

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND REGION) **RECEIVED**

2009 JUL 31 P 2: 14

In the Matter of: )

JIDDU/SIDDU Trust )  
66 College Parkway )  
Colchester, Vermont 05446 )

and )

CRC Excavating, LLC )  
350 East Hill )  
Middlesex, Vermont 05606 )

Proceeding under Section 113 of )  
the Clean Air Act, 42 U.S.C. § 7413 )

Docket No. CAA-01-2009-0090

COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

EPA REGION 1  
OFFICE OF  
REGIONAL HEARING CLERK

**I. STATEMENT OF AUTHORITY**

1. The Complainant, United States Environmental Protection Agency, Region 1 (“EPA”), issues this Complaint and Notice of Opportunity for Hearing to Respondents JIDDU/SIDDU Trust and CRC Excavating, LLC, pursuant to Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(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”), 40 C.F.R. Part 22.

2. The Complaint notifies Respondents of EPA’s intention to assess penalties for violations of Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”).

The Notice of Opportunity for Hearing describes Respondents' option to file an Answer to the Complaint and to request a formal hearing.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

3. Section 113(d) of the CAA provides authority for the assessment of penalties for violations of Section 112 of the CAA or any regulations promulgated thereunder.

4. Pursuant to Section 112 of the CAA, the Administrator of EPA promulgated the Asbestos NESHAP, set forth at 40 C.F.R. Part 61, Subpart M; 55 Fed. Reg. 48406 (November 20, 1990).

5. The Asbestos NESHAP provides, in pertinent part, that an owner or operator of a demolition or renovation activity: "prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM [asbestos containing material]." 40 C.F.R. § 61.145(a).

6. The Asbestos NESHAP also requires that "Each owner or operator of a demolition or renovation activity to which this section applies shall: (1) Provide the Administrator [of EPA] with written notice of intention to demolish or renovate..." in the manner specified by the section. 40 C.F.R. §§ 61.145(a)(2) and 61.145(b).

7. The Asbestos NESHAP defines "*Facility*," in pertinent part, as "any institutional, commercial, public, industrial, or residential structure, installation, or building." 40 C.F.R. § 61.141; *see National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision*, 55 Fed. Reg. 48406, 48412 (November 20, 1990) and *Asbestos NESHAP Clarification of Intent*, 60 Fed. Reg. 38725 (July 28, 1996).

8. The Asbestos NESHAP 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.” 40 C.F.R. § 61.141; see *National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision*, 55 Fed. Reg. 48406, 48412 (November 20, 1990) and *Asbestos NESHAP Clarification of Intent*, 60 Fed. Reg. 38725 (July 28, 1996).

### III. GENERAL ALLEGATIONS

9. Respondent JIDDU/SIDDU Trust (“JIDDU/SIDDU”) (Darcy D. Church and Gabriel Handy, Trustees) is a Vermont real estate trust, located at 66 College Parkway, Colchester, Vermont 05446.

10. Respondent JIDDU/SIDDU is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

11. Respondent JIDDU/SIDDU is the owner of two properties located at 231 and 235 Pearl Street, Essex Junction, Vermont (the “Facility”).

12. Respondent CRC Excavating, LLC (“CRC”) is a Vermont Limited Liability Corporation, located at 350 East Hill Road, Middlesex, Vermont, with a mailing address at P.O. Box 224, Jonesville, VT 05466.

13. Respondent CRC is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

14. In 2008, JIDDU/SIDDU retained CRC to demolish two residential homes on the Facility, to prepare the site as part of a commercial project to build a three-story, 35-unit apartment building on the combined lot.

15. The Facility is a “*Facility*,” as that term is defined at 40 C.F.R. § 61.141 (as noted in paragraph 7, above).

16. From on or about March 12, 2008 to March 28, 2008 Respondents conducted a “demolition” (the “Demolition”), within the meaning of that term as defined by 40 C.F.R. § 61.141, at the Facility.

17. With respect to the Demolition, Respondent JIDDU/SIDDU is an “*Owner or operator of a demolition or renovation activity*,” as defined at 40 C.F.R. § 61.141.

18. With respect to the Demolition, Respondent CRC is an “*Owner or operator of a demolition or renovation activity*,” as defined at 40 C.F.R. § 61.141.

19. From on or about March 28, 2008 to March 31, 2008, 75,106 pounds (approximately 120 cubic yards) of demolition debris was removed from the Facility and disposed of at a waste transfer station as non-asbestos containing waste.

