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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
FREBERG ENVIRONMENTAL, INC.	:	Section 611-A(11) of Act 147
1451 Larimer Street, Suite 200	:	of 2002 (40 P.S. § 310.11)
Denver, CO 80202	:	
	:	Section 1615(a) of the Surplus Lines
	:	Act, Act of May 17, 1921, P.L.
	:	682, <u>added by</u> the Act of December
	:	18, 1992, P.L. 1519 (40 P.S.
	:	§ 991.1615)
	:	
Respondent.	:	Docket No. CO05-04-022

CONSENT ORDER

AND NOW, this *16<sup>th</sup>* day of *February*, 2006, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S.A. §101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Respondent does not admit the conclusions of law contained herein, and Respondent expressly denies that it has violated any of the statutes cited above or any other insurance law of the Commonwealth of Pennsylvania.

#### FINDINGS OF FACT

4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is Freberg Environmental, Incorporated, and maintains its address at 1451 Larimer Street, Suite 200, Denver, Colorado 80202.
- (b) At all times herein, Respondent has been a licensed non-resident producer in Pennsylvania.
- (c) At the time of the transaction that is the subject of this Consent Order, Respondent was not a Pennsylvania surplus lines licensee.

- (d) On August 13, 2004, policyholder Meiser & Earl, Incorporated, State College, Pennsylvania ("Meiser"), paid \$235.86 in surplus lines taxes to the Pennsylvania Department of Revenue, indicating in writing that the insurance was procured by itself directly from the insurer and without the involvement of an insurance producer.
- (e) Hudson Specialty Insurance Company ("Hudson Specialty") issued the Meiser policy on August 21, 2004, under policy #FEC5102901.
- (f) The Meiser policy identified Respondent as the program administrator.
- (g) The Meiser policy did not include language disclosing that the insurance was not protected by the Pennsylvania Guaranty Association.
- (h) On February 28, 2005, Respondent confirmed that it acted as the program administrator for Hudson Specialty in the issuance of the policy to Meiser, adding that the producer for the policy was Knauff Insurance, Incorporated, of Charlotte, North Carolina ("Knauff").
- (i) Respondent also confirmed that it was not, at the time it issued the Meiser policy, a Pennsylvania surplus lines licensee, although it possessed a Pennsylvania non-resident producer license.

- (j) On February 28, 2005, Knauff confirmed that it represented Meiser in procuring the surplus lines policy from Respondent on behalf of Hudson Specialty.
- (k) Knauff also confirmed that at the time of the transaction that is the subject of this Consent Order, neither it nor its individual producer, Jana Zuerner, were licensed producers in the Commonwealth of Pennsylvania.
- (l) Knauff also confirmed that it advised Meiser to pay the surplus lines taxes to the Pennsylvania Department of Revenue as procured independent of an insurance producer.

CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law, which are not admitted by Respondent:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Section 611-A(11) of Act 147 of 2002 prohibits a licensee from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer (40 P.S. § 310.11).

(c) Respondent's activities described above in paragraphs 4(d) through (l) violate Section 611-A(11) of Act 147 of 2002 (40 P.S. § 310.11).

(d) Respondent's violations of Section 611-A(11) of Act 147 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):

(i) Denial, suspension, revocation or refusal to issue the certificate of qualification or license;

(ii) A civil penalty not to exceed five thousand dollars (\$5,000.00) for each action in violation of the Act;

(iii) An order to cease and desist;

(iv) Any other conditions as the commissioner deems appropriate.

(e) Section 1615 of the Surplus Lines Act prohibits any agent or broker licensed by the Department from transacting surplus lines insurance with any nonadmitted insurer without a valid surplus lines agent's license issued by the Department (40 P.S. § 991.1615).

- (f) Respondent's activities described above in paragraphs 4(d) through 4(l) constitute transacting surplus lines insurance without being properly licensed.
- (g) Respondent's violations of Section 1615 of the Surplus Lines Act are punishable by a civil penalty not to exceed \$1,000 for the first offense and not to exceed \$2,000 for each successive offense.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities determined in the Conclusions of Law to be unlawful.
- (b) Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

- (c) Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty payment has not been made, (ii) any terms of this Order have not been complied with, or (iii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of three (3) years from the date of this Order.
- (d) Respondent specifically waives its right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.
- (e) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that it is worthy of a license.
- (f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(c) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a license, Respondent's suspended certificates and licenses shall be revoked.

7. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

8. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

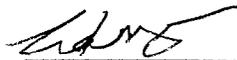
11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

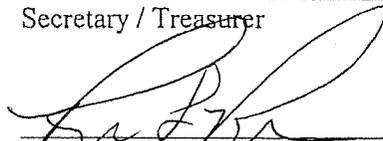
BY: FREBERG ENVIRONMENTAL, INC.,  
Respondent



\_\_\_\_\_  
President / Vice President



\_\_\_\_\_  
Secretary / Treasurer



\_\_\_\_\_  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania