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2007 SEP 26 AM 9:24

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

REGIONAL HEARING CLERK

Docket No. CAA-⁰⁹9-2007-0029

IN THE MATTER OF:

THE SOCO GROUP, INC.
and FLOYD NELSON JR. AND
SONS, INC.,
Respondents.

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA"), Region 9, issues this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents, The SoCo Group, Inc. ("SoCo") and Floyd Nelson Jr. and Sons, Inc. ("Nelson") pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413(d).

The Administrator of EPA ("Administrator") delegated the authority to issue civil administrative complaints such as this one in California to the Regional Administrator of Region 9 and the Regional Administrator, in turn, re-delegated the authority to issue such complaints to Complainant, the Director of the Air Division.

Pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, the Administrator promulgated regulations that govern the emission, handling, and disposal of asbestos and associated record-keeping and notification requirements. These

1 regulations are known as the National Emission Standards for
2 Hazardous Air Pollutants ("NESHAP") for asbestos. The NESHAP
3 regulations for asbestos are found at 40 C.F.R. Part 61,
4 Subpart M. Complainant will show that Respondents violated the
5 CAA by violating the asbestos NESHAP at 40 C.F.R. Part 61,
6 Subpart M, a copy of which is enclosed with this Complaint.

7 GENERAL ALLEGATIONS

8 1. Respondents SoCo and Nelson are corporations doing
9 business in the State of California.

10 2. Respondents are "persons" as that term is defined in
11 Section 302(e) of the Act, 42 U.S.C. § 7602(e).

12 3. At all times relevant to this Complaint, Respondent
13 SoCo owned, operated, controlled and/or supervised the Texaco
14 Quick Mart Building located at 1865 W. Adams Avenue in El Centro,
15 California (the "Building").

16 4. The Building is a "facility" as defined at 40 C.F.R.
17 §61.141.

18 5. Respondent SoCo hired Respondent Nelson to demolish the
19 Building.

20 6. On or around March 20, 2007, Respondent Nelson began
21 "demolition" of the Building, as that term is defined at 40
22 C.F.R. § 61.141.

23 7. On or about March 30, 2007, inspectors from the
24 California Air Resources Board and EPA verified that the Building
25 had been demolished.

26 8. Respondents are each "an owner or operator of a
27 "demolition activity" as defined at 40 C.F.R. §61.141.

1
2 COUNT I: FAILURE TO PROVIDE EPA WITH WRITTEN NOTICE OF INTENTION
3 TO DEMOLISH, 40 C.F.R. § 61.145(b)(1).

4 9. Paragraphs 1 through 8 are realleged and incorporated
5 herein by reference.

6 10. An owner or operator of a demolition activity must
7 provide EPA with a written notice of intention to demolish at
8 least ten working days before demolition begins. 40 C.F.R. §
9 61.145(b)(1)(i).

10 11. Respondents did not submit a written notice of
11 intention to demolish the Building to EPA before demolition
12 began.

13 12. Respondents' failure to provide written notice of
14 intention to demolish the Building to EPA before demolition began
15 constitutes a violation of 40 C.F.R. § 61.145(b)(1).

16 PROPOSED CIVIL PENALTY

17 Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a
18 civil administrative penalty of up to Twenty-Five Thousand
19 Dollars (\$25,000) per day for each violation of the Act, provided
20 that the total amount of penalty assessed does not exceed Two
21 Hundred Thousand Dollars (\$200,000). These maximum amounts have
22 been adjusted to \$32,500 per day not to exceed a total penalty of
23 \$270,000 for violations occurring on or after March 15, 2004
24 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule
25 at 40 C.F.R. Part 19, which implements the Debt Collection
26 Improvement Act of 1996, 31 U.S.C. § 3701. In this case, EPA
27 proposes the assessment of a civil penalty in the amount of
28 TWELVE THOUSAND, NINE HUNDRED DOLLARS (\$12,900) against

1 Respondents.

2 This civil penalty is proposed after consideration of the
3 statutory assessment factors set forth at Section 113(e) of the
4 Act, 42 U.S.C. § 7413(e), and in accordance with EPA's "Clean Air
5 Act Stationary Source Civil Penalty Policy" ("Penalty Policy")
6 dated October 25, 1991 and Appendix III of the Penalty Policy
7 ("Appendix III"), the "Asbestos Demolition and Renovation Civil
8 Penalty Policy" dated May 5, 1992. Copies of the Penalty Policy
9 and Appendix III are enclosed with this Complaint. This section
10 explains the rationale behind the penalty assessed for Count I
11 and the various penalty factors and adjustments that were used in
12 the calculation of the total penalty amount.

