



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In Reply Refer To Mail Code: 3LC61

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

JUN 22 2010

His Excellency Most Reverend W. Francis Malooly, Bishop of Wilmington  
Diocese of Wilmington, Delaware  
Michael Saltarelli, President  
1925 Delaware Avenue  
Wilmington, DE 19806

Re: Clean Air Act Complaint and Notice  
of Opportunity for Hearing  
EPA Docket No. CAA-03-2010-0312

Dear Most Reverend Malooly and Mr. Saltarelli:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., by the Diocese of Wilmington, DE ("the Diocese" or "Diocese") and St. Peter's Church at the St. Peter the Apostle School (a/k/a Saint Peter's Catholic School), a parochial elementary school located at 515 Harmony Street, New Castle, DE 19720 (the "Facility"). The Complaint is based on alleged violations of the National Emission Standard for Asbestos, promulgated pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, and codified at 40 C.F.R. Part 61, Subpart M, related to the removal of asbestos from the Facility. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations and proposed penalty.

Unless you elect to resolve the proceedings as set forth in the Complaint, an Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within 30 days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer shall result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint and Notice without further proceedings.

You may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in your Answer to this Complaint. Whether or not a hearing is

requested, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer. If you are not represented by legal counsel and have any questions or desire to arrange an informal conference to explore settlement, please contact Mr. Richard Ponak at (215) 814-2044 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by counsel, your counsel may contact Mr. Benjamin Cohan, Senior Assistant Regional Counsel, before the expiration of the thirty (30) day period following your receipt of this Complaint to discuss questions or arrange a settlement conference. Mr. Cohan can be reached by telephone at (215) 814-2618.

In addition, please be advised that certain companies may be required to disclose to the Securities and Exchange Commission the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether you may be subject to the same.

Sincerely,

  
Abraham Ferdas, Director  
Land and Chemicals Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In Reply Refer To Mail Code: 3LC61

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

JUN 07 2010

Reverend Arthur B. Fiore, Pastor  
Father John C. Klevence  
St. Peter's Church  
521 Harmony Street  
New Castle, DE 19720

Re: Clean Air Act Complaint and Notice  
of Opportunity for Hearing  
EPA Docket No. CAA-03-2010-0312

Dear Reverend Fiore and Father Klevence:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., by the Diocese of Wilmington, DE ("the Diocese" or "Diocese") and St. Peter's Church at the St. Peter the Apostle School (a/k/a Saint Peter's Catholic School), a parochial elementary school located at 515 Harmony Street, New Castle, DE 19720 (the "Facility"). The Complaint is based on alleged violations of the National Emission Standard for Asbestos, promulgated pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, and codified at 40 C.F.R. Part 61, Subpart M, related to the removal of asbestos from the Facility. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations and proposed penalty.

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You may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in your Answer to this Complaint. Whether or not a hearing is requested, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer. If you are not

represented by legal counsel and have any questions or desire to arrange an informal conference to explore settlement, please contact Mr. Richard Ponak at (215) 814-2044 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by counsel, your counsel may contact Mr. Benjamin M. Cohan, Senior Assistant Regional Counsel, before the expiration of the thirty (30) day period following your receipt of this Complaint to discuss questions or arrange a settlement conference. Mr. Cohan can be reached by telephone at (215) 814-2618.

EPA has determined that St. Peter's Church may be considered a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Please see the "Information for Small Businesses" brochure enclosed with this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve St. Peter's Church of its obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve the legal rights of St. Peter's Church, it must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

In addition, please be advised that certain companies may be required to disclose to the Securities and Exchange Commission the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether you may be subject to the same.

Sincerely,



Abraham Ferdas, Director  
Land and Chemicals Division

Enclosures

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

IN RE:

St. Peter's Church  
521 Harmony Street  
New Castle, DE 19720

and

Diocese of Wilmington, DE  
1626 North Union Street  
Wilmington, DE 19806

Respondents

St. Peter the Apostle School  
515 Harmony Street,  
New Castle, DE 19720

Facility

ADMINISTRATIVE COMPLAINT  
AND NOTICE OF  
OPPORTUNITY FOR HEARING

Docket No.CAA-03-2010-0312

**I. INTRODUCTION**

1. Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III ("EPA"), initiates this administrative action against the Diocese of Wilmington, Delaware ("Diocese") and St. Peter's Church (hereinafter collectively referred to as "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 ("the asbestos NESHAP"), codified at 40 C.F.R Part 61, Subpart M, Sections 61.140 - 61.157. 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, mill tailings or 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 and materials contaminated with asbestos including disposable equipment and clothing.

9. Pursuant to 40 C.F.R. § 61.141, "Category 1 nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, *resilient floor covering*, and asphalt roofing products 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.

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 one percent asbestos, 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 I nonfriable asbestos containing material ("ACM") that has become friable or Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading.

15. 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.

16. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include "an individual, corporation, partnership, association...and any agency, department, or instrumentality of the United States..."

