

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

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IN RE:)
)
Madonna Enterprises, Inc.)
610 3rd St.)
Port Carbon, PA 17965,)
)
and)
)
Whitehall Township)
3219 MacArthur Rd.)
Whitehall, PA 18052,)
)
Respondents,)
)
896 3rd St.)
Whitehall, PA 18052)
)
Facility.)

RESPONDENT'S ANSWER TO
ADMINISTRATIVE COMPLAINT
FOR HEARING

Docket No. CAA-03-2014-0092

ANSWER OF RESPONDENT WHITEHALL TOWNSHIP

And Now Comes the Respondent, Whitehall Township, who hereby requests a hearing on Complainant's Complaint and further requests an informal settlement conference, and files this Answer to the Complaint:

I. INTRODUCTION

1. Admitted that Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III, has initiated an administrative action against Madonna Enterprises, Inc. ("Madonna") and Whitehall Township, located in Lehigh County, Pennsylvania ("Whitehall

Township”) for violations of Section 112 of the Clean Air Act. It is denied that Respondent, Whitehall Township, is liable for any violations of the Clean Air Act. All other allegations are denied.

II. APPLICABLE STATUTES AND REGULATIONS

2. The allegation of this paragraph is a conclusion of law to which no response is required.

3. The allegation of this paragraph is a conclusion of law to which no response is required.

4. The allegation of this paragraph is a conclusion of law to which no response is required.

5. The allegation of this paragraph is a conclusion of law to which no response is required.

III. DEFINITIONS

6. The allegation of this paragraph is a conclusion of law to which no response is required.

7. The allegation of this paragraph is a conclusion of law to which no response is required.

8. The allegation of this paragraph is a conclusion of law to which no response is required.

9. The allegation of this paragraph is a conclusion of law to which no response is required.

10. The allegation of this paragraph is a conclusion of law to which no response is required.

11. The allegation of this paragraph is a conclusion of law to which no response is required.

12. The allegation of this paragraph is a conclusion of law to which no response is required.

13. The allegation of this paragraph is a conclusion of law to which no response is required.

14. The allegation of this paragraph is a conclusion of law to which no response is required.

15. The allegation of this paragraph is a conclusion of law to which no response is required.

16. The allegation of this paragraph is a conclusion of law to which no response is required.

IV. GENERAL ALLEGATIONS

17. The allegation of this paragraph pertains to a Respondent other than Answering Respondent, and therefore no response is required.

18. Admitted.

19. The allegation of this paragraph is a conclusion of law to which no response is required.

20. Admitted.

21. Admitted.

22. The allegation of this paragraph is a conclusion of law to which no response is required.

23. The allegation of this paragraph is a conclusion of law to which no response is required.

24. The allegation of this paragraph is a conclusion of law to which no response is required.

25. The allegation of this paragraph pertains to a Respondent other than Answering Respondent, and therefore no response is required.

26. The allegations of this paragraph with regard to a citizen's complaint/tip and the inspection by Richard Ponak are facts and information outside of the knowledge of Answering Respondent, and therefore are denied.

27. Admitted in part, denied in part. Admitted that by August 27, 2013, Respondent, Madonna, had engaged in demolition work of the facility. Answering Respondent is without sufficient information to admit or deny whether anyone from Madonna was present during the August 27, 2013 inspection.

28. Answering Respondent is without sufficient information to admit or deny whether a large tractor trailer loaded with demolition debris left the site during the August 27, 2013 inspection.

29. Answering Respondent is without sufficient information to admit or deny the presence of asbestos containing transite siding at the facility during the August 27, 2013 inspection. By way of further response, Respondent Madonna was responsible as the party performing the demolition to provide for appropriate removal of any asbestos containing material. It is belied and therefore averred

that the original siding of the home was wood clapboards, that sometime in the 1940's or 50's Asbestos Transite siding was installed over the wooden clapboards to eliminate the need for painting. Thereafter, in the 1990's, vinyl siding was installed over the Asbestos Transite siding. The prior owner never revealed to the Township that the home, then used as a commercial business, had Asbestos Transite Siding underneath the vinyl siding. The Township only became aware of the siding after the demolition process.

