UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FEDERAL EXPRESS

Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G Street,
NW, Suite 600
Washington, D.C. 20005

Re: CAA Appeal No. 05-02

To whom it may concern:

Enclosed please find an original and five copies of APPELLEE'S RESPONSE BRIEF for filing with the Environmental Appeals Board in the in the matter referenced above.

Sincerely

Jennifer M. Abramson
Assistant Regional Counsel

Enclosures

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

In re:	)	
	)	
Four Strong Builders, Inc.	)	CAA Appeal No. 05-02
	)	
Docket No. CAA-03-2004-0400	)	
	)	

APPELLEE'S RESPONSE BRIEF

Submitted by:

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Authorized to Receive Service

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INTRODUCTION

The United States Environmental Protection Agency ("EPA" or "Appellee/Complainant") responds to an appeal filed by Four Strong Builders, Inc. ("FSBI" or "Appellant/Respondent") of Administrative Law Judge Carl C. Charneski's July 6, 2005 Initial Decision assessing a civil penalty of $24,310 for violations of Section 112 of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7412, and the National Emissions Standard for Asbestos regulations ("Asbestos NESHAP"), codified at 40 C.F.R. part 61, Subpart M. FSBI was found to be in default pursuant to Section 22.17(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("CROP"), 40 C.F.R. part 22, for failing to comply with a February 17, 2005 Order Setting Prehearing Procedures ("Prehearing Order") and a May 16, 2005 Order to show cause. For the reasons stated below, FSBI's appeal should be dismissed on procedural grounds as being untimely, or, in the alternative, Administrative Law Judge Carl C. Charneski July 6, 2005 Initial Decision should be affirmed

FACTUAL AND PROCEDURAL BACKGROUND

On September 30, 2004, EPA issued a Complaint and Notice of Opportunity for Hearing" ("Complaint") to FSBI, DLC Management, Inc. ("DLC"), and Levittown, L.P. ("L.P."), (collectively, the "Respondents") under the authority of Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d). The Complaint alleges that the Respondents failed to comply with Section 112 of the CAA, 42 U.S.C. § 7412, and the Asbestos NESHAP by failing to provide timely notification as required by 40 C.F.R. § 61.145(b), failing to keep regulated asbestos containing material ("RACM") wet until disposal as required by 40 C.F.R.

§ 61.145(c)(6)(i), and failing to remove RACM without it becoming damaged or disturbed as required by 40 C.F.R. § 61.145(c)(6)(ii). Consisting of three (3) counts, the Complaint sought a total proposed civil penalty of $37,400 jointly from the Respondents for the alleged violations of the Asbestos NESHAP and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Respondents DLC and L.P., through common counsel, filed their Answer and Request for Informal Settlement Conference and Hearing on or about November 2, 2004. Respondent FSBI, through counsel, filed its Answer and Separate Defenses on or about November 8, 2004. On December 15, 2004, an Order Initiating Alternative Dispute Resolution Process and Appointing Neutral was issued at the request of the parties. EPA and the Respondents were unable to resolve the issues and on February 15, 2005, an Order Terminating ADR Process was issued by the Honorable Spencer T. Nissen.

In a February 15, 2005 Order of Designation, Chief Administrative Law Judge Susan L. Biro designated the Honorable Carl C. Charneski ("Presiding Officer") to preside over the matter. On February 17, 2005, by Prehearing Order and pursuant to 40 C.F.R. § 22.19, the Presiding Officer directed the parties to file opening prehearing exchanges by March 15, 2005, specifying the required content of such exchanges. EPA thereafter filed Complainant's Opening Prehearing Exchange on March 15, 2005. Complainant's Opening Prehearing Exchange met each of the applicable substantive, procedural, filing and service requirements of the Presiding Officer's Prehearing Order and of 40 C.F.R. §§ 22.19(a) and 22.5.

As of March 23, 2005, Complainant had not received either opening prehearing exchanges or motions for extension of time from any of the Respondents. On this date, EPA filed Complainant's Motion for Issuance of Show Cause Order, Extension of Time to File Replies, and Other Appropriate Relief ("Motion to Show Cause") requesting the Presiding

Officer to *inter alia* issue an order to show cause why FSBI should not be found in default for its failure its to comply with the Prehearing Order's March 15, 2005 deadline and information exchange requirements, and the requirements of 40 C.F.R. § 22.19(a).

On April 14, 2004, EPA filed a Consent Agreement and Final Order ("CAFO") which settled the matter as to DLC and L.P. for $13,090 for their liability for the violations alleged in the Complaint. On the same date, EPA filed Complainant's First Supplement to Opening Prehearing Exchange ("Supplemented Prehearing Exchange ") which adjusted the proposed penalty against the remaining party, FSBI, to $24,310.

On May 16, 2005, the Presiding Officer issued an Order directing FSBI to respond to EPA's Motion to Show Cause by May 30, 2005. As of July 6, 2005, FSBI had not filed an opening prehearing exchange or a response to the Presiding Officer's Order to show cause. On this date, the Presiding Officer issued a Default Order finding FSBI liable for the three violations alleged in the Complaint, and assessing Respondent a civil penalty of $24,310, constituting an Initial Decision under the CROP.

On August 4, 2005, Respondent FSBI filed a Notice of Appeal to the Entry of a Default Order and a Brief in Support of Appellant/Respondent's Notice of Appeal to Vacate a Default Order ("Appeal Notice" and "Appeal Brief", respectively) with the Environmental Appeals Board (the "Board"). On August 24, 2005, the Board issued an Order Directing Respondent to Serve Notice of Appeal and Appeal Brief on Complainant. On or about August 26, 2005, FSBI served Complainant's counsel with its Appeal Notice and Appeal Brief.

ARGUMENT

I. THE PRESIDING OFFICER HAD PROPER GROUNDS TO ISSUE A DEFAULT ORDER DUE TO APPELLANT/RESPONDENT'S FAILURE TO COMPLY WITH THE PREHEARING EXCHANGE ORDER AND THE ORDER TO SHOW CAUSE.

Section 22.17(a) of the CROP explicitly states that parties "may be found to be in default ...upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." 40 C.F.R. § 22.17(a). This section further provides that "default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." *Id.* According to section 22.17(c) of the CROP, "when the Presiding Officer finds that a default has occurred, he shall issue a default order against the defaulting party...unless the record shows good cause why a default order should not be issued". 40 C.F.R. § 22.17(c). The Board has affirmed the issuance of default orders for failure to comply with prehearing orders on several occasions. *In re Jiffy Builders, Inc*, 8 E.A.D. 315, 323 (EAB 1999); *In re Rybond*,6 E.A.D. 614, 642 (EAB 1996); *In re House Analysis & Assocs. & Fred Powell,* 4 E.A.D. 501, 512 (EAB 1993).

In this case, the Presiding Officer issued a Prehearing Order, pursuant to 40 C.F.R. § 22.19(a), clearly stating that "**Opening Prehearing Exchanges** are due March 15, 2005", and specifying the required content of such exchanges. Attachment 1 at page 1[1]. FSBI failed to file either an opening prehearing exchange or a motion for extension of time by the Prehearing Order's March 15, 2005 deadline.

[1] According to the Certificate of Service accompanying the Prehearing Order, a copy was sent both by Facsimile and Regular Mail to FSBI's counsel, Paul Faugno, Esq.. Attachment 1 at page 3. Although Appellee/Complainant has no direct evidence of service, Appellant/Respondent does not raise any issues with respect to service of the Prehearing Order in its Appeal Brief.

FSBI was put on notice of its default status, when, on March 23, 2005, EPA filed a Motion to Show Cause. Attachment 2[2]. FSBI did not file a response to EPA's Motion to Show Cause[3]. FSBI also did it not file an opening prehearing exchange after receiving EPA's Motion to Show Cause.

FSBI was subsequently put on notice of its status as an active litigant, when, on April 14, 2004, EPA filed its CAFO with DLC and L.P., and its Supplemented Prehearing Exchange. Attachment 3[4]. The first page of the CAFO clearly states in bold uppercase letters **"CONSENT AGREEMENT AS TO DLC MANAGEMENT, INC. AND LEVITTOWN, L.P."** Attachment 3 at page 2. In paragraph 1, the CAFO states that it "address[es] the violations alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. only." *Id.* The remainder of the CAFO makes reference to DLC and L.P. only. Attachment 3.

In the Supplemented Prehearing Exchange, EPA adjusts the proposed penalty against the remaining party, FSBI, as result of the settlement with DLC and L.P.. On page 1, the Supplemented Prehearing Exchange states:

> EPA and Respondents Levittown, L.P. and DLC Management have executed a Consent Agreement and Final Order ("CAFO") fully settling and resolving all allegations set forth in the Administrative Complaint and Notice of Opportunity filed in this matter as to Respondents Levittown, L.P. and DLC Management only. Filed

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[2] On March 23, 2005, EPA sent, by Facsimile and Federal Express, a copy of its Motion to Show Cause to FSBI's counsel, Paul Faugno, Esq.. A copy of this correspondence and evidence of its receipt on March 24, 2005 is attached. Attachment 2 at page 8 (last page).

[3] Section 22.16(b) of the CROP requires responses to motions to be filed within 15 days after service of such motion. 40 C.F.R. § 22.16(b). Section 22.7(c) of the CROP clarifies that service is complete upon mailing or when placed in the custody of a reliable commercial delivery service. 40 C.F.R. § 22.7(c). Although FSBI was not required to file a response to EPA's Motion to Show Cause, such response would have been required to be filed by April 7, 2005.

