

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of: :  
: :  
: SUPPLEMENTATION OF RECORD  
Ebersole Associates, Inc., :  
: :  
and : MOTION FOR DEFAULT ORDER  
: :  
L & N Zimmerman Excavating, Inc., :  
: Docket No. CAA-03-2007-0329  
: :  
Respondents. :

2008  
SEP 30 11:29  
2008

SUPPLEMENTATION OF RECORD

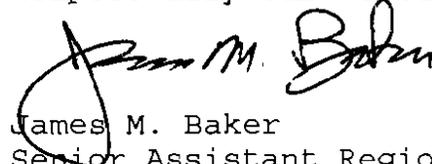
In response to the Order to Supplement Record issued by the Regional Judicial Officer/Presiding Officer on September 30, 2008, Complainant hereby respectfully submits the requested supplementation of record in the above-captioned matter and hereby respectfully moves that an order be issued in the above-captioned matter finding Respondent, Ebersole Associates, Inc. (Ebersole), in default and assessing a civil penalty of \$16,312.17. In fulfillment of the above-referenced order of September 30, 2008, and in support of the motion for default order, Complainant respectfully submits the following:

1. In arriving at the civil penalty amount, Complainant did consider the statutory factors set forth in Section 113(e) of the Clean Air Act (CAA), 42 U.S.C. § 7413(e), through application of the applicable CAA civil penalty policy. This application of the applicable penalty policy, as well as the presentation of the prima facie case in support of the civil penalty assessment, is evidenced by the Administrative Complaint and Notice of Opportunity for Hearing (Complaint) filed on September 28, 2007 and issued to Ebersole and L & N Zimmerman Excavating, Inc. (L&N), Respondents, under Section 113(a)(3)(A) and (d) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. [See Attachment 1]

2. Respondent Ebersole has never filed an answer to the Complaint. Respondent Ebersole was served with the Complaint by certified mail. The domestic return receipt (green card) was returned, signed by E. Houser on 10/1/07. When no answer was filed within 30 days, counsel for Complainant telephoned Randall I. Ebersole, President, to whom the Complaint was addressed. A receptionist who answered indicated he was not available and offered access to Mr. Ebersole's voice mail. Counsel for Complainant then left a voice mail message for Mr. Ebersole explaining the reason for the call and requesting a return phone call. No return phone call was ever received. No answer was ever filed. [See Attachment 2]

3. Complainant notes that Respondent Ebersole was served with Complainant's Motion for Default Order (which was filed on June 25, 2008) by certified mail. The domestic return receipt (green card) was returned, signed by Melissa Chilcoate on 6/28/08. Respondent Ebersole has never filed a response to Complainant's Motion. [See Attachment 3]

Respectfully submitted,



James M. Baker  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA - Region 3  
Counsel for Complainant

Dated: October 29, 2008  
Philadelphia, PA

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Attachment 1

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2007 SEP 28 AM 10:37  
REGIONAL OFFICE OF  
EPA REGION III, P.A.  
PHILADELPHIA, PA.

RECEIVED

In the Matter of: :  
: :  
: :  
Ebersole Associates, Inc., :  
: ADMINISTRATIVE COMPLAINT  
and : AND NOTICE OF OPPORTUNITY  
: FOR HEARING  
L & N Zimmerman Excavating, Inc., :  
: Docket No. CAA-03-2007-0329  
: :  
Respondents. :

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued under Section 113(a)(3)(A) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. A copy of the Consolidated Rules is enclosed with this Complaint. This Complaint is issued by the Director of the Waste and Chemicals Management Division of Region III of the United States Environmental Protection Agency (Complainant), pursuant to delegated authority. The Complaint alleges that Respondents violated requirements of a rule establishing a national emission standard for asbestos promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, as set forth below.

II. APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS

1. This Complaint arises under the CAA, 42 U.S.C. §§ 7401-7671q. On April 5, 1984, under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of the United States Environmental Protection Agency (EPA) promulgated a rule establishing a national emission standard for asbestos. That rule is codified at 40 C.F.R. Part 61, Subpart M (§§ 61.140-61.157).

2. 40 C.F.R. Part 61, Subpart M, § 61.145(a), provides, in pertinent part, that "the owner or operator of a demolition ...activity" is required to, "prior to the commencement of the

demolition..., thoroughly inspect the affected facility...for the presence of asbestos, including Category I and Category II nonfriable ACM".

