

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

2007 AUG 30 PM 3: 03

REGIONAL HEARING
CLERK

In re:

Ramey Resort, Inc. a/k/a IPH Hotels

Jesús Ruiz Brignoni

Bienvenida Colón Vargas

Respondents

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

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

CAA-02-2007-1216

Complaint

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) and proposes to assess penalties pursuant to the Clean Air Act ("CAA" or "Act"), as amended, 42 U.S.C. § 7401 et seq., at Section 113(d) of the Act, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant, the Director of the Caribbean Environmental Protection Division, EPA Region 2, is duly delegated the authority to issue Complaints, on behalf of EPA Region 2, for violations of the CAA that occurred and/or are occurring in the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.

EPA alleges herein that Ramey Resort, Inc. a/k/a IPH Hotels, Jesús Ruiz Brignoni and Bienvenida Colón Vargas (Respondents) have violated, or are in violation of, requirements or prohibitions of Sections 112 and/or 114 of the Act, and 40 C.F.R. Part 61, Subpart M, the national emission standards for hazardous air pollutants for asbestos (Asbestos NESHAP), promulgated, pursuant to Sections 112 and 114 of the Act.

I. Preliminary Statement and Description of Respondents

1. Respondent Ramey Resort, Inc., (Ramey Resort) a/k/a IPH Hotels, is a corporation duly organized and authorized to do business under the laws of the Commonwealth of Puerto Rico. Ramey Resort's primary office is located at Carretera 107, Km. 2.1, Aguadilla, Puerto Rico.
2. Respondent Ramey Resort is the owner and operator of a building in the former Ramey Air Force Base, located in Aguadilla, Puerto Rico, known as the Department of Transportation and Public Works Building (DTPW Building).
3. Respondent Ramey Resort is the operator of a building in the former Ramey Air Force Base, located in Aguadilla, Puerto Rico, known as the Officers Club House (Club House).
4. Respondents Jesús Ruiz Brignoni ("Jesús Ruiz") and Bienvenida Colón Vargas ("Bienvenida Colón") are individuals who were the owners of the DTPW Building from at least January 17, 2003 until June 9, 2005.
5. Jesús Ruiz and Bienvenida Colon's primary office and/or place of residence is located at Carretera 107, Km. 2.1, Aguadilla, Puerto Rico.
6. Each Respondent is a "person" within the meaning of Section 302(e) of the Act, and is therefore, subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.
7. Jesus Ruiz and Bienvenida Colón were the owners of the DTPW Building and Ramey Resort was the operator of the Club House, (collectively, the "Facility") at all times relevant to this Complaint.
8. The Facility is located at the former Ramey Air Force Base, bordered by natural vegetation, a public road and a public beach (north); a local government training facility and the U.S. Border Patrol (east); a residential area and the University of Puerto Rico Aguadilla Campus (south); and a residential area, private businesses and government building (west), in Malezas Abajo Ward, Aguadilla, Puerto Rico. The neighborhood is a blend of residential, commercial and institutional uses as well as public recreational areas.

II. General Statutory Authority

9. Section 113(a)(3) of the Act authorizes the Administrator of the EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

10. Section 113(d) of the Act authorizes EPA to prosecute violations by means of an administrative penalty action in circumstances where the total penalty sought does not exceed \$270,000 and where the first alleged date of violation occurred not more than 12 months prior to the initiation of the administrative action. On August 6, 2007, DOJ granted EPA's July 3, 2007 request for a waiver of the CAA §113(d) one year time limitation on EPA's authority to initiate an action in this matter.
11. Section 302(e) of the Act defines the term "person" as 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.
12. Section 112(b)(1) of the Act provides a list of initial hazardous air pollutants (HAPs).
13. Section 112(d) of the Act directs the EPA to promulgate regulations establishing emission and/or work practice standards for HAPs.
14. Section 114 of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding their facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain monitoring equipment or methods in order to determine whether any person is in violation of the Act.
15. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operated, controls or supervises the demolition or renovation operation, or both."
16. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering a facility or one or more facility components in any way, including the stripping or removal of RACM [regulated asbestos-containing material, as defined by 40 C.F.R. § 61.41] from a facility component."
17. The term "facility" is defined by 40 C.F.R. § 61.141 to include any commercial, public, industrial or residential structure of more than four (4) dwelling units.
18. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

19. 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.
20. 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.

III. Findings of Fact and Conclusions of Law

21. Paragraphs 1 – 19 are realleged and incorporated herein by reference.
22. Respondents Jesús Ruiz, Bienvenida Colón and Ramey Resort are either an “owner and/or operator” of a “renovation/demolition activity” within the meaning of 40 C.F.R. § 61.141.
23. The Facility is a “facility” within the meaning of 40 C.F.R. § 61.141.
24. On January 14 and 20, 2004, duly delegated EPA officials conducted an inspection at the Facility (Inspection) to investigate the renovation activities and to determine if Respondents were in compliance with the applicable requirements of the CAA and its implementing regulations.
25. During the Inspection the EPA officials observed that the DTPW Building and the Officers Club had recently undergone renovation, as defined in 40 C.F.R. § 61.141.
26. During the Inspection the EPA officials observed crushed vinyl floor tiles, ceiling tiles and boiler insulation materials. Samples were taken from the DTPW Building and the Officers Club which confirmed the presence of asbestos-containing material (ACM).
27. After the Inspection an EPA official conducted a search of EPA’s and the Puerto Rico Environmental Quality Board’s files (File Review) to determine whether Respondents were in compliance with the applicable notification requirements of the Asbestos NESHAP regulations, promulgated under the CAA.
28. During the File Review, EPA also discovered that Respondents had not filed the required EPA Notification of Demolition and Renovation form for this Facility.

