



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

JUL 30 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Theodore Fiore, President
T. Fiore Demolition
411 Wilson Ave
Newark, NJ 07105

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Brick Township and T. Fiore Recycling, Inc.
Docket No. CAA-02-2014-1221

Dear Mr. Fiori:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Brick Township and T. Fiore Demolition, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401 et seq. (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP), promulgated pursuant to Section 112 and 114 of the Act. The total amount of the penalty proposed is \$102,605.

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 of 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

REGIONAL HEARING
CLERK

2014 JUL 31 AM 10:45

U.S. Environmental
Protection Agency-Reg 2

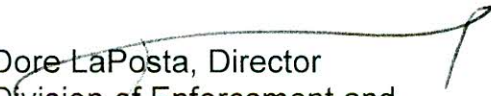
enclosed for reference.

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 begin 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 FOR 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

Clean Air Act Penalty Policy, Appendix III, Asbestos Demolition and Renovation Civil Penalty Policy (Rev. May 5, 1990)

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

Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

Juan Carlos Bellu
Deputy Department Head
Township of Brick
401 Charles Bridge Road
Brick, New Jersey 08723

Counsel on behalf of EPA:

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



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290 BROADWAY
NEW YORK, NEW YORK 10007-1866

JUL 30 2014

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Juan Carlos Bellu
Deputy Department Head
Township of Brick
401 Charles Bridge Road
Brick, New Jersey 08723

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Brick Township and T. Fiore Recycling, Inc.
Docket No. CAA-02-2014-1221

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REGIONAL HEARING
CLERK

2014 JUL 31 AM 10: 45

U.S. Environmental
Protection Agency-Reg 2


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Dore LaPosta, Director
Division of Enforcement and
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Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

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Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
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Theodore Fiore, President
T. Fiore Demolition
411 Wilson Ave
Newark, NJ 07105

Counsel on behalf of EPA:

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re:

Township of Brick, New Jersey

&

T. Fiore Recycling, Inc.

Respondents

In a proceeding under
Section 113(d) of the Clean Air Act

COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

CAA-02-2014-1221

REGIONAL HEARING
CLERK

2014 JUL 31 AM 10:45

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

In this Complaint and Notice of Opportunity to Request a Hearing (“Complaint”), the United States Environmental Protection Agency (“EPA”) alleges that the Township of Brick, New Jersey (“Brick Township”) and T. Fiore Recycling, Inc. (“T. Fiore”) (“Respondents”) violated 40 C.F.R. § 61.145(c) by failing to ensure that at least one person who is certified or trained in accordance with 40 C.F.R. § 61.145(c)(8) was onsite to supervise the demolition operations of nine (9) separate houses that were all located within the Township of Brick, New Jersey. These include 518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, 112 Jeanett Blvd, 7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N. Additionally, Respondents violated 40 C.F.R. § 61.150(b)(1) by failing to dispose of the debris from at least four (4) of these houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, and 112 Jeanett Blvd) in a landfill certified to accept and handle asbestos-containing waste material (ACWM).

Finally, Respondents violated 40 C.F.R. § 61.145(c)(6) by failing to ensure that debris was kept adequately wet at the 473 Rt. 35 N site during the demolition process which resulted in visible emissions. The Complaint proposes a civil penalty of \$102,605 for the Respondents' violations 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 40 C.F.R. Part 61, Subpart M 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 Division of Enforcement and Compliance Assistance, 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 State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

B. **National Emissions Standards for Hazardous Air Pollutants – 40 C.F.R. Part 61, Subpart M**

5. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (“HAPs”), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

6. 40 C.F.R. § 61.141 defines “asbestos-containing waste material” (ACWM) as friable asbestos waste material, filters from control devices, bags or other similar packaging contaminated with commercial asbestos, regulated ACWM and materials contaminated with asbestos including disposable equipment and clothing.

7. 40 C.F.R. § 61.141 defines “regulated asbestos-containing material” (RACM) as (a) Friable asbestos material, (b) Category I nonfriable asbestos-containing material (ACM) that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable 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 regulated by this subpart.

8. 40 C.F.R. § 61.141 defines “demolition” to include an operation in which load supporting structural members are wrecked or taken out.

9. 40 C.F.R. § 61.141 defines “facility” as 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); any ship; and any active or inactive waste disposal site.

10. 40 C.F.R. § 61.141 defines “installation” as any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

11. 40 C.F.R. § 61.141 defines an “owner or operator of a demolition or renovation activity” as any person who owns, leases, operates, controls or supervises the facility being renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operations, or both.

