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FAUGNO & ASSOCIATES, L.L.C.

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ENVIR. APPEALS BOARD

PAUL FAUGNO°
CERTIFIED BY THE SUPREME COURT
OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

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° MEMBER N.J. AND FEDERAL BAR OF N.J. AND D.C.
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* MEMBER OF N.J. AND FEDERAL BAR OF N.J. AND U.S. TAX COURT
~ MEMBER OF N.J., N.Y. AND CT. BAR

August 2, 2005

Via DHL

United States Environmental Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington, D.C. 20005

Re: In the Matter of Four Strong Builders, Inc., et als
EPA Docket No: CAA-03-2004-0400

Dear Sir:

Enclosed please find an original and five copies of appellant/respondent, Four Strong Builders, Inc., Notice of Appeal as well as the supporting Brief for filing with regard to the above captioned matter.

Kindly return a copy marked "filed" to the undersigned in the envelope provided.

Thank you for your cooperation in this matter.

Very truly yours,

FAUGNO & ASSOCIATES, LLC

By _____
Paul Faugno

PF/sp
Enc.

cc: Regional Hearing Clerk, Lydia A. Guy w/encl. (Via DHL)
Hon. ALJ Carl C. Charneski w/encl. (Via DHL)

6

U.S. EPA

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

2005 AUG 10 P 4:54

ENVIR. APPEALS BOARD

DOCKET NO.: CAA-03-2004-0400

In re:
Four Strong Builders, Inc.,
180 Sergeant Avenue
Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

NOTICE OF APPEAL TO THE ENTRY OF A DEFAULT ORDER

In accord with 40 C.F.R. Section 22.30, Four Strong Builders, Inc. files this Notice of Appeal to the entry of a default order by Hon. Administrative Law Judge Carl C. Charneski.

The attorney authorized to receive service in regard to this matter is Faugno & Associates, Attn: Paul Faugno, 125 State Street, Suite 101, Hackensack, NJ 07601, Phone No. 201-342-1969 Fax No. 201-342-2010.

Additionally, attached hereto is a certificate of service and in accord with 40 C.F.R. Section 22.5 (c) the appeal brief in accord with the C.F.R. Section 2230(a).

Dated: August 3, 2005

FAUGNO & ASSOCIATES, LLC
Attorneys for ~~Respondent/Appellant~~
Four Strong Builders, Inc.

Paul Faugno

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

DOCKET NO.: CAA-03-2004-0400

In re:
Four Strong Builders, Inc.,
180 Sergeant Avenue
Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

BRIEF IN SUPPORT OF APPELLANT/RESPONDENT'S NOTICE OF APPEAL TO VACATE A DEFAULT ORDER.

FAUGNO & ASSOCIATES, LLC
125 State Street
Suite 101
Hackensack, NJ 07601
(201) 342-1969
Attorneys for Respondent/Appellant
Four Strong Builders, Inc.

On the Brief:

Paul Faugno, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF FACTS

The Administrative Complaint in the underlying action alleged that Four Strong Builders, Inc. committed three violations. Firstly a failure to provide timely notification pursuant to 40C.F.R. Section 61.145 (b)(3)(i). The complaint additionally alleged that Four Strong failed to wet various dry friable RACM debris. Further, it was alleged that Four Strong failed to remove various RACM material in a proper fashion. In regard to the underlying case, there were two co-defendants in particular, DLC, Management, Inc., a demolition company, and Levittown, L.P., the owner of the subject premises.

On February 17, 2005 the Court entered an order setting prehearing procedures. On March 23, 2005 the complainant in the underlying action, the United States Environmental Protection Agency filed a motion for issuance of a show cause for non-compliance with the opening prehearing exchanges. In regard to the basis for appellant/respondent's non-compliance at that time, please see attached certification of Paul Faugno, Esq. (See attached Exhibit 1). The Court in the underlying action because of the non-compliance, ultimately entered a default order on July 6, 2005 . (See attached Exhibit 2). The

appellant/respondent has meritorious defenses in regard to the underlying action if it is allowed to defend the same. In particular, it is position of the respondent/appellant that it did timely file the notifications which is alleged as a violation in the underlying administrative complaint. Secondly, it is the position of the respondent/appellant that at the time that violations occurred relating to the collection, disposal and removal of "RACM" the respondent/appellant had already left the property and the same was in the control of the respondent demolition company. It should be noted that the demolition company settled the matter during the pendency of the underlying administrative complaint. It should also be noted that appellant/respondent prior to the institution of the actual administrative complaint, cooperated fully with the United States Environmental Protection Agency.

In particular on November 5, 2003 a request was made for information pursuant to section 114 of the Clean Air Act. The respondent/appellant provided a timely response thereto (See Exhibit 3).

STATEMENT OF ISSUES

In this matter an administrative complaint was filed by the United States Environmental Protection Agency on September 20, 2004. The complaint named Four Strong Builders, DLC Management, Inc. and Levittown, L.P. On July 6, 2005 the Honorable Administrative Law Judge Carl C. Charneski entered a Default Order and imposed an administrative penalty of $24,310 against respondent Four Strong Builders, Inc.

It is the position of the appellant/respondent that there is good cause existing to set aside the default order and allow Four Strong Builders, Inc. to defend against administrative complaint. In accord with 40C.F.R. Section 22.17 the entry of a default order may be appealed to the Environmental Appeal's Board.

Thus, the particular issue sought for review is as follows. It is the position of the appellant/respondent that good cause exists to set aside the default order and allow Four Strong Builders, Inc to interpose a defense.

ARGUMENT

POINT I

In accord with 40 C.F.R. section 22.17 "Default" states in pertinent part

> "For good cause shown the presiding officer may set aside a default order."

In accord with 40 C.F.R. Section 22.17 and In Re Rybond, Inc. 6 E.A.D. 614 (EAB 1996)a default order may be appealed to the Environmental Appeals Board. In this case the totality of the circumstances and the existence of a meritorious defense justify the setting aside of the default order. In particular, the counsel for the appellant/respondent provides an explanation as to why there was a failure to comply with hearing exchanges and Order to Show Cause which is set forth in Mr. Faugno's certification. The Court is cited to the case of Jiffy Builders, Inc. 8 E.A.D. 315 (EAB 1991). In that matter the appellant/ respondent was fined $22,000 predicated upon a default order by the presiding officer for failure to respond to the Pre-Hearing Exchange Order. While the Appeals Court in that matter upheld the default order, it based the same upon the failure of the appellant to provide any reason for the failure to comply. In this matter, appellant/respondent

through certification of counsel has explained the circumstances leading up to the non-compliance.

Additionally, the appellant/respondent has set forth meritorious defense, in that violation occurred during a portion of time when the appellant/respondent had left the job site and the work which led to the violation was committed by a co-respondent demolition contractor.

If the defense counsel had not inadvertently believed that the matter had been settled, a valid defense would have been interposed on behalf of the appellant/respondent. It would be unfair to preclude the appellant/respondent from defending this matter based upon the totality of the circumstances herein.

