

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

SEP 30 PM 4:13
REGIONAL CLERK

6)	Docket No. CAA-09-2009-0029
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8)	COMPLAINT AND NOTICE OF
9)	OPPORTUNITY FOR HEARING
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PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA"), Region 9, issues this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents, CSC Trading, Inc. ("CSC") and Rick Barone dba R&B Recycling ("R&B") pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413(d).

The Administrator of EPA ("Administrator") delegated the authority to issue civil administrative complaints such as this one in California to the Regional Administrator of Region 9 and the Regional Administrator, in turn, re-delegated the authority to issue such complaints to Complainant, the Director of the Air Division.

Pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, the Administrator promulgated regulations that govern the emission, handling, and disposal of asbestos and associated record-keeping and notification requirements. These

1 regulations are known as the National Emission Standards for
2 Hazardous Air Pollutants ("NESHAP") for asbestos. The NESHAP
3 regulations for asbestos are found at 40 C.F.R. Part 61,
4 Subpart M. Complainant will show that Respondents violated the
5 CAA by violating the asbestos NESHAP at 40 C.F.R. Part 61,
6 Subpart M, a copy of which is enclosed with this Complaint.

7 GENERAL ALLEGATIONS

8 1. Respondents are each a "person" doing business in the
9 State of California, as that term is defined in Section 302(e)
10 of the Act, 42 U.S.C. § 7602(e).

11 2. At all times relevant to this Complaint, Respondent
12 CSC was the owner of at least 3 railroad passenger cars that
13 were located adjacent to 12015 La Grange Road in Jamestown,
14 California (the "site").

15 3. The railroad passenger cars constitute a "facility,"
16 as defined at 40 C.F.R. §61.141.

17 4. Respondent CSC engaged Respondent R&B to demolish the
18 railroad passenger cars.

19 5. In or around June 2009, Respondent R&B began
20 "demolition" of the railroad passenger cars, as that term is
21 defined at 40 C.F.R. § 61.141.

22 6. On or about July 9, 2009, inspectors from the
23 California Air Resources Board ("CARB") and EPA conducted an
24 inspection of the site and found that the railroad passenger
25 cars had been demolished.

26 7. On or about July 9, 2009, the CARB and EPA inspectors
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1 found demolition debris containing suspect asbestos-containing
2 material in the form of flooring at the site.

3 8. Respondents are each "an owner or operator of a
4 "demolition activity" as defined at 40 C.F.R. §61.141.

5 COUNT I: FAILURE TO PROVIDE EPA WITH WRITTEN NOTICE OF
6 INTENTION TO DEMOLISH, 40 C.F.R. § 61.145(b)(1).

7 9. Paragraphs 1 through 8 are realleged and incorporated
8 herein by reference.

9 10. An owner or operator of a demolition activity must
10 provide EPA with a written notice of intention to demolish at
11 least ten working days before demolition begins. 40 C.F.R. §
12 61.145(b)(1)(i).

13 11. Respondents did not submit a written notice of
14 intention to demolish the railroad passenger cars to EPA before
15 demolition began.

16 12. Respondents' failure to provide written notice of
17 intention to demolish the railroad passenger cars to EPA before
18 demolition began constitutes a violation of 40 C.F.R. §
19 61.145(b)(1).

20 PROPOSED CIVIL PENALTY

21 Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes
22 a civil administrative penalty of up to Twenty-Five Thousand
23 Dollars (\$25,000) per day for each violation of the Act,
24 provided that the total amount of penalty assessed does not
25 exceed Two Hundred Thousand Dollars (\$200,000). These maximum
26 amounts have been adjusted to \$37,500 per day not to exceed a
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1 total penalty of \$295,000 for violations occurring after
2 January 12, 2009 pursuant to the Civil Monetary Penalty
3 Inflation Adjustment Rule at 40 C.F.R. Part 19, which
4 implements the Federal Civil Penalties Inflation Adjustment Act
5 of 1990, 28 U.S.C. § 2461. In this case, EPA proposes the
6 assessment of a civil penalty in the amount of FOURTEEN
7 THOUSAND, TWO HUNDRED DOLLARS (\$14,200) against Respondents.

8 This civil penalty is proposed after consideration of the
9 statutory assessment factors set forth at Section 113(e) of the
10 Act, 42 U.S.C. § 7413(e), and in accordance with EPA's "Clean
11 Air Act Stationary Source Civil Penalty Policy" ("Penalty
12 Policy") dated October 25, 1991 and Appendix III of the Penalty
13 Policy ("Appendix III"), the "Asbestos Demolition and
14 Renovation Civil Penalty Policy" dated May 5, 1992. Copies of
15 the Penalty Policy and Appendix III are enclosed with this
16 Complaint. This section explains the rationale behind the
17 penalty assessed for Count I and the various penalty factors
18 and adjustments that were used in the calculation of the total
19 penalty amount.