12. 40 C.F.R. § 61.141 defines “working days” as Monday through Friday.

13. 40 C.F.R. § 61.145(a)(1)(i) and (ii) and 40 C.F.R. § 61.145(a)(4)(i) and (ii) provide that the requirements of 40 C.F.R. § 61.145(b) and (c) apply to the owners and operators of renovation or demolition activities in which the amount of 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) off facility components where the length or area could not be measured previously.

14. 40 C.F.R § 61.145(c)(8) requires that no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one onsite representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.

15. 40 C.F.R. § 61.145(c)(6) requires that all RACM, including material that has been removed or stripped to be adequately wet until collected and contained or treated in preparation for disposal in accordance with § 61.150.

16. 40 C.F.R. § 61.150(b)(1) requires that all asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of § 61.154.

FINDINGS OF FACT

17. The factual findings set forth below are based on an investigation conducted by EPA Region 2 personnel pursuant to Section 114 of the CAA.

18. Brick Township is the owner of affected demolition or renovation activities, as defined by 40 C.F.R. §§ 61.141 and 61.145(b).

19. T. Fiore is the operator of affected demolition or renovation activities, as defined by 40 C.F.R. §§ 61.141 and 61.145(b).

20. The affected demolition and renovation activities occurred at any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control). (See definition of “installation” at 40 C.F.R. § 61.141.)

21. On July 30, 2013, an EPA Inspector inspected the demolition site at 112 Jeanett Drive in Brick Township.

22. At the time of the July 30, 2013 inspection, it was discovered that demolition debris from the demolition of four houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd and 112 Jeanett Blvd) that were declared “unsafe to enter” for purposes of inspection and abatement was not sent to a landfill certified to accept asbestos-containing waste material.

23. At the time of the July 30, 2013 inspection, for the demolition of at least four (4) houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd and 112 Jeanett Blvd), it was discovered there was no person trained onsite to supervise the demolition and debris removal operation, as required by 40 C.F.R. § 61.145(c)(8).

24. On September 4, 2013, an EPA Inspector inspected the demolition site at 473 Rt 35 N in Brick Township.

25. At the time of the September 4, 2013 inspection, for the demolition of at least five (5) houses (7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N), it was discovered there was no person trained onsite to supervise the demolition and debris removal operation, as required by 40 C.F.R. § 61.145(c)(8).

26. At the time of the September 4, 2013 inspection, Mr. Benny Fussella, a T. Fiore supervisor at the site, confirmed that no T. Fiore personnel at the site were asbestos supervisor-certified as required by 40 C.F.R. § 61.145(c)(8).

27. At the time of the September 4, 2013 inspection, Mr. Benny Fussella, a T. Fiore supervisor at the site, requested to know where he and his staff could obtain such certification.

28. The EPA Inspector observed visible emissions on two (2) separate occasions during the inspection of the demolition site located at 473 Rt. 35 N. The first observation was at approximately 10:00 am when the excavator was shifting the demolition debris without any water being used to keep the debris wet. The EPA inspector noted that the hose was not connected to the water hydrant at the time. The second observation was at approximately 12:00

pm when the excavator was transferring the demolition debris into a dumpster. Although water was being used, T. Fiore failed to adequately wet the debris prior to handling and transferring the debris which resulted in visible emissions.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

29. Respondents are “persons” within the meaning of Section 302(e) of the Act.

30. Respondents are subject to 40 C.F.R Part, 61 Subpart M, the Asbestos NESHAP regulation.

31. The affected demolition and renovation activities occurred at an “installation” as defined at 40 C.F.R. § 61.141.

32. Because 40 C.F.R. § 61.141 defines “facility” to include an “installation” the affected demolition and renovation activities occurred at a “facility.”

Count 1:

Failure to dispose of asbestos containing waste material in a certified/licensed asbestos landfill

33. Paragraphs 17 to 28 above are incorporated herein by reference.

34. Respondents’ failure to dispose of debris from at least four houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, and 112 Jeanett Blvd) that were “unsafe to enter” for purposes of inspection and abatement in a landfill that is certified/licensed to accept ACWM is a violation of Section 112 of the Act and 40 C.F.R. § 61.150(b)(1) of the Asbestos NESHAP.