20. On May 21, 2008, the Vermont Department of Health (“VT DOH”) issued a Notice of Violation (“NOV”) to JIDDU/SIDDU for failure to inspect the buildings at the Facility for asbestos and for failure to give VT DOH written notification of the demolition as required by Section 9.1(A) and (B) of the Vermont Regulations for Asbestos Control.

21. As required by the NOV, JIDDU/SIDDU hired a contractor to test remnant pieces of debris left onsite for the presence of asbestos.

22. On May 28, 2008, JIDDU/SIDDU’s consultant reported that six pieces of remnant debris that were tested were determined not to contain asbestos.

23. On July 11, 2008, EPA issued to JIDDU/SIDDU a reporting requirement under Section 114 of the Act, 42 U.S.C. § 7414, seeking information pertaining to the Demolition.

24. JIDDU/SIDDU submitted a response to the reporting requirement to EPA, on or about August 11, 2008.

25. In his response to the reporting requirement, Gabriel Handy, Trustee for JIDDU/SIDDU, answered that there was no inspection of the Facility prior to the Demolition.

26. In his response to the reporting requirement, Gabriel Handy, Trustee for JIDDU/SIDDU, answered that there was no notice of intent to conduct the Demolition at the Facility provided to EPA prior to the Demolition taking place.

#### **IV. VIOLATIONS**

##### **COUNT 1: FAILURE TO THOROUGHLY INSPECT FOR ASBESTOS**

27. The Asbestos NESHAP requires that, prior to the commencement of a demolition or renovation operation, an owner or operator of a demolition or renovation activity thoroughly inspect the affected facility or part of the affected facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material. 40 C.F.R. § 61.145(a).

28. Prior to the Demolition, Respondents failed to thoroughly inspect the Facility or part of the Facility where the Demolition was to occur for the presence of asbestos, including Category I and Category II nonfriable ACM.

29. Accordingly, Respondents violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(a), and Section 112 of the Act and are subject to penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**COUNT 2: FAILURE TO NOTIFY OF INTENT TO DEMOLISH**

30. For all scheduled demolition operations at a facility, the Asbestos NESHAP requires that an owner or operator of a demolition activity provide EPA with prior written notification of intention to demolish or renovate in the manner specified by 40 C.F.R. §§ 61.145(a)(2) and 61.145(b).

31. Prior to the Demolition, Respondents failed to provide EPA with prior written notification of intention to demolish in the manner specified by 40 C.F.R. § 61.145(b).

32. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(b), and Section 112 of the Act and are subject to penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**V. PROPOSED CIVIL PENALTY**

33. Section 113(d)(1)(B) of the CAA, together with the Debt Collection and Improvement Act of 1996 (“DCIA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of a civil administrative penalty of up to \$32,500 per day for each violation of the CAA between March 15, 2004 and January 12, 2009. Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration various penalty assessment criteria, including 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, payment of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To apply these criteria, EPA has used the “Clean Air Act Stationary Source Civil Penalty Policy,” dated October 25, 1991 (“Penalty Policy”) and Appendix III to the Penalty

Policy, entitled the "Asbestos Demolition and Renovation Civil Penalty Policy," dated May 5, 1992 ("Appendix III"), copies of which are enclosed with this Complaint.

34. Based on the allegations above, and taking into consideration the penalty assessment criteria of Section 113(e), the Complainant proposes to assess a civil penalty against Respondents, for the violations alleged herein, in an amount of twenty-nine thousand, three-hundred and eight dollars (\$29,308).

35. Attachment I to this Complaint provides a description of the specific penalty amounts proposed for Counts 1 and 2. The proposed penalty was developed based upon the best information available to Complainant, but may be adjusted if Respondents establish a *bona fide* claim of ability to pay or other issues relevant to determining an appropriate penalty.

36. Section 113(d) of the CAA limits EPA's authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation of the action, unless the EPA and the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty or occurring more than twelve months ago is appropriate for administrative action. Pursuant to the DCIA and its implementing regulations, the above-described penalty cap has been raised to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009.

37. This Complaint alleges violations that occurred more than twelve months ago. As, as permitted under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA and DOJ have jointly determined that it is appropriate to waive the Section 113(d) twelve-month limitation on EPA's authority to initiate an administrative action with respect to the alleged violations.

38. Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America," and mailed to:

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

The Complaint docket number (CAA-01-2009-0090) should be written on the check.