29. Respondents Jesús Ruiz and Bienvenida Colón transferred the ownership of the DTPW Building to Respondent Ramey Resort, Inc. by a deed dated June 9, 2005. Respondent Bienvenida Colón was and is the President of Ramey Resort, Inc. and Respondent Jesús Ruiz was and is the Registered Agent of Ramey Resort, Inc.

COUNT

30. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(b), a regulation promulgated pursuant to Sections 112 and 114 of the Act, by failing to provide EPA with a notice of intent to renovate at least ten (10) working days before the renovation activities began.

Proposed Civil Penalty

Section 113(d) of Act provides that the Administrator may assess a civil administrative penalty of up to Twenty-Five Thousand Dollars (\$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, which provide that the maximum civil penalty should be adjusted up to \$27,500 for each violation that occurred on or after January 30, 1997 and up to \$32,500 for violations which occurred on or after March 15, 2004.

In determining the amount of a penalty to be proposed, Section 113(e) of the Act requires the Administrator to 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 **\$27,500**.

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 violation alleged in this Complaint, and the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

1. **Gravity Component**

To ensure that the penalty amount reflects the gravity of the violation, the Penalty Policies instruct EPA to examine the actual or possible harm resulting from the violation, the sensitivity of the environment, the length of time of violation, and the importance to the regulatory scheme. Each sub-component is discussed below:

- A. **Count:** EPA's CAA Penalty Policy provides that a penalty of \$15,000 be proposed for failure to notify. Therefore, EPA proposes a penalty of **\$15,000**.
- B. **Size of the violator:** Consistent with the CAA Penalty Policy, EPA scales the penalty to the "size of violator" by calculating Respondents' net worth.

EPA was not able to precisely calculate Respondents Jesús Ruiz and Bienvenida Colón's personal net worth. However, in view of the fact that Respondents transferred ownership of the DTPW Building to Ramey Resort, Inc., it is assumed that the personal net worth of these Respondents is at least the declared sale value of the property, \$4,800,000.

The Asbestos Penalty Policy states that where there are multiple defendants, EPA has discretion to base the size of the violator calculation on any or all of the defendant's assets. Accordingly, EPA has decided to base the size of the violator calculation on Respondents Jesús Ruiz and Bienvenida Colón's assumed net worth.

In the alternative, because Ramey Resort is the current owner of the property, it can be assumed that Ramey Resorts also has a net worth of at least the value of this property, \$4,800,000. The CAA Penalty Policy indicates that the penalty amount corresponding to a net worth between \$1,000,001 and \$5,000,000 is \$10,000. This results in a size of violator adjustment of \$10,000 which increases the penalty to \$25,000.

Sub-total: \$25,000.

- C. **Inflationary Adjustment Rule:** The penalty proposed above must be adjusted for inflation. Pursuant to the September 21, 2004 memorandum from Thomas V. Skinner, Acting Assistant Administrator, to the Regional Administrators entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)" which modified all existing civil penalty policies to conform to a final rule that increased statutory penalties, for penalty policies which were issued prior to January 31, 1997, gravity components are to be calculated according to the penalty policy, then, reflect the 10% increase for the first penalty inflation adjustment, effective on January 30, 1997. As the violation alleged in this Complaint was discovered during an inspection performed on January 14 and 20, 2004, EPA proposes a \$2,500 adjustment for inflation (\$25,000 multiplied by 1.10) resulting in the new total gravity component penalty of **\$27,500**.

2. **Economical benefit**

The CAA Penalty Policy also provides that in addition to assessing a gravity component, an economic benefit component should be assessed. EPA determined that, in this case, the economic benefit resulting from noncompliance was de minimus, therefore, the total penalty proposed is **\$27,500**.

IV. **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 are not intended to 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:

Lourdes del Carmen Rodríguez
Assistant Regional Counsel
U.S. EPA Region 2
Office of Regional Counsel, Caribbean Team
1492 Ponce De León Avenue,
Centro Europa Building, Suite 417
San Juan, Puerto Rico 00907
Telephone (787) 977-5819
Fax (787) 729-7748

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 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, Lourdes del Carmen Rodriguez, at (787) 977-5819 or at the address listed above, to discuss settlement. If Respondents are represented by legal counsel in this matter, Respondents' counsel should contact EPA.

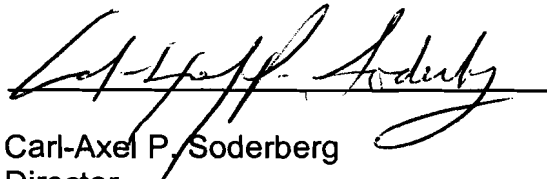
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

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:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251.

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: 08/28/07



Carl-Axel P. Soderberg
Director
Caribbean Environmental
Protection Division

To: Jesús Ruiz Brignoni
P.O. Box 5148
Aguadilla, Puerto Rico 00603

Bienvenida Colón Vargas
P.O. Box 5148
Aguadilla, Puerto Rico 00603

Ramey Resort, Inc.
c/o Jesús Ruiz Brignoni
Registered Agent
P.O. Box 5148
Aguadilla, Puerto Rico 00603

cc: Evelyn Rodríguez Cintrón, Director
Air Quality Area
Puerto Rico Environmental