



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 24 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Randall Mc Donald, President
A. Mac Contracting, Inc.
105 Lowell Road
Glen Rock, New Jersey 07452

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 26 A 10: 07
GENERAL HEARING
CLERK

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: A. Mac Contracting, Inc. & Bernard Gross CAA 02-2011-1207

Dear Mr. Mc Donald:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to A. Mac Contracting, Inc. & Bernard Gross, pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos. The total amount of the penalty proposed in the Complaint is \$56,652.

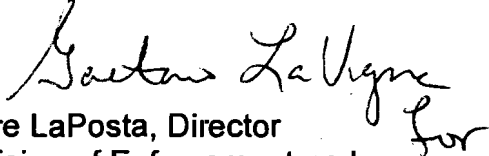
Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer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

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

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

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

Sincerely,



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

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

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

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

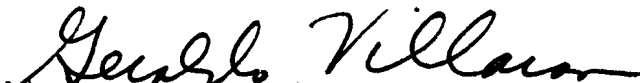
Counsel on behalf of EPA:

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON November 24, 2010, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7002-2030-0006-5359-0455 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Mr. Randall McDonald, President
A. Mac Contracting, Inc.
105 Lowell Road
Glen Rock, New Jersey 07452**


Geraldo Villaran



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

NOV 24 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bernard Gross
17 Cliff Ct.
Highland Park, New Jersey 08904

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: A. Mac Contracting, Inc. & Bernard Gross CAA 02-2011-1207

Dear Mr. Gross:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to A. Mac Contracting, Inc. & Bernard Gross, pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos. The total amount of the penalty proposed in the Complaint is \$56,652.

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

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 26 A 10:01
REGIONAL HEARING
CLERK

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

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

Sincerely,



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

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

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

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

Counsel on behalf of EPA:

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON November 24, 2010, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7002-2030-0006-5359-0462 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Mr. Bernard Gross
17 Cliff Ct.
Highland Park, New Jersey 08904**


Geraldo Villaran

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In re:

A. Mac Contracting, Inc. & Bernard Gross,
Respondents

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

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

CAA-02-2011-1207

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 26 A 10:07
REGIONAL HEARING
CLERK

Preliminary Statement

The U.S. Environmental Protection Agency ("EPA") issues this Complaint and Notice of Opportunity to Request a Hearing (the "Complaint") pursuant to Clean Air Act ("CAA") Section 113, 42 U.S.C. § 7413, and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Complaint is signed by the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to issue administrative complaints on behalf of EPA for CAA violations occurring in the States of New York and New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

EPA proposes to assess penalties against respondents A. Mac Contracting, Inc. and Bernard Gross for violations of the CAA and its implementing regulations at a

building located at 233 Cleveland Avenue in Highland Park, New Jersey (the "Facility"). EPA alleges that the respondents failed to comply with certain regulations governing the removal and handling of asbestos. Those regulations are set forth in 40 C.F.R. Part 61, Subpart M, and were promulgated by EPA pursuant to CAA Section 112, 42 U.S.C. § 7412.

Statutory and Regulatory Background

1. Section 112 of the CAA authorizes the EPA Administrator to issue emission standards and/or work practice standards for hazardous air pollutants. Such standards are known as national emission standards for hazardous air pollutants, or NESHAPs. Persons subject to a NESHAP are required to comply with it.

2. The Administrator has issued a NESHAP for asbestos (the "Asbestos NESHAP"). The Asbestos NESHAP imposes certain work practice standards on 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. Those work practice standards are set forth at 40 C.F.R. §§ 61.145 and 61.150.

3. 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."

4. 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."

5. 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."

6. The term "facility" is defined by 40 C.F.R. § 61.141 to include any commercial, public, industrial, or residential structure, installation or building.

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

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

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

10. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place, must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

11. 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.

12. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

13. 40 C.F.R. § 61.145(c)(3) provides that each owner or operator of a demolition or renovation activity must adequately wet the RACM during the stripping operation, when RACM is stripped from a facility component while it remains in place in the facility.

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

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

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

Findings of Fact and Conclusions of Law

17. Paragraphs 1-16 are realleged and incorporated herein by reference.
18. The Facility is a "facility" within the meaning of 40 C.F.R. § 61.141.
19. Each of the Respondents is a "person" within the meaning of CAA Section, 42 U.S.C. § 7602(e), and is therefore subject to the assessment of administrative penalties pursuant to CAA Section 113(d).
20. Respondent Bernard Gross was, in November and December 2009 and January and February 2010, the owner of the Facility. On or about November 5, 2009, Respondent A. Mac Contracting, Inc. ("A. Mac"), located at 105 Lowell Road in Glen Rock, New Jersey, notified EPA that it had been hired by Mr. Gross to remove and/or abate asbestos at the Facility, and that the abatement work would occur between November 18, 2009, and December 7, 2009, with an amendment extending work until December 14, 2009. At the time of the notification, the Facility contained RACM, as defined by 40 C.F.R. § 61.141 (2009). Therefore, Respondents are owners and/or operators of a renovation activity within the meaning of 40 C.F.R. § 61.141.
21. On or about November 25, 2009, the New Jersey Department of Health and Senior Services ("NJDHSS") inspected the Facility. A follow-up inspection was performed by NJDHSS on January 26 and January 27, 2010.
22. During the November 25, 2009 inspection referenced above, the inspector was told by a Respondent A. Mac supervisor that the boiler room had been completely abated. While checking some sealed bags, which were found to contain adequately wetted suspect RACM, the inspector noted identical bits of material spread around on the floor near the dumpster. Samples of the dry, friable, suspected RACM material

