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May 9, 2008

VIA FEDERAL EXPRESS

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

**Re: Answer to Administrative Complaint for Filing
EPA Docket No. CAA-03-2008-0148**

Dear Regional Hearing Clerk:

Enclosed for filing please find an original and one copy of the Answer, Request for Hearing and Request for Settlement Conference in the above-captioned matter, submitted on behalf of Respondent PDG, Inc. Please time-stamp the second copy enclosed and return it to me in the self-addressed envelope provided.

If you have any questions, please do not hesitate to contact me.

Thank you very much for your assistance.

Very truly yours,

COHEN & GRIGSBY, P.C.

By: 
Scott R. Thistle

SRT/ln
Enclosures
cc: Certificate of Service (w/encl.)

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

Handwritten notes and stamps on the right side of the page, including a date stamp "JUN 11 2008" and some illegible text.

IN RE:

Diocese of Scranton, PA :
300 Wyoming Avenue :
Scranton, PA 18503 : ANSWER, REQUEST FOR HEARING,
AND REQUEST FOR SETTLEMENT
and : CONFERENCE
:
PDG, Inc. : Docket No. CAA-03-2008-0148
1386 Beulah Road :
Building 801 :
Pittsburgh, PA 15235, :

Respondents.

PDG, Inc., by its attorneys Cohen & Grigsby, P.C., answers the Administrative Complaint and Notice of Opportunity for Hearing ("the Administrative Complaint") of the United States Environmental Protection Agency ("EPA"), as follows:

I. INTRODUCTION

I. The allegations of Paragraph 1 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 1 are denied.

II. APPLICABLE STATUTES AND REGULATIONS

2. The allegations of Paragraph 2 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 2 are denied.

3. The allegations of Paragraph 3 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 3 are denied.

4. The allegations of Paragraph 4 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 5 are denied.

III. DEFINITIONS

6. The allegations of Paragraph 6 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 7 are denied.

8. The allegations of Paragraph 8 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 8 are denied.

9. The allegations of Paragraph 9 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 9 are denied.

10. The allegations of Paragraph 10 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 10 are denied.

11. The allegations of Paragraph 11 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 11 are denied.

12. The allegations of Paragraph 12 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent,

however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 12 are denied.

13. The allegations of Paragraph 13 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 14 are denied.

15. The allegations of Paragraph 15 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 15 are denied.

IV. GENERAL ALLEGATIONS

16. The allegations of Paragraph 16 of the Administrative Complaint are admitted in part and denied in part. It is admitted that PDG, Inc. is a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania with headquarters in Pittsburgh, Pennsylvania. It is admitted that PDG, Inc. conducted a renovation operation which included the removal of material from the former Bishop O'Reilly High School, located at 316 North Maple Avenue, Kingston, PA 18704 ("the Facility"), some of which was regulated asbestos-containing material ("RACM"). It is denied that PDG, Inc.

operated, controlled or supervised removal of all “friable asbestos material” from the Facility at all times relevant to the Administrative Complaint. It is specifically denied that all the material removed by PDG, Inc. was RACM. Moreover, it is denied that PDG, Inc. “operated, controlled or supervised” a “renovation operation” at all times relevant to this Complaint. PDG, Inc. completed the demobilization of its operations at the Facility on or about August 3, 2007, and other independent persons had routine access to the affected space and performed a significant amount of work in the affected space after PDG, Inc.’s date of demobilization.

17. PDG, Inc. is without knowledge or information sufficient to form a belief as to Respondent Diocese’s entity status, and therefore denies the allegations of Paragraph 17 of the Administrative Complaint.

18. The allegations of Paragraph 18 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 18 are denied.

19. The allegations of Paragraph 19 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 19 are denied.

20. The allegations of Paragraph 20 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 20 are denied.

21. The allegations of Paragraph 21 of the Administrative Complaint are admitted in part and denied in part. It is admitted that PDG submitted to the EPA on or about July of 2007 an Asbestos Abatement and Demolition/Renovation Notification Form (“Notice”) and revisions thereto, to conduct a renovation of the Facility, including the removal of some friable asbestos material from the Facility. Any further allegations pertaining to the Notice are denied, because the Notice is a written document which speaks for itself. It is denied that all of the approximately 1,231 square feet of boiler and boiler-related insulation and the approximately 1,576 linear feet of pipe insulation was “Friable asbestos material.” By way of further response, upon information and belief, some of the materials removed from the Facility were not asbestos-containing materials (“ACM”).

