

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

In the Matter of:)
)
School District of Upper Dublin)
1580 Fort Washington Avenue)
Maple Glen, PA 19002)
)
1 Source Safety and Health, Inc.)
140 South Village Avenue, Suite 130)
Exton, PA 19341)
)
Sargent Enterprises, Inc.)
732 Center Street)
Jim Thorpe, PA 18229)
)
RESPONDENTS)

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR
HEARING**

DOCKET NO. CAA-03-2009-0189

2009 JUN 14 PM 12:05

I. INTRODUCTION

1. Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (EPA or Complainant), initiates this administrative action against the School District of Upper Dublin (Upper Dublin), 1 Source Safety and Health, Inc. (1 Source), and Sargent Enterprises, Inc. (Sargent), collectively, the "Respondents" (Respondents), for violations of Section 112 of the Clean Air Act (CAA), as amended, 42 U.S.C. § 7412, as alleged below. The authority for issuance of this Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is set forth in Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to issue this Complaint has been duly delegated to the signatory

below.

II. APPLICABLE STATUTES AND REGULATIONS

2. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA to publish

a list of air pollutants determined to be hazardous and to promulgate regulations establishing emission standards or, where necessary, design, equipment, work practice, or operational standards for each listed hazardous air pollutant.

3. Section 114 of the CAA, 42 U.S.C. § 7414, authorizes the Administrator of EPA to require any person who owns or operates any emission source or who is otherwise subject to the requirements of the CAA to, among other things, establish and maintain such records, make such reports and provide such information as the Administrator might reasonably require to develop or determine compliance with emission standards.

4. EPA listed asbestos as a hazardous air pollutant under the authority of Section 112 of the CAA, 42 U.S.C. § 7412. Pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated a National Emission Standard for Asbestos, codified at 40 C.F.R Part 61, Subpart M, Sections 61.140 - 61.156 (the asbestos NESHAP). The asbestos NESHAP includes regulations governing, inter alia, the emission, handling, and disposal of asbestos by the owner or operator of a demolition or renovation activity at an affected facility. Pursuant to Section 112(q) of the CAA, 42 U.S.C. § 7412(q), the above referenced standards and provisions remain in full force and effect, notwithstanding the November 15, 1990 Clean Air Act Amendments.

5. Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any rule, plan, order, waiver, or permit promulgated, issued, or approved under, inter alia, Section 112 of the CAA, 42 U.S.C. § 7412.

III. DEFINITIONS

6. Pursuant to 40 C.F.R. § 61.141, "adequately wet" means, to sufficiently mix or penetrate with liquid to prevent the release of particulates.

7. Pursuant to 40 C.F.R. § 61.141, "asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

8. Pursuant to 40 C.F.R. § 61.141, "asbestos-containing waste materials" means, in pertinent part, any waste that contains commercial asbestos and is generated by a source subject to the provisions of the asbestos NESHAP, including friable asbestos waste material, regulated asbestos-containing material waste, and materials contaminated with asbestos including disposable equipment and clothing.

9. Pursuant to 40 C.F.R. § 61.141, "Category II nonfriable asbestos-containing material" means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. Part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled,

pulverized or reduced to powder by hand pressure.

10. Pursuant to 40 C.F.R. § 61.141, "facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building.

11. Pursuant to 40 C.F.R. § 61.141, "facility component" means any part of a facility, including equipment.

12. Pursuant to 40 C.F.R. § 61.141, "friable asbestos material", means, in pertinent part, any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. Part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

13. Pursuant to 40 C.F.R. § 61.141, "owner or operator of a demolition or renovation activity" means 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 a demolition or renovation operation, or both.

14. Pursuant to 40 C.F.R. § 61.141, "regulated asbestos-containing material (RACM)" means, in pertinent part, friable asbestos material or Category II nonfriable asbestos containing material (ACM) that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

15. Pursuant to 40 C.F.R. § 61.141, "remove" means to take out RACM or facility components that contain or are covered with RACM from any facility.

16. Pursuant to 40 C.F.R. § 61.141, "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component.

17. Pursuant to 40 C.F.R. § 61.141, "strip" means to take off RACM from any part of a facility or facility components.

18. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include "an individual, corporation, partnership, (or) association."

IV. GENERAL ALLEGATIONS

19. Upper Dublin is a municipal authority association with a primary business address of 1580 Fort Washington Avenue in Maple Glen, Pennsylvania.

20. Upper Dublin is a "person" within the meaning Section 302(e) of the Act, 42 U.S.C. § 7602(e).

21. 1 Source is a corporation organized under the laws of the Commonwealth of Pennsylvania with a primary business address of 140 South Village Avenue in Exton, Pennsylvania.

