENT

27. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

Dated and entered this day of _____, ____.

HON. STEPHEN M. MCNAMEE
UNITED STATES DISTRICT JUDGE
District of Arizona

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FOR PLAINTIFF UNITED STATES OF AMERICA:

9/16/08
Date

BY

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

9/16/08
Date

ELISE S. FELDMAN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Elise.Feldman@usdoj.gov

DIANE J. HUMETEWA
United States Attorney
District of Arizona

SUE KLEIN
Assistant United States Attorney
District of Arizona
State Bar No.: 11253
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004-4408
Telephone: (602) 514-7500

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9/17/2008

Date

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

OF COUNSEL:
M. GRADY MATHAI-JACKSON
Assistant Regional Counsel
Region 9
75 Hawthorne Street
San Francisco, CA 94105

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FOR DEFENDANT CITY OF WINSLOW:

07/18/08
Date

NANCY A. MANGONE
Counsel of Record for the City of Winslow
The Mangone Law Firm, P.C.
3636 N. Central Avenue, Suite 700
Phoenix, AZ 85012

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FOR DEFENDANT WILLIAM CHRISTIE:

Date 7/17/08

~~WILLIAM CHRISTIE~~
WILLIAM CHRISTIE
3228 33rd Street
San Diego, CA 92104

FOR DEFENDANT ESTATE OF JOHN ROCHE:

Date _____

~~KAREN ROCHE~~
KAREN ROCHE
For the Estate of John Roche
12018 Porter Drive
Champlin, MN 55316

