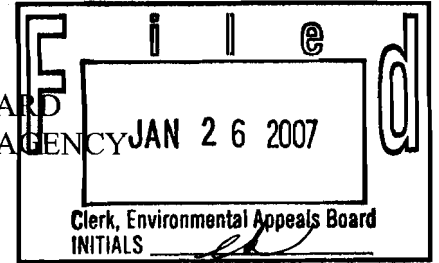


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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.

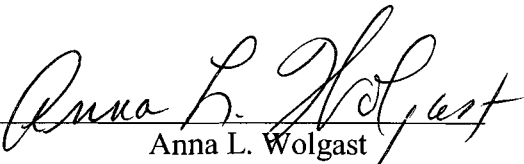
² EPA Region 3 served its notice of appeal and brief by overnight delivery; thus, the deadline for response is not extended by five days under 40 C.F.R. § 22.7(c). Additionally, the
(continued...)

Having received no response brief from any Party, the Board intends to proceed with its evaluation of this appeal based on the record before it.

So ordered.

Dated: January 26, 2007

ENVIRONMENTAL APPEALS BOARD



Anna L. Wolgast
Environmental Appeals Judge

²(...continued)
twentieth day fell on January 1, 2007 and thus, the deadline was extended by rule to January 3, due to the New Year's Day Holiday and due to the President's declaration of January 2, 2007 as a federal holiday. See 40 C.F.R. § 22.7(a).

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:

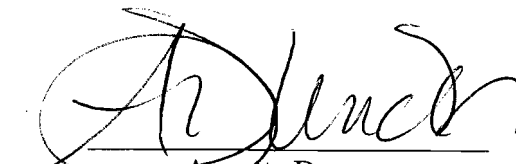
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Administrative Law Judge
U.S. EPA Headquarters, 1900L
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Dated: JAN 26 2007


Annette Duncan
Secretary