

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re:

T. Fiore Demolition, Inc.

Respondent

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

**COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CAA-02-2016-1203

U.S. Environmental
Protection Agency
2016 SEP 13 PM 2:03
REGION 2

PRELIMINARY STATEMENT

In this Complaint and Notice of Opportunity to Request a Hearing (“Complaint”), the United States Environmental Protection Agency (“EPA”) alleges that T. Fiore Demolition, Inc. (“T. Fiore”) (“Respondent”) violated 40 C.F.R. § 61.145(c) by failing to ensure that at least one person who is certified or trained in accordance with 40 C.F.R. § 61.145(c)(8) was onsite to supervise the demolition operations of nine (9) houses that were all located within the Township of Brick, New Jersey. These include 518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, 112 Jeanette Drive, 7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N. Additionally, Respondents violated 40 C.F.R. § 61.150(b)(1) by failing to dispose of the debris from at least four (4) of these houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, and 112 Jeanette Drive) in a landfill certified to accept and handle asbestos-containing waste material (ACWM).

Finally, Respondents violated 40 C.F.R. § 61.145(c)(6) by failing to ensure that debris was kept adequately wet at the 473 Rt. 35 N site during the demolition process which resulted in visible emissions. The Complaint proposes a civil penalty of \$95,605 for the Respondents' violations and is brought pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). A copy of the Consolidated Rules of Practice is enclosed with the service copy of this Complaint.

LEGAL BACKGROUND

A. EPA's Authority to Enforce the CAA and its Implementing Regulations

1. Section 113(d)(1) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to 40 C.F.R. Part 61, Subpart M of the Act.

2. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an 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 employee thereof.

3. Section 113(d)(2)(A) of the CAA provides that any administrative penalty assessed under Section 113(d)(1) of the CAA shall be assessed only after notice and an opportunity for a hearing, and that the EPA Administrator shall promulgate rules for such hearings. The Consolidated Rules of Practice contain those rules and apply to this Complaint.

4. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

5. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on August 19, 2016, the United States Department of Justice (DOJ) granted the EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

B. **National Emissions Standards for Hazardous Air Pollutants – 40 C.F.R. Part 61, Subpart M**

6. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants ("HAPs"), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

7. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator periodically to review the list and, where appropriate, revise it.

8. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

9. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) for each category or subcategory of major and area sources of HAPs.

10. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

11. The NESHAP promulgated for asbestos is set forth in 40 C.F.R. Part 61 Subpart M and is commonly referred to as the Asbestos NESHAP.

12. Section 112(h) of the Act authorizes EPA to promulgate “design, equipment, work practice, or operational” standards, or combinations thereof, which are consistent with Section 112 (d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP.

13. Pursuant to Section 112(d)(2)(D) and (E) of the Act, emission standards promulgated under Section 112(h) of the Act may include design, equipment, work practice, or operational standards, or combinations thereof.

14. Section 112(i)(3)(A) of the Act prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

15. Section 114 of the Act authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information to enable him, or her, to carry out any provision (except certain provisions in subchapter II) of the Act and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

16. Section 114(a)(2) of the Act provides that for the purpose of determining whether any person is in violation of any emission standard, EPA representatives shall have a right of entry, upon presentation of credentials, to any premises to inspect and sample certain emissions.

17. 40 C.F.R. § 61.141 defines “asbestos-containing waste material” (ACWM) as friable asbestos waste material, filters from control devices, bags or other similar packaging contaminated with commercial asbestos, regulated ACWM and materials contaminated with asbestos including disposable equipment and clothing.

18. 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.

19. 40 C.F.R. § 61.141 defines “demolition” to include an operation in which load supporting structural members are wrecked or taken out.

20. 40 C.F.R. § 61.141 defines “facility” as any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.

21. 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).

22. 40 C.F.R. § 61.141 defines an “owner or operator of a demolition or renovation activity” as any person who owns, leases, operates, controls or supervises the facility being renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operations, or both.

23. 40 C.F.R. § 61.141 defines “working days” as Monday through Friday.

24. 40 C.F.R. § 61.145(a)(1)(i) and (ii) and 40 C.F.R. § 61.145(a)(4)(i) and (ii) provide that the requirements of 40 C.F.R. § 61.145(b) and (c) apply to the owners and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed 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.

25. 40 C.F.R. § 61.145(a)(3) provides that if a facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of that section apply.

26. 40 C.F.R. § 61.145(c)(8) requires that no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one onsite representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.

27. 40 C.F.R. § 61.145(c)(6) requires that all RACM, including material that has been removed or stripped, be adequately wet until collected and contained or treated in preparation for disposal in accordance with § 61.150.

