

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

In the Matter of: :
: ADMINISTRATIVE COMPLAINT
Dillon Floral Corporation, : AND NOTICE OF OPPORTUNITY
: FOR HEARING
Respondent. :
: Docket No. CAA-03-2009-0293

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REGION III
PHILADELPHIA, PA
19103-2029

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued under Section 113(a)(3)(A) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. A copy of the Consolidated Rules is enclosed with this Complaint. This Complaint is issued by the Director of the Land and Chemicals Division of Region III of the United States Environmental Protection Agency (Complainant), pursuant to delegated authority. The Complaint alleges that Respondent violated requirements of a rule establishing a national emission standard for asbestos promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, as set forth below.

II. APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS

1. This Complaint arises under the CAA, 42 U.S.C. §§ 7401-7671q. On April 5, 1984, under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of the United States Environmental Protection Agency (EPA) promulgated a rule establishing a national emission standard for asbestos. That rule is codified at 40 C.F.R. Part 61, Subpart M (§§ 61.140-61.157).
2. The introductory paragraph of 40 C.F.R. Part 61, Subpart M, § 61.145(a) applies to each "owner or operator of a demolition or renovation activity". 40 C.F.R. Part 61, Subpart M, § 61.145(a)(1) or (2) apply to each "owner or operator of a demolition or renovation activity" where a facility is being demolished.

3. 40 C.F.R. Part 61, Subpart M, § 61.145(a), provides, in pertinent part, that "the owner or operator of a demolition ...activity" is required to, "prior to the commencement of the demolition..., thoroughly inspect the affected facility...for the presence of asbestos, including Category I and Category II nonfriable ACM".

4. Under 40 C.F.R. Part 61, Subpart M, § 61.145(a)(1) and (2), 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1) applies, except as noted, to each "owner or operator of a demolition or renovation activity" where a facility is being demolished regardless of the combined amount of "RACM" involved in the demolition.

5. 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1), provides, in pertinent part, that "[e]ach owner or operator of a demolition ...activity...shall provide the Administrator with written notice of intention to demolish...".

6. Under 40 C.F.R. Part 61, Subpart M, § 61.145(a)(1), 40 C.F.R. Part 61, Subpart M, § 61.145(c) applies, except as noted, to each "owner or operator of a demolition or renovation activity" where a facility is being demolished and the combined amount of "RACM" is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

7. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(1), provides, in pertinent part, that "[e]ach owner or operator of a demolition or renovation activity to whom [§ 61.145(c)] applies, according to [§ 61.145(a)], shall, except as provided therein,...[r]emove all RACM from a facility being demolished...before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal".

8. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(6)(i), provides, in pertinent part, that "[e]ach owner or operator of a demolition or renovation activity to whom [§ 61.145(c)] applies, according to [§ 61.145(a)], shall...[f]or all RACM, including material that has been removed or stripped...[a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150...".

9. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(8), provides, in pertinent part, that "no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by [§ 61.145] unless at least one on-site representative...trained in the provisions of [40 C.F.R. Part 61, Subpart M] and the means of complying with them, is present".

10. The following terms, among others, are defined in 40 C.F.R. Part 61, Subpart M, § 61.141: "owner or operator of a demolition or renovation activity", "demolition", "renovation", "facility", "regulated asbestos-containing material (RACM)", "remove", "strip", "adequately wet", "asbestos", "Category I nonfriable asbestos-containing material (ACM)", and "Category II nonfriable asbestos-containing material (ACM)".

11. Section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A), provides, in pertinent part, that "...whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated...[any requirement of various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under those provisions..., the Administrator may issue an administrative penalty order in accordance with [Section 113(d) of the CAA]...".

12. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), provides, in pertinent part, that "...The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person...has violated...any... requirement...of [various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under [those provisions]...".

III. GENERAL ALLEGATIONS

1. Respondent, Dillon Floral Corporation (Dillon), is and, at all times relevant hereto, has been a Pennsylvania corporation which owns and, at all times relevant hereto, has owned, the premises at 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815.

2. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a)(3)(A) and (d) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d), and in 40 C.F.R. Part 61, Subpart M.

3. Dillon owns, operates, controls, or supervises, and at all times relevant hereto has owned, operated, controlled, or supervised, the premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815.

4. The premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815 is and, at all times relevant hereto, has been a "facility" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

5. An EPA inspection of the premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815 was conducted on October 15, 2008. While on the premises to inspect the removal of thermal insulation by one contractor at one greenhouse on the premises, the EPA inspector observed several other greenhouses on the premises that had been completely or partially demolished. It appeared to the inspector that at least 8 greenhouses had been demolished. Crushed transite RACM debris was scattered throughout the premises. The observed RACM was dry and, in some cases, mixed with demolition debris. While on the premises, eight (8) samples and a number of photographs were taken by the EPA inspector. The eight (8) samples taken, when subsequently analyzed to determine their asbestos content (in percent) using the method specified in 40 C.F.R. Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy, were found to contain substantially more than 1 percent asbestos.