22. The allegations of Paragraph 22 of the Administrative Complaint are admitted in part and denied in part. It is admitted that PDG removed some friable asbestos material from the Facility. It is also admitted that PDG, Inc. was onsite performing removal work from approximately July 16, 2007 through August 3, 2007. It is denied that all of the approximately 1,231 square feet of boiler and boiler-related insulation and the approximately 1,576 linear feet of pipe insulation was “friable asbestos material.” By way of further response, upon information and belief, some of the materials removed from the Facility were not ACM.

23. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific dates, authorizations, inspections and the purposes of the inspections performed by representatives of the EPA and therefore denies the allegations of Paragraph 23 of the Administrative Complaint.

24. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations of the inspector or any other representative of the EPA or the nature of any subsequent test performed by these parties and therefore denies the allegations of Paragraph 24 of the Administrative Complaint. Strict proof of these allegations, and any tests performed by Complainant, are demanded of the Complainant.

25. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations of the inspector or any other representative of the EPA or the nature of any subsequent tests performed by these parties and therefore denies the allegations of Paragraph 25 of the Administrative Complaint. Strict proof of these allegations, and any tests performed by Complainant, are demanded of the Complainant. By way of further response, PDG, Inc. demobilized from the Facility on or about August 3, 2007 and thereafter, the area was subject to, and passed, multiple inspections including, but not limited to, a diligent independent visual inspection performed by the retained representative of Respondent Diocese, and an independent air testing performed by Quad 3 via Transmission Electron Microscopy (TEM) analysis.

26. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations of the inspector or any other representative of the EPA and therefore denies the allegations of Paragraph 26 of the Administrative Complaint. Strict proof of these allegations are demanded of the Complainant.

27. The allegations of Paragraph 27 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 of the Administrative Complaint are denied. The allegations in the last sentence of Paragraph 28 constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, these allegations of Paragraph 28 are denied.

29. The allegations of Paragraph 29 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 29 are denied.

30. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations and/or inspection of the inspector or any other representative of the EPA and therefore denies the allegations of Paragraph 30 of the Administrative Complaint. Strict proof of these allegations, and any tests performed by Complainant, are demanded of the Complainant. The remaining allegations of Paragraph 30 constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 31 are denied.

V. ALLEGED VIOLATIONS

COUNT I

32. In response to Paragraph 32 of the Administrative Complaint, PDG, Inc. incorporates by references its responses to Paragraphs 1 through 31 of the Administrative Complaint, as stated above.

33. The allegations of Paragraph 33 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 33 are denied.

34. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations and/or determinations of the inspector or any other representative of the EPA and therefore denies the allegations of Paragraph 34 of the Administrative Complaint. Strict proof of these allegations, and any tests performed by Complainant, are demanded of the Complainant. It is specifically denied that all of the material being stripped and all of the material stripped was RACM. Further, it is specifically denied that all of the materials being stripped and stripped were "dry" or "very dry and therefore not adequately wetted." The remaining allegations of Paragraph 34 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent,

however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 35 are denied.

COUNTS II & III

36. In response to Paragraph 36 of the Administrative Complaint, PDG, Inc. incorporates by reference its responses to Paragraphs 1 through 35, of the Administrative Complaint, as stated above.

THE ADMINISTRATIVE COMPLAINT SKIPS PARAGRAPH NUMBERS 37 THROUGH 40. THIS ANSWER FOLLOWS THE NUMBERING AS SET FORTH IN THE ADMINISTRATIVE COMPLAINT.

41. The allegations of Paragraph 41 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 41 are denied.

42. PDG, Inc. is without knowledge or information sufficient to form a belief as to the specific observations and/or determinations of the inspector or any other representative of the EPA and therefore denies the allegations of Paragraph 42 of the Administrative Complaint. Strict proof of these allegations, and any tests performed by Complainant, are demanded of the Complainant. It is specifically denied that all of the material collected and all the material uncollected was RACM. Further, it is specifically denied that all of the collected and uncollected RACM was either "dry" or "very dry and therefore not adequately wetted." The remaining allegations of Paragraph 42 of the Administrative Complaint constitute conclusions of law to which no responsive pleading

is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 42 are denied.

43. The allegations of Paragraph 43 of the Administrative Complaint constitute conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations of Paragraph 43 are denied.

VI. PROPOSED CIVIL PENALTY

PDG, Inc. denies violations occurred as outlined by the Administrative Complaint and therefore denies that any penalties are due. To the extent that PDG, Inc. may have violated any of the asbestos NESHAP requirements, PDG, Inc. denies that the calculated proposed civil penalties have been properly determined. PDG, Inc. specifically denies, among other aspects of the penalty calculations, the amount of asbestos alleged to be involved by the EPA. Most, if not all, of the allegations in this section are conclusions of law to which no responsive pleading is required. To the extent, however, that a response by PDG, Inc. may be deemed necessary, the allegations in this section are denied.

