



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2007 APR 12 PM 4:30

REGIONAL HEARING
CLERK

APR - 5 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William Englehart
President
Gloucester Point, Inc.
603 Water Street
Gloucester City, New Jersey 08030

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Phil Franchi Demolition & Excavating, Inc. & Gloucester Point, Inc.
CAA-02-2007-1213

Dear Mr. Englehart:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Gloucester Point, Inc., pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP), promulgated pursuant to Section 112 of the Act. The total amount of the penalty proposed by the Complaint is \$67,054.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is John F. Dolinar, who can be reached at (212) 637-3204 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement Conference," EPA is prepared to pursue settlement of this matter immediately.

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy, and Appendix III, Asbestos Demolitions & Renovation Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and one copy of both the Complaint and Certificate of Service):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Counsel on behalf of EPA:

John F. Dolinar
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866



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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Phil Franchi
President
Phil Franchi Demolition & Excavating, Inc.
25 International Avenue
Sewell, New Jersey 08080

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Phil Franchi Demolition & Excavating, Inc. & Gloucester Point, Inc.
CAA - 02-2007-1213

Dear Mr. Franchi:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Phil Franchi Demolition & Excavating, Inc., pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP), promulgated pursuant to Section 112 of the Act. The total amount of the penalty proposed by the Complaint is \$67,054.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

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Sincerely,


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

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cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and
one copy of both the Complaint and Certificate of Service):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Counsel on behalf of EPA:

John F. Dolinar
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
APR 12 PM 4:30

REGIONAL HEARING
CLERK

In re:

Phil Franchi Demolition & Excavating, Inc.
Sewell, New Jersey
&
Gloucester Point, Inc.
Gloucester City, New Jersey

Respondents

In a proceeding under the Clean Air Act,
42 U.S.C. § 7401 et seq., Section 113

**COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CAA-02-2007-1213

Complaint

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity to Request a Hearing (Complaint) and proposes to assess penalties pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (CAA or "the Act"), 42 U.S.C. § 7413, Section 113, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The Complainant in this matter, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, is duly delegated the authority to issue Complaints on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

EPA alleges that Respondents violated, or are in violation of, requirements or prohibitions of Sections 112 and/or 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M, the national emission standard for hazardous air pollutants (NESHAP) promulgated, pursuant to Section 112 of the Act, to address asbestos ("Asbestos NESHAP").

Section 112 of the Act authorizes the Administrator to issue emission and/or work practice standards for hazardous air pollutants. Section 114 of the Act authorizes the Administrator to require that information be provided by affected sources to determine compliance with the Act.

Preliminary Statement

1. Respondent, Gloucester Point, Inc. (Respondent Gloucester) located in Gloucester City, New Jersey hired Phil Franchi Demolition & Excavating, Inc. (Respondent Franchi) located in Sewell, New Jersey to demolish the Old GAF Facility, located in Gloucester City, New Jersey, which contained regulated asbestos-containing material (RACM), as defined by 40 C.F.R. § 61.141.

2. Each of the Respondents is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and is therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Statutory and Regulatory Background

3. The Asbestos NESHAP specifies a set of work practice standards, set forth at 40 C.F.R. §§ 61.145 and 61.150, which are applicable to the owners and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity.

4. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "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."

5. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."

6. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "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."

7. The term "facility" is defined by 40 C.F.R. § 61.141 to include any commercial, public, industrial, or residential structure of more than four (4) dwelling units.

8. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

9. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

10. The term "regulated asbestos-containing material" (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

11. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

12. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.

13. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

14. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

15. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one on site representative, trained in the NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

16. 40 C.F.R. § 61.150(a)(1)(iii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

Findings of Fact and Conclusions of Law

17. Paragraphs 1-16 are realleged and incorporated herein by reference.

18. The several buildings and structures, located on Water Street between the 600 and 700 blocks in Gloucester City, New Jersey, constitute a facility within the meaning of 40 C.F.R. § 61.141, which shall hereinafter be called "the Facility."

19. Starting on August 9, 2006, New Jersey Department of Health and Senior Services (NJDHSS) inspectors conducted several inspections of the Facility.

20. During the inspections, referenced in paragraph 19, the NJDHSS inspectors observed that the Facility had recently undergone a demolition, as defined by 40 C.F.R. § 61.145.

21. Respondents are owners and/or operators of a renovation/demolition activity within the meaning of 40 C.F.R. § 61.141.

22. During the inspections, referenced in paragraph 19, the inspectors observed and took bulk samples of dry material that had not been removed or had been left scattered about the Facility.

23. After the inspections, referenced above in paragraph 19, the samples taken during the inspection were analyzed and the sample results indicated the material sampled contained greater than 1% asbestos.