6. The material and debris observed and sampled on October 15, 2008 included "RACM" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

7. The material and debris observed and sampled on October 15, 2008 resulted from or was involved in a "demolition" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

8. Dillon owned, operated, controlled, or supervised the above-referenced "demolition" operation.

9. With respect to the above-referenced "demolition" operation, Respondent was an "owner or operator of a demolition or renovation activity" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

10. With respect to the above-referenced "demolition" operation, the combined amount of "RACM" involved was at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

11. With respect to the above-referenced "demolition" operation, 40 C.F.R. Part 61, Subpart M, § 61.145, including but not limited to the introductory paragraph of § 61.145(a), § 61.145(a)(1), § 61.145(b), and § 61.145(c), applied to Respondent as an "owner or operator of a demolition or renovation activity".

IV. VIOLATIONS

COUNT I

FAILURE TO NOTIFY

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operation, Respondent failed to provide the Administrator of EPA with written notice of intention to demolish, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1). As a consequence, with respect to the above-referenced "demolition" operation, Respondent violated 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1).

COUNT II

FAILURE TO REMOVE RACM BEFORE DEMOLITION

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operation, Respondent failed to remove all RACM from a facility being demolished before any activity began that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(c)(1). As a consequence, with respect to the above-referenced "demolition" operation, Respondent violated 40 C.F.R. Part 61, Subpart M, § 61.145(c)(1).

COUNT III
FAILURE TO ADEQUATELY WET RACM

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operation, Respondent failed to "adequately wet" the "RACM", including the material that had been removed or stripped, and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. Part 61, Subpart M, § 61.150, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(c)(6)(i). As a consequence, with respect to the above-referenced "demolition" operation, Respondent violated 40 C.F.R. Part 61, Subpart M, § 61.145(c)(6)(i).

COUNT IV
FAILURE TO HAVE TRAINED REPRESENTATIVE ON SITE

1. Complainant incorporates herein by reference the allegations set forth in Sections I., II., and III. above.

2. With respect to the above-referenced "demolition" operation, Respondent stripped, removed, or otherwise handled or disturbed RACM at a facility regulated by 40 C.F.R. § 61.145 without the presence of at least one on-site representative trained in the provisions of 40 C.F.R. Part 61, Subpart M and the means of complying with them, as required by 40 C.F.R. Part 61, Subpart M, § 61.145(c)(8). As a consequence, with respect to the above-referenced "demolition" operation, Respondent violated 40 C.F.R. Part 61, Subpart M, § 61.145(c)(8).

V. PROPOSED CIVIL PENALTIES

1. As noted in Paragraph II.12. above, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day of violation. However, for any violation which occurs on January 31, 1997 through March 15, 2004, the assessment of a civil administrative penalty of up to \$27,500 per day of violation is authorized, and for any violation which occurs after March 15, 2004, the assessment of a civil administrative penalty of up to \$32,500 per day of violation is authorized (See 40 C.F.R. Part 19). The proposed civil penalties for the above-described CAA violations have been determined in accordance with 1) Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and 2) EPA's Clean Air Act Stationary

Source Civil Penalty Policy, dated October 25, 1991 (CAA penalty policy), as modified, including Appendix III thereto (for violations of 40 C.F.R. Part 61, Subpart M), as revised May 5, 1992. Relevant modifications to the CAA penalty policy since its issuance on October 25, 1991 include modifications, dated May 9, 1997 and September 21, 2004 to implement the above-referenced Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), pursuant to the Debt Collection Improvement Act of 1996 (inflation modifications). These inflation modifications essentially increased penalty policy amounts by 10% and 17.23%, respectively. Copies of the CAA penalty policy, including the revised Appendix III, and the inflation modifications are enclosed with this Complaint.

2. In determining the amount of any CAA penalty to be assessed, Section 113(e) of the CAA, 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 (in addition to such other factors as justice may require).

3. To develop the proposed CAA penalties, EPA has taken into account the CAA penalty policy, as modified, and the particular facts and circumstances of this case. EPA's CAA penalty policy, as modified, represents an analysis of the statutory penalty factors enumerated above and guidance on their application in particular cases. If the CAA penalties proposed herein are contested through the hearing process described below, Complainant is prepared to present the statutory basis for the elements of the CAA penalty policy applied in this case and to substantiate the appropriateness of the proposed CAA penalties.