CONCLUSION

It is respectfully requested that the Environmental Appeals Board based upon the foregoing set aside the entry of a default against the appellant/respondent, Four Strong Builders, Inc. and remand this matter back to the Honorable Administrative Law Judge Carl C. Charneski.

Respectfully submitted

Faugno & ASSOCIATES, LLC

By_____
Paul Faugno

EXHIBIT 1

CERTIFICATION

I, Paul Faugno, of full age certifies as follows:

1. I am at attorney at law in the State of New Jersey and am the attorney in charge of handling the within file and thus am fully familiar with the facts herein.

2. The undersigned has represented Four Strong, Inc. since 1999 as general counsel. Until, the 2004 calendar year I never defended Four Strong Builders, Inc. in regard to any alleged violation by the Environmental Protection Agency, nor did I have any specific familiarity with the procedures. Given I was general counsel to the Corporation and at that time there were significant financial problems, it was determined that the undersigned would defend these matters. At the same time that the complaint was filed in this matter, there were two separate EPA matters filed against Four Strong. In particular, on September 30, 2004 a complaint was filed bearing docket no. CAA-02-2004-1217. Additionally, in December of 2004 an additional complaint was filed bearing docket no. CCA-02-2004-1208. Both of the above matters were venued in the District II, New York, NY of the United States Environmental Protection Agency.

3. On March 23, 2005 a motion was filed to show cause as to the failure to make prehearing exchanges. This ultimately resulted in an order directing my office to respond to the Order to Show Cause no later than May 30, 2005. Upon receipt of this Order this matter was assigned to my Associate with directions to compile relevant documents and forward them to my adversary and to prepare an opposition to the Order to Show Cause reflecting that the documents had been so provided.

4. This was actually prepared by my Associate, and was placed upon my desk for review. Prior to this being reviewed, I was advised by my associate that the matter involving Four Strong Builders and Levittown had been settled and that an Order had been entered dismissing the matter. I was provided with a copy from my Associate of the said consent agreement. To be perfectly candid with the Court I had relied upon what my associate advised me and did not read the consent agreement in full detail (attached hereto as Exhibit 1). I was under the mistaken impression that the matter had been resolved as to all parties.

5. Subsequently, I was advised by my secretary that a conference was to be scheduled in regard to one of the Four Strong EPA matters. I advised my secretary that

she should schedule such a conference call, and I was advised that a conference call would be held at 11:00 a.m. on June 13th. My secretary advised that I would be in court that morning yet I would have my cell phone available. Unfortunately, I was engaged in a hearing before a Judge at the time the call came in and therefore was not available for the same.

6. When I returned to my office I was advised by my secretary that I had missed the call. The matter was listed in my diary by my secretary as "Four Strong/EPA" conference call. Given the fact that I was previously under the mis-impression that this matter had been resolved and was no longer pending, I mistakenly assumed that when this matter was scheduled for conference call that it related to one of the other pending EPA matters. It was not until I received the default order dated June 25, 2005 that I went through the files and discovered my inadvertence. While I recognize that my inadvertence should not work to the detriment of the United States Environmental Protection Agency, I would also like to point out to the court that back in April of 2005, a close colleague of mine with extensive personal injury practice was diagnosed with cancer. In an effort to provide his office with

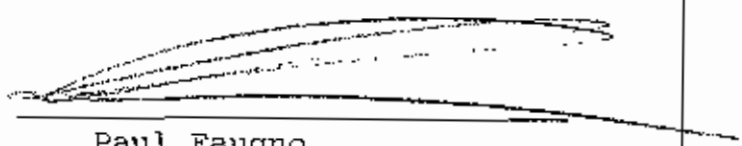
assistance I affiliated as of counsel with his office in April of 2005. The attorney's name is Nicholas Sekas. By assuming responsibility for his extensive practice, I was inundated with extensive work in the months of April, May and June which continues into present. I am in the process of hiring a new associate at the time of this certification. It was partially attributable to the unexpected increase in my work that I did not monitor this matter as closely as I normally would.

7. Based upon the foregoing, and in accord with 40 C.F.R. Section 22.17 providing that a default may be set aside for "good cause", it is respectfully submitted that the above constitutes good cause, and this default order should be set aside.

8. I should further point out that there is a meritorious defense in this matter. This is outlined in the original cover letter from my client (See Exhibit 2)

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: August 2, 2005



Paul Faugno

EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

I hereby certify that the within is a true and correct copy of the original CAFO filed in this matter.

Attorney for EPA

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 CONSENT AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

CONSENT AGREEMENT AS TO DLC MANAGEMENT, INC. AND LEVITTOWN, L.P.

I. PRELIMINARY STATEMENT

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a) and (d), the Director of the Waste and Chemicals Management Division for the United States Environmental Protection Agency, Region III ("EPA"), initiated this administrative proceeding for the assessment of civil penalties against Four Strong Builders, Inc., DLC Management, Inc., and Levittown, L.P. (hereinafter, "Respondents") by issuance of a Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed with the Regional Hearing Clerk on November 5, 2004. The Complaint, incorporated herein by reference, alleges that Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during a demolition project at the Levittown Shopping Center, located at Route 13 and Levittown Parkway in Tullytown, Pennsylvania which began March 2002. This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address the violations alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. only.

2. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. admit only the jurisdictional allegations set forth in the Complaint and herein.

3. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. neither admit nor deny the specific factual or legal allegations contained in the Complaint and herein.

4. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the issuance of this CAFO and agree to comply with the terms of this CAFO.

5. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the payment of a civil penalty in the amount and in the manner set forth in this CAFO.

6. For the purpose of this proceeding and in an effort to avoid unnecessary litigation expenses and resolve outstanding matters with EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. hereby expressly waive their rights to contest the allegations in the Complaint and herein (although they do not admit that the allegations herein are true), and their rights to appeal the Final Order accompanying this Consent Agreement.

7. Respondent DLC Management, Inc. and Respondent Levittown, L.P. shall bear their own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. EPA enters into this Consent Agreement with Respondent DLC Management, Inc. and Respondent Levittown, L.P. in order to fully settle and resolve all allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. without further adjudication of any issue of law or fact.

11. In full settlement of any and all charges and allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P., and in consideration of each provision of this Consent Agreement and the accompanying Final Order, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the assessment and payment of a civil penalty in the amount of thirteen thousand and ninety dollars ($13,090). The aforesaid civil penalty settlement amount was determined, and is based upon, EPA's consideration of a number of relevant factors including, but not limited to, the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25,

1991, as clarified January 17, 1992; and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of Paragraph 11, above, shall be made by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be mailed to the attention of U.S. EPA Region III, P.O. Box 360515, Pittsburgh, Pennsylvania 15251-6515 (overnight deliveries shall be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, ATTENTION: U.S. EPA, Region III, P.O. Box 360515). All payments made by check also shall reference the above case caption and docket number, Docket No. CAA-03-2004-0400. All electronic wire transfer payments shall be directed to Mellon Bank, Pittsburgh, PA, ABA No. 043000261, crediting account number 9108552, lockbox 36051. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jennifer Abramson (3RC10), Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

13. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, the failure of Respondent DLC Management, Inc. and Respondent Levittown, L.P. to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that copies of this CAFO are mailed or hand-delivered to Respondent DLC Management, Inc. and Respondent Levittown, L.P.. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R.

