

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 APR 14 AM 10:06  
REGIONAL HEARING  
CLERK

In re:

**Commonwealth of Puerto Rico**  
Department of Housing

**Fullana Heavy Works**

Respondents

In a proceeding under Section 113(d) of  
the Clean Air Act

**CONSENT AGREEMENT AND  
FINAL ORDER**

CAA-02-2007-1214

**I. Preliminary Statement**

On August 17, 2007, the U.S. Environmental Protection Agency (EPA) issued an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint), CAA 02-2007-1214, to the Department of Housing of the Commonwealth of Puerto Rico (Respondent DOH) and Fullana Heavy Works (Respondent Fullana). The Complaint charged Respondents with violating the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* ("CAA" or the "Act"), and in particular Sections 112 and/or 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and the National Emission Standard for Hazardous Air Pollutants for Asbestos, Subpart M of 40 C.F.R. Part 61 (Asbestos NESHAP), promulgated thereunder. The Complaint proposed penalties, pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d). The Complainant in this matter, the Director of the Caribbean Environmental Protection Division (CEPD), EPA, Region 2, is duly delegated the authority to issue Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 112 of the Act, authorizes the Administrator to issue and require compliance with emission or work practice standards for hazardous air pollutants. Pursuant to Section 112 of the Act, the Administrator promulgated 40 C.F.R. Part 61, Subpart M, entitled "National Emission Standard for Asbestos" (Asbestos NESHAP).

Section 114(a)(1) of the Act, authorizes the EPA Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

Complainant and Respondents have agreed to resolve the Complaint by entering into this Consent Agreement.

## **II. Findings of Fact and Conclusions of Law**

1. Each of the Respondents is a "person" as that term is defined in Section 302(e) of the Act, and as such is subject to the assessment of administrative penalties under Section 113(d) of the Act.
2. At all times relevant to this proceeding, Respondents were either the "owners or operators of a renovation or demolition activity," as those terms are defined at 40 C.F.R. §§ 61.02 and 61.141, subject to the Asbestos NESHAP.
3. The Complaint alleged Respondents violated 40 C.F.R. § 61.145(b), a regulation promulgated pursuant to Sections 112 and 114 of the Act, by failing to provide EPA with a notice of intent to demolish at least ten (10) working days before the demolition activities began.
4. Pursuant to 40 C.F.R. § 61.145(b), a provision of the Asbestos NESHAP, each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.
5. Failure to provide EPA with a notice of intent to demolish at least ten (10) working days before the demolition activities begin is a violation of the Asbestos NESHAP and Sections 112 and 114 of the Act.

## **III. Consent Agreement**

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

6. For the purpose of this proceeding, only, and to avoid the expense of protracted litigation, Respondents: (1) admit to the jurisdictional allegations of the Complaint; (2) neither admit nor deny specific factual allegations contained in the Complaint and in this Consent Agreement; and (3) consent to the assessment of the civil penalties stated herein.
7. Respondents will pay civil penalties pursuant to Section 113 (d) of the Act, in the amount of Twelve Thousand Eight Hundred Ninety Five Dollars (\$12,895.00) either by cashiers' check, certified check or check issued by

the Puerto Rico Department of Treasury. Respondent DOH and Respondent Fullana will each pay 50% (\$6,447.50) of the agreed amount. Respondents shall: (1) clearly type or write the docket number on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer of the United States of America;" and (3) send the check to:

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

Respondent DOH agrees to pay the amount of Six Thousand Four Hundred Forty-Seven Dollars Fifty Cents (\$6,447.50) within forty-five (45) calendar days from the effective date of the Consent Agreement.

Respondent Fullana agrees to pay the amount of Six Thousand Four Hundred Forty-Seven Dollars Fifty Cents (\$6,447.50) in *three payments* as follows:

- a. an initial payment of Two Thousand One Hundred Forty-Nine Dollars Seventeen Cents (\$2,149.17) shall be made within forty-five (45) calendar days from the effective date of the Consent Agreement;
- b. a second payment shall be made within one hundred thirty-five (135) calendar days from the effective date of the Consent Agreement in the amount of Two Thousand One Hundred Forty-Nine Dollars Seventeen Cents (\$2,149.17); and
- c. a third payment shall be made within two hundred and twenty-five (225) calendar days from the effective date of the Consent Agreement in the amount of Two Thousand One Hundred Forty-Nine Dollars Sixteen Cents (\$2,149.16).