13 The civil penalty has two components: economic benefit and
14 gravity. The economic benefit is based on the value that the
15 alleged violator realized from delaying or failing to comply with
16 the law. In this action, the economic benefit is \$0, as
17 calculated under Appendix III of the Penalty Policy. The second
18 component of the civil penalty is valuing the gravity of the
19 alleged violation. The gravity component of the civil penalty
20 addresses the gravity of each violation and assesses a penalty
21 based on the size of the violator. Count I alleges that
22 Respondents violated 40 C.F.R. § 61.145(b)(1) by failing to
23 provide EPA written notice of intention to demolish before
24 demolition began. The penalty assessed for this violation, as
25 calculated under Appendix III of the Penalty Policy, is \$5,000.
26 In addition, in accordance with Section 113(e) of the Act, the
27 Penalty Policy requires the assessment of an additional penalty
28 based on the "size of the violator" as a deterrent to future

1 violations. The Penalty Policy assigns a penalty amount based on
2 the net worth of the Respondents. However, if "size of violator"
3 penalty provided in the Penalty Policy exceeds the sum of the
4 economic benefit and gravity components, as in this case,
5 assessment for the "size of violator" penalty will equal the sum
6 of the economic benefit and gravity components. Consequently,
7 the "size of violator" penalty in this case is \$5,000. Combining
8 the penalty assessed for Count I and the penalty assessed for the
9 size of violator results in a penalty of \$10,000 assessed for
10 gravity. In accordance with the Civil Monetary Penalty Inflation
11 Adjustment Rule at 40 C.F.R. Part 19, this gravity penalty amount
12 is adjusted by 28.95%, resulting in a penalty of \$12,895. Since
13 there is no economic benefit calculated in this case, the total
14 civil penalty against Respondents is \$12,895, which is rounded to
15 the nearest hundred for a total penalty of \$12,900.

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

17 As provided in Section 113(d) of the Act, 42 U.S.C. §
18 7213(d), you have the right to request a formal hearing to
19 contest any material fact set forth in this Complaint or to
20 contest the appropriateness of the proposed penalty. Any hearing
21 requested will be conducted in accordance with the Administrative
22 Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules
23 of Practice Governing the Administrative Assessment of Civil
24 Penalties and the Revocation/Termination or Suspension of Permits
25 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of
26 the Consolidated Rules of Practice is enclosed with this
27 Complaint.

28 **You must file a written Answer within thirty (30) days of**

1 receiving this Complaint to avoid being found in default, which
2 constitutes an admission of all facts alleged in the Complaint
3 and a waiver of the right to a hearing, and to avoid having the
4 above penalty assessed without further proceedings. If you
5 choose to file an Answer, you are required by the Consolidated
6 Rules of Practice to clearly and directly admit, deny, or explain
7 each of the factual allegations contained in this Complaint to
8 which you have any knowledge. If you have no knowledge of a
9 particular fact and so state, the allegation is considered
10 denied. Failure to deny any of the allegations in this Complaint
11 will constitute an admission of the undenied allegation.

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

17 The Answer must be filed with:

18 **Regional Hearing Clerk**
19 **USEPA, Region IX**
20 **75 Hawthorne Street**
San Francisco, CA 94105

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

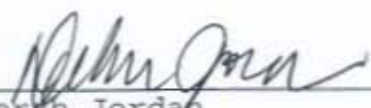
23 **Carol Bussey**
24 **Assistant Regional Counsel**
Office of Regional Counsel (ORC-2)
25 **USEPA, Region IX**
75 Hawthorne Street
San Francisco, CA 94105

26 Ms. Bussey is the attorney assigned to represent EPA in this
27 matter. Her telephone number is (415)972-3950.

28 You are further informed that the Consolidated Rules of

1 specified therein when the Regional Judicial Officer signs the
2 Final Order.

3
4 DATE: 9/25/07



Deborah Jordan
Director, Air Division
U.S. EPA, Region 9

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CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Complaint and Opportunity for Hearing was hand delivered to:


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 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 (including Appendix III) were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Paul Olivier
President
The Soco Group, Inc.
5962 Priestly Drive
Carlsbad, CA 92008
Certified Mail No. 7003 3110 0006 1997 2647

Floyd Nelson Jr.
President
Floyd Nelson Jr. and Sons, Inc.
2305 Hoyt Road
Holtville, CA 92250
Certified Mail No. 7003 3110 0006 1997 2630

Dated: SEP 26 2007

By: 
Air Enforcement Office
USEPA Region 9.