28. 40 C.F.R. § 61.150(b)(1) requires that all asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of § 61.154.

FINDINGS OF FACT

29. The factual findings set forth below are based on an investigation conducted by EPA Region 2 personnel pursuant to Section 114 of the CAA.

30. T. Fiore is the operator of affected demolition or renovation activities, as defined by 40 C.F.R. §§ 61.141 and 61.145(b).

31. The affected demolition and renovation activities occurred at building(s) or structure(s) or groups 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). (See definition of “installation” at 40 C.F.R. § 61.141).

32. On July 30, 2013, an EPA Inspector inspected the demolition site at 112 Jeanette Drive in Brick Township, New Jersey.

33. At the time of the July 30, 2013 inspection at 112 Jeanette Drive, Travis Mays, the Project Manager at the site and an employee of Rostan Solutions (a monitoring company overseeing demolition activities on behalf of Brick Township), told the EPA inspector that demolition debris from the demolition of four houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd and 112 Jeanette Drive in Brick Township) that were declared “unsafe to enter” for the purposes of inspection and abatement was not sent to a landfill certified to accept asbestos-containing waste material.

34. At the time of the July 30, 2013 inspection, neither the T. Fiore supervisor onsite nor any T. Fiore staff present were able to provide proof that at least one person onsite was trained to supervise the demolition and debris removal operations for material containing

RACM, as required by 40 C.F.R. § 61.145(c)(8). The EPA inspector informed Mr. Mays that a trained supervisor was required onsite during demolition of homes that cannot be surveyed to determine the presence of asbestos prior to demolition because they have been declared “unsafe to enter.” Later that day, the EPA inspector also met with representatives of the Town of Brick and informed them of this requirement.

35. On September 4, 2013, an EPA Inspector inspected the demolition site at 473 Rt. 35 N, in Brick Township, New Jersey.

36. At the time of the September 4, 2013 inspection, Mr. Benney Fussella, a T. Fiore supervisor onsite, told the EPA inspector that there was no person onsite trained to supervise demolition and debris removal operations for material containing RACM, as required by 40 C.F.R. § 61.145(c)(8).

37. At the time of the September 4, 2013 inspection, Mr. Benney Fussella confirmed that no T. Fiore personnel, working on the demolition project or otherwise employed by the company, were trained to supervise the demolition and debris removal operations for material containing RACM, as required by 40 C.F.R. § 61.145(c)(8).

38. At the time of the September 4, 2013 inspection, Mr. Benny Fussella, a T. Fiore supervisor at the site, asked the EPA inspector where he and his staff could obtain such certification.

39. Documents provided by Brick Township show that at least five (5) houses (7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N in Brick Township) that the township had declared “unsafe to enter” for the purposes of inspection and abatement were demolished on or prior to the September 4, 2013 inspection date by T. Fiore.

40. The EPA Inspector observed visible emissions on two (2) separate occasions during the inspection of the demolition site located at 473 Rt. 35 N in Brick Township. The first

observation was at approximately 10:00 am when the excavator was shifting the demolition debris without any water being used to keep the debris wet. The EPA inspector noted that the hose was not connected to the water hydrant at the time.

41. The second visible emissions observation was at approximately 12:00 pm when the excavator was transferring the demolition debris into a dumpster. Although water was being used, T. Fiore failed to adequately wet the debris prior to handling and transferring the debris which resulted in visible emissions.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

42. Respondent is a “person” within the meaning of Section 302(e) of the Act.

43. Respondent is subject to 40 C.F.R Part, 61 Subpart M, the Asbestos NESHAP regulation.

44. The affected demolition and renovation activities occurred at an “installation” as defined at 40 C.F.R. § 61.141.

45. Because 40 C.F.R. § 61.141 defines “facility” to include an “installation,” the affected demolition and renovation activities occurred at a “facility.”

Count 1:

Failure to dispose of asbestos containing waste material in a certified/licensed asbestos landfill

46. Paragraphs 29 to 45 above are incorporated herein by reference.

47. Respondents’ failure to dispose of debris from at least four houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, and 112 Jeanette Drive in Brick Township) that were “unsafe to enter” for purposes of inspection and abatement in a landfill that is certified/licensed to accept ACWM violates Section 112 of the Act and 40 C.F.R. § 61.150(b)(1) of the Asbestos NESHAP.