[4] On April 14, 2005, EPA sent, by certified mail return receipt requested, copies of the CAFO and the Supplemented Prehearing Exchange to FSBI's counsel, Paul Faugno, Esq.. A copy of this correspondence and evidence of its receipt on April 21, 2005 is attached. Attachment 3 at page 15 (last page).

> today, the CAFO requires Respondents Levittown, L.P. and DLC Management to pay a civil penalty of $ 13,090, collectively, for their involvement in the alleged violations. In light of such settlement, Complainant seeks the balance of the proposed penalty from the remaining Respondent, Four Strong Builders, Inc. *See In re Corporacion para el Desarrollo Economico y Futuro de la Isla Nena,* Dkt. No. CWA-II-97-61 (July 10, 1998) (Biro, Chief ALJ) ($75,000 awarded jointly and severally against three respondents for CWA violations; after one respondent settled for $40,000 and the other two failed to file an answer to the complaint, two non-settling respondents were given credit of $40,000 (the amount paid by the settling respondent) against the $75,000 award). *See* Attachment 3 at page 10.

It is clear from the express language in the CAFO and Supplemented Prehearing Exchange that FSBI was not a party to the settlement. FSBI did it not file an opening prehearing exchange after receiving the CAFO and Supplemented Prehearing Exchange.

FSBI's failure to comply with the information exchange requirements of § 22.19(a) and the Prehearing Order *at any time* during the proceeding is grounds for the issuance of a default order under the CROP. 40 C.F.R. §§ 22.17(a) and (c).

While not required to do so[5], the Presiding Officer issued an Order on May 16, 2005 directing Respondent FSBI to respond to EPA's Motion to Show Cause by May 30, 2005. Attachment 4[6]. FSBI failed to comply with the Order's May 30, 2005 deadline. The Presiding Officer scheduled a conference call with counsels for EPA and FSBI for June 13, 2005 at 11:00 a.m. to discuss FSBI's failure to comply with the May 16, 2005 Order. *See* Attachment 5 at page 2, footnote 3. Ultimately, the conference call was canceled when counsel for Respondent FSBI

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[5] There is no requirement in section 22.17(c) of the CROP for a Presiding Officer to issue an order to show cause prior to issuing a default order. 40 C.F.R. § 22.17(c). The Board has described the issuance of an order to show cause as "a purely discretionary act by the Presiding Officer." *Jiffy Builders*, 8 E.A.D. at 320, n.7.

[6] According to the Certificate of Service accompanying the Order, a copy was sent both by Facsimile and Certified Mail to FSBI's counsel, Paul Faugno, Esq.. Attachment 4 at page 2. Although Appellee/Complainant has no direct evidence of service, Appellant/Respondent does not raise any issues with respect to service of the Order to show cause in its Appeal Brief.

failed to call in at the agreed upon time. *Id.* FSBI failed to comply with the May 16, 2005 Order after the scheduled conference call.

Respondent FSBI's failure to comply with the Presiding Officer's May 16, 2005 Order to show cause *at any time* during the proceeding is grounds for the issuance of a default order under the CROP. 40 C.F.R. §§ 22.17(a) and (c).

As of July 6, 2005, FSBI had not filed an opening prehearing exchange or a response to the Presiding Officer's May 16, 2005 Order to show cause, nor had it provided any cause for the defaults. The Board has stated that "[t]he governing rules do not support the notion that a Presiding Officer must show inexhaustible patience in reckoning with a party's inattentiveness; rather they suggest the contrary – that default is an essential ingredient in the efficient administration of the adjudicatory process". *Jiffy Builders,* 8 E.A.D. at 320. On July 6, 2005, the Presiding Officer properly issued a Default Order finding FSBI liable for the three violations alleged in the Complaint, and assessing a civil penalty of $24,310, constituting an Initial Decision under the CROP.

II. THE "TOTALITY OF THE CIRCUMSTANCES" DO NOT WARRANT REVERSAL OF THE DEFAULT ORDER.

A. The standard of review requires a consideration of the 'totality of the circumstances'.

The CROP do not explicitly define the Board's standard of review for appeals of Default Orders constituting Initial Decisions. The Board, however, has previously indicated that "...when determining whether or not a Default Order should be reversed, the Board will 'consider the totality of the circumstances presented'". *In re Jiffy Builders, Inc,* 8 E.A.D. 315, 319 (EAB 1999), *quoting In re Rybond,* 6 E.A.D. 614, 616 (EAB 1996). Additionally, the Board

has consistently maintained that Default Orders will be set aside "when fairness and a balance of the equities so dictate". *In re Midwest Bank and Trust Co., Inc.*, 3 E.A.D. 696, 699 (CJO 1991); *In re Thermal Reduction Co., Inc.*, 4 E.A.D. 128, 131 (EAB 1992); and *Jiffy Builders*, 8 E.A.D. at 319.

B. The "totality of the circumstances' do not warrant a reversal of the Default Order.

i. Appellant/Respondent has not shown 'good cause' for its failure to comply with the Prehearing Exchange Order and the Order to Show Cause.

Section 22.17(c) of the CROP specifies "for good cause shown, the Presiding Officer may set aside a default order." 40 C.F.R. § 22.17(c). Even though technically Appellant/Respondent is not moving to set aside the default order but instead appealing the initial decision to the Board[7], the Board has generally expected some articulation of the 'cause' of the default on appeal. *Jiffy Builders*, 8 E.A.D. at 320, n.8, *citing Rybond*, 6 E.A.D. at 625.

Appellant/Respondent argues that good cause exists for its failure to comply with the Prehearing Order and the Order to show cause, and generally cites to an August 2, 2005 certification by FSBI counsel Paul Faugno, Esq. ("Certification") for support. Appeal Brief at 2, 4-6, and Exhibit 1, ¶ 7. Conspicuously absent from the Certification, however, is any explanation for FSBI's failure to comply with the Prehearing Order. Appeal Brief at Exhibit 1. The Certification generally asserts that counsel was not familiar with the administrative process and that he confused the underlying case with other EPA cases involving the same client. Appeal Brief at Exhibit 1, ¶ 2. Such factors do not constitute 'good cause' under the circumstances of this case , however, where counsel (versus a *pro se* litigant) is involved, where the language in the Prehearing Order carefully apprised FSBI of the due date and contents of the opening

[7] Under the CROP, a motion to set aside a default order and an appeal to the Board both have the effect of preventing an Initial Decision from automatically becoming a Final Order. 40 C.F.R. § 22.28(c).

prehearing exchange (see discussion I. *supra.*), and where FSBI failed to file its opening prehearing exchange even after being put on notice of its default status and of its status as a litigant (see discussion I. *supra*).

As to Appellant/Respondent's argument that it cooperated fully with EPA prior to the issuance of the Complaint (*See* Appeal Brief at 3), the Board has previously stated that "[r]espondent's other participatory acts in the process do not excuse its failure to comply with the Prehearing Exchange Order". *Jiffy Builders*, 8 E.A.D. at 320. For the above mentioned reasons, Appellant/Respondent has not presented 'good cause' for its failure to comply with the Prehearing Order.

As to FSBI's failure to comply with the Order to show cause, the Certification asserts that counsel was planning to file FSBI's opening prehearing exchange but refrained from doing so because, after receiving the CAFO with DLC and L.P, he was under the mistaken impression that the matter was resolved as to all parties. Appeal Brief at Exhibit 1, ¶¶ 3 and 4. Appellant/Respondent's rationale simply does not make sense in light of the fact that the Order to show cause was issued on May 16, 2005, weeks after FSBI received the CAFO and Supplemented Prehearing Exchange on April 21, 2004. *See* discussion I. *supra.* It should also be noted that any confusion about FSBI's settlement status would have been clarified had counsel read the CAFO and Supplemented Prehearing Exchange documents sent to him (*See* discussion I. *supra.*) rather than relying on the advice of his associate as acknowledged in the Certification. Appeal Brief at Exhibit 1, ¶ 4. The Certification also asserts that counsel was confused about which of the EPA/FSBI cases the June 13, 2005 conference call regarded. Appeal Brief at Exhibit 1, ¶¶ 5 and 6. Counsel could have easily clarified this matter had he followed-up with the coordinator of the call (i.e. the Presiding Officer's legal assistant) after he

missed the call, which would be expected regardless of which EPA/FSBI case was involved. Lastly, it should be noted that at no time during the proceeding did Appellant/Respondent move for an extension of time to comply with the Order to show cause (or the Prehearing Order, for that matter). Such a mechanism could have provided necessary relief from the "unexpected increase in work" described in the Certification. Appeal Brief at Exhibit 1, ¶ 6. For the above mentioned reasons, Appellant/Respondent has not presented 'good cause' for its failure to comply with the Order to show cause.

ii. Appellant/Respondent's defenses to liability are unlikely to prevail.