3. 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1), provides, in pertinent part, that "[e]ach owner or operator of a demolition...activity...shall provide the Administrator with written notice of intention to demolish..".

4. The following terms, among others, are defined in 40 C.F.R. Part 61, Subpart M, § 61.141: "owner or operator of a demolition or renovation activity", "demolition", "facility", "asbestos", "Category I nonfriable asbestos-containing material (ACM)", "Category II nonfriable asbestos-containing material (ACM)", and "regulated asbestos-containing material (RACM)".

5. The introductory paragraph of 40 C.F.R. Part 61, Subpart M, § 61.145(a) applies to each "owner or operator of a demolition or renovation activity". 40 C.F.R. Part 61, Subpart M, § 61.145(a)(1) or (2) apply to each "owner or operator of a demolition or renovation activity" where a facility is being demolished.

6. Under 40 C.F.R. Part 61, Subpart M, § 61.145(a)(1), 40 C.F.R. Part 61, Subpart M, § 61.145(b) and (c) apply, except as noted, to each "owner or operator of a demolition or renovation activity" where a facility is being demolished and the combined amount of "RACM" 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.

7. Under 40 C.F.R. Part 61, Subpart M, § 61.145(a)(2), only the specified provisions of 40 C.F.R. Part 61, Subpart M, § 61.145(b) apply to each "owner or operator of a demolition or renovation activity" where a facility is being demolished and the combined amount of "RACM" is less than 80 linear meters (260 linear feet) on pipes or less than 15 square meters (160 square feet) on other facility components or less than 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

8. Section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A), provides, in pertinent part, that "...whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated...[any requirement of various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under those provisions..., the Administrator may issue an administrative penalty order in accordance with [Section 113(d) of the CAA]...".

9. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), provides, in pertinent part, that "...The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person...has violated...any... requirement...of [various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under [those provisions]...".

10. EPA and the U.S. Department of Justice have made a joint determination that this administrative penalty action is appropriate and that, as a consequence, the 12-month time limitation of Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), is waived.

### **III. GENERAL ALLEGATIONS**

1. Respondent, Ebersole Associates, Inc. (Ebersole), is a Pennsylvania corporation which owns and, at all times relevant hereto, has owned the premises of the former JDM Outlet office supply store (at 1500 East Cumberland Street) and the premises of the former Eatwell Diner (at 1539 East Cumberland Street) in Lebanon, Pennsylvania. Respondent, L&N Zimmerman Excavating, Inc. (L&N), is a Pennsylvania corporation which, at all times relevant hereto, was a demolition contractor hired by Ebersole to demolish the former JDM Outlet office supply store and the former Eatwell Diner.

2. Each of the Respondents is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a)(3)(A) and (d) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d), and in 40 C.F.R. Part 61, Subpart M.

3. Ebersole owns, operates, controls, or supervises, and at all times relevant hereto has owned, operated, controlled, or supervised, the premises of the former JDM Outlet office supply store and the former Eatwell Diner in Lebanon, Pennsylvania.

4. Throughout the demolition of the former JDM Outlet office supply store and the former Eatwell Diner, L&N operated, controlled, or supervised the premises of the former JDM Outlet office supply store and the former Eatwell Diner in Lebanon, Pennsylvania.

5. The premises of both the former JDM Outlet office supply store and the former Eatwell Diner in Lebanon, Pennsylvania are and, at all times relevant hereto, have been a "facility" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

6. On March 28, 2006, while on official business, EPA asbestos inspector Rich Ponak happened to be traveling along East Cumberland Street in Lebanon, Pennsylvania en route to another destination when he observed ongoing demolition activities at the site of the Eatwell Diner at 1539 East Cumberland Street. Mr. Ponak stopped to investigate. He spoke with an individual involved in the demolition activity and learned that the demolition was being conducted by L&N. He spoke with a neighbor and learned that the apparent owner of the site was Ebersole, located just down the street at 1900 Cumberland Street. Before leaving the demolition site, Mr. Ponak took two (2) samples of the debris and a number of photographs. Subsequent laboratory analysis found both samples to contain regulated asbestos [asbestos content, using the method specified in 40 C.F.R. Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy, was greater than 1 percent]. Upon leaving the demolition site, Mr. Ponak proceeded down Cumberland Street to the Ebersole premises and spoke with a representative there. Upon returning to the office, Mr. Ponak made further contact with L&N and learned of an earlier demolition, also done by L&N for Ebersole, of the former JDM Outlet office supply store at 1500 East Cumberland Street. There is no evidence that any pre-demolition inspection was conducted prior to either demolition and no notice of an intention to demolish was submitted prior to either demolition. As a result of Mr. Ponak's contact with L&N, L&N did subsequently submit a notice for the ongoing demolition of the Eatwell Diner.

