

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

IN THE MATTER OF:) CAA Appeal No. 07-03
)
LISTON BRICK COMPANY OF CORONA) NON-OPPOSITION TO
) APPEAL OF THE INITIAL
) DECISION OF THE PRESIDING
) OFFICER
)
DOCKET NO. CAA-09-2005-0018)

I. INTRODUCTION

Appellee, the Director of the Air Division, United States Environmental Protection Agency, Region IX ("EPA" or "Appellee"), does not oppose Liston Brick Company of Corona's ("Appellant's" or "Liston's"), Appeal of the Initial Decision of the Presiding Officer, Administrative Law Judge ("ALJ") Barbara A. Gunning, in In the Matter of Liston Brick of Corona, Docket No. CAA-09-2015-0018, dated December 18, 2007, in which Appellant seeks assessment of a civil administrative penalty of \$107,504.64.

II. BACKGROUND AND ARGUMENT

EPA has been concerned during the course of this litigation that Liston would delay these proceedings as long as possible in order to allow Mr. Hall, the owner, to shut down the business, leave the area and never pay a penalty. We raised this concern to ALJ Gunning during the hearing. Transcript at 717-18.

EPA believes that ALJ Gunning's determination of Liston's

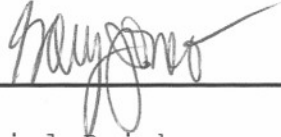
size of business is supported by direct evidence in the record. However, EPA does not oppose Appellant's prayer for relief of a penalty amount of \$107,504.64 in order to expeditiously resolve this litigation. See In re: Rhee Bros., Inc., FIFRA Appeal No. 06-02 at 14 (May 17, 2007) (Parties agreed that the amount of the penalty assessed in the Initial Decision was appropriate).

III. CONCLUSION

Based on the foregoing, EPA requests the Environmental Appeals Board issue a Final Order to require Liston to pay a civil penalty of \$107,504.64.

Respectfully submitted,

Date: 2/28/08



for Daniel Reich
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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Nonopposition to Appeal of the Initial Decision of the Presiding Officer was hand delivered to:

Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

and that a true and correct copy of the said document was filed with the Clerk of the Board electronically via CDX, and sent by First Class United States Mail, addressed to the following:

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Dated: 2/28/08

By: 

Gary Jones
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