Count 2:

Failure to Have an Asbestos-certified Supervisor Onsite

48. Paragraphs 29 to 47 above are incorporated herein by reference.

49. Respondents' failure to ensure that at least one person certified or trained in accordance with 40 C.F.R. § 61.145(c)(8) is onsite to supervise the demolition operation at nine houses (518 Rt. 35 N, 515 Sunset Blvd, 519 Sunset Blvd, 112 Jeanette Drive, 7 West Marion, 9 West Marion, 11 West Marion, 15 West Marion and 473 Rt. 35 N in Brick Township) violates Section 112 of the Act and 40 C.F.R. § 61.145(c)(8) of the Asbestos NESHAP.

Count 3:

Failure to Follow Procedures for Asbestos Emissions Control

50. Paragraphs 29 to 49 above are incorporated herein by reference.

51. Respondents' failure to ensure that debris was kept adequately wet at the 473 Rt. 35 N, Brick Township demolition facility resulting in visible emissions is a violation of Section 112 of the Act and 40 C.F.R. § 61.145(c)(6) of the Asbestos NESHAP.

PROPOSED CIVIL PENALTY

Based on the statutory penalty assessment criteria set forth in CAA Section 113(e), and on the guidance provided by EPA's Clean Air Act Stationary Source Civil Penalty Policy (the "CAA Penalty Policy"), the Complainant proposes a civil penalty of \$ 95,605 for Respondents' violations.

A. Statutory Penalty Assessment Criteria

Section 113(d) of the CAA provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act, including but not limited to violations of any requirements or prohibitions of rules promulgated under the Act. However, the statutory maximum of \$25,000 per day has been adjusted upward to account for

inflation, pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”). Thus, the statutory maximum is \$27,500 for violations that occurred after January 30, 1997 through March 15, 2004, \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and \$37,500 for violations that occurred after January 12, 2009. *See* 40 C.F.R. Part 19, Table 1. Part 19 indicates that the maximum civil penalty has been upwardly adjusted 10% for violations that occurred after January 30, 1997 through March 15, 2004, further adjusted 17.23% for violations that occurred after March 15, 2004 through January 12, 2009, for a total of 28.95%, and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%. Further adjustments made pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701) became effective by August 1, 2016.

In determining the amount of penalty to be assessed, Section 113(e) of the CAA requires that the Administrator consider 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, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

B. CAA Penalty Policy

EPA’s CAA Penalty Policy reflects EPA’s application of the factors set forth in Section 113(e) of the Act and provides guidance on how EPA is to calculate penalties for CAA. The policy indicates that EPA should propose a penalty consisting of an economic benefit component and a gravity component. The economic benefit component is the economic benefit the violator gained as a result of the violation. The gravity component, in turn, consists of elements based on the actual or potential harm caused by the violation, the significance of the regulation in question

to the regulatory scheme, the sensitivity of the environment and the size of the violator. Finally, consistent with the DCIA and 40 C.F.R. Part 19, when proposing a penalty for a specific violation, EPA adjusts the dollar figures listed in the CAA Penalty Policy upward for inflation.

C. EPA's Proposed Penalty in this Case

The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$95,605. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's CAA Penalty Policy. Enclosed with this complaint is a copy of the policy. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. The hearing is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.*, and the procedures set forth in EPA's Consolidated Rules of Practice.

In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Sara Froikin
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied.

The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

NOTICE OF OPPORTUNITY FOR A SETTLEMENT CONFERENCE

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibility of settlement by engaging in informal settlement communications with EPA counsel. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Those times are set by the Consolidated Rules of Practice.

You may contact EPA counsel at the address listed above to discuss settlement, the alleged violations and/or the amount of the proposed penalty, whether or not you intend to file an Answer and/or request a hearing. If you are represented by legal counsel, your counsel should contact EPA. If a settlement is reached, it will be in the form of a written Consent Agreement and accompanying Final Order.

**PAYMENT OF PENALTY IN LIEU OF
ANSWER, HEARING AND/OR SETTLEMENT**

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of

this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: 9/8/2016

For Heather Malone-Bozney
Dore F. LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: Theodore Fiore, President
T. Fiore Demolition, Inc.
457 Wilson Ave
Newark, NJ 07105

CERTIFICATE OF SERVICE

I certify that on Sept. 13, 2016, I caused the foregoing Complaint in the matter of *T. Fiore Demolition, Inc.*, CAA-02-2016-1203, to be served on the following people in the manner listed below:

One Original and One Copy, by hand delivery to:

✓ Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy, by hand delivery to:


Sara Froikin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy, by Certified Mail-Return Receipt Requested, Article Number 7015 0640 0001 0675 *to:* 2622

Theodore Fiore, President
T. Fiore Demolition, Inc.
457 Wilson Ave
Newark, NJ 07105

Dated: Sept. 13, 2016



Katherine Zuckerman
Air Branch Secretary
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2