

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SERVICE BY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 15, 2018

Donald Dolittle
President
Wesco Construction Co.
902 Saginaw Road
Oxford, PA 19363

Re: 1400 Union Meeting Road
Blue Bell, PA 19422

Dear Mister. Dolittle:

Re: Complaint and Notice of Opportunity for Hearing
EPA Docket No. CAA-03-2018-0054

Enclosed please find a copy of the Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") that I filed February 1, 2018, with the Regional Hearing Clerk ("Clerk") concerning alleged violations by Wesco Construction Co. ("Wesco") of Section 112 of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. § 7412.

You must file an Answer to the Complaint within thirty (30) days of your receipt of this letter with the corrected Complaint. The Answer must specifically respond to each of the allegations in the corrected Complaint. Your failure to respond to the Complaint by specific Answer within thirty (30) days of your receipt of the Complaint will constitute an admission of the Complaint's allegations. If you fail to file an Answer, EPA will file a Motion for a Default Order. This could result in the issuance of a Default Order imposing the Complaint's proposed penalty without further proceedings.

If you have any questions, you can reach me by telephone at (215) 814-2495.

Sincerely,

A handwritten signature in cursive script that reads "Philip Yeany".

Philip Yeany
Senior Assistant
Regional Counsel

Enclosures

cc: Richard Ponak (w/o enclosures)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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REGIONAL HEARING CLERK
EPA REGION III, PHILA, PA
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2/1/2018

In the matter of: : Administrative Complaint and Notice of
 : Opportunity for Hearing
 :
 Wesco Construction Co. :
 902 Saginaw Road : U.S. EPA Docket No.
 West Grove, PA 19390 : CAA-03-2018- 0054
 Respondent, :
 :
 :
 1400 Union Meeting Road :
 Blue Bell, PA 19422 :
 Facility. :
 :
 :

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR A HEARING

I. INTRODUCTION

1. Complainant, the Director of the Lands and Chemicals Division of the United States Environmental Protection Agency, Region III, initiates this action against Wesco ("Wesco" or the "Respondent") for violations of Section 112 of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. § 7412, as alleged below.
2. This Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, ("EPA" or the "Agency") by Section 113(a)(3) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The authority to issue this Complaint has been duly delegated to the Complainant.

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3. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), authorize the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any rule, plan, order, waiver, or permit promulgated, issued, or approved under, *inter alia*, Section 112 of the CAA, 42 U.S.C. § 7412.
4. This Complaint alleges that the Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, by failing to comply with the National Emission Standards for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), 40 C.F.R. Part 61, Subpart M - *National Emission Standard for Asbestos*, in connection with a renovation conducted at 1400 Union Meeting Road, Blue Bell, PA 19422 (hereafter the "Facility").

II. JURISDICTION, BACKGROUND AND DEFINITIONS

5. EPA and the Office of Administrative Law Judges have jurisdiction over this matter pursuant to Sections 113(a)(3) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. §§ 22.1(a)(2) and 22.4.
6. As enacted the CAA lists asbestos as a hazardous air pollutant, Section 112(b) of the CAA, 42 U.S.C. § 7412(b).
7. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA to promulgate regulations establishing emission standards or, where necessary, promulgate design, equipment, work practice, or operational standards for each listed hazardous air pollutant.
8. Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), authorizes the Administrator of EPA to require any person who owns or operates any emission source or who is

otherwise subject to the requirements of the CAA to, among other things, establish and maintain such records, make such reports and provide such information as the Administrator might reasonably require to develop or determine compliance with emission standards.

9. Pursuant to, among other sections, Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated the Asbestos NESHAP.
10. The Asbestos NESHAP includes regulations governing, *inter alia*, the emission, handling, and disposal of asbestos by the owner or operator of a demolition or renovation activity at an affected facility, 40 C.F.R. § 61.145.
11. EPA promulgated portions of the Asbestos NESHAP prior to the enactment of the November 15, 1990 Clean Air Act Amendments.
12. Notwithstanding the November 15, 1990 Clean Air Act Amendments, the portions of the Asbestos NESHAP promulgated prior to the enactment of the November 15, 1990 Clean Air Act Amendments remain in full force and effect, unless modified after November 15, 1990, pursuant to Section 112(q) of the CAA, 42 U.S.C. § 7412(q).
- ~~13.~~ Pursuant to 40 C.F.R. § 61.141, "Adequately wet" is defined as "sufficiently mix or penetrate with liquid to prevent the release of particulates."
14. Pursuant to 40 C.F.R. § 61.141, "Asbestos" is defined as "the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite."
15. Pursuant to 40 C.F.R. § 61.141, "Category II nonfriable [Asbestos Containing Material ("ACM")]" is defined as "any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in Appendix E