The Board has stated that an examination of the 'totality of circumstances' may include a consideration of the likelihood that the action would have had a different outcome had there been a hearing. *Jiffy Builders,* 8 E.A.D. at 319, *citing Rybond* 6 E.A.D. *at 625* In assessing the likelihood of a different outcome, the Board has considered whether the Respondent would likely prevail on any defenses to liability raises by the Respondent. *Jiffy Builders,* 8 E.A.D. at 319, *citing Rybond* 6 E.A.D. *at 628-38.*

Appellant/Respodent argues that it has meritorious defenses to liability for the violations alleged in the Complaint. EPA disagrees. In Count I, EPA alleges that Respondents failed to submit a timely certified asbestos notification ten (10) working days prior to the project's start date and therefore violated the notification requirements of 40 C.F.R. § 61.145(b) of the Asbestos NESHAP. "It is the position of respondent/appellant that it did timely file the notifications which is alleged as a violation in the underlying administrative complaint". Appeal Brief at 3. No discussion or reference to any evidentiary support for this assertion is provided, except for a statement by Steve Pantovich, Office Manager, FSBI, in an October 25, 2004 letter to Paul Faugno, Esq., that "as far as I know [the notification] was mailed out on time, but with

the mail you never know". Appeal Brief at Exhibit 2. As preparer of the asbestos notifications at issue, FSBI is in an ideal position to locate and produce any notifications, correspondences or other business records that would evidence compliance with the Asbestos NESAHP notification requirements. The Appeal Brief makes no mention of any such evidence.

In Count II, EPA alleges that Respondents failed to ensure that the RACM remained wet until its disposal and therefore violated the work practice requirements of 40 C.F.R. § 61.145(c)(6)(i) of the Asbestos NESHAP. In Count III, EPA alleges that Respondents treated the RACM during its removal in a way that caused it to become damaged and crushed and therefore violated the work practice requirements of 40 C.F.R. § 61.145(c)(6)(ii) of the Asbestos NESHAP. Respondent/Appellant argues in defense of these allegations that FSBI was not present at the job site during the time of the violations. Appeal Brief at 3, 6 and Exhibit 1, ¶ 8. As for evidentiary support, the Appeal Brief provides a statement by Mr. Pantovich, in his October 25, 2004 letter to Paul Faugno, Esq, in which he makes reference to "notes" that show that FSBI was not present during the violations. Appeal Brief at Exhibit 2. For the reasons discussed below, EPA believes that such facts, even if proven, would not change the outcome as to Appellant/Respondent's liability for Counts II and III.

Appellant/Respondent's default constitutes an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations according to the CROP. 40 C.F.R § 22.17(a). The facts in the Complaint support the conclusion that FSBI is an "owner or operator of a demolition or renovation activity' within the meaning of 40 C.F.R. § 61.141[8]. It

[8] It should also be noted that EPA's Complaint alleges and FSBI's Answer admits that it is an "owner or operator of a demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141. Attachment 6 at ¶ 33 and Attachment 7 at ¶ 33. It is a generally accepted federal rule that a party is bound by the admissions in its pleadings. *See State Farm Mutual Automobile Ins. Co. v. Worthington*, 405 F.2d 683, 686 (8th Cir. 1968); *Hill v. FTC*, 124 F.2d 104, 106 (5th Cir. 1941); *Ferguson v. Neighborhood Housing Services, Inc* , 780 F.2d 549, 551 (6th Cir. 1986);

is well settled that "[t]he Asbestos NESHAP imposes a standard of strict liability for violating any of the work practice standards." *See In re Ocean State Asbestos Removal, Inc,* 7 E.A.D. 522, 529 (EAB 1998), *quoting In re Echevarria,*5 E.A.D. 626, 631-32 (EAB 1994). The legislative history of the CAA makes clear that the strict liability provisions of the Asbestos NESHAP were imposed to avoid the situation in which it would be "in the owner or operator's interest not to have actual knowledge of the manner of operation." *Ocean State,*7 E.A.D. at 546, *quoting* H.R. Rep. No. 94-1175, at 52 (1976). Any interpretation of the Asbestos NESHAP that would allow an asbestos contactor such as FSBI to avoid liability by not being at the site doing what it was supposed to be doing (i.e keeping the RACM wet and ensuring RACM is removed without it becoming damaged or disturbed) would be inconsistent with statutory intent. Accordingly, the issue of whether FSBI was present at the time of the violations is simply irrelevant as to its liability as an 'owner or operator of a demolition or renovation activity'. For the above-mentioned reasons, Appellant/Respondent has failed to meets its burden of showing likely success on these defenses.

IIII. RESPONDENT/APPELLANT'S APPEAL IS UNTIMELY BECAUSE IT WAS SERVED ON COMPLAINANT/APPELLEE "OUT OF TIME" AND THERE ARE NO "SPECIAL CIRCUMSTANCES" TO WARRANT AN EXCUSE FOR LATENESS

Section 22.30 of the CROP establishes the timing and service requirements for appeals from initial decisions. *See* 40 C.F.R. § 22.30. Under section 22.30(a), parties may appeal by filing a notice of appeal and an accompanying appellate brief with the Board within 30 days after the initial decision is served. *See* 40 C.F.R. § 22.30(a). Section 22.30(a) further provides that the appellants shall "simultaneously serve one copy of the notice and brief upon all other parties…". *Id.* When an initial decision is served by mail, rather than by overnight or express

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Best Canvas Prods. & Supplies, Inc. v Ploof Truck Lines, Inc. 713 F.2d 618,621 (11th Cir.1983).

delivery, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document". 40 C.F.R. § 22.7(c).

The Presiding Officer issued his Default Order on July 6, 2005. Attachment 5. On the same date, the Default Order was served via certified mail on FSBI's counsel, Paul Faugno, Esq.. Attachment 5 at page at 6[9]. Appellant/Respondent therefore had until August 6, 2005 to file its Notice of Appeal and Appeal Brief with the Board and to serve it on EPA under the CROP. 40 C.F.R. §§ 22.7(c) and 30(a). While Appellant/Respondent filed its appeal documents with the Board by August 4, 2005, it failed to serve such documents on EPA until on or about August 26, 2005.

"The Board typically requires strict compliance with the time limits set forth in the rules of practice governing penalty appeals". *In re Tri-County Builders Supply,* CWA Appeal No. 03-04, slip op. at 5 (EAB, May 24, 2004), *citing In re Antkiewicz & Pest Elimination Prod. of Am., Inc.,* 8 E.A.D. 218, 220 n.2 (EAB 1999). The Board generally does not excuse late-filed appeals except when "special circumstances" are found. *Tri-County,* CWA Appeal No. 03-04, slip op. at 5; *In re B&L Plating, Inc.,* CAA Appeal No. 02-08, slip op. at 11 (EAB, October 20, 2003), *citing In re Outboard Marine Corp.,* 6 E.A.D. 194 (EAB 1995) and *In re Production Plated Plastics, Inc.,* 5 E.A.D. 101 (EAB 1994). The Board has found special circumstances to exist only in rare cases such as where appellant relied on erroneous filing information provide by EPA in writing and where national policy issues are implicated. *See In re BASF Corp. Chem. Div.,* 2 E.A.D. 925 (Adm'r Reilly 1989); *In re Genesee Power Station,* 4 E.A.D. 832 (EAB 1993).

In the case at bar, Appellant/Respondent provides no explanation for its failure to serve its appeal documents on EPA in a timely manner and has not otherwise portrayed any "special

[9] Although Appellee/Complainant has no direct evidence of service, Appellant/Respondent doe not raise any issues with respect to service of the Default Order in its Appeal Brief.

circumstances" as to its appeal. The Board has stated that it "has an interest in bringing finality to the Agency's administrative proceedings and will preserve its limited resources for parties who are diligent enough to follow its procedural rules". *B&L Plating,* CAA Appeal No. 02-08, slip op. at 11, *citing In re Gary Dev. Co.*, 6 E.A.D. 526, 533-34 (EAB 1996). As was the disposition in *B&L Plating* and *Tri-County* where appellants failed to comply with the timing requirements under the CROP for filing appeals and did not show "special circumstances", Appellant/Respondent's appeal should be dismissed on timeliness grounds. *B&L Plating,* CAA Appeal No. 02-08, slip op. at 14; *Tri-County,* CWA Appeal No. 03-04, slip op. at 8.

CONCLUSION

Based on the foregoing, FSBI's appeal should be dismissed on procedural grounds as being untimely, or, in the alternative, the Board should find that the Presiding Officer properly issued a Default Order and that a reversal is not warranted based on the "totality of the circumstances", and should therefore affirm the Presiding Officer's Initial Decision.

Respectfully Submitted,

SEP 1 3 2005

Date

Jennifer M. Abramson
Assistant Regional Counsel

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	**Docket No. CAA-03-2004-0400**
DLC Management Inc., and	)	
Levittown, LP,	)	
	)	
Respondents	)	

ORDER SETTING PREHEARING PROCEDURES

In accordance with 40 C.F.R. 22.19, the parties shall comply with the prehearing filing schedule set forth below.

I. **Opening Prehearing Exchanges** are due March 15, 2005.

1. List fact witnesses intended to be called at the hearing, along with a narrative summary of their expected testimony.

2. List expert witnesses intended to be called at the hearing, along with a narrative summary of their expected testimony.

3. Submit copies of exhibits intended to be introduced into evidence.

4. Provide an estimate of time needed to present case.

5. Submit view as to location of hearing.

II. **Replies to Opening Prehearing Exchanges** are due March 30, 2005.

(Replies to Opening Prehearing Exchanges are optional.)

III. Filing Procedure

The original and one copy of all pleadings required or permitted to be filed in this proceeding shall be sent to the Regional Hearing Clerk and copies shall be sent to the opposing party and to the Presiding Judge. 40 C.F.R. 22.5.