§ 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. Respondent DLC Management, Inc. and Respondent Levittown, L.P. agree not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

15. Failure by Respondent DLC Management, Inc. and Respondent Levittown, L.P. to comply with the requirements of this Consent Agreement may subject them to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 112 of the CAA, 42 U.S.C. § 7412.

IV. RESERVATION OF RIGHTS

17. This Consent Agreement and the accompanying Final Order resolve both Respondent DLC Management, Inc.'s and Respondent Levittown, L.P.'s liability for all civil claims arising from the violations and facts alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. with prejudice. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent DLC Management, Inc. and Respondent Levittown, L.P., in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions for any violations of law, and the United States reserves its authority to pursue any such criminal sanctions. Furthermore, EPA reserves any rights and remedies available under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of the Consent Agreement and the accompanying Final Order, following entry thereof. Notwithstanding the reservations of rights discussed above, Complainant represents that, other than the violation alleged in the Complaint, it is not aware of any alleged violations of the Clean Air Act by Respondent DLC Management, Inc. and Respondent Levittown, L.P. relating to the renovation activities performed at the Levittown Shopping Center in the calendar years 2001 and 2002.

V. PARTIES BOUND

18. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. and their officers, directors, employees, agents, successors and assigns. The persons signing this Consent Agreement on behalf of Respondent DLC Management, Inc. and Respondent Levittown, L.P. acknowledge by their signatures that they are fully authorized to enter into this Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VI. EFFECTIVE DATE

19. The effective date of this CAFO is the date on which the Final Order, after signature by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

VII. ENTIRE AGREEMENT

20. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order.

The undersigned representatives of Respondent DLC Management, Inc. and Respondent Levittown, L.P. certify that they are fully authorized to execute this Consent Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to this Consent Agreement.

For DLC Management Corporation
a New York Corporation

3/23/05
Date

Adam Ifshin
President

For Levittown LP
a Delaware limited partnership

First Man Levittown Corp.,
a Delaware corporation, general partner

3/23/05
Date

Adam Ifshin
President

For EPA:

4/6/05
Date

Jennifer M. Abramson
Assistant Regional Counsel

Accordingly, the Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, issue the attached Final Order. The amount of the recommended civil penalty assessment is thirteen thousand and ninety dollars ($13,090), in accord with the terms and conditions incorporated herein.

April 8, 2005
Date

James J. Burke, Director
Waste and Chemicals Management Division
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 FINAL AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

FINAL ORDER

The Preliminary Statement, Findings of Fact and Conclusions of Law, and other sections and terms of the foregoing Consent Agreement ("CA") are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 112 and 113 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7412, and 7413, the federal regulations implementing the National Emission Standards for Hazardous Air Pollutants for Asbestos set forth at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice") set forth at 40 C.F.R. Part 22, Respondent DLC Management, Inc. and Respondent Levittown, L.P. are hereby ordered to pay a civil penalty in the amount of thirteen thousand ninety dollars ($13,090), in settlement of the civil claims alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P..

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 4/14/05

Renée Sarajian
Regional Judicial Officer

EXHIBIT 2

Four Strong Builders, Inc.

BESTOS REMOVAL & TREATEMENT
DUSTRIAL • COMERCIAL • INSTITUTIONAL
, NY, PA, CT, MA & OH LICENCED

180 SARGEANT AVENUE • CLIFTON, NJ 07013-1935
TEL: (973) 614-0377 • FAX: (973) 614-0107

25 October 2004

Mr. Paul Faugno, Esq.
Faugno and Associates
125 State Street, Suite 101
Hackensack, NJ 07601

RE: US EPA Violations.

Paul,

I just faxed over the two (2) EPA violations that Four Strong (FSBI) got for projects located in Bogota, New Jersey and Levittown, Pennsylvania. In regards to them I am providing the following information:

Bogota: In the EPA paperwork, the NJ DOH inspector says that he found asbestos strewn around in the work area (boiler room) and in dry condition on 30 April 2004. But the problem I have with that is that FSBI completed the work it had to do in the work area on 24 April 2004.

Levittown: The three violations listed are as follows:

#1 – Failure to provide the notification on a timely basis.
As far as I know it was mailed out on time, but with the mail you never know.

#2 – Failure to wet the asbestos prior to removing it.
If you read the notes, you'll see that FSBI was not present when this was done. The person doing the removal work was the demolition contractor.

#3 – Failure to prevent the breaking of the non-friable materials as they were being removed.
Again, the notes refer to the general contractor being the one doing the removal work, not FSBI.

If you have any questions, please call.

Sincerely,

Steve Pantovich
Office Manager, FSBI

2

EXHIBIT 2

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	**Docket No. CAA-03-2004-0400**
	)	
Respondent	)	

DEFAULT ORDER

This civil administrative penalty proceeding arises under Section 113 (a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a)(3) and (d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. Part 22 (2005). On September 30, 2004, the United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing a Complaint against Four Strong Builders, Inc. ("Respondent" or "Four Strong").[1] The Complaint charges Respondent with failure to comply with the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Asbestos, codified at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412. Complainant seeks the imposition of a civil administrative penalty in the amount of $24,310 against Respondent. In the Complaint, EPA proposed a penalty of $37,400. It now seeks a penalty of $24,310.[2]

For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17 (a) of the Rules of Practice, 40 C.F.R. §22.17 (a), and is assessed the proposed penalty of $24,310.

I. Statement of the Case

The EPA initiated this matter by filing a Complaint and Notice of Opportunity for

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[1]The Complaint also listed DLC Management, Inc., and Levittown, L.P., as co-respondents. DLC Management, Inc., and Levittown, L.P., have entered into a "Consent Agreement" with EPA settling this matter.

[2]This civil penalty reduction reflects the $13,090 to be paid by DLC Management, Inc., and Levittown, L.P.

Hearing pursuant to Sections 113 (a) (3) and (d) of the Clean Air Act, 42 U.S.C. §7413 (a) (3) and (d). In the Complaint, the EPA charges Respondent with three violations of Section 112 (b) of the Clean Air Act, 42 U.S.C. § 7412 (b), for failing to comply with the regulations codified at 40 C.F.R. Part 61, Subpart M. Specifically, Complainant alleges that Respondent, the "owner or operator" of a demolition or renovation activity, violated 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i) and 61.145 (c)(6)(ii). Respondent, through counsel, filed its Answer on November 8, 2004. In its Answer, Respondent denied the charges in the Complaint and requested a hearing. Answer at 9.

