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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

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IN RE:)	
)	DOCKET NO. CAA-9-2008-0033
Rosalva Caro)	
and)	COMPLAINT AND
Ed Chun Architectural Corp.)	NOTICE OF
)	OPPORTUNITY FOR HEARING
<u>RESPONDENTS.</u>)	

PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA"), Region 9, is issuing this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents Rosalva Caro ("Caro"), and Ed Chun Architectural Corporation ("Ed Chun" and together with Hernandez the "Respondents") pursuant to Section 113(d) of the Clean Air Act, as amended (the "Act"), 42 U.S.C. § 7413(d). The Administrator of EPA ("Administrator") delegated to the Regional Administrator of Region 9 the authority to issue complaints such as this one in the state of California, and the Regional Administrator, in turn, re-delegated that Authority to the Complainant.

Complainant will show that the Respondents violated the National Emission Standards for Hazardous Air Pollutants for asbestos, promulgated under Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and codified at 40 C.F.R. Part 61, Subpart M, a copy of which is enclosed with this Complaint.

GENERAL ALLEGATIONS

1. Rosalva Caro is an individual. Rosalva Caro is the owner of the property at 416 S J Street Imperial, site of the

1 former La Fuente Restaurant, located in Imperial California.

2 2. Ed Chun Architectural Corporation is a corporation
3 incorporated in the state of California.

4 3. Respondents are each a "person" as that term is defined
5 by Section 302(e) of the Act, 42 U.S.C. § 7602(e).

6 4. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412,
7 the Administrator promulgated regulations that govern the
8 emission, handling, and disposal of asbestos. These emission
9 standards are known as the National Emission Standards for
10 Hazardous Air Pollutants ("NESHAP"). These asbestos NESHAP
11 regulations are codified at 40 C.F.R. Part 61, Subpart M.

12 5. At all times relevant to this complaint, Caro owned and
13 controlled the La Fuente Restaurant, a commercial building
14 located at 416 S. J Street, Imperial, California (the "Old La
15 Fuente Restaurant").

16 6. At all times relevant to this complaint, Ed Chun was the
17 engineering firm in control of the work to be done at 416 S. J
18 Street, Imperial, California, including removal of the Old La
19 Fuente Restaurant.

20 8. The Old La Fuente Restaurant was a "facility" as that
21 term is defined by 40 C.F.R. § 61.141.

22 9. Sometime on or before February 6, 2008, Respondents
23 began removal of the Old La Fuente Restaurant.

24 10. Removal of the Old La Fuente Restaurant was a
25 "demolition" as that term is defined by 40 C.F.R. § 61.141.
26 Removal of the Old La Fuente Restaurant is the "Demolition
27 Activity".

28 11. With respect to the Demolition Activity, each of the

1 Respondents is an "owner or operator of a demolition or
2 renovation activity" as that term is defined by 40 C.F.R. §
3 61.141.

4 12. Written notice of intent to demolish was not sent to
5 the Administrator before the Demolition Activity began on or
6 around on or before **February 6, 2008**.

7 **COUNT I - FAILURE TO NOTIFY OF INTENTION TO DEMOLISH**
8 **(§ 61.145(b))**

9 13. Complainant realleges and incorporates by reference
10 Paragraphs 1 through 12.

11 14. Pursuant to 40 C.F.R. § 61.145(a) and § 61.145(b), each
12 owner or operator of a demolition activity must provide the
13 Administrator with written notice of intent to demolish
14 postmarked or delivered at least 10 working days before the start
15 of demolition activity.

16 15. Respondents did not provide the Administrator with
17 written notice of intent to conduct demolition activities before
18 the Demolition Activity began on or before **February 6, 2008**.

19 16. Respondent's failure to provide the Administrator with
20 written notice of intent to demolish before demolition began
21 constitutes a violation of 40 C.F.R. § 61.145(b).

22 **PROPOSED CIVIL PENALTY**

23 Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a
24 civil administrative penalty of up to Twenty-Five Thousand
25 Dollars (\$25,000) per day for each violation of the Act, provided
26 that the total amount of penalty assessed does not exceed Two
27 Hundred Thousand Dollars (\$200,000). The civil penalty amount
28 has been increased pursuant to the Civil Monetary Penalty
Inflation Adjustment Rule (as mandated by the Debt Collection

1 Improvement Act of 1996) to: not more than \$27,500 for violations
2 occurring between January 30, 1997 and March 15, 2004; and not
3 more than \$32,500 for violations occurring on or after March 15,
4 2004. 40 C.F.R. Part 19; 69 Fed. Reg. 7121. In this case, EPA
5 proposes the assessment of a joint and several civil penalty in
6 the amount of nine thousand dollars (**\$9,000**) against Respondents.