IV. Mailing Address

The undersigned's mailing address is as follows:

U.S Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-6281 or 564-6255

V. Commercial Delivery Service

The undersigned's address for commercial delivery (*e.g.*,Federal Express) is as follows:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street, N.W.
Suite 350
Washington, D.C. 20005
(202) 564-6281 or 564-6255

Carl C. Charneski
Administrative Law Judge

Issued: February 17, 2005
Washington, D.C.

In the Matter of *Four Strong Builders, Inc., DLC Management, Inc., and Levittown, LP*, Respondents. Docket No. CAA-03-2004-0400

Certificate of Service

I certify that the foregoing **Order Setting Prehearing Procedures**, dated February 17, 2005, was sent this day in the following manner to the addressees below.

Mary Angeles
Legal Staff Assistant

Original and Copy by Facsimile and Pouch Mail to:

Lydia Guy, Esq.
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Facsimile and Pouch Mail to:

Jennifer M. Abramson, Esq.
Associate Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Facsimile and Regular Mail to:

Jonathan H. Spergel, Esq. (Counsel for DLC Management, Inc. and Levittown, LP)
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
Fx: 484.430.5711

Paul Faugno, Esq. (Counsel for Four Strong Builders, Inc.)
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: February 17, 2005
Washington, D.C.

Attachment 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FAX AND FEDERAL EXPRESS

Paul Faugno, Esq.
Faugno & Associates, LLC.
125 State Street, Suite 101
Hackensack, NJ 07601

MAR 2 3 2005

Re: Docket No. CAA-03-2004-0400

Dear Mr. Faugno,

Enclosed please find a copy of COMPLAINANT'S MOTION FOR ISSUANCE OF SHOW CAUSE ORDER, EXTENSION OF TIME TO FILE REPLIES TO OPENING PREHEARING EXCHANGES AND OTHER APPROPRIATE RELIEF filed today in the matter referenced above regarding your client Four Strong Builders, Inc.. Should you have any questions, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Assistant Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013 DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591 Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591 Respondents	:	Docket No. CAA-03-2004-0400 COMPLAINANT'S MOTION FOR ISSUANCE OF SHOW CAUSE ORDER, EXTENSION OF TIME TO FILE REPLIES TO OPENING PREHEARING EXCHANGES AND OTHER APPROPRIATE RELIEF

I hereby certify that the within is a true and correct copy of the original MOTION filed in this matter.

Attorney for EPA

I. INTRODUCTION.

Pursuant to the requirements of 40 C.F.R. § 22.16, Complainant hereby moves this Court for: (1) the issuance of an Order to Show Cause why Respondent Four Strong Builders, Inc. should not be found in default for its failure to comply with the March 15, 2005 Opening Prehearing Exchange deadline set forth in this Court's February 17, 2005 Order Setting Prehearing Procedures ("Order") and with the additional information exchange requirements set forth therein and at 40 C.F.R. § 22.19(a), (2) an extension of time to file its Replies to Respondents' Opening Prehearing Exchanges filed in this matter, and (3) such other relief as this Court deems appropriate and just.

II. STATEMENT OF THE CASE.

On September 30, 2004 Complainant issued a "Complaint and Notice of Opportunity For Hearing" ("Complaint") to Four Strong Builders, Inc. ("FSB"), DLC Management, Inc. ("DLC"), and Levittown, L.P. ("L.P."), (collectively, the "Respondents"), under the authority of Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d). Consisting of three (3) counts, the Complaint seeks a total proposed civil penalty of $ 37,400 jointly from the Respondents for their alleged failure to comply with the requirements of the National Emission Standard for Asbestos, codified at 40 C.F.R. 61, Subpart M, and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Respondents DLC and L.P., through common counsel, filed their "Answer and Request for Informal Settlement Conference and Hearing" on or about November 2, 2004. Subsequent negotiations yielded a 'settlement in principle' between Complainant and Respondents DLC and L.P. (jointly). On March 17, 2005, counsel for Complainant mailed a settlement agreement, in the form of a Consent Agreement and Final Order ("CAFO") between Complainant and Respondents' DLC and L.P., to Respondents counsel for signature. On March 22, 2005, counsel for Respondents DLC and L.P. represented that he anticipated the signed CAFO to be returned to Complainant's counsel by Thursday, March 24, 2005 for further processing. Respondent FSB, through counsel, filed its "Answer and Separate Defenses" on or about November 8, 2004.

By Order, and pursuant to 40 C.F.R. § 22.19, Your Honor directed the parties to file Opening Prehearing Exchanges by March 15, 2005, specifying with particularity the required content of such exchanges. The Order further directed parties opting to file Replies to the Opening Prehearing Exchanges to do so by March 30, 2005.

Complainant filed its Opening Prehearing Exchange on March 15, 2005. Complainant's

Opening Prehearing Exchange met each of the applicable substantive, procedural, filing and service requirements of the Order and regulatory requirements of 40 C.F.R. §§ 22.19(a) and 22.5, respectively.

Counsel for Complainant did not receive a copies of Respondents' Opening Prehearing Exchanges by mail, or otherwise, by mid-day on Wednesday, March 23, 2005. Upon personally checking with the Regional Hearing Clerk and Your Honor's legal assistant, on March 22, 2005 and on March 23, 2005, respectively, Complainant's counsel herein represents that the Respondents have not filed Opening Prehearing Exchanges with the Regional Hearing Clerk nor have they served Opening Prehearing Exchanges upon Your Honor or the Complainant.

III. DISCUSSION.

At 40 C.F.R. § 22.7(b), subtitled "*Extensions of time*", the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits provide that: "The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order. "

In the instant matter, none of the Respondents have filed motions for extensions of time to the Order's Opening Prehearing Exchange filing deadline. The Respondents' failure to timely file their Prehearing Exchanges, or to timely seek extensions to the filing deadlines set forth in

the Order, create the potential of significant prejudice to the Complainant absent relief from this Court. Complainant will be prejudiced in that the deadline for its own Replies to Respondents' Opening Prehearing Exchanges - March 30, 2005 - is rapidly approaching and the Complainant is wholly without: any documents the Respondents intend to introduce into evidence in support of their respective positions in this matter; any identification of the witnesses the Respondents intend to call in this matter or any statement as to their anticipated testimony, or any explanation as to why Complainant's proposed penalty should be reduced or eliminated.

As support for Respondents' positions in this proceeding remain completely undisclosed to the Complainant, the Complainant is prevented from filing meaningful Replies due to Respondents' complete failure to file their own Opening Prehearing Exchanges in a timely and appropriate manner.

While as a technical matter Complainant does not believe the failure of Respondents DLC and L.P. to comply with the filing deadlines and other requirements in this Court's Order and applicable regulations is excused, Complainant is not moving for this Court to issue an Order to Show Cause against Respondents DLC and L.P. at this time based on the settlement status and representations of Respondents' counsel discussed above. However, Complainant reserves the right to file motions seeking injunctive relief as may be appropriate.

IV. COMPLAINANT'S REQUEST FOR RELIEF.

WHEREFORE, in consideration of the above, Complainant moves:

1. for the issuance by this Court of an Order to Show Cause why Respondent Four Strong Builders, Inc. should not be found in default for its failure to comply with the March 15, 2005 Opening Prehearing Exchange deadline set forth in this Court's February 17, 2005 Order Setting Prehearing Procedures and with the additional information exchange requirements of this Court's Prehearing Order and of 40 C.F.R. § 22.19(a);

2. for an extension of time to file its Replies to Respondents' Opening Prehearing Exchanges in this matter for such reasonable and appropriate time — after the filing of Respondents' Opening Prehearing Exchanges — as this Court deems reasonable, just and proper; and

3. for such other relief as this Court deems appropriate and just.

Respectfully submitted,

Jennifer M. Abramson
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066
Fax (215) 814-3113

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, the original and one copy of the foregoing COMPLAINANT'S MOTION FOR ISSUANCE OF SHOW CAUSE ORDER, EXTENSION OF TIME TO FILE REPLIES TO OPENING PREHEARING EXCHANGES AND OTHER APPROPRIATE RELIEF was hand-delivered to Lydia Guy, Regional Hearing Clerk, EPA Region III, and that true and correct copies were sent to each of the following persons in the following manner:

Copy by FAX and FEDERAL EXPRESS

Jonathan H. Spergel, Esq
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
(Counsel for DLC Management, Inc. L.P.)

Paul Faugno, Esq.
Faugno & Associates, LLC.
125 State Street, Suite 101
Hackensack, NJ 07601
(Counsel for Four Strong and Levittown Builders, Inc.)

Copy by FEDERAL EXPRESS

The Honorable Judge Charneski
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14TH Street, N.W., Suite 350
Washington, D.C. 2000

3/23/05
Date

Jennifer M. Abramson (3RC10)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

09/01/2005

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Recipient:
PAUL FAUGNO ESQ
FAUGNO & ASSOC LLC
125 STATE ST STE 101
HACKENSACK, NJ 07601 US

Shipper:
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EPA
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Attachment 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA CERTIFIED MAIL

Paul Faugno, Esq.
Faugno & Associates, LLC.
125 State Street, Suite 101
Hackensack, NJ 07601

APR 14 2005

Re: Docket No. CAA-03-2004-0400

Dear Mr. Faugno,

Enclosed please find copies of the CONSENT AGREEMENT AND FINAL ORDER as to DLC Management, Inc. and Levittown, L.P. and of COMPLAINANTS' FIRST SUPPLEMENT TO OPENING PREHEARING EXCHANGE filed today in the matter referenced above regarding your client Four Strong Builders, Inc. Should you have any questions, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Assistant Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

I hereby certify that the within is a true and correct copy of the original CAFO filed in this matter.