On February 17, 2005, the Court entered an Order Setting Prehearing Procedures ("Prehearing Exchange Order") setting forth a schedule for the parties to submit their prehearing exchange information. The Order directed the parties to file Opening Prehearing Exchanges by March 15, 2005, specifying the required content of such exchanges. Prehearing Exchange Order at 1. On March 15, 2005, Complainant filed its Opening Prehearing Exchange as directed. To date, Respondent has not filed a prehearing exchange.

Thereafter, on March 23, 2005, Complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other Appropriate Relief ("Motion to Show Cause") noting that Respondent had failed to file its prehearing exchange as directed. On May 16, 2005, the Court directed Respondent to respond to Complainant's Motion to Show Cause no later than May 30, 2005. To date, a response to the Order has not been received.[3]

Accordingly, as discussed below, Respondent's failure to comply with this Court's February 17, 2005 Prehearing Exchange Order and subsequent order of May 16, 2005 results in the entry of a default judgment.

II. Discussion

A. Liability on Default

Section 22.17 (a) of the Rules of Practice lists those instances in which a party may be found to be in default. 40 C.F.R. 22.17 (a). It provides, in part, that a default judgment may be entered against a party for "failure to comply with the information exchange requirements of § 22.19 (a) or an order of the Presiding Officer." *Id.* That is precisely the case here. In fact, respondent satisfied both criteria in failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order of May 16, 2005.

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[3]Moreover, a conference call was scheduled to be held at 11:00 a.m. on June 13, 2005, between the Court and the parties. The purpose of this call was to discuss Respondent's failure to respond to the Court's Order of May 16, 2005. Despite the fact that the time and date of the conference call was confirmed with the parties on June 10, 2005, counsel for Respondent was not available for the June 13 conference.

Section 22 17 (a) of the Rules of Practice further provides that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17 (a). Thus, the facts alleged in the instant Complaint establish Respondent's liability for three violations of 40 C.F.R. Part 61, Subpart M. Specifically, the alleged facts, deemed to be admitted, establish that Respondent failed to: provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began, ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal, and remove the RACM without its becoming damaged or disturbed. 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i), and 61.145 (c)(6)(ii). Compl. ¶ ¶ 46, 50, and 54.

A party's failure to comply with an order of the Administrative Law Judge subjects the defaulting party to a default order under Section 22.17 (a) of the Rules of Practice, unless the record shows good cause why a default order should not be issued. Here, Respondent failed to offer any explanation for its noncompliance. Based on the "totality of the circumstances," Respondent is found to be in default, and the record does not show good cause why a default order should not be issued. *See Pyramid Chemical Co.*, RCRA Appeal No. HQ-2003-0001, 11 E.A.D. __ , (EAB Sept. 16, 2004).

B. Penalty on Default

The Rules of Practice also direct that where a party is found in default, as is the case here, "the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17 (c). In that regard, Section 22.17 (c) of the Rules of Practice states, in pertinent part:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. *The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act....*

40 C.F.R. § 22.17 (c). (Empahsis added).

Here, EPA proposes that Four Strong, the sole remaining respondent, be assessed a civil administrative penalty in the amount of $24,310 for violating the Asbestos NESHAP. Pursuant to 40 C.F.R. 22.17 (c), it is held that an administrative penalty in the amount of $24,310 is

appropriate under the circumstances of this case.

III. Conclusions of Law

1. Respondent is found to be in default for failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order dated May 16, 2005. Moreover, the record does not show good cause why such a default order should not be issued. 40 C.F.R. § 22.17 (a).

2. The default by Respondent constitutes, for purposes of the above-cited matter only, an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations. 40 C.F.R. § 22.17 (a).

3. Respondent's failure to: (1) provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began violated the notification requirements of 40 C.F.R. § 61.145 (b) of the Asbestos NESHAP; (2) ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(i) of the Asbestos NESHAP; and (3) remove the RACM without its becoming damaged or disturbed violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(ii) of the Asbestos NESHAP, during a demolition project at the Levittown Shopping Center which began in March, 2002. These three violations of Section 112 of the Clean Air Act subject Respondent to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7416 (d).

4. Inasmuch as this order "resolves all outstanding issues and claims in the proceeding" it constitutes an initial decision under the rules of practice. 40 C.F.R. 22.17 (c). *See* 40 C.F.R. 22.27 (c).

IV. Order

Four Strong Builders, Inc., is found to be in default and, accordingly, is found to have violated Section 112 of the Clean Air Act and the Asbestos NESHAP as charged in the Complaint. For these violations, Respondent is assessed a civil administrative penalty of $24,310

Payment of the full amount of this civil penalty shall be made within "30 days after the default order becomes final under [40 C.F.R.] § 22.27 (c)." 40 C.F.R. 22.17 (d). Respondent is directed to submit a cashier's check or certified check in the amount of $24,310, payable to "Treasurer, United States of America," and mailed to:

Attn: U.S. EPA Region 3
P.O. Box 360515
Pittsburgh, PA 15251-6515[4]

Failure to pay the penalty within the prescribed period after the entry of this Order may result in the additional assessment of interest. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

Carl C. Charneski
Administrative Law Judge

Issued: July 6, 2005
Washington, D.C.

[4] Respondent and EPA may arrange for an alternative method of payment.

In the Matter of *Four Strong Builders, Inc.*
Docket No. CAA-03-2004-0400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Default Order**, dated July 6, 2005, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Certified Mail to:

Jennifer M. Abramson, Esq.
Assistant Regional Counsel (3RC10)
U.S. EPA-Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.3113

Copy by Certified Mail:

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: July 6, 2005
Washington, DC

EXHIBIT 3

Four Strong Builders, Inc.

SBESTOS REMOVAL & TREATEMENT
NDUSTRIAL • COMERCIAL • INSTITUTIONAL
J, NY, PA, CT, MA & OH LICENCED

180 SARGEANT AVENUE • CLIFTON, NJ 07013-1935
TEL: (973) 614-0377 • FAX: (973) 614-0107

17 December 2003

Mr. Richard Ponak
Pesticides/Asbestos Program and Enforcement Branch
Mail Cache 3WC32
1650 Arch Street
Philadelphia, NJ 19103

RE: Levittown Shopping Mall, EPA request for information dated 5 November, 2003.

Dear Mr. Ponak,

In response to your request for information, referenced above, please find our responses.

1. Four Strong Builders, Inc., (FSBI) was originally hired by J & P Recovery (J & P) to abate various asbestos containing materials. (see attached contract). Please note: Not all of this work was done due to legal difficulties with J & P.
2. Please see attached copy of contract with J & P.
3. Please see attached a copy of the asbestos survey provided to FSBI by DLC Management's consultant, BL Companies.
4. Please refer to the air monitoring reports (March 2002) for the areas where removal work was completed. (see attached reports). As for quantities, see attached BL Companies' survey report. Please note: FSBI did not work at Levittown in July of 2001.
5. Please see attached sign in sheets for the period requested.
6. The project supervisor for the work was Mr. Risto Trajkov. Mr. Trajkov is no longer employed by our firm as August 2003.
7. I was not present when the work was being done, so I can't detail what work was done when. Copies of the log and waste manifests are attached for your use as requested.
8. Please see attached copies of the notification for this project. Please note: Not all of the work was done because of legal problems with J & P.