were collected and photographs of the area containing the material were taken. The inspector verbally notified an on-site Respondent A. Mac supervisor of finding the dry, friable suspected material and of the regulatory requirements. The Respondent A. Mac President, Randall McDonald, was also contacted by phone and told of the inspector's findings and of the regulatory requirements prior to the inspector leaving the Facility.

23. During the January 26 and January 27, 2010 inspection, the inspector observed many additional areas in which dry, friable suspected RACM were found by contractors during remodeling work, which occurred after the Respondent A. Mac asbestos abatement was completed. Some of the suspected RACM was scattered on the floor in various locations. Twelve samples and over 200 photographs of the scattered suspected RACM were obtained.

24. After the January inspection, all samples were analyzed at a certified laboratory and the results indicated that all of the material sampled contained greater than 1% asbestos.

COUNT 1

25. Based on the Findings of Fact and Conclusions of Law, EPA has determined that Respondents violated 40 C.F.R. § 61.145(c)(6)(i), a provision of a regulation promulgated pursuant to CAA Section 112, on November 25, 2009, by failing to wet all RACM that has been removed and ensure that it remains wet until collected or contained for disposal.

COUNT 2

26. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(6)(i), a provision of a regulation

promulgated pursuant to Section 112 of the Act, on January 26 and 27, 2010, by failing to wet all RACM that has been removed and ensure that it remains wet until collected or contained for disposal.

Count 3

27. Based on the Findings of Fact and Conclusions of Law, in particular, the results of the January 26 and 27, 2010 inspection, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(1), a provision of a regulation promulgated pursuant to Section 112 of the Act, by failing to remove all RACM from a facility before any activity began that might break-up, dislodge, or disturb the material.

COUNT 4

28. Based on the Findings of Fact and Conclusions of law, EPA determined that Respondents violated 40 C.F.R. § 61.150(a), a provision of a regulation promulgated pursuant to Section 112 of the Act, on January 27, 2010, by failing to seal all asbestos containing waste material in leak tight containers while wet.

Proposed Civil Penalty

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

occurred from 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 on or 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 fifty-six thousand six-hundred and fifty-two dollars (\$56,652).

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

The Asbestos Penalty Policy directs EPA to propose a \$5,000 penalty for work practice violations involving quantities of asbestos defined as "small." Therefore, EPA proposes a penalty of \$5,000 each for the violations alleged in Counts 1, 3 and 4. The Penalty Policy directs EPA to propose a \$15,000 penalty for each day in which there is a subsequent violation of a work practice requirement where the Facility is on notice of the regulatory requirements. Since the Facility was notified of the initial November 25, 2009 violation on November 25, 2009, EPA proposes a penalty of \$15,000 for the subsequent violation of 40 C.F.R. § 61.145(c)(6)(i) alleged in Count 2.

In addition, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator, determined by the violator's net worth. Based on the estimated net worth of other asbestos abatement contractors, EPA proposes a penalty of \$10,000 for the size of violator component. The size of violator penalty may be adjusted should information be discovered that indicates the Respondents' net worth is less or more than estimated.

The penalties proposed above comprise what both penalty policies term the "gravity component." Therefore, EPA proposes a non-aggravated and unadjusted gravity component for these violations of \$40,000.

The DCIA and Part 19 direct EPA to adjust the gravity component 41.63% for violations occurring after January 12, 2009. The DCIA and Part 19 inflation adjustment for these violations is \$16,652, resulting in an adjusted proposed penalty of \$56,652.

The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy provides EPA the discretion for not

seeking economic benefit where the benefit derived is less than \$5,000. EPA determined that, in this case, the economic benefit resulting from noncompliance is *de minimis*, therefore the total penalty proposed remains at \$56,652.

Notice of Opportunity to Request a Hearing

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

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

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

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

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

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

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

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a

proposed Final Order. You may contact EPA counsel, John Dolinar, at (212) 637-3204 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

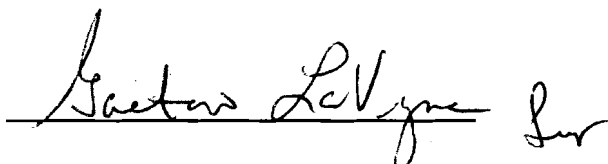
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

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

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: 11/24/10



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**TO: Mr. Randall McDonald, President
A. MAC Contracting, Inc.
105 Lowell Road
Glen Rock, NJ 07452**

**Mr. Bernard Gross
17 Cliff Ct.
Highland Park, NJ 08904**