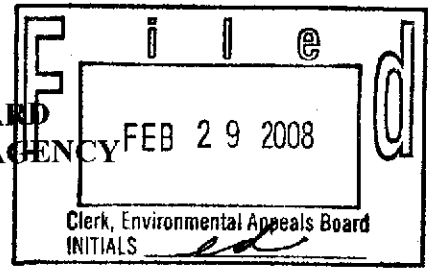


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
Liston Brick Co.) CAA Appeal No. 07-03
))
Docket No. CAA-09-2005-0018))
_____))

ORDER REQUIRING RESPONSE

On January 16, 2008, Liston Brick Company ("Liston"), filed a notice of appeal from an Initial Decision issued by Administrative Law Judge Barbara A. Gunning ("ALJ"), along with a motion seeking a thirty-day extension of time to file an appellate brief. "Notice of Appeal [Concurrently Filed With Motion for Extension of Time to File Appellant Brief]." The Initial Decision found Liston liable for two violations of 40 C.F.R. part 63, subpart RRR (National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production) and section 112 of the Clean Air Act, 42 U.S.C. § 7412. In addition, the ALJ found Liston liable for two violations of Section 114 of the Clean Air Act, 42 U.S.C. § 7414, for failing to comply with requests for information. For these violations the ALJ assessed a civil administrative penalty of \$116,402. By order dated January 18, 2008, the Board granted Liston's motion for an extension of time to file its appellate brief. *See* Order Extending Time to File Appellate Brief (Jan. 18, 2008). Liston filed its appellate brief on February 19, 2008. *See* Respondent's Appeal of the Initial Decision of the Presiding Officer (Feb. 19, 2008) ("Appeal").

On appeal, Liston argues that the ALJ erred in concluding that Liston's net worth exceeded one million dollars. Appeal at 2. According to Liston, the evidence in the record does not support this conclusion and, as a result, Liston argues that the penalty should be reduced from \$116,402 to 107,504.64.¹ *Id.* at 11. In response, U.S. EPA Region 9 (the "Region"), the complainant in this matter, states that it "does not oppose [Liston's] prayer for relief of a penalty amount of \$107,504.64 in order to expeditiously resolve this litigation." Non-Opposition to Appeal of the Initial Decision of the Presiding Officer at 2 (Feb. 28, 2008) ("Non-Opposition"). The Region requests that this Board issue a final order requiring Liston to pay a civil penalty of \$107,504.64. *Id.*

Because it appears that the parties are in agreement regarding the amount of the penalty, this Board is inclined to issue a final order assessing a penalty of \$107,504.54. Before doing so, however, the Board has concluded that a response from Liston is appropriate. In particular, the Board seeks confirmation from Liston as to whether this matter should be resolved in the manner suggested by the Region. Accordingly, Liston is hereby ordered to file a response to the

¹ Under the applicable penalty policy, a \$10,000 penalty (prior to an inflationary adjustment) is assessed for a corporation with a net worth exceeding one million dollars. *See Clean Air Act Stationary Source Civil Penalty Policy* (Oct. 25, 1991). A lesser penalty of \$2,000 (also prior to an inflationary adjustment) is assessed where a violator's net worth does not exceed \$100,000. *Id.* Liston argues that its net worth does not exceed \$100,000, and that it should therefore be subject to this lesser penalty.

Region's Non-Opposition no later than March 13, 2008.² If Liston concurs in the Region's request, it must file a motion to withdraw its appeal along with its response.

So ordered.

Dated:

February 29, 2008

ENVIRONMENTAL APPEALS BOARD

By: *Anna L. Wolgast*
Anna L. Wolgast
Environmental Appeals Judge

² Documents are "filed" with the Board on the date they are *received* by the Clerk of the Board.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Requiring Response in the matter of Liston Brick Company, CAA Appeal No. 07-03, were sent to the following persons in the manner indicated:

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Office of Civil Enforcement

Dated:

February 29, 2008

Annette Duncan
Annette Duncan
Secretary