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Environmental Appeals Board

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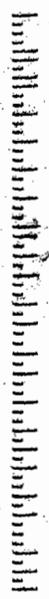
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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

In the Matter of)
)
)
 City of Wilkes-Barre,)
 A.R. Popple, Inc.,)
 Wyoming S. & P., Inc.)
)
)
 Docket No. CAA-03-2005-0053)
)

Appeal No.: CAA 06-03

ORDER ON FAILURE TO FILE A RESPONSE

On December 13, 2006, the Environmental Protection Agency, Region 3, filed with the Environmental Appeals Board ("Board") a notice of appeal from Administrative Law Judge ("ALJ") Spencer T. Nissan's November 14, 2006, initial decision in the above-captioned case.¹ Simultaneously, Region 3 filed an accompanying appellate brief challenging the ALJ's penalty assessment for the violations alleged in Counts II, III and IV of the complaint.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. pt. 22, "[w]ithin 20 days of service of notices of appeal and briefs . . . any other party or non-party participant may file with the [Board] an original and one copy of a response brief responding to argument raised by the appellant[.]" 40 C.F.R. § 22.30(a)(2). The deadline for the filing of a response brief in this case expired on January 3, 2007.² To date, no party has filed a response to Region 3's appeal.

¹ This appeal arises from an enforcement proceeding alleging violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the National Emission Standard for Asbestos codified at 40 C.F.R. Part 61, Subpart M.

² EPA Region 3 served its notice of appeal and brief by overnight delivery; thus, the deadline for response is not extended by five days under 40 C.F.R. § 22.7(c). Additionally, the
(continued...)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order on Failure to File a Response in the matter of City Wilkes-Barre, A.R. Popple, Inc., Wyoming S. & P., Inc., CAA Appeal No. 06-03, were sent to the following persons in the manner indicated.

By Certified Mail Return Receipt Requested:

Timothy J. Henry, Esquire
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By Pouch Mail:

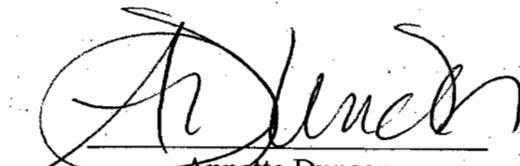
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By Inter-Office Mail:

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Dated: JAN 26 2007


Annette Duncan
Secretary