Attorney for EPA

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	Docket No. CAA-03-2004-0400 CONSENT AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	
Respondents	

CONSENT AGREEMENT AS TO DLC MANAGEMENT, INC. AND LEVITTOWN, L.P.

I. PRELIMINARY STATEMENT

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a) and (d), the Director of the Waste and Chemicals Management Division for the United States Environmental Protection Agency, Region III ("EPA"), initiated this administrative proceeding for the assessment of civil penalties against Four Strong Builders, Inc., DLC Management, Inc., and Levittown, L.P. (hereinafter, "Respondents") by issuance of a Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed with the Regional Hearing Clerk on November 5, 2004. The Complaint, incorporated herein by reference, alleges that Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during a demolition project at the Levittown Shopping Center, located at Route 13 and Levittown Parkway in Tullytown, Pennsylvania which began March 2002. This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address the violations alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. only.

2. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. admit only the jurisdictional allegations set forth in the Complaint and herein.

3. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. neither admit nor deny the specific factual or legal allegations contained in the Complaint and herein.

4. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the issuance of this CAFO and agree to comply with the terms of this CAFO.

5. For the purpose of this proceeding, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the payment of a civil penalty in the amount and in the manner set forth in this CAFO.

6. For the purpose of this proceeding and in an effort to avoid unnecessary litigation expenses and resolve outstanding matters with EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. hereby expressly waive their rights to contest the allegations in the Complaint and herein (although they do not admit that the allegations herein are true), and their rights to appeal the Final Order accompanying this Consent Agreement.

7. Respondent DLC Management, Inc. and Respondent Levittown, L.P. shall bear their own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. EPA enters into this Consent Agreement with Respondent DLC Management, Inc. and Respondent Levittown, L.P. in order to fully settle and resolve all allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. without further adjudication of any issue of law or fact.

11. In full settlement of any and all charges and allegations set forth in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P., and in consideration of each provision of this Consent Agreement and the accompanying Final Order, Respondent DLC Management, Inc. and Respondent Levittown, L.P. consent to the assessment and payment of a civil penalty in the amount of thirteen thousand and ninety dollars ($13,090). The aforesaid civil penalty settlement amount was determined, and is based upon, EPA's consideration of a number of relevant factors including, but not limited to, the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25,

1991, as clarified January 17, 1992; and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of Paragraph 11, above, shall be made by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be mailed to the attention of U.S. EPA Region III, P.O. Box 360515, Pittsburgh, Pennsylvania 15251-6515 (overnight deliveries shall be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, ATTENTION: U.S. EPA, Region III, P.O. Box 360515). All payments made by check also shall reference the above case caption and docket number, Docket No. CAA-03-2004-0400. All electronic wire transfer payments shall be directed to Mellon Bank, Pittsburgh, PA, ABA No. 043000261, crediting account number 9108552, lockbox 36051. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jennifer Abramson (3RC10), Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

13. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, the failure of Respondent DLC Management, Inc. and Respondent Levittown, L.P. to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that copies of this CAFO are mailed or hand-delivered to Respondent DLC Management, Inc. and Respondent Levittown, L.P.. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R.

§ 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. Respondent DLC Management, Inc. and Respondent Levittown, L.P. agree not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

15. Failure by Respondent DLC Management, Inc. and Respondent Levittown, L.P. to comply with the requirements of this Consent Agreement may subject them to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 112 of the CAA, 42 U.S.C. § 7412.

IV. RESERVATION OF RIGHTS

17. This Consent Agreement and the accompanying Final Order resolve both Respondent DLC Management, Inc.'s and Respondent Levittown, L.P.'s liability for all civil claims arising from the violations and facts alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P. with prejudice. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent DLC Management, Inc. and Respondent Levittown, L.P., in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions for any violations of law, and the United States reserves its authority to pursue any such criminal sanctions. Furthermore, EPA reserves any rights and remedies available under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of the Consent Agreement and the accompanying Final Order, following entry thereof. Notwithstanding the reservations of rights discussed above, Complainant represents that, other than the violation alleged in the Complaint, it is not aware of any alleged violations of the Clean Air Act by Respondent DLC Management, Inc. and Respondent Levittown, L.P. relating to the renovation activities performed at the Levittown Shopping Center in the calendar years 2001 and 2002.

V. PARTIES BOUND

18. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon EPA, Respondent DLC Management, Inc. and Respondent Levittown, L.P. and their officers, directors, employees, agents, successors and assigns. The persons signing this Consent Agreement on behalf of Respondent DLC Management, Inc. and Respondent Levittown, L.P. acknowledge by their signatures that they are fully authorized to enter into this Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VI. EFFECTIVE DATE

19. The effective date of this CAFO is the date on which the Final Order, after signature by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

VII. ENTIRE AGREEMENT

20. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order.

The undersigned representatives of Respondent DLC Management, Inc. and Respondent Levittown, L.P. certify that they are fully authorized to execute this Consent Agreement and to legally bind Respondent DLC Management, Inc. and Respondent Levittown, L.P., respectively, to this Consent Agreement.

For DLC Management Corporation
a New York Corporation

3/23/05
Date

Adam Ifshin
President

For Levittown LP
a Delaware limited partnership

First Man Levittown Corp.,
a Delaware corporation, general partner

3/23/05
Date

Adam Ifshin
President

For EPA:

4/6/05
Date

Jennifer M. Abramson
Assistant Regional Counsel

Accordingly, the Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, issue the attached Final Order. The amount of the recommended civil penalty assessment is thirteen thousand and ninety dollars ($13,090), in accord with the terms and conditions incorporated herein.

April 8, 2005
Date

James J. Burke, Director
Waste and Chemicals Management Division
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 FINAL AGREEMENT
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

FINAL ORDER

The Preliminary Statement, Findings of Fact and Conclusions of Law, and other sections and terms of the foregoing Consent Agreement ("CA") are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 112 and 113 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7412, and 7413, the federal regulations implementing the National Emission Standards for Hazardous Air Pollutants for Asbestos set forth at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice") set forth at 40 C.F.R. Part 22, Respondent DLC Management, Inc. and Respondent Levittown, L.P. are hereby ordered to pay a civil penalty in the amount of thirteen thousand ninety dollars ($13,090), in settlement of the civil claims alleged in the Complaint against Respondent DLC Management, Inc. and Respondent Levittown, L.P..

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 4/14/05

Renée Sarajian
Regional Judicial Officer

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

I hereby certify that the within is a true and correct copy of the original 1ST SUPP-3 PHE filed in this matter.

Attorney for EPA

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400 COMPLAINANT'S FIRST SUPPLEMENT TO OPENING PREHEARDING EXCHANGE
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

COMPLAINT'S FIRST SUPPLEMENT TO OPENING PREHEARING EXCHANGE

Pursuant to 40 C.F.R. § 22.19(f) of the Consolidated Rules of Practice, and for the reasons described below, Complainant, the United States Environmental Protection Agency ("EPA"), hereby supplements its prehearing exchange as follows:

C. CIVIL PENALTY CALCULATION/JUSTIFICATION

EPA and Respondents Levittown, L.P. and DLC Management have executed a Consent Agreement and Final Order ("CAFO") fully settling and resolving all allegations set forth in the Administrative Complaint and Notice of Opportunity filed in this matter as to Respondents Levittown, L.P. and DLC Management only. Filed today, the CAFO requires Respondents Levittown, L.P. and DLC Management to pay a civil penalty of $ 13,090, collectively, for their involvement in the alleged violations. In light of such settlement, Complainant seeks the balance of the proposed penalty from the remaining Respondent, Four Strong Builders, Inc. *See In re Corporacion para el Desarrollo Economico y Futuro de la Isla Nena,* Dkt. No. CWA-II-97-61 (July 10, 1998) (Biro, Chief ALJ) ($75,000 awarded jointly and severally against three respondents for CWA violations; after one respondent settled for $40,000 and the other two failed to file an answer to the complaint, two non-settling respondents were given credit of $40,000 (the amount paid by the settling respondent) against the $75,000 award).