7 This civil penalty has been determined in accordance with
8 Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e). For
9 purposes of determining the amount of any penalty to be assessed,
10 Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e) requires
11 EPA to take into account, in addition to such other facts as
12 justice may require, the size of the business, the economic
13 impact of the penalty on the business, the violator's full
14 compliance history and good faith efforts to comply, the duration
15 of the violation as established by any credible evidence, payment
16 by the violator of penalties previously assessed for the same
17 violation, the economic benefit of noncompliance, and the
18 seriousness of the violation.

19 To develop the proposed penalty in this Complaint, EPA has
20 taken into account the particular facts and circumstances of this
21 case with specific reference to EPA's "Clean Air Act Stationary
22 Source Civil Penalty Policy" dated October 25, 1991, EPA's
23 "Asbestos Demolition and Renovation Civil Penalty Policy" dated
24 May 5, 1992 ("Asbestos Penalty Policy"), and the Civil Monetary
25 Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. Copies of
26 the "Clean Air Act Stationary Source Civil Penalty Policy" and
27 the "Asbestos Penalty Policy" are enclosed with this Complaint.

1 The civil penalty has two components: economic benefit and
2 gravity. The economic benefit is based on the value that the
3 alleged violator realized from delaying or failing to comply with
4 the law. In this case, the economic benefit is \$0, as calculated
5 from the Asbestos Penalty Policy.

6 The second component of the civil penalty is valuing the
7 gravity of the alleged violations. Count I alleges that
8 Respondents violated 40 C.F.R. § 61.145(b) by failing to notify
9 the Administrator of intent to conduct demolition activities
10 before demolition activities began. Utilizing the gravity
11 component table in the Asbestos Penalty Policy, this violation
12 warrants a penalty of \$5,000.

13 As part of the gravity component, EPA evaluates the net
14 worth or net current assets of the alleged violator to determine
15 an appropriate adjustment for deterring future violations. In
16 this case, Complainant has estimated that Respondents' net worth
17 is below \$100,000. Consequently, pursuant to the Clean Air Act
18 Stationary Source Civil Penalty Policy Penalty Policy and the
19 Asbestos Penalty Policy, the additional gravity-based penalty for
20 size of violator is \$2,000. Adjusting the gravity-based penalty
21 of \$7,000 upward by 28.95% pursuant to the Civil Monetary Penalty
22 Inflation Adjustment Rule yields an inflation-adjusted gravity-
23 based penalty of **\$9027**. Since there is no economic benefit
24 calculated in this case, the total proposed civil penalty is
25 **\$9,027**, which is rounded to the nearest hundred for a total
26 penalty of **\$9,000**.

27 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

28 As provided in Section 113(d) of the Act, 42 U.S.C. § 7213(d),

1 you have the right to request a formal hearing to contest any
2 material fact set forth in this Complaint or to contest the
3 appropriateness of the proposed penalty. Any hearing requested
4 will be conducted in accordance with the Administrative Procedure
5 Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of
6 Practice Governing the Administrative Assessment of Civil Penalties
7 and the Revocation or Suspension of Permits ("Consolidated Rules of
8 Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of
9 Practice is enclosed with this Complaint.

10 You must file a written Answer within thirty (30) days of
11 receiving this Complaint to avoid being found in default, which
12 constitutes an admission of all facts alleged in the Complaint and
13 a waiver of the right to a hearing, and to avoid having the above
14 penalty assessed without further proceedings. If you choose to
15 file an Answer, you are required by the Consolidated Rules of
16 Practice to clearly and directly admit, deny, or explain each of
17 the factual allegations contained in this Complaint to which you
18 have any knowledge. If you have no knowledge of a particular fact
19 and so state, the allegation is considered denied. Failure to deny
20 any of the allegations in this Complaint will constitute an
21 admission of the undenied allegation.