7. On March 28, 2006, with respect to the premises of the former JDM Outlet office supply store (at 1500 East Cumberland Street) and the premises of the former Eatwell Diner (at 1539 East

Cumberland Street) in Lebanon, Pennsylvania, Ebersole was operating as the property owner, and L&N was operating as Ebersole's demolition contractor.

8. The material and debris observed and sampled on March 28, 2006 included "RACM" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

9. The material and debris observed and sampled on March 28, 2006 resulted from or was involved in a "demolition" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

10. Ebersole owned, operated, controlled, or supervised the above-referenced "demolition" operations.

11. L&N operated, controlled, or supervised the above-referenced "demolition" operations.

12. With respect to the above-referenced "demolition" operations, each of the Respondents was an "owner or operator of a demolition or renovation activity" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

13. With respect to the above-referenced "demolition" operations, 40 C.F.R. Part 61, Subpart M, § 61.145, including but not limited to the introductory paragraph of § 61.145(a), § 61.145(a)(1), § 61.145(b), and § 61.145(c), applied to each Respondent as an "owner or operator of a demolition or renovation activity".

#### **IV. VIOLATIONS**

##### **COUNT I**

##### **FAILURE TO INSPECT**

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operations, neither of the Respondents, prior to the commencement of the demolitions, thoroughly inspected the premises of the former JDM Outlet office supply store (at 1500 East Cumberland Street) or the premises of the former Eatwell Diner (at 1539 East Cumberland Street) for the presence of asbestos, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(a). As a consequence, with respect to the above-referenced "demolition" operations,

each of the Respondents violated 40 C.F.R. Part 61, Subpart M, § 61.145(a).

**COUNT II**  
**FAILURE TO PROVIDE NOTICE**

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operations, neither of the Respondents provided the Administrator with written notice of intention to demolish before demolition began, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1). As a consequence, with respect to the above-referenced "demolition" operations, each of the Respondents violated 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1).

**V. PROPOSED CIVIL PENALTIES**

1. As noted in Paragraph II.9. above, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day of violation. However, for any violation which occurs on January 31, 1997 through March 15, 2004, the assessment of a civil administrative penalty of up to \$27,500 per day of violation is authorized, and for any violation which occurs after March 15, 2004, the assessment of a civil administrative penalty of up to \$32,500 per day of violation is authorized (See 40 C.F.R. Part 19). The proposed civil penalties for the above-described CAA violations have been determined in accordance with 1) Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and 2) EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (CAA penalty policy), as modified, including Appendix III thereto (for violations of 40 C.F.R. Part 61, Subpart M), as revised May 5, 1992. Relevant modifications to the CAA penalty policy since its issuance on October 25, 1991 include modifications, dated May 9, 1997 and September 21, 2004 to implement the above-referenced Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), pursuant to the Debt Collection Improvement Act of 1996 (inflation modifications). These inflation modifications essentially increased penalty policy amounts by 10% and 17.23%, respectively. Copies of the CAA penalty policy, including the revised Appendix III, and the inflation modifications are enclosed with this Complaint.

2. In determining the amount of any CAA penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to

take into consideration 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require).

3. To develop the proposed CAA penalties, EPA has taken into account the CAA penalty policy, as modified, and the particular facts and circumstances of this case. EPA's CAA penalty policy, as modified, represents an analysis of the statutory penalty factors enumerated above and guidance on their application in particular cases. If the CAA penalties proposed herein are contested through the hearing process described below, Complainant is prepared to present the statutory basis for the elements of the CAA penalty policy applied in this case and to substantiate the appropriateness of the proposed CAA penalties.

4. After considering the statutory factors, the CAA penalty policy, as modified, and the facts and circumstances of this case, Complainant proposes that Respondents be assessed a total CAA civil penalty of \$28,369, as set forth below, for the violations alleged in Counts I and II of this Complaint.