EPA's proposed penalty against Respondent Four Strong Builders, Inc. can be broken down and summarized as follows:

Step 1: Economic Benefit **$ 0**

Step 2: Gravity Component

Count I:
Regulatory requirement(s): 40 C.F.R. § 61.145(b)(3)(i)
Violation: notice provided while asbestos removal in progress
Proposed Penalties -

(a) First Day of Violation:	$ 2,000
(b) Subsequent days of violation:	$ 0
	$ 2,000

Count II:
Regulatory requirement(s): 40 C.F.R. § 61.145(c)(6)(i)
Violation: failure to keep RACM wet prior to disposal
Quantity of asbestos: > 50 units
Proposed Penalties -

(a) First day of violation:	$ 15,000
(b) Subsequent days of violation:	$ 0
	$ 15,000

Count III:
Regulatory requirement(s): 40 C.F.R. § 61.145(c)(6)(ii)
Violation: failure to treat RACM carefully during removal
Quantity of asbestos: > 50 units
Proposed Penalties -

(a) First day of violation:	$ 15,000
(b) Subsequent days of violation:	$ 0
	$ 15,000

Size of the Violator: (Based on worth/net assets < $ 100,000):	**$ 2,000**
UNADJUSTED GRAVITY:	**$ 34,000**
$ 34,000 X 1.1 ADJUSTED GRAVITY:	**$ 37,400**

Step 3: Total plus Adjustment Factors

Economic Benefit + Adjusted Gravity	$ 37,400

Degree of Willfulness/Cooperation	$ 0
History of Noncompliance	$ 0
Previous payment for Same Violation	$ 0
	$ 37.400

ADJUSTMENT FOR PENALTY TO BE PAID BY LEVITTOWN, L.P. AND DLC MANAGEMENT	-$ 13,090

TOTAL PROPOSED PENALTY: $ 24.310

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	Docket No. CAA-03-2004-0400
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	
Respondents	:	

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER as to DLC Management, Inc. and Levittown, L.P. and COMPLAINANTS' FIRST SUPPLEMENT TO OPENING PREHEARING EXCHANGE was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Two copies by certified mail:
(Consent Agreement and Final Order only)

Jonathan H. Spergel, Esq
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004

Counsel for DLC Mannagement, Inc. and Levittown, L.P.

One copy by certified mail:

Paul Faugno, Esq.
Faugno & Associates, L.L.C.
125 State Street, Suite 101
Hackensack, NJ 07601

Counsel for Four Strong Builders, Inc.

One copy by EPA pouch mail:

The Honorable Judge Carl C. Charneski
Office of Administrative Law Judges, Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

APR 14 2005

Date

Jennifer M. Abramson (3RC10)
Assistant Regional Counsel
U.S. EPA, Region III

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
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- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3.

Paul Faugno, Esq.
Faugno & Associates, LLC.
125 State Street, Suite 101
Hackensack, NJ 07601

4a. Article Number
7000 1670 0005 1591 2637

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
6/04

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

Thank you for using

PS Form **3811,** December 1994 102595-97-B-0179 **Domestic Return Receipt**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	**Docket No. CAA-03-2004-0400**
	)	
Respondent [1]	)	

ORDER

On March 23, 2005, complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other Appropriate Relief. Complainant's motion in part seeks the issuance of an "Order to Show Cause Why Respondent, Four Strong Builders, Inc., should not be found in default for its failure to comply with the March 15, 2005, Opening Prehearing Exchange deadline." Respondent, Four Strong Builders, Inc., is directed to respond to complainant's motion no later than May 30, 2005.

Carl C. Charneski
Administrative Law Judge

Issued: May 16, 2005
Washington, D.C.

[1] On April 14, 2005, a Final Order was issued accepting the Consent Agreement and Final Order settling this matter as it relates to respondents DLC Management, Inc., and Levittown, L.P. The caption of this case has been amended to reflect this settlement.

In the Matter of *Four Strong Builders, Inc.*
Docket No. CAA-03-2004-0400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order**, dated May 16, 2005, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Facsimile and Certified Mail to:

Jennifer M. Abramson, Esq.
Assistant Regional Counsel (3RC10)
U.S. EPA-Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.3113

Copy by Facsimile and Certified Mail:

Jonathan H. Spergel, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
Fx: 484.430.5711

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: May 16, 2005
Washington, DC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	**Docket No. CAA-03-2004-0400**
	)	
Respondent	)	

DEFAULT ORDER

This civil administrative penalty proceeding arises under Section 113 (a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a)(3) and (d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. Part 22 (2005). On September 30, 2004, the United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing a Complaint against Four Strong Builders, Inc. ("Respondent" or "Four Strong").[1] The Complaint charges Respondent with failure to comply with the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Asbestos, codified at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412. Complainant seeks the imposition of a civil administrative penalty in the amount of $24,310 against Respondent. In the Complaint, EPA proposed a penalty of $37,400. It now seeks a penalty of $24,310.[2]

For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17 (a) of the Rules of Practice, 40 C.F.R. §22.17 (a), and is assessed the proposed penalty of $24,310.

I. Statement of the Case

The EPA initiated this matter by filing a Complaint and Notice of Opportunity for

---

[1]The Complaint also listed DLC Management, Inc., and Levittown, L.P., as co-respondents. DLC Management, Inc., and Levittown, L.P., have entered into a "Consent Agreement" with EPA settling this matter.

[2]This civil penalty reduction reflects the $13,090 to be paid by DLC Management, Inc., and Levittown, L.P.

Hearing pursuant to Sections 113 (a) (3) and (d) of the Clean Air Act, 42 U.S.C. §7413 (a) (3) and (d). In the Complaint, the EPA charges Respondent with three violations of Section 112 (b) of the Clean Air Act, 42 U.S.C. § 7412 (b), for failing to comply with the regulations codified at 40 C.F.R. Part 61, Subpart M. Specifically, Complainant alleges that Respondent, the "owner or operator" of a demolition or renovation activity, violated 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i) and 61.145 (c)(6)(ii). Respondent, through counsel, filed its Answer on November 8, 2004. In its Answer, Respondent denied the charges in the Complaint and requested a hearing. Answer at 9.

On February 17, 2005, the Court entered an Order Setting Prehearing Procedures ("Prehearing Exchange Order") setting forth a schedule for the parties to submit their prehearing exchange information. The Order directed the parties to file Opening Prehearing Exchanges by March 15, 2005, specifying the required content of such exchanges. Prehearing Exchange Order at 1. On March 15, 2005, Complainant filed its Opening Prehearing Exchange as directed. To date, Respondent has not filed a prehearing exchange.

Thereafter, on March 23, 2005, Complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other Appropriate Relief ("Motion to Show Cause") noting that Respondent had failed to file its prehearing exchange as directed. On May 16, 2005, the Court directed Respondent to respond to Complainant's Motion to Show Cause no later than May 30, 2005. To date, a response to the Order has not been received.[3]

Accordingly, as discussed below, Respondent's failure to comply with this Court's February 17, 2005 Prehearing Exchange Order and subsequent order of May 16, 2005 results in the entry of a default judgment.

II. Discussion

A. Liability on Default

Section 22.17 (a) of the Rules of Practice lists those instances in which a party may be found to be in default. 40 C.F.R. 22.17 (a). It provides, in part, that a default judgment may be entered against a party for "failure to comply with the information exchange requirements of § 22.19 (a) or an order of the Presiding Officer." *Id.* That is precisely the case here. In fact, respondent satisfied both criteria in failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order of May 16, 2005.

[3]Moreover, a conference call was scheduled to be held at 11:00 a.m. on June 13, 2005, between the Court and the parties. The purpose of this call was to discuss Respondent's failure to respond to the Court's Order of May 16, 2005. Despite the fact that the time and date of the conference call was confirmed with the parties on June 10, 2005, counsel for Respondent was not available for the June 13 conference.

Section 22.17 (a) of the Rules of Practice further provides that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17 (a). Thus, the facts alleged in the instant Complaint establish Respondent's liability for three violations of 40 C.F.R. Part 61, Subpart M. Specifically, the alleged facts, deemed to be admitted, establish that Respondent failed to: provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began, ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal, and remove the RACM without its becoming damaged or disturbed. 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i), and 61.145 (c)(6)(ii). Compl. ¶ ¶ 46, 50, and 54.

A party's failure to comply with an order of the Administrative Law Judge subjects the defaulting party to a default order under Section 22.17 (a) of the Rules of Practice, unless the record shows good cause why a default order should not be issued. Here, Respondent failed to offer any explanation for its noncompliance. Based on the "totality of the circumstances," Respondent is found to be in default, and the record does not show good cause why a default order should not be issued. *See Pyramid Chemical Co.*, RCRA Appeal No. HQ-2003-0001, 11 E.A.D. __, (EAB Sept. 16, 2004).

B. Penalty on Default

The Rules of Practice also direct that where a party is found in default, as is the case here, "the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17 (c). In that regard, Section 22.17 (c) of the Rules of Practice states, in pertinent part:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. *The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act....*

40 C.F.R. § 22.17 (c). (Empahsis added).

Here, EPA proposes that Four Strong, the sole remaining respondent, be assessed a civil administrative penalty in the amount of $24,310 for violating the Asbestos NESHAP. Pursuant to 40 C.F.R. 22.17 (c), it is held that an administrative penalty in the amount of $24,310 is

appropriate under the circumstances of this case.

III. Conclusions of Law

1. Respondent is found to be in default for failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order dated May 16, 2005. Moreover, the record does not show good cause why such a default order should not be issued. 40 C.F.R. § 22.17 (a).

2. The default by Respondent constitutes, for purposes of the above-cited matter only, an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations. 40 C.F.R. § 22.17 (a).

3. Respondent's failure to: (1) provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began violated the notification requirements of 40 C.F.R. § 61.145 (b) of the Asbestos NESHAP; (2) ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(i) of the Asbestos NESHAP; and (3) remove the RACM without its becoming damaged or disturbed violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(ii) of the Asbestos NESHAP, during a demolition project at the Levittown Shopping Center which began in March, 2002. These three violations of Section 112 of the Clean Air Act subject Respondent to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7416 (d).

4. Inasmuch as this order "resolves all outstanding issues and claims in the proceeding" it constitutes an initial decision under the rules of practice. 40 C.F.R. 22.17 (c). *See* 40 C.F.R. 22.27 (c).

