

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In Re:

Condado Palm, LLC

GB Project Management, LLC

Respondents

In a proceeding under Section 113(d) of the  
Clean Air Act , 42 U.S.C. § 7413(d)

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

Index No. CAA-02-2012-1224

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
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REGIONAL HEARING  
CLERK

**Preliminary Statement**

In this Complaint and Notice of Opportunity to Request a Hearing (“Complaint”), the United States Environmental Protection Agency (“EPA”) alleges that Condado Palm, LLC and GB Project Management, LLC (hereinafter “Respondents”) violated Section 112 and/or 114 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7412 and 7414, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (the “Asbestos NESHAP”). The Complaint proposes a civil penalty of \$22,421 for Respondent’s failure to provide notice to EPA before the commencement of demolition activities and is brought pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the “Consolidated Rules of Practice”). A copy of the Consolidated Rules of Practice is enclosed with the service copy of this Complaint.

## **Legal Background**

### **A. EPA's Authority to Enforce the CAA and its Implementing Regulations**

1. Section 113(d)(1) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Section 112 and/or 114 of the Act.

2. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Section 113(d)(2)(A) of the CAA provides that any administrative penalty assessed under Section 113(d)(1) of the CAA shall be assessed only after notice and an opportunity for a hearing, and that the EPA Administrator shall promulgate rules for such hearings. The Consolidated Rules of Practice contain those rules and apply to this Complaint.

4. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Caribbean Environmental Protection Division, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

**B. Sections 112 and 114 of the CAA**

5. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (“HAPs”), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for each category or subcategory of major and area sources of HAP.

6. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator to periodically review the list and, where appropriate, revise it.

7. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

8. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. The NESHAPs promulgated under the CAA, as it existed prior to the 1990 CAA amendments, are set forth in 40 C.F.R. Part 61.

9. Section 112(h) of the Act authorizes EPA to promulgate design, equipment, work practice, or operational standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP. Pursuant to Section 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under Section 112(h) of the Act, are treated as emission standards.

10. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the

Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

11. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

**C. The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M**

12. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

13. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

14. In general, the Asbestos NESHAP, which was promulgated by EPA pursuant to Sections 112 and 114 of the Act, contains work practice requirements that apply to the owners and operators of renovation or demolition activities in which the amount of “regulated asbestos-containing material” (RACM) that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity. However, as set

forth in 40 C.F.R. § 61.145(a) of the Asbestos NESHAP, certain notice requirements apply even when the amount of RACM is less than those thresholds.

15. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

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

17. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

18. The term "facility" is defined by 40 C.F.R. § 61.141 to include, among other things, "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units)."

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

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

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

22. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.

23. 40 C.F.R. § 61.141 defines "working day" as Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

#### **Findings of Fact**

24. Respondent Condado Palm, LLC is a corporation duly organized under the laws of the Commonwealth of Puerto Rico.

25. Respondent GB Project Management, LLC is a corporation duly organized under the laws of the Commonwealth of Puerto Rico.

26. Respondents Condado Palm, LLC is the owner of the Condado Palm Inn and Suites facility (former Diamond Palace Hotel) located at 55 Condado Avenue, San Juan, Puerto Rico (the "Facility"), where a demolition activity took place.

27. Respondents were the owners and/or operators of the demolition activities that took place at the Facility.

28. The Facility includes, among other structures, what is referred to as the North and South Towers. The Facility is comprised of hotel and commercial units.

29. On July 27, and on July 30, 2012, EPA conducted inspections at the Facility in order to determine Respondents' compliance with the Act and its implementing regulations (the "Inspections").

30. During the Inspections, EPA observed:

- a. demolition and renovation activities undergoing in several areas of the Facility as part of the construction activities that were taking place; and
- b. suspected asbestos containing material (ACM) scattered at: the entrance of the South Tower; in the roll off container next to the entrance of the South Tower; on different floors in the North and South Towers (i.e. dispersed fragments of damaged/disturbed ceiling stucco), and in adjacent areas.

31. On or about August 9, 2012, EPA conducted a review of the EPA files (Review) in order to verify if Respondents submitted to EPA a *U.S. EPA Notification of Demolition and Renovation* form for their demolition activities at the Facility.

32. The Review revealed that Respondents failed to submit the required demolition notice to EPA indicating their intent to demolish the Facility structures mentioned above.

33. On August 1, 2012, EPA issued a Section 114 Information Request Letter (S114 letter) index number CAA-02-2012-1473, requesting information relevant to assess Respondents' compliance with the Act and its implementing regulations.

34. On September 7, 2012, Respondents submitted their responses to the S114 letter.

35. EPA reviewed Respondents' answer to the S114 Letter and noticed that Respondents did not provide a copy of a *U.S. EPA Notification of Demolition and Renovation* form for their demolition activities at the Facility. As of the date of issuance of this enforcement action, Respondents have failed to submit the required demolition notice to EPA.

### **Conclusions of Law**

36. From the Findings of Fact as set forth above, Respondents are a "person" within the meaning of Section 302(e) of the Act and is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

37. Respondents were, at the time period relevant to this complaint, the owners of a renovation and demolition activity within the meaning of 40 C.F.R. § 61.141.

38. From the Findings of Fact as set forth above, Respondents are in violation of 40 C.F.R. § 61.145(b) for failing to provide EPA with a written notice of their intention to demolish or renovate the Facility at least ten (10) working days before demolition activities began.

### **COUNT 1**

39. Paragraphs 24-35 are re-alleged and incorporated herein by reference. EPA determined that Respondents violated 40 C.F.R. § 61.145(b), a provision of a regulation promulgated pursuant to Section 112 and 114 of the Act, by failing to provide their notification for the Facility (paragraphs 31-35 above) at least 10 working days in advance before demolition or renovation activity began.