- to Subpart E of 40 C.F.R. Part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.”
16. Pursuant to 40 C.F.R. § 61.141, “Facility” is defined 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. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to [the Asbestos NESHAP] is not excluded, regardless of its current use or function.”
17. Pursuant to 40 C.F.R. § 61.141, “Facility component” is defined as “any part of a facility including equipment.”
18. Pursuant to 40 C.F.R. § 61.141, “Friable asbestos material” is defined in pertinent part as “any material containing more than 1 percent asbestos as determined using . . . Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.”
19. Pursuant to 40 C.F.R. § 61.141, “Regulated asbestos-containing material” or “RACM” is defined 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 [the Asbestos NESHAP].”

20. Pursuant to 40 C.F.R. § 61.141, “Remove” is defined as “to take out RACM or facility components that contain or are covered with RACM from any facility.”
21. Pursuant to 40 C.F.R. § 61.141, “Renovation” is defined in pertinent part as “altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.”
22. Pursuant to 40 C.F.R. § 61.141, “Strip” is defined as “to take off RACM from any part of a facility or facility components.”
23. Pursuant to 40 C.F.R. § 61.141, “Owner or operator of a demolition or renovation activity” is defined as “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.”
24. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), “person” is defined as “[including] 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.”

III. GENERAL ALLEGATIONS

25. At all times relevant to the violations alleged in this Complaint, Respondent is a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania with a headquarters located at 902 Saginaw Road, West Grove, PA 19390.
26. At all times relevant to the violations alleged in this Complaint, the Respondent was a “person” within the meaning of Section 302(e), 42 U.S.C. § 7602(e).

27. At all times relevant to the violations alleged in this Complaint, Wesco, a contractor for the owner of the Facility, was engaged in a "renovation," as defined in 40 C.F.R. § 61.141, at the Facility that included the removal of ACM from the Facility.
28. At all times relevant to the violations alleged in this Complaint, the Respondent was an "operator of a demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141.
29. At all times relevant to the violations alleged in this Complaint, the Facility was a "facility" within the meaning of 40 C.F.R. § 61.141.
30. On April 27, 2015, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility, pursuant to Section 114 of CAA, 42 U.S.C. § 7414.
31. During the April 27 Compliance Evaluation Inspection ("April 27 CEI"), the EPA representative observed that pipe insulation had been removed from pipes, floor tile had been removed from the floor, and fire proofing had been removed from one (1) room in the Facility.
32. In addition, the EPA representative observed and took photographs of floor tile debris and fire proofing debris in several areas on the second floor of the Facility.
33. During the April 27 CEI, the EPA representative took a total of four (4) samples from the debris piles on the second floor.
34. Two (2) of the four (4) samples the EPA representative took during the April 27 CEI were from the fire proofing debris piles and the other two (2) samples were from tile debris piles that included black mastic.

35. The EPA representative sent the four (4) samples to a certified laboratory, Criterion Laboratories, Inc. ("Criterion"), for analysis to determine the percentage of asbestos in each sample.
36. Criterion notes on its laboratory reports it is accredited by the AIHA Laboratory Accreditation Programs (AIHA-LAP, LLC) in the Industrial Hygiene Laboratory Accreditation Program (IHLAP), Environmental Microbiology Laboratory Accreditation Program (EMLAP), and the Environmental Lead Laboratory Accreditation Program (ELLAP) for Polarized Light Microscopy.
37. Using Polarized Light Microscopy, Criterion analyzed the samples collected during the April 27 CEI.
38. Analysis of the samples taken during the April 27 CEI from the Facility showed that the two (2) samples of fire proofing debris each contained more than one (1) percent asbestos.
39. Analysis of the samples taken during the April 27 CEI from the Facility showed that the two (2) samples of tile debris with black mastic each contained more than one (1) percent asbestos.
40. Because the fire proofing debris piles contained more than one (1) percent asbestos, the debris was ACM.
41. Because the tile debris piles with black mastic contained more than one (1) percent asbestos, the debris was ACM.
42. Because the debris piles with ACM contained either friable asbestos material, as defined by 40 C.F.R. § 61.141, or Category II nonfriable ACM, as defined by 40 C.F.R. § 61.141, 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 the Asbestos NESHAP, the debris was RACM, as defined by 40 C.F.R. § 61.141.