IV. Order

Four Strong Builders, Inc., is found to be in default and, accordingly, is found to have violated Section 112 of the Clean Air Act and the Asbestos NESHAP as charged in the Complaint. For these violations, Respondent is assessed a civil administrative penalty of $24,310.

Payment of the full amount of this civil penalty shall be made within "30 days after the default order becomes final under [40 C.F.R.] § 22.27 (c)." 40 C.F.R. 22.17 (d). Respondent is directed to submit a cashier's check or certified check in the amount of $24,310, payable to "Treasurer, United States of America," and mailed to:

Attn: U.S. EPA Region 3
P.O. Box 360515
Pittsburgh, PA 15251-6515[4]

Failure to pay the penalty within the prescribed period after the entry of this Order may result in the additional assessment of interest. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

Carl C. Charneski
Administrative Law Judge

Issued: July 6, 2005
Washington, D.C.

[4] Respondent and EPA may arrange for an alternative method of payment.

In the Matter of *Four Strong Builders, Inc.*
Docket No. CAA-03-2004-0400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Default Order**, dated July 6, 2005, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Certified Mail to:

Jennifer M. Abramson, Esq.
Assistant Regional Counsel (3RC10)
U.S. EPA-Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.3113

Copy by Certified Mail:

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: July 6, 2005
Washington, DC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Four Strong Builders, Inc. 180 Sargeant Avenue Clifton, New Jersey 07013	:	Docket No. CAA-03-2004-0400
DLC Management, Inc. 580 White Plains Road Tarrytown, New York 10591	:	
Levittown, L.P. 580 White Plains Road Tarrytown, New York, 10591	:	ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
Respondents	:	

I. INTRODUCTION

1. Complainant, the Division Director of the Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III ("EPA"), initiates this administrative action against Four Strong Builders, Inc., DLC Management, Inc., and Levittown, L.P. (hereinafter collectively referred to as the "Respondents"), for violations of Section 112 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §7412, as alleged below. The authority for issuance of this Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is set forth in Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits ("Consolidated Rules"), set forth at 40 C.F.R. Part 22. The authority to issue this Complaint has been duly delegated to the signatory below.

II. APPLICABLE STATUTES AND REGULATIONS

2. Prior to the November 15, 1990 amendments to the CAA, Section 112, 42 U.S.C. § 7412 required the Administrator of EPA to publish a list of air pollutants determined to be hazardous and to promulgate regulations establishing emissions standards or, where necessary, design, equipment, work practice, or operational standards, for each listed hazardous air pollutant.

3. EPA listed asbestos as a hazardous air pollutant. Pursuant to authority granted by Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated a National Emission Standard for Asbestos ("the Asbestos NESHAP"), codified at 40 C.F.R. Part 61, Subpart M (40 C.F.R. §§ 61.140 - 61.157).

4. The Asbestos NESHAP includes regulations governing, inter alia, the emission, handling, and disposal of asbestos during the demolition or renovation of asbestos-containing facilities.

5. Pursuant to Section 112(q) of the CAA, 42 U.S.C. § 7412(q), the above-referenced standards and provisions remain in full force and effect, notwithstanding the November 15, 1990 CAA amendments.

6. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), authorize the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any rule, plan, order, waiver, or permit promulgated, issued, or approved under, inter alia, Section 112 of the CAA, 42 U.S.C. § 7412.

7. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA's authority to bring an administrative action is limited to matters in which the total penalty sought does not exceed $220,000[1] and the first alleged date of violation occurred no more that twelve (12) months prior to the initiation of the administrative action, except where EPA and the United States Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty amount or longer period between the violations and the initiation of the action is appropriate for an administrative penalty action. EPA and DOJ have determined that a waiver of the period between the violations and the initiation of the action is appropriate for this administrative penalty action. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), any such determination by EPA and DOJ shall not be subject to judicial review.

III. DEFINITIONS

8. CAA Section 302(e), 42 U.S.C. § 7602(e), defines the term "person" to mean "any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or any employee thereof."

9. CAA Section 112(a)(3), 42 U.S.C. § 7412(a)(3), defines the term "stationary source" to mean "any building, structure, facility, or installation which emits or may emit any air pollutant."

10. 40 C.F.R. § 61.141 defines "adequately wet" as "sufficiently mix or penetrate with liquid to prevent the release of particulates."

[1] The figure of $220,000 was calculated by increasing the $200,000 statutory maximum in the Act pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19 (July 1, 2002).

11. 40 C.F.R. § 61.141 defines "asbestos" as "the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite."

12. 40 C.F.R. § 61.141 defines "Category I nonfriable asbestos-containing material (ACM)" as "asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in Appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy."

13. 40 C.F.R. § 61.141 defines "Category II nonfriable ACM" as "any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in Appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure."

14. 40 C.F.R. § 61.141 defines "demolition" as "the wrecking or taking out of any load supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

15. 40 C.F.R. § 61.141 defines "facility", in pertinent part, as "any institutional, commercial, public, industrial, or residential structure, installation, or building...."

16. 40 C.F.R. § 61.141 defines "facility component" as "any part of a facility including equipment."

17. 40 C.F.R. § 61.141 defines "friable asbestos material", in pertinent part, as "any material containing more than 1 [one] percent asbestos as determined using the method specified in Appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure."

18. 40 C.F.R. § 61.141 defines "in poor condition" to mean "the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material."

19. 40 C.F.R. § 61.141 defines "installation" as "any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control)."

20. 40 C.F.R. § 61.141 defines "owner or operator of a demolition or renovation activity" as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both."

21. 40 C.F.R. § 61.141 defines "regulated asbestos-containing material" ("RACM") as "(a) Friable asbestos material; (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart."

22. 40 C.F.R. § 61.141 defines "remove" to mean "to take out RACM or facility components that contain or are covered with RACM from any facility."

23. 40 C.F.R. § 61.141 defines "renovation" as "altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolition."

IV. GENERAL ALLEGATIONS

24. Respondent Levittown, L.P. is a Delaware Limited Partnership with a principal office located at 580 White Plains Road, Tarrytown, New York, 10591.

25. Respondent DLC Management, Inc. ("DLC") is a New York corporation with a principal place of business located at 580 White Plains Road, Tarrytown, New York, 10591.

26. Respondent Four Strong Builders, Inc. ("FSB") is a New Jersey corporation with a principal office located at 180 Sargeant Avenue, Clifton, New Jersey, 07013.

27. Each Respondent is a "person" within the meaning Section 302(e) of the Act, 42 U.S.C. § 7602(e).

28. Levittown, L.P. has owned the Levittown Shopping Center, located at Route 13 and Levittown Parkway, Tullytown, Pennsylvania, since 1992.

29. In 2001, Levittown, L.P. retained DLC to lease, manage, and supervise construction demolition activities planned for Levittown Shopping Center.

30. In March 2002, DLC awarded a contract to J&P Recovery, Inc. ("J&P") of Langhorne, Pennsylvania, a certified asbestos abatement contractor licensed to perform asbestos abatement in Pennsylvania, on behalf of Levittown, L.P. to perform various aspects of the abatement project at Levittown Shopping Center.

31. In turn, J&P retained FSB, an asbestos removal and abatement company, as a subcontractor to perform various aspects of the abatement work.

32. The Levittown Shopping Center is a "facility" within the meaning of 40 C.F.R. § 61.141.

33. Each Respondent is an "owner or operator of a demolition or renovation activity" within its meaning in 40 C.F.R. § 61.141.

34. According to the initial asbestos notification that EPA received on April 18, 2002, the asbestos abatement was to commence at Levittown Shopping Center on March 18, 2002 and conclude by December 31, 2002.

35. On April 23, 2002, May 1, 2002, and May 7, 2002, EPA inspector Richard Ponak ("Mr. Ponak") conducted site inspections at the Levittown Shopping Center abatement project.

36. During April 23, 2002 and May 1, 2002 inspections, Mr. Ponak observed dry, crushed, friable suspected transite debris strewn throughout the facility on the ground and in open dumpsters. Several hundred small pieces of the suspected transite debris were scattered on the ground or hanging from the building.

37. While onsite, Mr. Ponak advised Rick Sieber, the Levittown Shopping Center Property Manager and the demolition contractor to stop all demolition work until the RACM was adequately wetted and disposed of in accordance with the Asbestos NESHAP requirements.

38. Suspecting the material to be transite and potential RACM, on May 1, 2002, Mr. Ponak took photos and collected seven (7) suspected transite samples while onsite. Laboratory analytical results confirmed that all seven (7) transite samples contained 15-20% crysotile asbestos.

39. Transite is "Category II non-friable ACM."

40. The transite Mr. Ponak observed at the Facility on May 1, 2002 was RACM, since it was a Category II non-friable ACM with a high probability of becoming, or which had become by the time of the May 1, 2002 inspection, crumbled, pulverized or reduced to a powder by the forces expected to act on the transite during the course of the renovation or demolition operations at the Facility.

V. VIOLATIONS

COUNT I - FAILURE TO PROVIDE TIMELY NOTIFICATION

41. Complainant realleges the allegations contained in paragraphs 1 through 40 above.

42. Pursuant to the requirements of 40 C.F.R. § 61.145(b)(3)(i), each owner and operator of a demolition or renovation activity must provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work begins.