20 The civil penalty has two components: economic benefit and
21 gravity. The economic benefit is based on the value that the
22 alleged violator realized from delaying or failing to comply
23 with the law. In this action, the economic benefit is \$0, as
24 calculated under Appendix III of the Penalty Policy. The
25 second component of the civil penalty is valuing the gravity of
26 the alleged violation. The gravity component of the civil
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1 penalty addresses the gravity of each violation and assesses a
2 penalty based on the size of the violator. Count I alleges
3 that Respondents violated 40 C.F.R. § 61.145(b)(1) by failing
4 to provide EPA written notice of intention to demolish before
5 demolition began. The penalty assessed for this violation, as
6 calculated under Appendix III of the Penalty Policy, is \$5,000.
7 In addition, in accordance with Section 113(e) of the Act, the
8 Penalty Policy requires the assessment of an additional penalty
9 based on the "size of the violator" as a deterrent to future
10 violations. The Penalty Policy assigns a penalty amount based
11 on the net worth of the Respondents. However, if "size of
12 violator" penalty provided in the Penalty Policy exceeds the
13 sum of the economic benefit and gravity components, as in this
14 case, assessment for the "size of violator" penalty will equal
15 the sum of the economic benefit and gravity components.
16 Consequently, the "size of violator" penalty in this case is
17 \$5,000. Combining the penalty assessed for Count I and the
18 penalty assessed for the size of violator results in a penalty
19 of \$10,000 assessed for gravity. In accordance with the Civil
20 Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part
21 19, this gravity penalty amount is adjusted by 41.63%,
22 resulting in a penalty of \$14,163. Since there is no economic
23 benefit calculated in this case, the total civil penalty
24 against Respondents is \$14,163, which is rounded to the nearest
25 hundred for a total penalty of \$14,200.

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1 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

2 As provided in Section 113(d) of the Act, 42 U.S.C. §
3 7213(d), you have the right to request a formal hearing to
4 contest any material fact set forth in this Complaint or to
5 contest the appropriateness of the proposed penalty. Any
6 hearing requested will be conducted in accordance with the
7 Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the
8 Consolidated Rules of Practice Governing the Administrative
9 Assessment of Civil Penalties and the Revocation/Termination or
10 Suspension of Permits ("Consolidated Rules of Practice"), 40
11 C.F.R. Part 22. A copy of the Consolidated Rules of Practice
12 is enclosed with this Complaint.

13 **You must file a written Answer within thirty (30) days of**
14 **receiving this Complaint to avoid being found in default, which**
15 **constitutes an admission of all facts alleged in the Complaint**
16 **and a waiver of the right to a hearing, and to avoid having the**
17 **above penalty assessed without further proceedings.** If you
18 choose to file an Answer, you are required by the Consolidated
19 Rules of Practice to clearly and directly admit, deny, or
20 explain each of the factual allegations contained in this
21 Complaint to which you have any knowledge. If you have no
22 knowledge of a particular fact and so state, the allegation is
23 considered denied. Failure to deny any of the allegations in
24 this Complaint will constitute an admission of the undenied
25 allegation.

26 The Answer shall also state the circumstances and
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1 arguments, if any, which are alleged to constitute the grounds
2 of defense, and shall specifically request an administrative
3 hearing, if desired. If you deny any material fact or raise
4 any affirmative defense, you will be considered to have
5 requested a hearing.

6 The Answer must be filed with:

7 **Regional Hearing Clerk**
8 **USEPA, Region IX**
9 **75 Hawthorne Street**
10 **San Francisco, CA 94105**

11 In addition, please send a copy of the Answer and all other
12 documents that you file in this action to:

13 **Carol Bussey**
14 **Assistant Regional Counsel**
15 **Office of Regional Counsel (ORC-2)**
16 **USEPA, Region IX**
17 **75 Hawthorne Street**
18 **San Francisco, CA 94105**

19 Ms. Bussey is the attorney assigned to represent EPA in this
20 matter. Her telephone number is (415)972-3950.

21 You are further informed that the Consolidated Rules of
22 Practice prohibit any ex parte (unilateral) discussion of the
23 merits of any action with the Regional Administrator, Regional
24 Judicial Officer, Administrative Law Judge, or any person
25 likely to advise these officials in the decision of the case,
26 after the Complaint is issued.

27 **INFORMAL SETTLEMENT CONFERENCE**

28 EPA encourages all parties against whom a civil penalty is
proposed to pursue the possibility of settlement through
informal conferences. Therefore, whether or not you request a

1 informal conferences. Therefore, whether or not you request a
2 hearing, you may confer informally with EPA through Carol
3 Bussey, the EPA attorney assigned to this case, regarding the
4 facts of this case, the amount of the proposed penalty, and the
5 possibility of settlement. An informal settlement conference
6 does not, however, affect your obligation to file an Answer to
7 this Complaint.

8 **ALTERNATIVE DISPUTE RESOLUTION**

9 The parties also may engage in any process within the
10 scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581
11 et seq., which may facilitate voluntary settlement efforts.
12 Dispute resolution using alternative means of dispute
13 resolution does not divest the Presiding Officer of
14 jurisdiction nor does it automatically stay the proceeding.

15 **CONSENT AGREEMENT AND FINAL ORDER**

16 EPA has the authority, where appropriate, to modify the
17 amount of the proposed penalty to reflect any settlement
18 reached with you in an informal conference or through
19 alternative dispute resolution. The terms of such an agreement
20 would be embodied in a Consent Agreement and Final Order. A
21 Consent Agreement signed by both parties would be binding as to
22 all terms and conditions specified therein when the Regional
23 Judicial Officer signs the Final Order.

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25 DATE: 9/29/09

Ej Adams for D Jordan
26 Deborah Jordan
27 Director, Air Division
28 U.S. EPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Complaint and Opportunity for Hearing was hand delivered to:


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and that a true and correct copy of the Complaint; the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the Clean Air Act Stationary Source Civil Penalty Policy (including Appendix III) were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Rick Barone dba R&B Recycling
R&B Recycling
26910 Sierra Highway
Newhall, CA 91321
Certified Mail No. 7009 0820 0001 3646 5953

Scott Sakajjian
President
CST Trading
26845 Lugar De Oro Dr.
Valencia, CA 91354
Certified Mail No. 7009 0820 0001 3646 5946

Dated: Sept 30, 2009

By: 
Robert Trotter
Air Enforcement Office
USEPA Region 9.