The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order (due date) accompanying this Consent Agreement.

8. Respondents shall send notice of payment, along with a copy of the check to the following:

Héctor L. Vélez Cruz, Esq.  
Office of Regional Counsel - Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907- 4127, and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007.

9. Failure to remit the penalty in full in accordance with the above provisions may result in referral of this matter to the United States Attorney for collection. In such an action, pursuant to Section 113(d)(5) of the Clean Air Act, and 31 U.S.C. §§ 3717 and 3731, Respondents shall pay the following amounts:
- a. Interest. If Respondents fail to make payment, any unpaid installment portion of the assessed penalty shall bear interest, at the rate established pursuant to Section 113(d)(5) of the Act and 31 U.S.C. § 3731, from the payment due date specified in this Consent Agreement.
  - b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars \$15.00 will be assessed for each thirty (30) day period (or portion thereof) following the due date in which any payment remains unpaid.
  - c. Attorneys Fees, Collection Costs, Nonpayment of Penalty. Pursuant to Section 113(d)(5) of the Act, should Respondents fail to pay on a timely basis the amount of the assessed penalty, Respondents shall pay -- in addition to such assessed penalty, interest and handling charges -- the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment of penalty shall be ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of all enumerated liabilities that might have arose as a result of Respondents' alleged failure to comply with Sections 112 and 114 of the Act and the Asbestos NESHAP promulgated thereunder.
11. Respondents have read the Consent Agreement, find it reasonable, and consent to its terms and issuance as a Final Order.
12. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their duty to comply with all applicable provisions of the CAA and other environmental laws.
13. Respondents explicitly waive their right to request a hearing on the Complaint, this Consent Agreement, and/or the attached Final Order, and explicitly waive their rights to contest allegations in the Complaint and their rights to appeal the attached Final Order.
14. Respondents waive any right they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
15. Each party to this agreement shall bear the responsibility for its own costs and attorneys fees in the action resolved by this Consent Agreement.
16. This Consent Agreement shall be binding on the parties executing this agreement their officers, directors, employees, successors, and assigns.
17. Each of the undersigned representative(s) certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

**RESPONDENT  
DEPARTMENT OF HOUSING OF THE COMMONWEALTH OF PUERTO RICO:**

*Aracelis Rivera Jiménez*  
Signature

*April 11, 2008*  
Date

*Secretary*  
Title (please print)

**RESPONDENT FULLANA HEAVY WORKS:**

  
\_\_\_\_\_  
Signature

4/2/2008  
Date

President  
Title (please print)

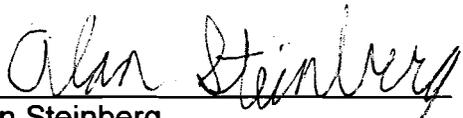
**COMPLAINANT:**

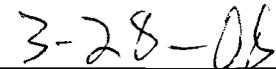
BY:   
Carl-Axel P. Soderberg  
Director  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency - Region 2

Date: 03-25-08

**IV. Final Order**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

  
\_\_\_\_\_  
Alan Steinberg  
Regional Administrator  
United States Environmental  
Protection Agency - Region 2  
290 Broadway  
New York, New York

  
\_\_\_\_\_  
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated April 10, 2008, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, Overnight Mail to:

**Karen Maples**

Regional Hearing Clerk

Region II

U.S. Environmental Protection Agency

290 Broadway, 16<sup>th</sup> Floor

New York, NY 10007-1866

Fax (212) 637-3202.

Copy by facsimile, certified mail/return receipt to:

Attorney for Respondent-Commonwealth of PR:

**Mariacté Correa-Cestero, Esq.**

O'Neill & Borges

American Internacional Plaza

250 Muñoz Rivera Ave, Suite 800

San Juan, PR 00918-1813

Fax (787) 753-8944.

Attorney for Respondent- Fullana Heavy Works:

**Germán Novoa Rodríguez, Esq.**

Lugo Lugo & Asociado

P. O. Box 8672

Bayamón, PR 00960-8036

Fax (787) 779-8502.

Copy by facsimile, Overnight Mail to:

Administrative Law Judge

**Honorable Barbara A. Gunning**

Office of Administrative Law Judges

U.S. Environmental Protection Agency

1099 14<sup>th</sup> Street, N.W., Suite 350

Washington, D.C. 20005

Fax (202) 565-0044.

*April 10, 2008*  
Date

*[Signature]*  
Name