

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT -1 PM 1:37
REGIONAL HEARING
CLERK

In re:

St. Croix Renaissance Group
Kingshill, St.Croix, Virgin Islands

Respondent

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

In a proceeding under the Clean Air Act,
42 U.S.C. § 7401 et seq., Section 113

CAA-02-2007-1225

Complaint

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity to Request a Hearing (Complaint) and proposes to assess penalties pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (CAA or "the Act"), 42 U.S.C. § 7413, Section 113, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, is duly delegated the authority to issue Complaints 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.

EPA alleges that Respondents violated, or are in violation of, requirements or prohibitions of Sections 112 and/or 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M, the national emission standard for hazardous air pollutants (NESHAP) promulgated, pursuant to Section 112 of the Act, to address asbestos (Asbestos NESHAP).

Section 112 of the Act authorizes the Administrator to issue emission and/or work practice standards for hazardous air pollutants. Section 114 of the Act authorizes the Administrator to require that information be provided by affected sources to determine compliance with the Act.

Preliminary Statement

1. Respondent, St. Croix Renaissance Group (Respondent Renaissance) located in Kingshill, St. Croix, Virgin Islands hired several contractors working in the Virgin Islands to renovate/demolish the Old ALCOA Facility, located in St. Croix, Virgin Islands, which contained regulated asbestos-containing material (RACM), as defined by 40 C.F.R. § 61.141.

2. The Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and is therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Statutory and Regulatory Background

3. The Asbestos NESHAP specifies a set of work practice standards, set forth at 40 C.F.R. §§ 61.145 and 61.150, which are applicable 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) when the length or area could not be measured prior to the asbestos removal/demolition activity.

4. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

5. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."

6. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

7. The term "facility" is defined by 40 C.F.R. § 61.141 to include any commercial, public, industrial, or residential structure of more than four (4) dwelling units.

8. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

9. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

10. The term "regulated asbestos-containing material" (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

11. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of a demolition or renovation activity.

12. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which § 61.145 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.

13. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

14. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

15. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one on site representative, trained in the NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

16. 40 C.F.R. § 61.150(a)(1)(iii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

Findings of Fact and Conclusions of Law

17. The several buildings and structures, located in St. Croix Renaissance Park, known as the old ALCOA site (Facility), constitute a facility within the meaning of 40 C.F.R. § 61.141.

18. In March through October 2002, Respondent, through its several contractors, completed an extensive asbestos abatement involving the removal of approximately 9,631 linear feet of asbestos containing Thermal Surface Insulation (TSI), over 12,000 square feet of blanket TSI, and over 70,000 square feet of non-friable vinyl asbestos tile, without ever notifying EPA as required by 40 C.F.R. § 61.145(b).

19. On March 8, 2006, a contractor, hired by Respondent, began demolishing one of the structures that was abated during the 2002 extensive asbestos abatement.

COUNT 1

20. Paragraphs 1-19 are realleged and incorporated herein by reference.

21. Respondent's failures to notify EPA, at least 10 working days prior to an asbestos abatement, of the asbestos March through October 2002 and March 2006 asbestos abatements is a violation of 40 C.F.R. § 61.145(b), a regulation promulgated pursuant to Sections 112 and 114 of the Act.

22. Each of Respondent's violations of 40 C.F.R. § 61.145(b) is a violation of Sections 112 and 114 of the Act.

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Part 19), which provide that the maximum civil penalty per day should be adjusted to \$27,500 per day for each violation that occurred from January 30, 1997 through March 14, 2004 and \$32,500 per day for each violation that occurred on or after March 15, 2004.

In determining the amount of penalty to be assessed, Section 113(e) of the Act 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. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint of \$32,237.50

The proposed penalty has been prepared in accordance with Section 113(e) of the Act, EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy), and Appendix III to the CAA Penalty Policy, the "Asbestos Demolition and

Renovation Civil Penalty Policy" dated May 5, 1992 (Asbestos Penalty Policy), copies of which are enclosed with this Complaint. The CAA Penalty Policy is EPA's policy concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing a penalty for violations of the Act. The short narrative below explains the reasoning behind the penalty proposed for the violations alleged.

The Asbestos Penalty Policy directs EPA to propose a \$15,000 penalty for notification violations. Because one of the notification violations set forth in the Complaint is barred by the Statute of Limitations, EPA proposes only a \$15,000 penalty for the second violation.

In addition, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator, determined by the violator's net worth. Respondent is a Brownfield Recovery Corporation with an estimated net worth between 1 and 5 million dollars. The penalty policy directs that a penalty of \$10,000 be proposed for violators with a net worth of this size. Therefore, EPA proposes a penalty of \$10,000 for the size of violator component. The size of violator penalty may be adjusted should information be discovered that indicates the contractor's net worth is less or more than hypothesized.

The penalties proposed above comprise what both penalty policies term the 'gravity component.' The total gravity component of the penalty, prior to adjustment for inflation is twenty-five thousand dollars (\$25,000). Part 19 provides that the gravity component of the penalty must be adjusted 28.95% for inflation. Therefore, \$7,237.50 is proposed for inflation, resulting in an adjusted proposed penalty of \$32,237.50.

The CAA Penalty Policy also provides that in addition to proposing a gravity component, an economic benefit component should be proposed. EPA determined that, in this case, the economic benefit resulting from noncompliance is de minimus, therefore the total penalty proposed is \$32,237.50

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

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. 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:

John Dolinar
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 to 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 its 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.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, John Dolinar, at (212) 637-3204

or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

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:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

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: September 27, 2007


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division

TO: St. Croix Renaissance Group
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Kingshill St. Croix, Virgin Islands
00851-1525

bcc: C. Rivera, CEPD-MPCD
CEPD-MPCD Fike
J. Dolinar, ORC-AIR
ORC-AIR File
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