43. Respondents' initial asbestos notification with respect to the project at Levittown Shopping Center was mailed to EPA on April 16, 2002 without certified corporate signatures.

44. According to the April 16, 2002 asbestos notification, the asbestos abatement was to have begun on March 18, 2002.

45. Based on information and belief, the removal, stripping or other work that would breakup, dislodge or similarly disturb the asbestos at the facility commenced on or about March 18, 2002.

46. By failing to send a timely certified asbestos notification 10 working days prior to the original March 18, 2002 project start date through hand delivery, commercial delivery service or the U.S. Mail, Respondents violated the notification requirements of 40 C.F.R. § 61.145(b) of the Asbestos NESHAP.

COUNT II–FAILURE TO KEEP RACM WET UNTIL ITS COLLECTION AND DISPOSAL

47. Complainant realleges the allegations contained in paragraphs 1 through 46 above.

48. On May 1, 2002, while onsite Mr. Ponak observed dry friable transite RACM debris on the ground and in open dumpsters.

49. On May 1, 2002, while onsite Mr. Ponak photographed and took samples of the dry friable transite RACM debris.

50. By failing to ensure that the RACM remained wet until its disposal, Respondents violated the work practice requirements of 40 C.F.R. § 61.145(c)(6)(i) of the Asbestos NESHAP.

COUNT III - FAILURE TO REMOVE RACM WITHOUT ITS BECOMING DAMAGED OR DISTURBED

51. Complainant realleges the allegations contained in paragraphs 1 through 50 above.

52. Pursuant to 40 C.F.R. § 61.145(c)(6)(ii), each owner and operator of a renovation or demolition activity must carefully lower the RACM to the ground and floor and must ensure that the material is not dropped, thrown, slid, or otherwise damaged or disturbed during the removal or demolition project.

53. During the April 23, 2002 and May 1, 2002 site inspections, Mr. Ponak observed crushed, broken transite RACM strewn on ground and hanging from the building.

54. By treating the RACM during its removal in a way that caused it to become damaged and crushed, Respondents violated the work practice requirements of 40 C.F.R. § 61.145(c)(6)(ii) of the Asbestos NESHAP.

VI. PROPOSED CIVIL PENALTY

Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19 (July 1, 2002), authorize a penalty of not more than $27,500 for each violation of the Act that occurred

on or after January 30, 1997. EPA proposes to assess a civil penalty of thirty seven thousand four hundred dollars ($ 37,400) against Respondents for the violations herein alleged, as follows:

1. Gravity Component

COUNT I:
Regulatory requirement(s): 40 C.F.R. § 61.145(b)(3)(i)
Violation: Failure to provide timely notification
Proposed Penalties:
$ 2,000

COUNT II:
Regulatory requirement(s): 40 C.F.R. § 61.145(c)(6)(i)
Violation: Failure to adequately wet RACM
Proposed Penalties:
$ 15,000

COUNT III:
Regulatory requirement(s): 40 C.F.R. § 61.145(c)(6)(ii)
Violation: Failure to prevent damage to RACM
Proposed Penalty:
$ 15,000

Size of the Violator: (Based on worth/net assets < $ 100,000[2]):	**$ 2,000**
2. Economic Benefit of Noncompliance	$ 0.00
SUBTOTAL:	**$ 34,000**
3. Adjustments 10% Upwards Adjustment for Inflation 40 C.F.R. Part 19	**$ 3,400**
TOTAL PROPOSED PENALTY:	**$ 37,400**

The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; the Adjustment of Civil Monetary Penalties for Inflation Rule, 40

[2] This represents 50% of the total preliminary deterrence amount as set forth in EPA's Clean Air Act Stationary Source Civil Penalty Policy.

C.F.R. Part 19; and EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 ("CAA Penalty Policy"). A copy of the CAA Penalty Policy is enclosed with this Complaint. The proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

In determining the amount of any penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case, as known and understood at the time of issuance of this Complaint, with specific reference to the CAA Penalty Policy, which was indexed for inflation in keeping with 40 C.F.R. Part 19.

EPA will consider, among other factors, Respondents' ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondents' ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondents. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty

proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondents have the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 19103-2029 within **thirty (30) days** of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondents dispute; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. All material facts not denied in the Answer will be considered as admitted. A copy of the Answer and all other documents filed with the Regional Hearing Clerk related to this Complaint must be sent to Charles Hayden (3RC10), Senior Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

If any Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint as to

that Respondent and a waiver of the right to a hearing under Section 113 of the Act, 42 U.S.C. § 7413. Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules of Practice, 40 C.F.R. Part 22 (July 1, 2002). A copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d) (July 1, 2002).

VIII. SETTLEMENT CONFERENCE

EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Charles Hayden, Senior Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Hayden at (215) 814-2668 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Mr. Hayden on your behalf. Please be advised that the Consolidated Rules of Practice, at 40 C.F.R. § 22.8 (July 1, 2002), prohibit any unilateral discussion of the merits of a case with the

Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

IX. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules of Practice (July 1, 2002), Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondents pay the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules of Practice (July 1, 2002), no Answer need be filed.

If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules of Practice (July 1, 2002), Respondents may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondents agree to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1) (July 1, 2002). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Charles Hayden (3RC10), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice (July 1, 2002).

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules of Practice (July 1, 2002), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the final order. Payment of the penalty shall be made by sending a certified or cashier's check made payable to the Treasurer of the United States of America, in care of:

U.S. EPA, Region III
Regional Hearing Clerk
P. O. Box 360515
Pittsburgh, PA 15251-6515

Copies of the check shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III,
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and to:

Charles Hayden (3RC10)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

James J. Burke, Director
Waste and Chemicals Management Division

United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

DOCKET NO.: CAA-03-2004-0400

In re:

Four Strong Builders, Inc.,
180 Sergeant Avenue
Clifton, New Jersey 07013

DLC Management, Inc.
580 White Plains Road
Tarrytown, New York 10591

Levittown, L.P.
580 White Plains Road
Tarrytown, New York 10591

Respondents

ANSWER and SEPARATE DEFENSES

Respondent, Four Strong Builders, Inc., with its principal place of business located at 180 Sargeant Avenue, Clifton, New Jersey in the County of Passaic, State of New Jersey by way of Answer to the complaint says:

1. Admit
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit.

9. Admit.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. Admit.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. Admit.

24. Admit.

25. This respondent has insufficient information to neither admit or deny this allegation.

26. Admit.

27. Admit.

28. Admit.

29. This respondent has insufficient information to neither admit or deny this allegation.

30. This respondent has insufficient information to neither admit or deny this allegation.

31. Admit.

32. Admit.

33. Admit.

34. This respondent has insufficient information to neither admit or deny this allegation.

35. This respondent has insufficient information to neither admit or deny this allegation.

36. This respondent has insufficient information to neither admit or deny this allegation.

37. This respondent has insufficient information to neither admit or deny this allegation.

38. This respondent has insufficient information to neither admit or deny this allegation.

39. Admit

40. This respondent has insufficient information to neither admit or deny this allegation.

41. Admit.

42. Admit.

43. Denied. From the prospective of this respondent the proper notification was sent in a timely fashion.

44. Admit.

45. Admit.

46. Denied.

47. Admit.

48. This respondent has insufficient information to neither admit or deny this allegation.

49. This respondent has insufficient information to neither admit or deny this allegation.

50. This respondent denies the same. This respondent was not in control at the time this work occurred. This work was performed by the demolition contractor.

51. Admit.

52. Admit.

53. This respondent has insufficient information to neither admit or deny this allegation.

54. This respondent denies the same. This respondent performed this work, as it was performed by the general contractor.

Request for Hearing

Respondent hereby request a hearing upon the issues raised by the Complaint and Respondent's answer thereto, pursuant to EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22 (July 1, 2002).

Settlement Conference

Respondent, Four Strong Builders, Inc., requests an informal conference to discuss the facts of this matter with EPA, and to attempt to arrive at a settlement of this matter without proceeding to a hearing.

FAUGNO & ASSOCIATES
Attorneys for Respondent

BY: _____
Paul Faugno

Dated: November 8, 2004

CERTIFICATE OF SERVICE

I, Paul Faugno, hereby certify that on November 9, 2004, I caused a true and correct copy of Respondent's, Four Strong Builders, Inc., Answer and Request for Informal Settlement Conference and Hearing to be served via hand delivery upon the following:

Regional Hearing Clerk
United States Environmental
Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103

Charles Hayden
Senior Assistant Regional Counsel
United States Environmental
Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103

Jonathan H. Sperge, Esq.
Mako, Gold, Katcher & Fox
401 City Avenue
Suite 500
Bala Cynwyd, PA 19004

FAUGNO & ASSOCIATES
Attorneys for Respondent

BY: _____
Paul Faugno

Dated: November 8, 2004

CERTFICIATE OF SERVICE

I hereby certify that on the date indicated below, the original and five copies of the foregoing APPELLEE'S RESPONSE BRIEF in the matter of Four String Builders, Inc., CAA Appeal NO. 05-02 were sent via FEDERAL EXPRESS to the Clerk of the Board, Colorado Building, 1341 G Street, NW, Suite 600, Washington, D.C. 20005, and that a true and correct copy was mailed to the following person in the following manner:

FEDERAL EXPRESS

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601

SEP 1 3 2005

Date

Jennifer M. Abramson
Assistant Regional Counsel