#### IV. GENERAL ALLEGATIONS

17. At all times relevant to this Complaint, Respondent St. Peter's Church was directly engaged in controlling, operating and supervising a renovation operation which included the removal of regulated asbestos containing material ("RACM") from St. Peter the Apostle School (a/k/a Saint Peter's Catholic School), a parochial elementary school located at 515 Harmony Street, New Castle, DE 19720 ("the Facility"). Upon information and belief, the Facility is also deeded to Respondent St. Peter's Church, a non-profit religious corporation/institution of the State of Delaware; however, the Facility itself is part and parcel of the Diocese family of parochial schools which the Diocese leases, operates, controls or supervises in accordance with its religious mission.

18. Respondent Diocese is a non-profit religious institution operating and doing business in the State of Delaware, with a primary business address of 1925 Delaware Avenue, Wilmington, DE 19806. At all times relevant to this Complaint, the Diocese was the de facto co-owner and/or co-operator of the subject Facility.

19. Respondents are "persons" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

20. At all times relevant to this Complaint, Respondent St. Peter's Church was an "owner or operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.

21. At all times relevant to this Complaint, Respondent Diocese was also an "owner or operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.

22. On or about August 24, 2009, the State of Delaware received a citizen's complaint alleging that RACM was being removed from the basement and cafeteria areas of the Facility, in violation of the Asbestos NESHAP work practice standards. Upon information and belief, and based on Delaware's and EPA's own inspection evidence, said renovation operation included, but was not limited to, the removal of approximately 5,000 square feet of *resilient floor covering*/ Vinyl Asbestos Tile and mastic ("VAT") (sometime referred to herein as "Category I ACM") from the Facility.

23. Upon information and belief, and from approximately August 13, 2009 through August 17, 2009, Respondent St. Peter's Church removed Category I ACM from the Facility in violation of the Asbestos NESHAP.

24. On September 1, 2009, a duly-authorized representative of EPA ("the inspector") conducted an inspection of the Facility. The purpose of this inspection was to verify Respondents' compliance with the asbestos NESHAP, 40 C.F.R. §§ 61.141 et seq.

25. At the time of the September 1, 2009 inspection, the EPA inspector inspected those areas of the Facility where asbestos abatement activities were being conducted – the gym stairwells, basement, cafeteria kitchen, and storage areas. During the inspection, dry and friable VAT debris (i.e. "Category I ACM") was observed on the ground throughout the basement cafeteria, kitchen, and storage areas. Photos and samples were taken of the suspect RACM debris. Subsequent Polarized Light Microscopy tests of the samples taken by the inspector revealed that all of the Category I ACM samples contained more than one percent "chrysotile" asbestos.

26. During the inspection, the inspector observed that the suspected VAT (i.e. "Category I

ACM") could be crumbled, pulverized, or reduced to powder by hand pressure and was therefore friable.

27. Pursuant to 40 C.F.R. § 61.145(a), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145 apply to the owner or operator of a renovation activity if 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.

28. Before, during and following the time of the subject inspection, Respondents were engaged in the renovation of the Facility, which included the stripping, disturbing, and/or removal from the Facility of approximately 5,000 square feet of RACM. Therefore, pursuant to 40 C.F.R. § 61.145(a), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145 applied to the renovation.

29. The Facility is a "facility" within the meaning of 40 C.F.R. § 61.141.

30. At some time prior to the commencement of the renovation, the subject VAT in the Facility was "Category I non-friable ACM" as defined at 40 C.F.R. § 61.141.

31. The VAT debris observed by the inspector at the Facility during the subject inspection constitutes "friable asbestos material," within the meaning of 40 C.F.R. § 61.141 because it contained more than one percent asbestos, as determined using the method specified in 40 C.F.R. Part 763, Polarized Light Microscopy and because it was able to be crumbled, pulverized or reduced to powder by hand pressure.

32. The VAT debris observed by the inspector at the Facility during the subject inspection constitutes "RACM" within the meaning of 40 C.F.R. § 61.141 because it was Category I non-

friable ACM that had become friable and/or was subjected to sanding, grinding, cutting, or abrading.

33. The activities conducted by Respondents in removing RACM from the Facility referenced above constitute a "renovation" or "renovation activity" within the meaning of 40 C.F.R. § 61.141.

## V. VIOLATIONS

### COUNT I

#### **FAILURE TO KEEP STRIPPED RACM ADEQUATELY WET UNTIL COLLECTED FOR DISPOSAL**

34. Complainant realleges the allegations contained in paragraphs 1 through 33, above.

35. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), owners and operators of demolition or renovation activities must adequately wet all RACM, including material that has been removed or stripped, and ensure the RACM remains wet until collected and contained or treated in preparation for disposal.

36. At the time of the subject inspection, the EPA inspector determined that dry RACM, including, but not limited to, VAT debris, which had been removed or stripped from the Facility by Respondents, was deposited in and around the gym basement area. Additionally, small pieces of chipped VAT debris were strewn throughout the basement in the cafeteria, kitchen, closets, storage areas; and a trail of RACM debris lead out of the rear door to the dumpster. After

inspecting representative samples of the RACM awaiting collection and disposal on September 1, 2009, the inspector observed that all of the uncollected RACM was very dry, and therefore not adequately wetted pursuant to 40 C.F.R. § 61.145(c)(6)(i).

37. Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) on September 1, 2009, constitute a separate "per day" violation of Section 112 of the CAA, 42 U.S.C. § 7412.

## COUNT II

### **FAILURE TO PROVIDE WRITTEN NOTIFICATION OF INTENTION TO RENOVATE**

38. Complainant realleges the allegations contained in paragraphs 1 through 33, above.

39. Pursuant to 40 C.F.R. § 61.145(a)(4), each owner and operator of a renovation activity which involves stripping, removing, dislodging, cutting, drilling or similarly disturbing one hundred and sixty (160) square feet or more of regulated asbestos containing material ("RACM") must comply with the notification requirements of 40 C.F.R. § 61.145(b).

40. Pursuant to 40 C.F.R. § 61.145(b), and in relevant part only, each owner and operator of a regulated renovation activity must provide written notice to EPA at least ten (10) working days before asbestos stripping and removal work or any other activity begins.

41. At or about the time of the September 1, 2010 inspection, the EPA inspector determined that Respondents had failed to provide the requisite written notice of intention to renovate set forth at 40 C.F.R. § 61.145(b).

42. Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(b) prior to the renovation of the Facility constitute a separate "per day" violation of Section 112 of the

CAA, 42 U.S.C. § 7412.

**COUNT III**

**FAILURE TO HAVE A TRAINED ON-SITE REPRESENTATIVE PRESENT  
DURING THE ASBESTOS RENOVATION OPERATION**

43. Complainant realleges the allegations contained in paragraphs 1 through 33, above.
44. Pursuant to 40 C.F.R. § 61.145(c)(8), and in relevant part only, no RACM shall be stripped, removed or otherwise handled or disturbed at a facility unless at least one on site representative trained in the provisions of the Asbestos NESHAP regulations, and the means of complying with them, is present. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.
45. During the September 1, 2010 inspection, the EPA inspector found no evidence that the required Asbestos NESHAP training had been completed in accordance with paragraph 44, above. After determining that the required training had not been posted or made otherwise available to EPA, the EPA inspector then asked Respondent St. Peter's Church representatives whether at least one on-site representative trained in the provisions of the Asbestos NESHAP regulations, and the means of complying with them, was present during asbestos abatement/renovation operations. Respondent St. Peter's Church representatives stated that there were no asbestos NESHAP trained representatives (such as a foreman or management level person) on site during asbestos renovation operations.

46. Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(c)(8) by failing to have at least one on site representative trained in the provisions of the Asbestos NESHAP present during the removal/renovation of RACM constitutes a separate "per day" 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 EPA Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a penalty of not more than \$37,500 for each violation of the CAA that occurred after January 12, 2009. EPA proposes to assess a civil penalty of fifty two thousand, four hundred and three dollars (\$52, 403.00) against Respondents as follows:

#### **A. Gravity Component**

##### Count I

*September 1, 2009*

Failure to keep stripped RACM adequately wet until collected for disposal (> 10 unit but < 50 units; first violation)  
40 C.F.R. § 61.145(c)(6)(i)

\$ 10,000

##### Count II

*September 1, 2009*

Failure to provide notification (> 10 unit but < 50 units; first violation)

40 C.F.R. § 61.145(b)	\$15,000
<u>Count III</u>	
<i>September 1, 2009</i>	
Failure to have trained representative on site ( > 10 unit but < 50 units; first violation)	
40 C.F.R. § 61.145(c)(8)	\$ 10,000
Size of the Violator	<u>\$2,000</u>
 SUBTOTAL	 \$37,000
 <b>B. Adjusted Gravity Component</b>	
<b>Multiplication by 1.4163</b>	
<b>Upwards Adjustment for Inflation</b>	
<b>40 C.F.R. Parts 19 &amp; 27</b>	<b>\$52,403</b>
 <b>B. Economic Benefit</b>	 <u>\$ 0.00</u>
 <b>TOTAL PROPOSED PENALTY:</b>	 <b>\$52,403</b>

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" (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004), 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 (more than 10 Units but less than 50 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 or undiscovered 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 Benjamin Cohan (3RC10), Senior Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

If either 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 Benjamin M. Cohan, Senior Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Cohan at (215) 814-2618 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 Mr. Cohan 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.

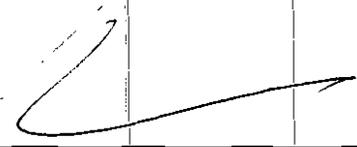
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Administrative Complaint and Notice of Opportunity for Hearing (re: **Docket No. CAA-03-2010-0312**) was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified return receipt requested first-class U.S. Mail, to the following persons:

His Excellency Most Reverend W. Francis Malooly, Bishop of Wilmington  
Diocese of Wilmington, Delaware  
Michael Saltarelli, President  
1925 Delaware Avenue  
Wilmington, DE 19806

Reverend Arthur B. Fiore, Pastor  
Father John C. Klevence  
St. Peter's Church  
521 Harmony Street  
New Castle, DE 19720

6/22/10  
Date

  
\_\_\_\_\_  
Benjamin M. Cohan  
Sr. Assistant Regional Counsel