VII. REQUEST A HEARING

Respondent, PDG, Inc. hereby requests a hearing on this matter for purposes of contesting those issues of fact and law raised in the pleadings and for purposes of contesting the proposed penalty.

VIII. REQUEST FOR SETTLEMENT CONFERENCE

PDG, Inc. does hereby request a settlement conference to confer with Complainant regarding the allegations of the Administrative Complaint and the amount of the proposed civil penalty.

AFFIRMATIVE DEFENSES

1. The Administrative Complaint fails to state a claim upon which relief can be granted.
2. The claims set forth in the Administrative Complaint are barred in part because not all of the removed materials that were handled and stored constituted RACM.
3. The claims set forth in the Administrative Complaint are barred because Complainant has put forth no evidence that the material allegedly sampled and analyzed by Complainant on July 24, 2007 and August 28, 2007 was representative of all the material removed from the Facility by Respondent PDG, Inc.
4. The proposed penalty is barred because it is not properly based on the nature, circumstances, extent, and gravity of the alleged violations, on any other applicable factors enumerated in Section 113 (e) of the Clean Air Act, 42 U.S.C. §7413(e), or on the applicable civil penalty policies utilized by Complainant to determine the penalty.
5. The proposed penalty is barred as to PDG, Inc. because it is not properly based on PDG Inc.'s compliance history and lack of culpability.

6. The Administrative Complaint and proposed penalty are barred as to PDG, Inc. because Complainant has failed to meet the requisite burden of proof under 40 CFR §22.24.

7. PDG, Inc. was engaged by Respondent Diocese to remove certain insulation material at the Facility. Some of the material removed by PDG, Inc. was RACM, but upon information and belief, some was not RACM.

8. Upon information and belief, the independent consultant hired by the Diocese to oversee the project and to perform air monitoring, i.e., Quad 3, informed PDG, Inc. during at least one inspection that PDG, Inc. was using too much water and that the removed material was extremely wet.

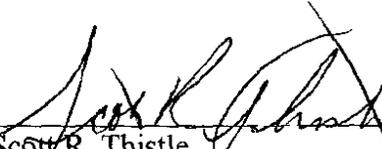
9. The EPA inspector's alleged, subjective findings of "dry" and "very dry" do not legally prove violations of the "adequately wetted" standard.

10. The Quad 3 air monitoring results at the Facility never showed any exceedances of threshold PELs, and therefore indicated that all RACM removed and stored was "adequately wetted."

11. PDG has no responsibility for any RACM that may have been disturbed and may have been on the floor after the August 3, 2007 demobilization. Inspections showed that the condition of the work area passed as of that date, and PDG, Inc. has not been onsite since. Some asbestos-containing insulation remained in place at the Facility and was not removed by PDG, Inc. as of the demobilization date. Other independent contractors installed two boilers in the same area following the demobilization date.

WHEREFORE, for the foregoing reasons, Respondent, PDG, Inc. respectfully requests that the Complaint against it be dismissed with prejudice.

COHEN & GRIGSBY, P.C.

By 

Scott R. Thistle

PA ID. No. 46049

Helen S. Ward

PA ID No. 204088

11 Stanwix Street, 15th Floor

Pittsburgh, PA 15222

Telephone: 412-297-4900

Attorneys for Respondent,
PDG, Inc.

Dated May 9, 2008

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VERIFICATION

I have read the foregoing **Answer to Administrative Complaint**, and hereby verify that the statements set forth therein are true and correct to the best of my knowledge, information, and belief.

This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this statement and verification on behalf of **PDG, Inc.** as General Manager in its Drums, Pennsylvania office.



Gary A. Skuba, General Manager
PDG, Inc.
Rittenhouse Place
Route 309 North
Drums, PA 18222

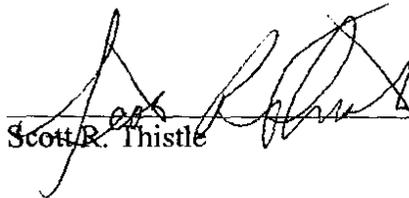
Date: May 8, 2008

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer, Request for Hearing and Request for Settlement Conference** was served via regular U.S. mail on the 9th day of May, 2008, upon the following:

Benjamin M. Cohan (3RC10)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

James E. O'Brien, Jr., Esquire
Kennedy & O'Brien Law Office
Scranton Life Building, Suite 610
538 Spruce Street
Scranton, PA 18503-1816


Scott R. Thistle

DATED: May 9, 2008