24. EPA conducted a review of its physical files and computer databases but could find no notice of intent to demolish prior to the inspections referenced above in paragraph 19.

COUNT 1

25. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(b), a regulation promulgated pursuant to Sections 112 and 114 of the Act, by failing to notify EPA at least 10 working days prior to demolishing a regulated facility.

COUNT II

26. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(1), a regulation promulgated pursuant to Section 112 of the Act by failing to remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge or similarly disturb the material.

COUNT III

27. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(6)(i), a regulation promulgated pursuant to Section 112 of the Act, by failing to adequately wet all RACM including the material that has been removed or stripped and ensure it remains wet until collected and contained or treated in preparation for disposal.

COUNT IV

28. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.150(a)(iii), a regulation promulgated pursuant to Section 112 of the Act, by failing to seal all RACM in leak-tight containers while wet.

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Part 19), which provide that the maximum civil penalty per day should be adjusted to \$27,500 per day for each violation that occurred from January 30, 1997 through March 14, 2004 and \$32,500 per day for each violation that occurred on or after March 15, 2004.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint of sixty seven thousand fifty four dollars (\$67,054).

The proposed penalty has been prepared in accordance with Section 113(e) of the Act, EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy), and Appendix III to the CAA Penalty Policy, the "Asbestos Demolition and Renovation Civil Penalty Policy" dated May 5, 1992 (Asbestos Penalty Policy), copies of which are enclosed with this Complaint. The CAA Penalty Policy is EPA's policy concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing a penalty for violations of the Act. The short narrative below explains the reasoning behind the penalty proposed for the violations alleged.

The Asbestos Penalty Policy directs EPA to propose a \$15,000 penalty for the notification violation set forth in Count I. It further requires that for every work practice violation at a facility with a quantity of RACM defined by the policy to be "medium", EPA propose a penalty of \$10,000. EPA therefore proposes a penalty of \$10,000 each for Count II, Count III and Count IV. EPA also determined that the violation alleged for failure to maintain RACM wet (Count III), occurred on at least two additional days. Therefore, in accordance with the asbestos penalty policy, EPA proposes a \$1,000 penalty (10% of the \$10,000 work practice violation) for each of the two additional days of violation equaling \$2,000.

In addition, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator, determined by the violator's net worth. Based on Region 2's experience, generally the net worth of asbestos contractors falls within the range for which the CAA Penalty Policy directs a \$5,000 penalty. Therefore, it is EPA Region 2's policy to propose a penalty of \$5,000 for the size of violator component. The size of violator penalty may be adjusted should information be discovered that indicates the contractor's net worth is less or more than hypothesized.

The penalties proposed above comprise what both penalty policies term the 'gravity component.' The total gravity component of the penalty, prior to adjustment for inflation is fifty two thousand dollars (\$52,000). Part 19 provides that the gravity component of the penalty must be adjusted 28.95% for violations occurring during the period of time in which the violations alleged in the Complaint occurred. Therefore, \$15,054 is proposed for inflation, resulting in an adjusted proposed penalty of \$67,054.

The CAA Penalty Policy also provides that in addition to proposing a gravity component, an economic benefit component should be proposed. EPA determined that, in this case, the economic benefit resulting from noncompliance is de minimus, therefore the total penalty proposed is \$67,054.

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

John Dolinar
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege to constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, John Dolinar, at (212) 637-3204 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

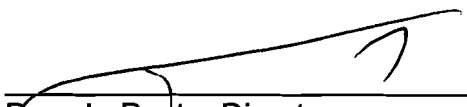
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: APRIL 5, 2007



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

TO: Phil Franchi Demolition & Excavating, Inc.
25 International Avenue
Sewell, New Jersey 08080

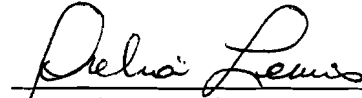
William Englehart, President
Gloucester Point, Inc.
603 Water Street
Gloucester City, New Jersey 08030

Joseph Eldridge, Assistant Director
Consumer & Environmental Health Services
NJDOHSS
P.O. Box 369
Trenton, NJ 08625-0369

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing Docket Number CAA-02-2007-1213, a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (64 *Federal Register* 40176 [July 23, 1999]), Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and a copy of the Clean Air Act Statutory Source Civil Penalty Policy, by certified mail, return receipt requested to: Mr. William Englehart, President, Gloucester Point, Inc., 603 Water Street, Gloucester City, NJ 08030 and Mr. Phil Franchi, President, Phil Franchi Demolition and Excavating, Inc., 25 International Avenue, Sewell, NJ 08080. I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: April 12, 2007
New York, New York



Orelia Lewis