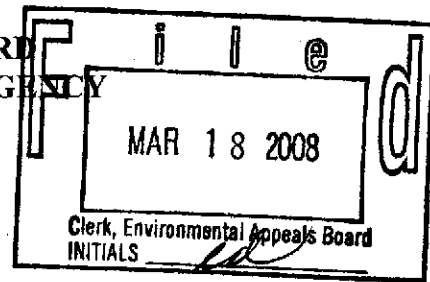


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

**FINAL ORDER**

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. *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.*

In a response filed on March 13, 2008, Liston states that "it concurs with the Region's Non-Opposition" and that "[t]he parties are in agreement regarding the amount of the penalty and seek a final order." Respondent's Response to Region's Non-Opposition (Mar. 13, 2008) ("Response"). In conjunction with its Response, Liston has filed a motion to withdraw its appeal. Respondent's Motion to Withdraw Appeal (Mar. 13, 2008) ("Motion").

Under these circumstances, Liston's motion is granted. Liston's appeal before this Board is hereby dismissed with prejudice. Further, the penalty assessed in the Initial Decision is modified as follows. Liston shall pay a civil penalty in the amount of \$107,504.64 within thirty (30) days of receipt of this Final Order. Payment shall be made by forwarding a cashier's or certified check payable to the Treasurer, United States of America, at the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

A transmittal letter identifying the case name and the EPA docket number must accompany the check. 40 C.F.R. § 22.31(c)

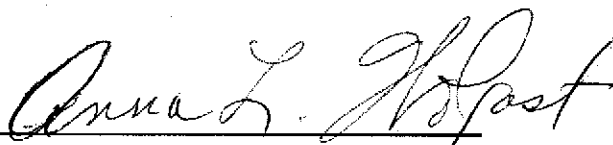
So ordered.<sup>1</sup>

Dated:

*March 18, 2008*

ENVIRONMENTAL APPEALS BOARD

By:

  
\_\_\_\_\_  
Anna L. Wolgast  
Environmental Appeals Judge

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<sup>1</sup> The two-member panel deciding this matter is comprised of Environmental Appeals Judges Kathie A. Stein and Anna L. Wolgast. 40 C.F.R. § 1.25(e)(1).

**CERTIFICATE OF SERVICE**

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

By First Class Mail:

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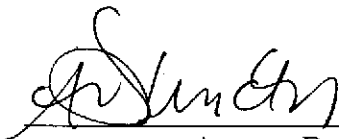
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By Inter-Office Mail: **MAR 18 2008**

Gary Jones (2241A)  
Office of Civil Enforcement

Dated: **MAR 18 2008**



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Annette Duncan  
Secretary