39. At the time of payment, Respondents shall send notice of such payment and copies of the check to:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

and

David Peterson  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (SES)  
Boston, Massachusetts 02114-2023

## **VI. OPPORTUNITY TO REQUEST A HEARING**

40. As provided by Section 113(d) of the CAA, Respondents have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.



41. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, each Respondent must file (or jointly file) a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which each Respondent has any knowledge. If a Respondent has no knowledge of a particular fact and so states, the allegation is considered denied as to that Respondent. Failure to admit, deny, or explain an allegation constitutes an admission of that allegation. A Respondent's Answer must also state all arguments or circumstances that are alleged to constitute grounds for a defense, as well as the facts that the Respondent intends to place at issue. Further, the Answer must specifically request an administrative hearing if such a hearing is desired. If a Respondent denies any material fact or raises any affirmative defense, that Respondent will be considered to have requested a hearing. An Answer must be sent to:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

42. Respondents should also send a copy of the Answer and all other documents that Respondents file in this action to David Peterson, who has been authorized to accept service on behalf of the Complainant, at:

David Peterson  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (SES)  
Boston, MA 02114-2023

43. Instead of filing an Answer, Respondents may choose to pay the proposed penalty, in full, within 30 days after receiving the Complaint, or may file a statement with the Regional Hearing Clerk within 30 days of receiving the Complaint, that they agree to pay the proposed penalty within 60 days of receipt of the Complaint. See 40 C.F.R. § 22.18(a).

**VII. SETTLEMENT CONFERENCE**

44. Whether or not Respondents request a hearing, they may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondents may wish to be represented by counsel at the informal settlement conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region 1. To explore the possibility of settlement in this matter, please contact Peter Kudarauskas, Asbestos NESHAP Enforcement Coordinator, at (617) 918-1404, or have your attorney contact David Peterson, Senior Enforcement Counsel, at (617) 918-1891. Please note that a request for an informal settlement conference does not enlarge the 30-day period for the submission of a written Answer.

Susan Studlien  
Susan Studlien  
Director, Office of Environmental Stewardship  
EPA Region 1

Date: 07/31/09

ATTACHMENT I (Penalty Calculation under the Clean Air Act)  
In the Matter of JIDDU/SIDDU Trust and CRC Excavating, LLC  
Docket No. Docket No. CAA-01-2009-0090

The following penalty calculation is based on the Clean Air Act and applicable EPA guidance. The violations should be considered first-time violations by of JIDDU/SIDDU Trust and CRC Excavating, LLC, since both parties have no known prior history of Asbestos NESHAP violations.\*

GRAVITY COMPONENT

|   |          |
|---|----------|
| Count 1 [61.145(a): Failure to Inspect for Asbestos (1 day)].....                         | \$ 5,000 |
| Count 2 [61.145(b): Failure to Notify of Renovation (1 day)] .....                        | \$15,000 |
| Size of Violator [based on an assumed net worth between \$100,001 and \$1 million*] ..... | \$5,000  |
| Inflation Under Civil Monetary Penalty Inflation Rule (17.23%) .....                      | \$4,308  |
| Total Gravity.....  | \$29,308 |

ECONOMIC BENEFIT COMPONENT

Inspection Violation: According to JIDDU/SIDDU Trust, the after-the-fact asbestos survey of the 231 and 235 Pearl Street demolition site cost \$390.00 (delayed cost). The economic benefit from delaying such asbestos survey for 1 month is believed to have been negligible.\*

Notification Violation: Appendix III of the CAA Civil Penalty Policy – Asbestos Demolition and Renovation Civil Penalty Policy – recommends assigning an economic benefit of \$20 per square foot of asbestos for substantive violations of the Asbestos NESHAP (e.g., work practice and disposal requirements). The notification requirements under 40 C.F.R. § 61.145(b), however, and are not considered substantive violations. Therefore, no economic benefit amount has been calculated for failure to submit a notification for the demolition.

Total Economic Benefit ..... \$0

TOTAL PROPOSED PENALTY (Gravity and Economic Benefit) ..... \$29,308

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\* Should further information show that Complainant’s present understanding is incorrect or otherwise inconsistent with the underlying facts and circumstances, Complainant reserves the right to revise the proposed penalty in light of such new information.

In the matter of JIDDU/SIDDU Trust and CRC Excavating, LLC  
Docket No. CAA-01-2009-0090

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing has been sent to the following persons on the date noted below:

Original and one copy  
(Hand-delivered)

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114

Copy  
(Priority/Certified First Class)

Gabriel Handy  
Trustee, JIDDU/SIDDU Trust  
66 College Parkway  
Colchester, VT 05546

Richard Cowles  
CRC Excavating, LLC  
P.O. Box 224  
Jonesville, VT 05466  
350 East Hill Road  
Middlesex, VT 05602

Date: July 31, 2009

Suzanne Shuttler for David M. Peterson

David M. Peterson  
Senior Enforcement Counsel (SES)  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114  
Tel (617) 918-1891  
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