**Count I - Failure to Inspect**

I. Gravity Component

- ≤10 units - \$5,000 [See page 17 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$5,000

**Count II - Failure to Provide Notice**

## I. Gravity Component

- \$15,000 (first violation) [See page 15 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

## II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$15,000

Size of Violator Factor - \$2,000 [See page 14 of 10/25/91 CAA penalty policy: net worth presumed to be under \$100,000]

Pre-Inflation Adjustment Total Gravity Component - \$22,000

Post-Inflation Adjustment Total Gravity Component - \$28,369 [See 9/21/04 inflation modification: violations occurred after 3/15/04; both the 10% and 17.23% increases apply]

Total Economic Benefit Component - Not Assessed

**Total Proposed Civil Penalty - \$28,369**

This proposed total civil penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

5. EPA will consider appropriate factors as a possible basis for adjusting the civil penalties proposed to be assessed in this Complaint. In addition, to the extent that relevant facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance, such relevant facts and circumstances may also be considered as a possible basis for adjusting the civil penalties proposed to be assessed in this Complaint.

6. EPA reserves its right to seek higher and/or additional civil penalties if the evidence supports their assessment.

## **VI. NOTICE OF OPPORTUNITY FOR HEARING**

This proceeding is governed by the Consolidated Rules. Each Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed civil penalties. To request a hearing, each Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA-Region III (3RC00), 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense, (2) the facts which Respondent disputes, (3) the basis for opposing any proposed relief, and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered as admitted. A copy of the Answer and all other documents filed with the Regional Hearing Clerk relating to this Complaint shall be served upon the EPA attorney assigned to this matter: James M. Baker (3RC10), Senior Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

If either Respondent fails to file a written Answer within thirty (30) days of its receipt of this Complaint, such failure shall constitute an admission of all facts alleged in this Complaint and a waiver of the right to contest such factual allegations. Failure to file an Answer may result in the filing of a Motion for Default Order which, if granted, would assess the civil penalties proposed in this Complaint without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules. A requested hearing will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

## **VII. QUICK RESOLUTION**

In accordance with 40 C.F.R. § 22.18(a), Respondent(s) may resolve this proceeding at any time by paying the specific civil

penalties proposed in this Complaint or in Complainant's subsequent prehearing exchange. If Respondent(s) pay(s) the specific civil penalties proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent(s) wish(es) to resolve this proceeding by paying the civil penalties proposed in this Complaint instead of filing an Answer, but need(s) additional time to pay the civil penalties, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent(s) may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent(s) agree(s) to pay the proposed civil penalties in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to James M. Baker (3RC10), Senior Assistant Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent(s) shall pay the full amount of the proposed civil penalties. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent(s) to default, pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent(s) shall constitute a waiver of the rights of Respondent(s) to contest the allegations and to appeal the final order.

Payment of the civil penalties shall be made by sending a certified or cashier's check made payable to the United States Treasury, in care of:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Copies of the check shall be mailed, at the same time payment is made, to: Regional Hearing Clerk (3RC00), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and James M. Baker (3RC10), Senior Assistant Regional Counsel, U.S.

EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania  
19103-2029.

### VIII. SETTLEMENT CONFERENCE

EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the pertinent statute. Whether or not a hearing is requested, each Respondent may confer with Complainant regarding the allegations of this Complaint and the amounts of the proposed civil penalties.

In the event a settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or the Regional Judicial Officer. **Settlement conferences, and requests therefor, do not affect the requirement to file a timely Answer to the Complaint.**

As noted above, the EPA attorney assigned to this matter is James M. Baker, Senior Assistant Regional Counsel. If a Respondent has any questions or desires to arrange a settlement conference, Respondent shall contact Mr. Baker at (215)814-2109 before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint. If Respondent is represented by legal counsel, Respondent's legal counsel should contact Mr. Baker on Respondent's behalf. **Please be advised that, after issuance of a Complaint, the Consolidated Rules prohibit any ex parte discussion of the merits of a proceeding with the Administrator, members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any other person who is likely to advise these officials on any decision in the proceeding.**

Date: 9/26/07

  
Abraham Ferdas, Director  
Waste and Chemicals Management  
Division

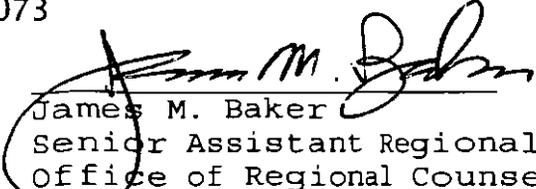
CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a copy of this Administrative Complaint and enclosures (Docket No. CAA-03-2007-0329) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below. The original and one copy of this Administrative Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA-Region III.