Count 2:

Failure to Have a Asbestos-certified Supervisor Onsite

35. Paragraphs 17 to 28 above are incorporated herein by reference.

36. Respondents' failure to ensure that at least one person certified or trained in accordance with 40 C.F.R. § 61.145(c)(8) is onsite to supervise the demolition operation at the nine demolition sites (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, 112 Jeanett Blvd, 7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N) is a violation of Section 112 of the Act and 40 C.F.R. § 61.145(c)(8) of the Asbestos NESHAP.

Count 3:

Failure to Follow Procedures for Asbestos Emissions Control

37. Paragraphs 17 to 28 above are incorporated herein by reference.

38. Respondents' failure to ensure that debris was kept adequately wet at the 473 Rt. 35 N demolition site resulting in visible emissions is a violation a violation of Section 112 of the Act and 40 C.F.R. § 61.145(c)(6) of the Asbestos NESHAP.

PROPOSED CIVIL PENALTY

Based on the statutory penalty assessment criteria set forth in CAA Section 113(e), and on the guidance provided by EPA's Clean Air Act Stationary Source Civil Penalty Policy (the "CAA Penalty Policy"), the Complainant proposes a civil penalty of \$ 102,605 for Respondents' violations.

A. Statutory Penalty Assessment Criteria

Section 113(d) of the CAA provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act, including but not limited to violations of any requirements or prohibitions of rules promulgated under the Act. However, the statutory maximum of \$25,000 per day has been adjusted upward to account for inflation, pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"). Thus, the statutory maximum is \$27,500 for violations that occurred after January 30, 1997 through March 15, 2004, \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009

and \$37,500 for violations that occurred after January 12, 2009. *See* 40 C.F.R. Part 19, Table 1. Part 19 indicates that the maximum civil penalty has been upwardly adjusted 10% for violations that occurred after January 30, 1997 through March 15, 2004, further adjusted 17.23% for violations that occurred after March 15, 2004 through January 12, 2009, for a total of 28.95%, and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, Section 113(e) of the CAA 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.

B. CAA Penalty Policy

EPA's CAA Penalty Policy reflects EPA's application of the factors set forth in Section 113(e) of the Act and provides guidance on how EPA is to calculate penalties for CAA. The policy indicates that EPA should propose a penalty consisting of an economic benefit component and a gravity component. The economic benefit component is the economic benefit the violator gained as a result of the violation. The gravity component, in turn, consists of elements based on the actual or potential harm caused by the violation, the significance of the regulation in question to the regulatory scheme, the sensitivity of the environment and the size of the violator. Finally, consistent with the DCIA and 40 C.F.R. Part 19, when proposing a penalty for a specific violation, EPA adjusts the dollar figures listed in the CAA Penalty Policy, upward for inflation.

C. EPA's Proposed Penalty in this Case

The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$102,605. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's CAA Penalty Policy. Enclosed with this complaint is a copy of the policy. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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. The hearing is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.*, and the procedures set forth in EPA's Consolidated Rules of Practice.

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 F. 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 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 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.

NOTICE OF OPPORTUNITY FOR A SETTLEMENT CONFERENCE

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibility of settlement by engaging in informal settlement communications with EPA counsel. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Those times are set by the Consolidated Rules of Practice.

You may contact EPA counsel at the address listed above to discuss settlement, the alleged violations and/or the amount of the proposed penalty, whether or not you intend to file an Answer and/or request a hearing. If you are represented by legal counsel, your counsel should contact EPA. If a settlement is reached, it will be in the form of a written Consent Agreement and accompanying Final Order.

**PAYMENT OF PENALTY IN LIEU OF
ANSWER, HEARING AND/OR SETTLEMENT**

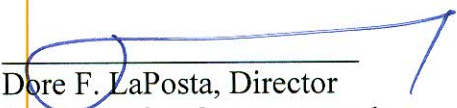
Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked 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
P.O. 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: JULY 30, 2014


Dore F. LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: Theodore Fiore, President
T. Fiore Demolition
411 Wilson Ave
Newark, NJ 07105

Juan Carlos Bellu
Deputy Department Head
Township of Brick
401 Chambers Bridge Road
Brick, NJ 08723

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **July 31, 2014**, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT REQUESTED**, **ARTICLE NUMBERS 7005-3110-0000-5947-3139** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Juan Carlos Bellu
Deputy Department Head
Township of Brick
401 Charles Bridge Road
Brick, New Jersey 08723**


Geraldo Villaran

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Newark, New Jersey 07105**



Geraldo Villaran