22. 1 Source is a "person" within the meaning Section 302(e) of the Act, 42 U.S.C. § 7602(e).

23. Sargent is a corporation organized under the laws of the Commonwealth of Pennsylvania with a primary business address of 732 Center Street in Jim Thorpe, Pennsylvania.

24. Sargent is a "person" within the meaning Section 302(e) of the Act, 42 U.S.C.

§ 7602(e).

25. The Upper Dublin High School located at 800 Loch Ash Avenue in Fort Washington, Pennsylvania (Facility), is a “facility” within the meaning of 40 C.F.R. § 61.141.

26. At all times relevant to the violations alleged herein, Upper Dublin owned, operated, controlled, or supervised the Facility.

27. According to an Asbestos Abatement and Demolition/Renovation Notification Form Sargent submitted to EPA on or about May 29, 2008, which was revised and re-submitted on or about June 6, 2008 (“Asbestos Notice”), Sargent was to conduct an asbestos abatement project at the Facility, beginning on June 16, 2008, which involved the removal of 25,000 square feet of Category I nonfriable asbestos containing floor and mastic, 1,612 linear feet of friable asbestos containing pipe insulation, 782 linear feet of friable asbestos containing fittings, 100 square feet of asbestos containing door caulk, and 2,400 square feet of asbestos containing ceiling plaster.

28. During the time period starting June 19, 2008 and ending August 29, 2008, Sargent removed asbestos-containing material from the Facility in connection with the project described in the Asbestos Notice.

29. The asbestos abatement project described in paragraphs 27 and 28, above (“Renovation”), is a “renovation” within the meaning of 40 C.F.R. § 61.141.

30. At all times relevant to the violations alleged herein, Sargent operated or controlled the Renovation at the Facility.

31. During the time period starting June 19, 2008 and ending August 29, 2008, 1 Source

served as Upper Dublin's Environmental Consultant and was responsible for monitoring Sargent's activities to verify that work was performed in accordance with the job specifications and with federal and state regulations, including the asbestos NESHAP.

32. At all times relevant to the violations alleged herein, 1 Source controlled or supervised the Renovation at the Facility.

33. At all times relevant to the violations alleged herein, Upper Dublin was an "operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.

34. At all times relevant to the violations alleged herein, Sargent was an "operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.

35. At all times relevant to the violations alleged herein, 1 Source was an "operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.

36. On August 11, 2008, a duly authorized representative of EPA (EPA Inspector) conducted an inspection of the Facility. The purpose of this inspection was to verify compliance with the asbestos NESHAP.

37. No asbestos removal was in progress at the time the EPA Inspector arrived at the Facility on August 11, 2008.

38. During the August 11, 2008 inspection, the EPA Inspector observed an on-site trailer that contained black leak-tight disposal bags, as well as large boxes, filled with waste material removed from the Facility.

39. During the August 11, 2008 inspection, the EPA Inspector opened four (4) of the black

leak-tight disposal bags and observed pieces of the friable asbestos containing pipe insulation described in the Asbestos Notice in each bag.

40. During the August 11, 2008 inspection, the EPA Inspector observed that the friable asbestos containing pipe insulation in each of the four (4) bags was dry.

41. During the August 11, 2008 inspection, the EPA Inspector collected two (2) samples of the dry friable asbestos containing pipe insulation from each of the four (4) bags.

42. According to Polarized Light Microscopy with Dispersion Staining following the EPA "Interim Method" for determination of asbestos in bulk building materials (EPA-600/M4-82-020, or 40 C.F.R. part 763, Appendix E to Subpart E), all eight (8) samples collected by the EPA Inspector during the inspection on August 11, 2008 were determined to contain more than one (1) percent asbestos.

43. All of the friable asbestos containing pipe insulation observed during the August 11, 2008 inspection and referred to above constitute "RACM" as that term is defined at 40 C.F.R. § 61.141 because it was friable and contained more than one (1) percent asbestos.

44. Pursuant to 40 C.F.R. § 61.145(a)(4), the asbestos NESHAP notification requirements of 40 C.F.R. § 61.145(b) and work practice requirements of 40 C.F.R. § 61.145(c) applied to the Renovation at the Facility since the combined amount of RACM removed involved at least 80 linear meters (260 linear feet) on pipes or least 15 square meters (160 square feet) on other facility components.