If you have any questions, please call.

Sincerely,

Steve Pantovich
Office Manager, FSBI

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

DOCKET NO.: CAA-03-2004-0400

In re:
Four Strong Builders, Inc.,
180 Sergeant Avenue
Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the appellant/respondent's Notice of Appeal to the Entry of a Default Order and supporting Brief was sent via DHL to the Clerk of the Appeal's Board and two copies of same was sent via DHL to the Regional Hearing Clerk, Lydia A. Guy at U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103 and to the Honorable Administrative Law Judge Carl C. Charneski at 1099 14th Street, N.W., Suite 350, Washington, D.C. 20005 on August 3, 2005.

Dated: August 3, 2005

Simmi Poveromo, Secretary

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

DOCKET NO.: CAA-03-2004-0400

In re:
Four Strong Builders, Inc.,
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Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

NOTICE OF APPEAL TO THE ENTRY OF A DEFAULT ORDER

In accord with 40 C.F.R. Section 22.30, Four Strong Builders, Inc. files this Notice of Appeal to the entry of a default order by Hon. Administrative Law Judge Carl C. Charneski.

The attorney authorized to receive service in regard to this matter is Faugno & Associates, Attn: Paul Faugno, 125 State Street, Suite 101, Hackensack, NJ 07601, Phone No. 201-342-1969 Fax No. 201-342-2010.

Additionally, attached hereto is a certificate of service and in accord with 40 C.F.R. Section 22.5 (c) the appeal brief in accord with the C.F.R. Section 2230(a).

Dated: August 3, 2005

FAUGNO & ASSOCIATES, LLC
Attorneys for ~~Respondent/Appellant~~
Four Strong Builders, Inc.

Paul Faugno

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

DOCKET NO.: CAA-03-2004-0400

In re:
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DLC Management, Inc.
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Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

BRIEF IN SUPPORT OF APPELLANT/RESPONDENT'S NOTICE OF APPEAL TO VACATE A DEFAULT ORDER.

FAUGNO & ASSOCIATES, LLC
125 State Street
Suite 101
Hackensack, NJ 07601
(201) 342-1969
Attorneys for Respondent/Appellant
Four Strong Builders, Inc.

On the Brief:

Paul Faugno, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF FACTS

The Administrative Complaint in the underlying action alleged that Four Strong Builders, Inc. committed three violations. Firstly a failure to provide timely notification pursuant to 40C.F.R. Section 61.145 (b)(3)(i). The complaint additionally alleged that Four Strong failed to wet various dry friable RACM debris. Further, it was alleged that Four Strong failed to remove various RACM material in a proper fashion. In regard to the underlying case, there were two co-defendants in particular, DLC, Management, Inc., a demolition company, and Levittown, L.P., the owner of the subject premises.

On February 17, 2005 the Court entered an order setting prehearing procedures. On March 23, 2005 the complainant in the underlying action, the United States Environmental Protection Agency filed a motion for issuance of a show cause for non-compliance with the opening prehearing exchanges. In regard to the basis for appellant/respondent's non-compliance at that time, please see attached certification of Paul Faugno, Esq. (See attached Exhibit 1). The Court in the underlying action because of the non-compliance, ultimately entered a default order on July 6, 2005 . (See attached Exhibit 2). The

appellant/respondent has meritorious defenses in regard to the underlying action if it is allowed to defend the same. In particular, it is position of the respondent/appellant that it did timely file the notifications which is alleged as a violation in the underlying administrative complaint. Secondly, it is the position of the respondent/appellant that at the time that violations occurred relating to the collection, disposal and removal of "RACM" the respondent/appellant had already left the property and the same was in the control of the respondent demolition company. It should be noted that the demolition company settled the matter during the pendency of the underlying administrative complaint. It should also be noted that appellant/respondent prior to the institution of the actual administrative complaint, cooperated fully with the United States Environmental Protection Agency.

In particular on November 5, 2003 a request was made for information pursuant to section 114 of the Clean Air Act. The respondent/appellant provided a timely response thereto (See Exhibit 3).

STATEMENT OF ISSUES

In this matter an administrative complaint was filed by the United States Environmental Protection Agency on September 20, 2004. The complaint named Four Strong Builders, DLC Management, Inc. and Levittown, L.P. On July 6, 2005 the Honorable Administrative Law Judge Carl C. Charneski entered a Default Order and imposed an administrative penalty of $24,310 against respondent Four Strong Builders, Inc.

It is the position of the appellant/respondent that there is good cause existing to set aside the default order and allow Four Strong Builders, Inc. to defend against administrative complaint. In accord with 40C.F.R. Section 22.17 the entry of a default order may be appealed to the Environmental Appeal's Board.

Thus, the particular issue sought for review is as follows. It is the position of the appellant/respondent that good cause exists to set aside the default order and allow Four Strong Builders, Inc to interpose a defense.

ARGUMENT

POINT I

In accord with 40 C.F.R. section 22.17 "Default" states in pertinent part

> "For good cause shown the presiding officer may set aside a default order."

In accord with 40 C.F.R. Section 22.17 and In Re Rybond, Inc., 6 E.A.D. 614 (EAB 1996)a default order may be appealed to the Environmental Appeals Board. In this case the totality of the circumstances and the existence of a meritorious defense justify the setting aside of the default order. In particular, the counsel for the appellant/respondent provides an explanation as to why there was a failure to comply with hearing exchanges and Order to Show Cause which is set forth in Mr. Faugno's certification. The Court is cited to the case of Jiffy Builders, Inc. 8 E.A.D. 315 (EAB 1991). In that matter the appellant/ respondent was fined $22,000 predicated upon a default order by the presiding officer for failure to respond to the Pre-Hearing Exchange Order. While the Appeals Court in that matter upheld the default order, it based the same upon the failure of the appellant to provide any reason for the failure to comply. In this matter, appellant/respondent

through certification of counsel has explained the circumstances leading up to the non-compliance.

Additionally, the appellant/respondent has set forth meritorious defense, in that violation occurred during a portion of time when the appellant/respondent had left the job site and the work which led to the violation was committed by a co-respondent demolition contractor.

If the defense counsel had not inadvertently believed that the matter had been settled, a valid defense would have been interposed on behalf of the appellant/respondent. It would be unfair to preclude the appellant/respondent from defending this matter based upon the totality of the circumstances herein.

CONCLUSION

It is respectfully requested that the Environmental Appeals Board based upon the foregoing set aside the entry of a default against the appellant/respondent, Four Strong Builders, Inc. and remand this matter back to the Honorable Administrative Law Judge Carl C. Charneski.

Respectfully submitted

Faugno & ASSOCIATES, LLC

By_____
Paul Faugno

EXHIBIT 1

CERTIFICATION

I, Paul Faugno, of full age certifies as follows:

1. I am at attorney at law in the State of New Jersey and am the attorney in charge of handling the within file and thus am fully familiar with the facts herein.