4. After considering the statutory factors, the CAA penalty policy, as modified, and the facts and circumstances of this case, Complainant proposes that Respondent be assessed a total CAA civil penalty of **\$41,264**, as set forth below, for the violations alleged in Counts I, II, III and IV of this Complaint.

Count I - Failure to Notify

I. Gravity Component

- \$15,000 (first violation) [See page 15 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$15,000

Count II - Failure to Remove RACM Before Demolition

I. Gravity Component

- ≤ 10 units (10/15/08) - \$5,000 (first violation) [See page 17 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$5,000

Count III - Failure to Adequately Wet RACM

I. Gravity Component

- ≤ 10 units (10/15/08) - \$5,000 (first violation) [See page 17 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$5,000

Count IV - Failure To Have Trained Representative On Site

I. Gravity Component

- <10 units (10/15/08) - \$5,000 (first violation) [See page 17 of Appendix III (revised May 5, 1992) to the CAA penalty policy]

II. Economic Benefit Component

- Not Assessed

PROPOSED CIVIL PENALTY - \$5,000

Size of Violator Factor - \$2,000 [See page 14 of 10/25/91 CAA penalty policy: applied to demolition contractor]

Pre-Inflation Adjustment Total Gravity Component - \$32,000

Post-Inflation Adjustment Total Gravity Component - \$41,264 [See 9/21/04 inflation adjustment memorandum: for violations after 3/15/04, increase by 28.95%]

Total Economic Benefit Component - Not Assessed

Total Proposed Civil Penalty - \$41,264

This proposed total civil penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

5. EPA will consider appropriate factors as a possible basis for adjusting the civil penalties proposed to be assessed in this Complaint. In addition, to the extent that relevant facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance, such relevant facts and circumstances may also be considered as a possible basis for adjusting the civil penalties proposed to be assessed in this Complaint.

6. EPA reserves its right to seek higher and/or additional civil penalties if the evidence supports their assessment.

VI. NOTICE OF OPPORTUNITY FOR HEARING

This proceeding is governed by the Consolidated Rules. Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed civil penalties. **To request a hearing, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA-Region III (3RC00), 1650 Arch Street, Philadelphia, Pennsylvania 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 Respondent has any knowledge. If Respondent has 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 Respondent disputes, (3) the basis for opposing any proposed relief; and (4) a statement of 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 relating to this Complaint shall be served upon the EPA attorney assigned to this matter: James M. Baker (3RC10), Senior Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

If Respondent fails to file a written Answer within thirty (30) days of its receipt of this Complaint, such failure shall constitute an admission of all facts alleged in this Complaint and a waiver of the right to contest such factual allegations. Failure to file an Answer may result in the filing of a Motion for Default Order which, if granted, would assess the civil penalties proposed in this Complaint 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. A requested hearing will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

VII. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific civil penalties proposed in this Complaint or in Complainant's

prehearing exchange. If Respondent pays the specific civil penalties proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the civil penalties proposed in this Complaint instead of filing an Answer, but needs additional time to pay the civil penalties, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed civil penalties in accordance with 40 C.F.R. § 22.18(a)(1). 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 James M. Baker (3RC10), Senior Assistant Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed civil penalties. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default, pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of the rights of Respondent to contest the allegations and to appeal the final order.

Payment of the civil penalties 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:

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


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 pertinent statute. Whether or not a hearing is requested, Respondent may confer with Complainant regarding the allegations of this Complaint and the amounts of the proposed civil penalties.

In the event a 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, and requests therefor, do not affect the requirement to file a timely Answer to the Complaint.**

As noted above, the EPA attorney assigned to this matter is James M. Baker, Senior Assistant Regional Counsel. If Respondent has any questions or desires to arrange a settlement conference, Respondent shall contact Mr. Baker at (215)814-2109 before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint. If Respondent is represented by legal counsel, Respondent's legal counsel should contact Mr. Baker on Respondent's behalf. **Please be advised that, after issuance of a Complaint, the Consolidated Rules prohibit any ex parte discussion of the merits of a proceeding with the Administrator, members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any other person who is likely to advise these officials on any decision in the proceeding.**

Date: 7/24/09

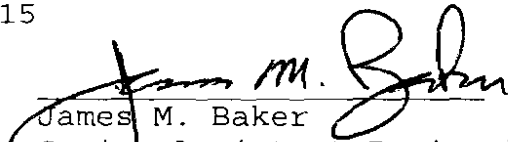

Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a copy of this Administrative Complaint and enclosures (Docket No. CAA-03-2009-0293) was sent by Certified Mail, Return Receipt Requested, to the addressee listed below. The original and one copy of this Administrative Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA-Region III.

Robert W. Dillon, President
Dillon Floral Corporation
933 Columbia Boulevard
Bloomsburg, Pennsylvania 17815

Date: 9/30/09


James M. Baker
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029