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Regional Counsel

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RECEIVED  
REGIONAL COUNSEL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of:

) Docket No. CAA-9-2007-0002

B.C.S. Enterprises, Inc. and  
Arizona Department of  
Transportation

)  
)  
) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING

Proceeding under Section 113 of  
the Clean Air Act,  
42 U.S.C. § 7413

I. STATEMENT OF AUTHORITY

1. Pursuant to Sections 113(a)(3) and 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. §§ 7413(a)(3) and 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 Code of Federal Regulations ("C.F.R.") Part 22 ("Consolidated Rules of Practice"), the Director of the Air Division, EPA Region 9 ("Complainant") commences this administrative action and issues this Complaint and Notice of Opportunity for Hearing ("Complaint"). Complainant is duly delegated the authority to file this action.
2. This Complaint notifies B.C.S. Enterprises, Inc. ("BCS") and Arizona Department of Transportation ("ADOT") (collectively, "Respondents") of Complainant's determination that Respondents have violated Sections 112 and 114 of the CAA,

42 U.S.C. §§ 7412 and 7414, and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 C.F.R. Part 61, Subpart M, 40 C.F.R. §§ 61.140 - 63.157 ("Asbestos NESHAP").

## **II. NATURE OF ACTION**

3. This is a civil administrative action instituted pursuant to Sections 113(a)(3) and 113(d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d), and the Consolidated Rules of Practice. Specifically, Complainant seeks civil penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for Respondent's violations of Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, and the Asbestos NESHAP.

## **III. STATUTORY AND REGULATORY FRAMEWORK**

4. Section 112 of the CAA, 42 U.S.C. § 7412, lists various hazardous air pollutants ("HAPs") and requires EPA to establish national emissions standards for these pollutants. Codified as Subpart M of 40 C.F.R. Part 61, EPA promulgated the Asbestos NESHAP, which sets forth the standard for the removal and disposal of asbestos incident to demolition or renovation activities, along with associated notification and recordkeeping requirements under Section 114 of the CAA, 42 U.S.C. § 7414.
5. The Asbestos NESHAP covers anyone who is an "owner or operator of a demolition or renovation activity," within the meaning of 40 C.F.R. § 61.141. Pursuant to 40 C.F.R. § 61.145(a), the notification and control requirements of 40

C.F.R. §§ 61.145(b) and (c), respectively, apply if the combined amount of regulated asbestos-containing material ("RACM") on a facility being demolished is more than 160 square feet on components other than pipes.

6. The definition of "RACM" includes, *inter alia*, Category II nonfriable asbestos-containing material ("ACM") that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations. See 40 C.F.R. § 61.141. Category I nonfriable ACM means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1% asbestos using specified test methods. *Id.* Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1% asbestos, determined using specified test methods, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. *Id.* Nonfriable asbestos-cement products such as transite roof shingles are an example of Category II material.
7. Pursuant to 40 C.F.R. § 61.145(c)(1), each owner or operator of a demolition activity shall remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal, unless one of the exceptions set forth



- 1 at 40 C.F.R. § 61.145(c)(1)(i) through (iv) apply.
- 2 8. Pursuant 40 C.F.R. § 61.145(b), each owner or operator of a  
3 demolition activity shall provide written notification to  
4 EPA (or EPA's delegatee if the notification program is  
5 delegated) of the intention to demolish at least ten (10)  
6 working days before demolition begins. The notification  
7 must include, *inter alia*, an estimate of the approximate  
8 amount of RACM, scheduled starting and completion dates of  
9 the demolition, a description of planned demolition or  
10 renovation work to be performed and method(s) employed,  
11 including the demolition techniques used and a description  
12 of affected facility components, and a description of  
13 asbestos removal and waste-handling emission control  
14 procedures. See 40 C.F.R. § 61.145(b)(4).
- 15 9. Pursuant to 40 C.F.R. § 61.150(d)(1), each owner or operator  
16 of a demolition activity shall maintain a waste shipment  
17 record, and provide a copy of the same to the disposal site  
18 owner or operator.
- 19 10. The waste shipment record that must be maintained and  
20 provided pursuant to 40 C.F.R. § 61.150(d)(1) must include,  
21 *inter alia*, an accurate description of the materials  
22 consigned.
- 23 11. Pursuant to Section 4 of the Federal Civil Penalties  
24 Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as  
25 amended by the Debt Collection Improvement Act of 1996, 31  
26 U.S.C. 3701 note, EPA is authorized to assess a civil  
27

penalty of up to \$32,500 per day for each violation of the  
CAA occurring after March 15, 2004. See 40 C.F.R. Part 19.

**IV. GENERAL ALLEGATIONS**

12. BCS is a demolition contractor located in Gilbert, Arizona,  
a corporation incorporated under the laws of the State of  
Arizona, and a "person" within the meaning of Section 302(e)  
of the CAA, 42 U.S.C. § 7602(e).