2. The undersigned has represented Four Strong, Inc. since 1999 as general counsel. Until, the 2004 calendar year I never defended Four Strong Builders, Inc. in regard to any alleged violation by the Environmental Protection Agency, nor did I have any specific familiarity with the procedures. Given I was general counsel to the Corporation and at that time there were significant financial problems, it was determined that the undersigned would defend these matters. At the same time that the complaint was filed in this matter, there were two separate EPA matters filed against Four Strong. In particular, on September 30, 2004 a complaint was filed bearing docket no. CAA-02-2004-1217. Additionally, in December of 2004 an additional complaint was filed bearing docket no. CCA-02-2004-1208. Both of the above matters were venued in the District II, New York, NY of the United States Environmental Protection Agency.

3. On March 23, 2005 a motion was filed to show cause as to the failure to make prehearing exchanges. This ultimately resulted in an order directing my office to respond to the Order to Show Cause no later than May 30, 2005. Upon receipt of this Order this matter was assigned to my Associate with directions to compile relevant documents and forward them to my adversary and to prepare an opposition to the Order to Show Cause reflecting that the documents had been so provided.

4. This was actually prepared by my Associate, and was placed upon my desk for review. Prior to this being reviewed, I was advised by my associate that the matter involving Four Strong Builders and Levittown had been settled and that an Order had been entered dismissing the matter. I was provided with a copy from my Associate of the said consent agreement. To be perfectly candid with the Court I had relied upon what my associate advised me and did not read the consent agreement in full detail (attached hereto as Exhibit 1). I was under the mistaken impression that the matter had been resolved as to all parties.

5. Subsequently, I was advised by my secretary that a conference was to be scheduled in regard to one of the Four Strong EPA matters. I advised my secretary that

she should schedule such a conference call, and I was advised that a conference call would be held at 11:00 a.m. on June 13th. My secretary advised that I would be in court that morning yet I would have my cell phone available. Unfortunately, I was engaged in a hearing before a Judge at the time the call came in and therefore was not available for the same.

6. When I returned to my office I was advised by my secretary that I had missed the call. The matter was listed in my diary by my secretary as "Four Strong/EPA" conference call. Given the fact that I was previously under the mis-impression that this matter had been resolved and was no longer pending, I mistakenly assumed that when this matter was scheduled for conference call that it related to one of the other pending EPA matters. It was not until I received the default order dated June 25, 2005 that I went through the files and discovered my inadvertence. While I recognize that my inadvertence should not work to the detriment of the United States Environmental Protection Agency, I would also like to point out to the court that back in April of 2005, a close colleague of mine with extensive personal injury practice was diagnosed with cancer. In an effort to provide his office with

assistance I affiliated as of counsel with his office in April of 2005. The attorney's name is Nicholas Sekas. By assuming responsibility for his extensive practice, I was inundated with extensive work in the months of April, May and June which continues into present. I am in the process of hiring a new associate at the time of this certification. It was partially attributable to the unexpected increase in my work that I did not monitor this matter as closely as I normally would.

7. Based upon the foregoing, and in accord with 40 C.F.R. Section 22.17 providing that a default may be set aside for "good cause", it is respectfully submitted that the above constitutes good cause, and this default order should be set aside.

8. I should further point out that there is a meritorious defense in this matter. This is outlined in the original cover letter from my client (See Exhibit 2)

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: August 2, 2005

Paul Faugno

EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

I hereby certify that the within is a true and correct copy of the original CAFO filed in this matter.
Attorney for EPA

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 CONSENT AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

CONSENT AGREEMENT AS TO DLC MANAGEMENT, INC. AND LEVITTOWN, L.P.

I. PRELIMINARY STATEMENT

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a) and (d), the Director of the Waste and Chemicals Management Division for the United States Environmental Protection Agency, Region III ("EPA"), initiated this administrative proceeding for the assessment of civil penalties against Four Strong Builders, Inc., DLC Management, Inc., and Levittown, L.P. (hereinafter, "Respondents") by issuance of a Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed with the Regional Hearing Clerk on November 5, 2004. The Complaint, incorporated herein by reference, alleges that Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during a demolition project at the Levittown Shopping Center, located at Route 13 and Levittown Parkway in Tullytown, Pennsylvania which began March 2002. This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address the violations alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. only.

2. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. admit only the jurisdictional allegations set forth in the Complaint and herein.

3. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. neither admit nor deny the specific factual or legal allegations contained in the Complaint and herein.

4. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the issuance of this CAFO and agree to comply with the terms of this CAFO.

5. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the payment of a civil penalty in the amount and in the manner set forth in this CAFO.

6. For the purpose of this proceeding and in an effort to avoid unnecessary litigation expenses and resolve outstanding matters with EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. hereby expressly waive their rights to contest the allegations in the Complaint and herein (although they do not admit that the allegations herein are true), and their rights to appeal the Final Order accompanying this Consent Agreement.

7. Respondent DLC Management, Inc. and Respondent Levittown, L.P. shall bear their own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. EPA enters into this Consent Agreement with Respondent DLC Management, Inc. and Respondent Levittown, L.P. in order to fully settle and resolve all allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. without further adjudication of any issue of law or fact.

11. In full settlement of any and all charges and allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P., and in consideration of each provision of this Consent Agreement and the accompanying Final Order, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the assessment and payment of a civil penalty in the amount of thirteen thousand and ninety dollars ($13,090). The aforesaid civil penalty settlement amount was determined, and is based upon, EPA's consideration of a number of relevant factors including, but not limited to, the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25,

1991, as clarified January 17, 1992; and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of Paragraph 11, above, shall be made by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be mailed to the attention of U.S. EPA Region III, P.O. Box 360515, Pittsburgh, Pennsylvania 15251-6515 (overnight deliveries shall be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, ATTENTION: U.S. EPA, Region III, P.O. Box 360515). All payments made by check also shall reference the above case caption and docket number, Docket No. CAA-03-2004-0400. All electronic wire transfer payments shall be directed to Mellon Bank, Pittsburgh, PA, ABA No. 043000261, crediting account number 9108552, lockbox 36051. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jennifer Abramson (3RC10), Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

13. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, the failure of Respondent DLC Management, Inc. and Respondent Levittown, L.P. to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that copies of this CAFO are mailed or hand-delivered to Respondent DLC Management, Inc. and Respondent Levittown, L.P.. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R.

§ 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. Respondent DLC Management, Inc. and Respondent Levittown, L.P. agree not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

15. Failure by Respondent DLC Management, Inc. and Respondent Levittown, L.P. to comply with the requirements of this Consent Agreement may subject them to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 112 of the CAA, 42 U.S.C. § 7412.