22 The Answer shall also state the circumstances and arguments,
23 if any, which are alleged to constitute the grounds of defense, and
24 shall specifically request an administrative hearing, if
25 desired. If you deny any material fact or raise any affirmative
26 defense, you will be considered to have requested a hearing.

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1 The Answer must be filed with:

2 Regional Hearing Clerk
3 USEPA, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 In addition, please send a copy of the Answer and all other
7 documents that you file in this action to:

8 Margaret Alkon
9 Assistant Regional Counsel
10 Office of Regional Counsel (ORC-2)
11 USEPA, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 Ms. Alkon is the attorney assigned to represent EPA in this
15 matter. Her telephone number is (415)972-3890.

16 You are further informed that the Consolidated Rules of
17 Practice prohibit any ex parte (unilateral) discussion of the
18 merits of any action with the Regional Administrator, Regional
19 Judicial Officer, Administrative Law Judge, or any person likely
20 to advise these officials in the decision of the case, after the
21 Complaint is issued.

22 **INFORMAL SETTLEMENT CONFERENCE**

23 EPA encourages all parties against whom a civil penalty is
24 proposed to pursue the possibility of settlement through informal
25 conferences. Therefore, whether or not you request a hearing,
26 you may confer informally with EPA through Margaret Alkon, the
27 EPA attorney assigned to this case, regarding the facts of this
28 case, the amount of the proposed penalty, and the possibility of
settlement. **An informal settlement conference does not, however,
affect your obligation to file an Answer to this Complaint.**

ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope

1 of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et
2 seq., which may facilitate voluntary settlement efforts. Dispute
3 resolution using alternative means of dispute resolution does not
4 divest the Presiding Officer of jurisdiction nor does it
5 automatically stay the proceeding.

6 **QUICK RESOLUTION**

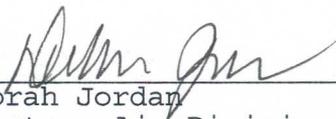
7 Instead of requesting an informal settlement conference or
8 filing an Answer requesting a hearing, you may choose to resolve
9 the proceeding by paying the specific penalty proposed in the
10 Complaint and filing a copy of the check or other instrument of
11 payment with the Regional Hearing Clerk within thirty (30) days
12 after receiving the Complaint. If you wish to resolve the
13 proceeding in this manner instead of filing an answer but need
14 additional time to pay the penalty, you may file a written
15 statement stating that you agree to pay the proposed penalty in
16 accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing
17 Clerk within 30 days after receiving the Complaint. The written
18 statement need not contain any response to, or admission of, the
19 allegations in the Complaint. Within sixty (60) days after
20 receiving the Complaint, the full amount of the proposed penalty
21 must be paid. Failure to make such payment within this sixty-day
22 period may subject you to default. Upon receipt of payment in
23 full, the Regional Judicial Officer will issue a final order.
24 Payment by a respondent shall constitute a waiver of the
25 respondent's rights to contest the allegations and to appeal the
26 final order. In addition, full payment of the proposed penalty
27 shall only resolve Respondents' liability for Federal civil
28 penalties for violations and facts alleged in the Complaint and

1 does not affect the right of EPA or the United States to pursue
2 appropriate injunctive or other equitable relief or criminal
3 sanctions for any violations of law.

4 CONSENT AGREEMENT AND FINAL ORDER

5 EPA has the authority, where appropriate, to modify the
6 amount of the proposed penalty to reflect any settlement reached
7 with you in an informal conference or through alternative dispute
8 resolution. The terms of such an agreement would be embodied in
9 a Consent Agreement and Final Order. A Consent Agreement signed
10 by all parties would be binding as to all terms and conditions
11 specified therein when the Regional Judicial Officer signs the
12 Final Order.

13 Dated at San Francisco, California on this 4th day of
14 September, 2008.

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19 Deborah Jordan
20 Director, Air Division
21 U.S. EPA, Region 9
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CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for hearing was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Complaint; the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the Clean Air Act Stationary Source Civil Penalty Policy and Asbestos Demolition and Renovation Civil Penalty Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Eddie M. Chun
President
Ed Chun Architectural Corporation
1265 State Street
El Centro, CA 92243

Certified Return Receipt No.

Rosalva Caro
Property Owner
416 S J Street
Imperial, CA 92251

Certified Return Receipt No.

Dated: 9-9-08

By: Robert Trotter

Air Enforcement Office
US EPA, Region 9