### **Proposed Civil Penalty**

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



per day for each violation that occurred after March 15, 2004 to January 12, 2009 and \$37,500 per day for each violation occurring after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, adjusted an additional 17.23% for violations that occurred after March 15, 2004 for a total of 28.95% and adjusted an additional amount for a total of 41.63% for all violations occurring after January 12, 2009. In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty for the violations alleged in this Complaint, of twenty-two thousand four hundred twenty-one dollars (**\$22,421**).

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

To ensure that the penalty amount reflects the gravity of the violation, the Asbestos Penalty Policy directs EPA to examine the actual or possible harm resulting from the violation,

the sensitivity of the environment, the length of time of violation, and the importance to the regulatory scheme.

EPA's CAA Penalty Policy provides that a penalty of \$15,000 be proposed for failure to notify. Therefore, EPA proposes a penalty of \$15,000, for Respondent's failure to notify EPA of the demolition activities at the Facility.

In addition, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator determined by the violator's net worth. A review of the Corporate Annual Reports up to year 2011 filed by Respondents with the Puerto Rico State Department, Corporate Section, did not reveal information that could assist in determining Respondents' net worth in order to determine the size of each corporation. EPA also performed a review of the Dun and Bradstreet records and did not find any corporate records for Respondents. In absence of net worth information, EPA decided to use the lowest value net worth range in the CAA Penalty Policy for size of violator. The CAA Penalty Policy indicates that the penalty amount corresponding for a net worth of less than \$100,000, is \$2,000. This results in a size of violator adjustment of **\$2,000** which increases the penalty to **\$17,000**. The size of violator penalty may be adjusted should information be discovered that indicates the Respondents' net worth is more than estimated.

The penalty proposed above must be adjusted for inflation. Pursuant to the September 21, 2004 memorandum from Thomas V. Skinner, EPA Acting Assistant Administrator, to the Regional Administrators entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)" which modified all existing civil penalty policies to conform to a final rule that increased statutory penalties, for penalty policies which were issued

prior to January 31, 1997, gravity components are to be calculated according to the penalty policy, then, for violations that occurred after March 15, 2004, the gravity component should be multiplied by 1.2895, reflecting both the 10% increase for the first penalty inflation adjustment, effective on January 30, 1997, and the 17.23% increase for the second penalty inflation adjustment, effective on March 15, 2004. As the violation alleged in this Complaint was discovered during the Inspections and EPA Review, EPA proposes a \$4,921 adjustment for inflation (\$17,000 multiplied by 1.2895) resulting in the new total gravity component penalty of **\$21,921**.

The CAA Penalty Policy also provides that in addition to assessing a gravity component, an economic benefit component should be assessed. EPA determined that, in this case, the economic benefit resulting from noncompliance was estimated at \$500.00 for their failure to provide EPA with a notice of intent to demolish a structure at least ten (10) working days before the demolition activities began.

Therefore the total penalty proposed is twenty- two thousand four hundred twenty-one dollars (**\$22,421.00**).

#### **Notice of Opportunity to Request a Hearing**

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

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is

inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

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

Héctor L. Vélez Cruz, Esq.  
Team Leader  
Office of Regional Counsel – Caribbean Team  
U.S. Environmental Protection Agency - Region 2  
City View Plaza II - Suite 7000  
# 48 Rd. 165 Km. 1.2  
Guaynabo, PR 00968-8069  
(787) 977-5850  
velez.hector@epa.gov

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state:

(1) the circumstances or arguments which you allege to constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its

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

#### **Settlement Conference**

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Héctor L. Vélez Cruz, at (787) 977-5850 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

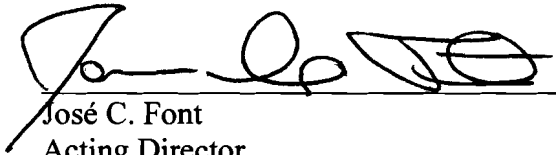
#### **Payment of Penalty in lieu of Answer, Hearing and/or Settlement**

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

U. S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

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

Dated: Sept 28, 2012



José C. Font  
Acting Director  
Caribbean Environmental Protection  
Division

To: Eduardo Ferrer-Ramírez de Arellano  
President  
Condado Palm, LLC  
P. O. Box 9020485  
San Juan, Puerto Rico 00902-0485

José Arreseigor  
Vice President  
GB Project Management, LLC  
1357 Ave. Ashford  
PMB-464  
San Juan, Puerto Rico 00907.

cc: Luis Sierra, Director  
Air Quality Area  
Puerto Rico Environmental Quality Board

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In Re:

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Index No. CAA-02-2012-1224

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing", a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22), and a copy of "EPA's 1998 Supplemental Environmental Projects Policy" to the following persons at the address listed below:

**Eduardo Ferrer-Ramírez de Arellano**

President

Condado Palm, LLC

P. O. Box 9020485

San Juan, Puerto Rico 00902-0485

**José Arreseigor**

Vice President

GB Project Management, LLC

1357 Ave. Ashford

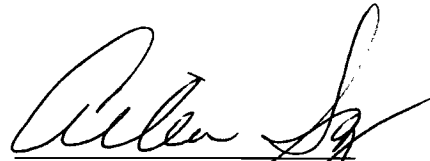
PMB-464

San Juan, Puerto Rico 00907.

I sent by overnight mail the original and a copy of the foregoing Complaint for filing, to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date:

October 1, 2012

  
San Juan, Puerto Rico