IV. RESERVATION OF RIGHTS

17. This Consent Agreement and the accompanying Final Order resolve both Respondent DLC Management, Inc.'s and Respondent Levittown, L.P.'s liability for all civil claims arising from the violations and facts alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. with prejudice. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent DLC Management, Inc. and Respondent Levittown, L.P., in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions for any violations of law, and the United States reserves its authority to pursue any such criminal sanctions. Furthermore, EPA reserves any rights and remedies available under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of the Consent Agreement and the accompanying Final Order, following entry thereof. Notwithstanding the reservations of rights discussed above, Complainant represents that, other than the violation alleged in the Complaint, it is not aware of any alleged violations of the Clean Air Act by Respondent DLC Management, Inc. and Respondent Levittown, L.P. relating to the renovation activities performed at the Levittown Shopping Center in the calendar years 2001 and 2002.

V. PARTIES BOUND

18. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. and their officers, directors, employees, agents, successors and assigns. The persons signing this Consent Agreement on behalf of Respondent DLC Management, Inc. and Respondent Levittown, L.P. acknowledge by their signatures that they are fully authorized to enter into this Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VI. EFFECTIVE DATE

19. The effective date of this CAFO is the date on which the Final Order, after signature by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

VII. ENTIRE AGREEMENT

20. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order.

The undersigned representatives of Respondent DLC Management, Inc. and Respondent Levittown, L.P. certify that they are fully authorized to execute this Consent Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to this Consent Agreement.

For DLC Management Corporation
a New York Corporation

3/23/05
Date

Adam Ifshin
President

For Levittown LP
a Delaware limited partnership

First Man Levittown Corp.,
a Delaware corporation, general partner

3/23/05
Date

Adam Ifshin
President

For EPA:

4/6/05
Date

Jennifer M. Abramson
Assistant Regional Counsel

Accordingly, the Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, issue the attached Final Order. The amount of the recommended civil penalty assessment is thirteen thousand and ninety dollars ($13,090), in accord with the terms and conditions incorporated herein.

April 8, 2005
Date

James J. Burke, Director
Waste and Chemicals Management Division
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 FINAL AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

FINAL ORDER

The Preliminary Statement, Findings of Fact and Conclusions of Law, and other sections and terms of the foregoing Consent Agreement ("CA") are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 112 and 113 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7412, and 7413, the federal regulations implementing the National Emission Standards for Hazardous Air Pollutants for Asbestos set forth at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice") set forth at 40 C.F.R. Part 22, Respondent DLC Management, Inc. and Respondent Levittown, L.P. are hereby ordered to pay a civil penalty in the amount of thirteen thousand ninety dollars ($13,090), in settlement of the civil claims alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P..

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 4/14/05

Renée Sarajian
Regional Judicial Officer

EXHIBIT 2

Four Strong Builders, Inc.

BESTOS REMOVAL & TREATEMENT
)USTRIAL • COMERCIAL • INSTITUTIONAL
, NY, PA, CT, MA & OH LICENCED

180 SARGEANT AVENUE • CLIFTON, NJ 07013-1935
TEL: (973) 614-0377 • FAX: (973) 614-0107

25 October 2004

Mr. Paul Faugno, Esq.
Faugno and Associates
125 State Street, Suite 101
Hackensack, NJ 07601

RE: US EPA Violations.

Paul,

I just faxed over the two (2) EPA violations that Four Strong (FSBI) got for projects located in Bogota, New Jersey and Levittown, Pennsylvania. In regards to them I am providing the following information:

Bogota: In the EPA paperwork, the NJ DOH inspector says that he found asbestos strewn around in the work area (boiler room) and in dry condition on 30 April 2004. But the problem I have with that is that FSBI completed the work it had to do in the work area on 24 April 2004.

Levittown: The three violations listed are as follows:

#1 – Failure to provide the notification on a timely basis.
As far as I know it was mailed out on time, but with the mail you never know.

#2 – Failure to wet the asbestos prior to removing it.
If you read the notes, you'll see that FSBI was not present when this was done. The person doing the removal work was the demolition contractor.

#3 – Failure to prevent the breaking of the non-friable materials as they were being removed.
Again, the notes refer to the general contractor being the one doing the removal work, not FSBI.

If you have any questions, please call.

Sincerely,

Steve Pantovich
Office Manager, FSBI

2

EXHIBIT 2

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	Docket No. CAA-03-2004-0400
	)	
Respondent	)	

DEFAULT ORDER

This civil administrative penalty proceeding arises under Section 113 (a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a)(3) and (d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. Part 22 (2005). On September 30, 2004, the United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing a Complaint against Four Strong Builders, Inc. ("Respondent" or "Four Strong").[1] The Complaint charges Respondent with failure to comply with the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Asbestos, codified at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412. Complainant seeks the imposition of a civil administrative penalty in the amount of $24,310 against Respondent. In the Complaint, EPA proposed a penalty of $37,400. It now seeks a penalty of $24,310.[2]

For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17 (a) of the Rules of Practice, 40 C.F.R. §22.17 (a), and is assessed the proposed penalty of $24,310.

I. Statement of the Case

The EPA initiated this matter by filing a Complaint and Notice of Opportunity for

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[1]The Complaint also listed DLC Management, Inc., and Levittown, L.P., as co-respondents. DLC Management, Inc., and Levittown, L.P., have entered into a "Consent Agreement" with EPA settling this matter.

[2]This civil penalty reduction reflects the $13,090 to be paid by DLC Management, Inc., and Levittown, L.P.

Hearing pursuant to Sections 113 (a) (3) and (d) of the Clean Air Act, 42 U.S.C. §7413 (a) (3) and (d). In the Complaint, the EPA charges Respondent with three violations of Section 112 (b) of the Clean Air Act, 42 U.S.C. § 7412 (b), for failing to comply with the regulations codified at 40 C.F.R. Part 61, Subpart M. Specifically, Complainant alleges that Respondent, the "owner or operator" of a demolition or renovation activity, violated 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i) and 61.145 (c)(6)(ii). Respondent, through counsel, filed its Answer on November 8, 2004. In its Answer, Respondent denied the charges in the Complaint and requested a hearing. Answer at 9.

On February 17, 2005, the Court entered an Order Setting Prehearing Procedures ("Prehearing Exchange Order") setting forth a schedule for the parties to submit their prehearing exchange information. The Order directed the parties to file Opening Prehearing Exchanges by March 15, 2005, specifying the required content of such exchanges. Prehearing Exchange Order at 1. On March 15, 2005, Complainant filed its Opening Prehearing Exchange as directed. To date, Respondent has not filed a prehearing exchange.

Thereafter, on March 23, 2005, Complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other Appropriate Relief ("Motion to Show Cause") noting that Respondent had failed to file its prehearing exchange as directed. On May 16, 2005, the Court directed Respondent to respond to Complainant's Motion to Show Cause no later than May 30, 2005. To date, a response to the Order has not been received.[3]

Accordingly, as discussed below, Respondent's failure to comply with this Court's February 17, 2005 Prehearing Exchange Order and subsequent order of May 16, 2005 results in the entry of a default judgment.