30. The allegation of this paragraph is a conclusion of law to which no response is required.

31. Answering Respondent is without sufficient information to admit or deny whether RACM material was present during the August 27, 2013 inspection. By way of further response, all asbestos removal was contractually the obligation of Madonna as the demolition contractor.

32. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the August 27, 2013 inspection.

33. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the August 27, 2013 inspection.

34. Answering Respondent is without sufficient information to admit or deny the testing of the samples removed from the demolition site on August 27, 2013.

35. Answering Respondent is without sufficient information to admit or deny whether Criterion is certified by the National Institute of Standards and Technology, National Voluntary Laboratory Accreditation Program.

36. Answering Respondent is without sufficient information to admit or deny the inspection of the samples obtained during the August 27, 2013 inspection.
37. Answering Respondent is without sufficient information to admit or deny the inspection of the samples obtained during the August 27, 2013 inspection.
38. Answering Respondent is without sufficient information to admit or deny the observations of Complainant during the August 27, 2013 inspection.
39. Answering Respondent is without sufficient information to admit or deny the dates and times of any inspections by Mr. Ponak.
40. Answering Respondent is without sufficient information to admit or deny the observations of Mr. Ponak during the August 28, 2013 inspection.
41. Answering Respondent is without sufficient information to admit or deny the discussions of Mr. Ponak with representatives of Madonna during the August 28, 2013 inspection.
42. Admitted.
43. Answering Respondent is without sufficient information to admit or deny the presence of specific individuals during the August 28, 2013 inspection. By way of further response, Madonna was contractually obligated to perform the demolition in accordance with all local, state and federal laws and regulations.
44. Answering Respondent is without sufficient information to admit or deny the presence of specific individuals during the August 28, 2013 inspection. By way of further response, Madonna was contractually obligated to perform the demolition in accordance with all local, state and federal laws and regulations.

45. Answering Respondent is without sufficient information to admit or deny the presence of specific individuals during the August 28, 2013 inspection. By way of further response, Madonna was contractually obligated to perform the demolition in accordance with all local, state and federal laws and regulations.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak on September 3, 2013.

51. Answering Respondent is without sufficient information to admit or deny the observations of Mr. Ponak during the September 3, 2013 inspection.

52. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the September 3, 2013 inspection.

53. Answering Respondent is without sufficient information to admit or deny the observations of Mr. Ponak during the September 3, 2013 inspection.

54. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the September 3, 2013 inspection.

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56. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the September 3, 2013 inspection.

57. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the September 3, 2013 inspection.

58. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak during the September 3, 2013 inspection.

59. Answering Respondent is without sufficient information to admit or deny the actions of Mr. Ponak on September 18, 2013.

60. Admitted.

61. The allegation of this paragraph is a conclusion of law to which no response is required.

62. Admitted that Respondent was the owner of the facility. By way of further response, Respondent Madonna was contractually obligated for the demolition work and to perform the same in accordance with all local, state and federal rules, regulations and law.

V. VIOLATIONS

COUNT I

FAILURE TO PROVIDE WRITTEN NOTIFICATION OF INTENTION TO DEMOLISH

63. No response is required of Answering Respondent.

64. The allegation of this paragraph is a conclusion of law to which no response is required.

65. The allegation of this paragraph is a conclusion of law to which no response is required.

66. The allegation of this paragraph is a conclusion of law to which no response is required.

67. The allegation of this paragraph is a conclusion of law to which no response is required.

68. The allegations of this paragraph pertain to a Respondent other than Answering Respondent, and therefore no response is required.

69. The allegation of this paragraph is a conclusion of law to which no response is required.

COUNT II

FAILURE TO REMOVE RACM BEFORE DEMOLITION

70. No response is required of Answering Respondent.

71. The allegation of this paragraph is a conclusion of law to which no response is required.

72. The allegation of this paragraph is a conclusion of law to which no response is required.

73. Answering Respondent is without sufficient information to admit or deny at this time, as such information is in the exclusive possession of co-Respondent, Madonna.

74. The allegation of this paragraph is a conclusion of law to which no response is required. By way of further response, to the extent a response is required, Answering Respondent denies that they have failed to comply with 40 C.F.R. §61.145(c)(1).