13. ADOT is a state agency and a "person" within the meaning of  
Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. At all times relevant to this Complaint, ADOT was the owner  
of a single-family house located on Parcel #11-0589, 20929  
E. Highway 60, Florence Junction, Pinal County, Arizona  
("House").

15. On or about March 24, 2006, ADOT awarded a demolition  
contract to BCS to demolish and remove the House.

16. In the Pre-Demolition Bulk Asbestos Survey performed on the  
House for ADOT by Allen Environmental Services ("Allen  
Environmental"), dated March 31, 2006, Allen Environmental  
found approximately 2,800 square feet of transite roof  
shingles with asbestos at or above 1.0% ("transite  
shingles").

17. At all times relevant to this Complaint, the transite  
shingles were Category II ACM.

18. At all times relevant to this Complaint, the transite  
shingles were asbestos-containing material that had a high  
probability of becoming crumbled, pulverized, or reduced to

1 powder by the forces expected to act on the material in the  
2 course of demolition.

3 19. At all times relevant to this Complaint, the transite  
4 shingles were "RACM."

5 20. At all times relevant to this Complaint, BCS was an "owner  
6 or operator of a demolition or renovation activity," within  
7 the meaning of 40 C.F.R. § 61.141, subject to the  
8 requirements of 40 C.F.R. §§ 61.145(b) and (c) and 61.150(d)  
9 of the Asbestos NESHAP.

10 21. At all times relevant to this Complaint, ADOT was an "owner  
11 or operator of a demolition or renovation activity," within  
12 the meaning of 40 C.F.R. § 61.141, subject to the  
13 requirements of 40 C.F.R. §§ 61.145(b) and (c) and 61.150(d)  
14 of the Asbestos NESHAP.

15 22. On or about April 14, 2006, ADOT awarded an abatement  
16 contract to Native Environmental, LLC to remove the transite  
17 shingles from the House.

18 23. On April 18 and 19, 2006, BCS demolished the House.

19 24. On April 18 and 19, 2006, BCS demolished the House prior to  
20 abatement or removal of the transite shingles from the  
21 House.

22 **V. SPECIFIC ALLEGATIONS**

23 **COUNT 1 - DEMOLITION PRIOR TO RACM ABATEMENT**

24 25. Complainant incorporates by reference the allegations  
25 contained in paragraphs 1 through 24.

26 26. At all times relevant to this Complaint, demolition of the  
27

House would break up, dislodge or similarly disturb the transite shingles or preclude access to the transite shingles for subsequent removal.

27. At all times relevant to this Complaint, the transite shingles did not otherwise qualify for any of the exceptions set forth at 40 C.F.R. § 61.145(c)(1)(i) through (iv).

28. Pursuant to 40 C.F.R. § 61.145(c)(1), BCS and ADOT were required to remove the transite shingles from the House before demolition.

29. BCS and ADOT failed to remove the transite shingles from the House before demolition.

30. The failure of BCS and ADOT to have the transite shingles removed from the House before demolition constitutes a violation of Section 112 of the CAA and 40 C.F.R. § 61.145(c)(1).

**COUNT 2 - FAILURE TO PROVIDE PROPER NOTIFICATION**

31. Complainant incorporates by reference the allegations contained in paragraphs 1 through 24.

32. In the NESHAP Notification for Renovation and Demolition Activities, dated April 4, 2006, for demolition of the House ("Original Notification"), BCS did not provide an estimate of the approximate amount of RACM to be removed from the House.

33. The failure of BCS and ADOT to provide notification at least ten (10) days before demolition regarding an estimate of the approximate amount of RACM to be removed from the House



constitutes a violation of Section 114 of the CAA and 40 C.F.R. § 61.145(b)(4)(vi).

34. In the Original Notification, BCS stated that the asbestos in the House was to be removed by others prior to demolition.

35. BCS's inaccurate representation in the Original Notification that the RACM in the House will be removed by others prior to demolition constitutes a violation of Section 114 of the CAA and 40 C.F.R. § 61.145(b)(4).

36. In the Original Notification, BCS stated that the demolition start date of the House was April 19, 2006.

37. The failure of BCS and ADOT to provide notification at least ten (10) days before demolition regarding the demolition start date of the House (April 18, 2006) constitutes a violation of Section 114 of the CAA and 40 C.F.R. § 61.145(b)(4)(ix).

**COUNT 3 - FAILURE TO MAINTAIN AND PROVIDE PROPER  
WASTE SHIPMENT RECORD**

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 24.

39. In the Asbestos NESHAP Waste Shipment Record ("Waste Shipment Record"), dated April 26, 2006, BCS represented that the RACM removed from the House was nonfriable.

40. The failure of BCS and ADOT to accurately represent in the Waste Shipment Record that the RACM removed from the House was friable constitutes a violation of Section 114 of the CAA and 40 C.F.R. §61.150(d).