II. Discussion

A. Liability on Default

Section 22.17 (a) of the Rules of Practice lists those instances in which a party may be found to be in default. 40 C.F.R. 22.17 (a). It provides, in part, that a default judgment may be entered against a party for "failure to comply with the information exchange requirements of § 22.19 (a) or an order of the Presiding Officer." *Id.* That is precisely the case here. In fact, respondent satisfied both criteria in failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order of May 16, 2005.

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[3]Moreover, a conference call was scheduled to be held at 11:00 a.m. on June 13, 2005, between the Court and the parties. The purpose of this call was to discuss Respondent's failure to respond to the Court's Order of May 16, 2005. Despite the fact that the time and date of the conference call was confirmed with the parties on June 10, 2005, counsel for Respondent was not available for the June 13 conference.

Section 22.17 (a) of the Rules of Practice further provides that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17 (a). Thus, the facts alleged in the instant Complaint establish Respondent's liability for three violations of 40 C.F.R. Part 61, Subpart M. Specifically, the alleged facts, deemed to be admitted, establish that Respondent failed to: provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began, ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal, and remove the RACM without its becoming damaged or disturbed. 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i), and 61.145 (c)(6)(ii). Compl. ¶ ¶ 46, 50, and 54.

A party's failure to comply with an order of the Administrative Law Judge subjects the defaulting party to a default order under Section 22.17 (a) of the Rules of Practice, unless the record shows good cause why a default order should not be issued. Here, Respondent failed to offer any explanation for its noncompliance. Based on the "totality of the circumstances," Respondent is found to be in default, and the record does not show good cause why a default order should not be issued. *See Pyramid Chemical Co.*, RCRA Appeal No. HQ-2003-0001, 11 E.A.D. __, (EAB Sept. 16, 2004).

B. Penalty on Default

The Rules of Practice also direct that where a party is found in default, as is the case here, "the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17 (c). In that regard, Section 22.17 (c) of the Rules of Practice states, in pertinent part:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. *The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act....*

40 C.F.R. § 22.17 (c). (Empahsis added).

Here, EPA proposes that Four Strong, the sole remaining respondent, be assessed a civil administrative penalty in the amount of $24,310 for violating the Asbestos NESHAP. Pursuant to 40 C.F.R. 22.17 (c), it is held that an administrative penalty in the amount of $24,310 is

appropriate under the circumstances of this case.

III. Conclusions of Law

1. Respondent is found to be in default for failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order dated May 16, 2005. Moreover, the record does not show good cause why such a default order should not be issued. 40 C.F.R. § 22.17 (a).

2. The default by Respondent constitutes, for purposes of the above-cited matter only, an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations. 40 C.F.R. § 22.17 (a).

3. Respondent's failure to: (1) provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began violated the notification requirements of 40 C.F.R. § 61.145 (b) of the Asbestos NESHAP; (2) ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(i) of the Asbestos NESHAP; and (3) remove the RACM without its becoming damaged or disturbed violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(ii) of the Asbestos NESHAP, during a demolition project at the Levittown Shopping Center which began in March, 2002. These three violations of Section 112 of the Clean Air Act subject Respondent to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7416 (d).

4. Inasmuch as this order "resolves all outstanding issues and claims in the proceeding" it constitutes an initial decision under the rules of practice. 40 C.F.R. 22.17 (c). *See* 40 C.F.R. 22.27 (c).

IV. Order

Four Strong Builders, Inc., is found to be in default and, accordingly, is found to have violated Section 112 of the Clean Air Act and the Asbestos NESHAP as charged in the Complaint. For these violations, Respondent is assessed a civil administrative penalty of $24,310.

Payment of the full amount of this civil penalty shall be made within "30 days after the default order becomes final under [40 C.F.R.] § 22.27 (c)." 40 C.F.R. 22.17 (d). Respondent is directed to submit a cashier's check or certified check in the amount of $24,310, payable to "Treasurer, United States of America," and mailed to:

Attn: U.S. EPA Region 3
P.O. Box 360515
Pittsburgh, PA 15251-6515[4]

Failure to pay the penalty within the prescribed period after the entry of this Order may result in the additional assessment of interest. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

Carl C. Charneski
Administrative Law Judge

Issued: July 6, 2005
Washington, D.C.

[4] Respondent and EPA may arrange for an alternative method of payment.

In the Matter of *Four Strong Builders, Inc.*
Docket No. CAA-03-2004-0400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Default Order**, dated July 6, 2005, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Certified Mail to:

Jennifer M. Abramson, Esq.
Assistant Regional Counsel (3RC10)
U.S. EPA-Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.3113

Copy by Certified Mail:

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: July 6, 2005
Washington, DC

EXHIBIT 3

Four Strong Builders, Inc.

SBESTOS REMOVAL & TREATEMENT
IDUSTRIAL • COMERCIAL • INSTITUTIONAL
J, NY, PA, CT, MA & OH LICENCED

180 SARGEANT AVENUE • CLIFTON, NJ 07013-1935
TEL: (973) 614-0377 • FAX: (973) 614-0107

17 December 2003

Mr. Richard Ponak
Pesticides/Asbestos Program and Enforcement Branch
Mail Cache 3WC32
1650 Arch Street
Philadelphia, NJ 19103

RE: Levittown Shopping Mall, EPA request for information dated 5 November, 2003.

Dear Mr. Ponak,

In response to your request for information, referenced above, please find our responses.

1. Four Strong Builders, Inc., (FSBI) was originally hired by J & P Recovery (J & P) to abate various asbestos containing materials. (see attached contract). Please note: Not all of this work was done due to legal difficulties with J & P.
2. Please see attached copy of contract with J & P.
3. Please see attached a copy of the asbestos survey provided to FSBI by DLC Management's consultant, BL Companies.
4. Please refer to the air monitoring reports (March 2002) for the areas where removal work was completed. (see attached reports). As for quantities, see attached BL Companies' survey report. Please note: FSBI did not work at Levittown in July of 2001.
5. Please see attached sign in sheets for the period requested.
6. The project supervisor for the work was Mr. Risto Trajkov. Mr. Trajkov is no longer employed by our firm as August 2003.
7. I was not present when the work was being done, so I can't detail what work was done when. Copies of the log and waste manifests are attached for your use as requested.
8. Please see attached copies of the notification for this project. Please note: Not all of the work was done because of legal problems with J & P.

If you have any questions, please call.

Sincerely,

Steve Pantovich
Office Manager, FSBI

United States Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G. Street N.W.
Suite 600
Washington D.C., 20005

DOCKET NO.: CAA-03-2004-0400

In re:
Four Strong Builders, Inc.,
180 Sergeant Avenue
Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the appellant/respondent's Notice of Appeal to the Entry of a Default Order and supporting Brief was sent via DHL to the Clerk of the Appeal's Board and two copies of same was sent via DHL to the Regional Hearing Clerk, Lydia A. Guy at U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103 and to the Honorable Administrative Law Judge Carl C. Charneski at 1099 14th Street, N.W., Suite 350, Washington, D.C. 20005 on August 3, 2005.

Dated: August 3, 2005

Simmi Poveromo, Secretary