COUNT III

FAILURE TO ADEQUATELY WET RACM

75. No response is required of Answering Respondent.

76. The allegation of this paragraph is a conclusion of law to which no response is required.

77. The allegation of this paragraph is a conclusion of law to which no response is required.

78. Answering Respondent is without sufficient information to admit or deny the same as Answering Respondent was not present at the time of the August 27, 2013 inspection.

79. Answering Respondent is without sufficient information to admit or deny the same as Answering Respondent was not present at the time of the September 3, 2013 inspection.

80. The allegation of this paragraph is a conclusion of law to which no response is required. By way of further response, to the extent a response is required, Answering Respondent denies that they have failed to comply with 40 C.F.R. §61.145(c)(1).

COUNT IV

FAILURE TO HAVE TRAINED REPRESENTATIVES PRESENT ON SITE

81. No response is required of Answering Respondent.

82. The allegation of this paragraph is a conclusion of law to which no response is required.

83. The allegation of this paragraph is a conclusion of law to which no response is required.

84. Answering Respondent is without sufficient information to admit or deny the same as Answering Respondent was not present at the time of the August 28, 2013 inspection.

85. The allegations of this paragraph are conclusions of law to which no response is required. In the alternative, to the extent a response is required, Answering Respondent denies that it has failed to comply with the requirement of 40 C.F.R. §61.145(c)(8), as Answering Respondent has hired Madonna to complete all construction in accordance with all local, state and federal rules, regulations and laws.

VI. PROPOSED CIVIL PENALTY

Complainant correctly cites to §113(d) of the CAA, 42 U.S.C. §7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990.

TOTAL PROPOSED PENALTY:

Answering Respondent objects to the proposed civil penalty as Answering Respondent had engaged the services of Madonna to complete demolition in accordance with all local, state and federal rules, regulations and laws, including compliance with all regulations and laws relating to asbestos. By way of further response, Answering Respondents were unaware of any asbestos until after the demolition.

GENERAL DENIAL:

Respondent denies each and every allegation of the Complaint not specifically admitted. To the extent that any allegation of a fact in the Complaint remains unanswered, Respondent denies such allegation. Respondent denies each and every prayer for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Complainant's Complainant, and each count thereof attempted to be stated, fails to state a claim upon which relief can be granted against this Answering Respondent.

SECOND AFFIRMATIVE DEFENSE

Respondent acted in good faith and with a reasonable belief that his actions were lawful at all times and places mentioned in Complainant's Complaint.

THIRD AFFIRMATIVE DEFENSE

The Complaint, and each count therein attempted to be stated, is barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially caused by the actions of the Federal and/or State government, and civil penalties, if any, are inappropriate or should be reduced in proportion to the absolute or proportionate share of governmental responsibility.

FIFTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially attributable to causes beyond the responsible control of the Respondent herein, and civil penalties, if any, should be reduced to the absolute or relative proportions.

SIXTH AFFIRMATIVE DEFENSE

Respondent, at all times and places mentioned in Complainant's Complaint, exercised good faith efforts to comply with applicable regulatory requirements.

SEVENTH AFFIRMATIVE DEFENSE

The Complainant's Complaint, and each count therein attempted to be stated, is barred by the doctrine of estoppel.

Respectfully submitted,

GROSS MCGINLEY, LLP

Date: 4-24-14

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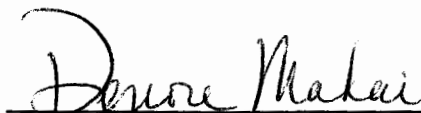
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CERTIFICATE OF SERVICE

I, DENORE MAHAI, hereby certify that I served a true and correct copy of the **ANSWER OF RESPONDENT WHITEHALL TOWNSHIP** in the above-captioned case via first class mail, postage prepaid, on the persons listed below on this, the 24th day of April, 2014.

LYDIA GUY REGIONAL HEARING CLERK (3RC00) U.S. EPA REGION III 1650 ARCH STREET PHILADELPHIA, PA 19103-2029	JENNIFER J. NEARHOOD ASSISTANT REGIONAL COUNSEL (3RC50) U.S. EPA REGION III 1650 ARCH STREET PHILADELPHIA, PA 18103-2029
VINCENT MADONNA PRESIDENT MADONNA ENTERPRISES, INC. 610 3 rd STREET PORT CARBON, PA 17965	



Denore Mahai
Legal Administrative Assistant to Kimberly G. Krupka

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