Randall I. Ebersole  
President, Ebersole Associates, Inc.  
1900 Cumberland Street  
Lebanon, Pennsylvania 17042

Lester S. Zimmerman  
President, L&N Zimmerman Excavating, Inc.  
2 Moonstown Lane  
Newmanstown, Pennsylvania 17073

Date: 9/28/07

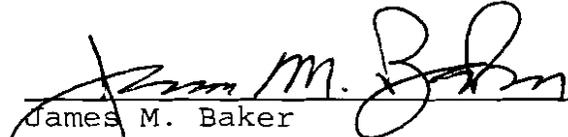
  
James M. Baker  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029



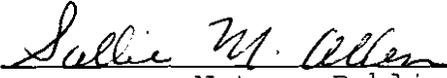
answer was filed within 30 days, I telephoned Randall I. Ebersole, President, to whom the Complaint was addressed. A receptionist who answered indicated he was not available and offered access to Mr. Ebersole's voice mail. I then left a voice mail message for Mr. Ebersole explaining the reason for the call and requesting a return phone call. No return phone call was ever received. No answer was ever filed.

5. The issued Complaint contained a proposed civil penalty for the case of \$28,369. A partial settlement was reached with Respondent L&N which assessed a civil penalty of \$12,056.83 against Respondent L&N, leaving uncollected a balance of \$16,312.17 of the proposed penalty for the case. The civil penalty of \$12,056.83 assessed against Respondent L&N has been received by the Treasurer of the United States.

This the 29<sup>th</sup> day of October, 2008.

  
James M. Baker  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA - Region 3  
Counsel for Complainant

Sworn and subscribed to before me  
this 29<sup>th</sup> day of October, 2008.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Sallie M. Allen, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Feb. 25, 2011  
Member, Pennsylvania Association of Notaries

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Randall I. Ebersole  
President, Ebersole Associates, Inc.  
1900 Cumberland Street  
Lebanon, Pennsylvania 17042

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
**X E. Houser**

B. Received by (Printed Name) C. Date of Delivery  
**E Houser** **10/1/07**

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number

(Transfer from service label)

7001 0320 0006 1219 3458

UNITED STATES POSTAL SERVICE  
HARRISBURG PA 171



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

01 OCT 2007 PM 5 L

• Sender: Please print your name, address, and ZIP+4 in this box •

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 ARCH STREET  
MAIL CODE *3RC10* *Jim Baker*  
PHILADELPHIA, PA 19103-2029  
OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300

326



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Randall I. Ebersole  
 President, Ebersole Associates, ..  
 1900 Cumberland Street  
 Lebanon, Pennsylvania 17042

2. Article Number

(Transfer from service label)

7004 2890 0000 5075-5527

PS Form 3811, February 2004

Domestic Return Receipt

102585-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *M. Orlando*

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

6-25-08

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

*Melissa Chilcote*

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

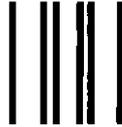
4. Restricted Delivery? (Extra Fee)

Yes

Attachment 3

Attachment 3

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
MAIL CODE *32C10*  
PHILADELPHIA, PA 19103-2029  
OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300

*Jim Baker*

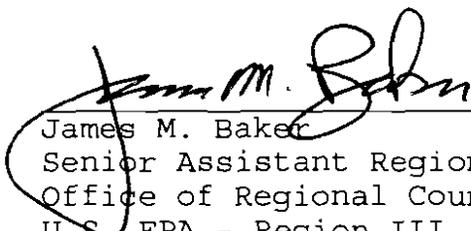


CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a copy of this Supplementation of Record (Docket No. CAA-03-2007-0329) was sent by Certified Mail, Return Receipt Requested, to the addressee listed below. The original and one copy of this Supplementation of Record were hand-delivered to the Regional Hearing Clerk, U.S. EPA-Region III.

Randall I. Ebersole  
President, Ebersole Associates, Inc.  
1900 Cumberland Street  
Lebanon, Pennsylvania 17042

Date: 10/29/08

  
James M. Baker  
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