**VI. PENALTY ASSESSMENT**

41. Based on application of the statutory penalty factors set forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and embodied in the Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 ("CAA General Penalty Policy") and Appendix III thereto, dated May 5, 1992, a CAA civil penalty of **Forty-Five Thousand Five Hundred Twelve Dollars (\$45,512)** is hereby proposed to be assessed against BCS and ADOT.

42. Payment shall be made by electronic fund transfer ("EFT") or cashier's or certified check. Payment by EFT shall be transferred to the following address:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

Payment made by cashier's or certified check shall be payable to the "Treasury, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency  
Region 9  
P.O. Box 371099M  
Pittsburgh, PA 15251

The check shall note the case title and docket number.

Concurrent with the delivery of payment, Respondent shall send a copy of the check to the following addresses:

Regional Hearing Clerk (ORC-1)  
U.S. Environmental Protection Agency  
Region IX

75 Hawthorne Street  
San Francisco, CA 94105

Robert Trotter  
Enforcement Office (AIR-5)  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

Brian P. Riedel  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

**VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

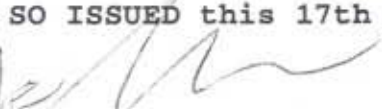
43. As provided by Section 113(d) of the CAA, Respondents have a right to request a hearing on the issues raised in this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice. Note that a request for a hearing must be incorporated in a written answer ("Answer") filed with the Regional Hearing Clerk within thirty (30) days of service of this Complaint. See 40 C.F.R. § 22.15.
44. In their Answer(s), Respondent(s) may contest, among other things, any material fact contained in the Complaint. The Answer(s) shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint as to which Respondent(s) have any knowledge. Where Respondent(s) have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The Answer(s) shall also state: (1) the circumstances or

arguments alleged to constitute the grounds of any defense;  
(2) the facts which Respondent(s) dispute; (3) the basis for  
opposing any proposed relief; and, (4) whether a hearing is  
requested. Any failure of Respondent(s) to admit, deny or  
explain any material fact contained in the Complaint  
constitutes an admission of that allegation.

**VIII. POSSIBILITY OF DEFAULT**

45. If Respondent(s) fail to file a timely Answer to the  
Complaint, Respondent(s) may be found to be in default  
pursuant to 40 C.F.R. § 22.17. For purposes of this action  
only, default by Respondent(s) constitutes an admission of  
all facts alleged in the Complaint and a waiver of the right  
of Respondent(s) to contest such factual allegations.

**SO ISSUED this 17th day of April 2007:**

  
Deborah Jordan  
Director, Air Division  
United States Environmental  
Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105



CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Complaint and Opportunity for Hearing was hand delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

and that a true and correct copy of the Complaint; the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the Clean Air Act Stationary Source Civil Penalty Policy (including Appendix III) were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Victor Mendez  
Director  
Arizona Department of Transportation  
206 S. 17<sup>th</sup> Avenue  
Phoenix, AZ 85007-3213  
Certified Mail No. 7000 0520 0025 3713 4911

W. Michael Sumner  
President  
BCS Enterprises, Inc.  
1275 W. Houston Ave.  
Gilbert, AZ 85223  
Certified Mail No. 7000 0520 0025 3713 4928

Dated: 4/17/07

By: Robert Trotter  
Air Enforcement Office  
USEPA Region 9.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 17 2007

CERTIFIED MAIL NO. 7000 0520 0025 3713 4928  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5  
REFER TO: Docket No. CAA-9-2007-0002

W. Michael Sumner  
President  
BCS Enterprises, Inc.  
1275 W. Houston Ave.  
Gilbert, AZ 85223

Dear Mr. Sumner:

Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The Complaint alleges that, during renovation/demolition of the structure(s) located at 20929 E. Highway 60, Florence Junction, Arizona, BCS Enterprises, Inc. ("BCS"), and Arizona Department of Transportation ("ADOT") failed to comply with notification and work practice requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated pursuant to Section 112 of the Act. These alleged violations are more specifically set forth in the Complaint.

As set forth in the Complaint, you are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure may constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: (1) the asbestos NESHAP regulations (40 C.F.R. Part 61, Subpart M); (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; (3) the Clean Air Act Stationary Source Civil Penalty Policy and Appendix III.

If you wish to discuss this Complaint, your attorney may contact Brian Riedel, Assistant Regional Counsel, at (415)972-3924, or you may contact Robert Trotter, Enforcement Officer, at (415)972-3989.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jordan', is written over the printed name.

Deborah Jordan  
Director, Air Division

Enclosures

cc: Pinal County Air Quality Department





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 17 2007

CERTIFIED MAIL NO. 7000 0520 0025 3713 4911  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5  
REFER TO: Docket No. CAA-9-2007-0002

Victor Mendez  
Director  
Arizona Department of Transportation  
206 S. 17<sup>th</sup> Avenue  
Phoenix, AZ 85007-3213

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Sincerely,



Deborah Jordan  
Director, Air Division

Enclosures

cc: Pinal County Air Quality Department