V. VIOLATIONS

FAILURE TO KEEP REMOVED OR STRIPPED RACM ADEQUATELY WET UNTIL COLLECTED FOR DISPOSAL

45. EPA realleges the allegations contained in paragraphs 1 through 44 above.
46. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), all RACM, including material that has been removed or stripped, must be adequately wetted and remain wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.
47. During the August 11, 2008 inspection, the EPA Inspector observed that the friable asbestos containing pipe insulation in each of the four (4) black leak-tight disposal bags was dry.
48. By failing to adequately wet and keep wet the friable asbestos containing pipe insulation until collected and contained or treated in preparation for disposal, Respondents violated the work practice requirements of 40 C.F.R. § 61.145(c)(6)(i) of the asbestos NESHAP.
49. The failure of Respondents to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

VI. PROPOSED CIVIL PENALTY

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, authorize a penalty of not more than \$32,500 for each violation of the CAA that occurred after March 15, 2004 through January 12, 2009. EPA proposes to assess a civil penalty of twenty-one

thousand nine hundred dollars (\$21,900) jointly and severally against Respondents as follows:

A. Gravity Component

Failure to keep removed or stripped RACM adequately wet until collected for disposal. 40 C.F.R. § 61.145(c)(6)(i) < or = 10 units Second Violation (Sargent)	\$ 15,000
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Size of the Violator	\$ 2,000
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B. Economic Benefit \$ 0

SUBTOTAL	\$ 17,000
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INFLATIONARY ADJUSTMENT: 1.2895%

TOTAL PROPOSED PENALTY: \$21,900

The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1992 (CAA Penalty Policy), and Appendix III thereto (Asbestos Penalty Policy); and Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009), dated December 29, 2008 (Inflation Policy). Copies of the CAA Penalty Policy, Asbestos Penalty Policy, and the Inflation Policy are enclosed with this Complaint. The proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

In determining the amount of any 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. To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's Asbestos Penalty Policy as well as the CAA Penalty Policy, both of which were indexed for inflation in keeping with 40 C.F.R. Part 19.

EPA will consider, among other factors, Respondents' ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondents' ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondents. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed.

The gravity component of the penalty accounts for the amount of asbestos involved (i.e., less than or equal to 10 units) and the substantive nature of the violation. No further adjustment of the penalty appears warranted under the applicable penalty policies at this time. If appropriate, further penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondents have the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. **To request a hearing, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 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 Respondents have any knowledge. If Respondents have 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 Respondents dispute; (3) the basis for opposing any proposed relief; and (4) 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 related to this Complaint must be sent to Jennifer M. Abramson (3LC62), Senior Assistant Regional Counsel, U.S. EPA Region III,**

1650 Arch Street, Philadelphia, PA, 19103-2029.

If any Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint as to that Respondent and a waiver of the right to a hearing under Section 113 of the CAA, 42 U.S.C. § 7413. Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein 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 at 40 C.F.R. Part 22. A copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

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 CAA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event 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 his designee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Jennifer M. Abramson, Senior Assistant Regional

Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Ms. Abramson at (215) 814-2066 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Ms. Abramson on your behalf. Please be advised that the Consolidated Rules at 40 C.F.R. § 22.8 prohibit any unilateral discussion of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

IX. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules, Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondents pay the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules, no Answer need be filed.

If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules, Respondents may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondents agree to pay the proposed penalty 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 Jennifer M. Abramson (3LC62), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondents shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondents to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules.

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

Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below:

All checks shall be made payable to "Treasurer, United States of America" and shall be mailed to the attention of U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO, 63197-9000. Contacts: Craig Steffen 513-487-2091, Eric Volck 513-487-2105. Overnight deliveries shall be sent to U.S. Bank, Government Lockbox 979077, US EPA Fines & Penalties, 1005 Convention Plaza, SL-MO-C2-GL, St. Louis, MO 63101. Phone: 314-418-1028.

All electronic wire transfer payments shall be directed to Federal Reserve Bank of New York, ABA = 021030004, Account = 68010727, SWIFT address = FRNYUS33, 33 Liberty

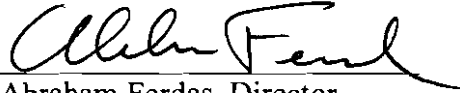
Street, New York NY 10045. (Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency")

Payments through ACH shall be directed to U.S. Treasury REX/Cashlink ACH Receiver, ABA 051036706, Account No. 310006, Environmental Protection Agency, CTX Format, Transaction Code 22 – checking. Contact: Jesse White 301-887-6548

Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

All payments also shall reference the above case caption and docket number. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jennifer M. Abramson (3LC62), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

6/4/09
Date


Abraham Ferdas, Director
Land and Chemicals Division