43. All of the RACM that the EPA representative observed during the April 27 CEI was dry.
44. On May 6, 2015, an EPA representative conducted a second CEI ("May 6 CEI") of the Facility.
45. During the May 6 CEI, the EPA representative observed and photographed three (3) large cardboard boxes containing materials that had been removed or stripped from the Facility or from components in the Facility.
46. The first box ("Box 1") contained pipe insulation in ten leak proof bags ("Box 1 pipe insulation").
47. The EPA representative estimated that there was at least 30 feet of pipe insulation in each bag in Box 1.
48. According to a representative of the Respondent, the Box 1 pipe insulation had been placed in the bags after it was stripped from components at the Facility.
49. To ascertain whether the Box 1 pipe insulation in each of the ten bags was dry, the EPA representative opened some of the bags and visually inspected the contents.
50. For those bags of the Box 1 pipe insulation that the EPA representative opened, he observed that the pipe insulation was dry with dry visible dust observable in the bags.
51. For the remaining bags of the Box 1 pipe insulation, the EPA representative manipulated the outside of each bag and squeezed the contents of the bag.

52. For each of the remaining bags of the Box 1 pipe insulation, the EPA representative observed that the pipe insulation felt dry as he squeezed it.
53. Because the Box 1 pipe insulation had been bagged when it was stripped from components at the Facility, was in leak proof bags, and was either dry with dry visible dust or felt dry when squeezed, the Respondent had not adequately wetted the Box 1 pipe insulation when Respondent stripped it from components at the Facility.
54. The second box ("Box 2") had bags of dry fiberglass insulation with fitting insulation and some bags of fireproofing.
55. The fiberglass and fitting insulation in Box 2 were dry.
56. The third box ("Box 3") contained construction debris and fireproofing.
57. The fireproofing in Box 3 was dry.
58. During the May 6 CEI, the EPA representative took three (3) samples from the dry pipe insulation in Box 1.
59. During the May 6 CEI, the EPA representative took two (2) samples from the dry fitting insulation in Box 2.
60. During the May 6 CEI, the EPA representative took one (1) sample from the dry fireproofing in Box 3.
61. The EPA representative sent the six (6) samples referenced in Paragraphs 58-60 to Criterion for analysis to determine the percentage of asbestos in each sample.
62. Using Polarized Light Microscopy, Criterion analyzed the samples referenced in Paragraphs 58-60.
63. Analysis of the three (3) samples taken from Box 1 during the May 6 CEI showed that two (2) of the three (3) samples contained more than one (1) percent asbestos.

64. Analysis of the two (2) samples taken from Box 2 during the May 6 CEI showed that the two (2) samples contained more than one (1) percent asbestos.
65. Analysis of the sample taken from Box 3 during the May 6 CEI showed that it contained more than one (1) percent asbestos.
66. Because the samples showed that the pipe insulation, the pipe fitting insulation, and the fire proofing contained more than one (1) percent asbestos, these materials were ACM.
67. Because the pipe insulation, the pipe fitting insulation, and fire proofing with ACM contained either friable asbestos material or 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 the Asbestos NESHAP, the material was RACM.
68. Based on EPA's representative's observations during the April 27 and May 6 CEIs at the Facility, the Respondent was engaged in "renovation" or "renovation activity" within the meaning of 40 C.F.R. § 61.141.
69. The Respondent did not provide notice of the renovation activities at the Facility to EPA.
70. Prior to the April 27 CEI, the Respondent provided a notice form dated March 19, 2015, that stated that the renovation activities at the Facility were not subject to the Asbestos NESHAP.
71. Pursuant to 40 C.F.R. § 61.145(a), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145 apply to the owner or operator of a renovation activity if the combined amount of a facility's RACM to be 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,

72. A notice to DEP of the renovation dated May 14, 2015, and observations by the EPA representative during the April 27 and May 6 CEIs evidence that the Respondent was removing more than 80 linear meters (260 linear feet) on pipes (including pipe fittings) from the Facility and more than 16 square meters (160 square feet) of RACM from other facility components, that is, tiles and fire proofing.
73. Because the Respondent was removing from the Facility more than 80 linear meters (260 linear feet) of RACM on pipes (including pipe fittings) and more than 16 square meters (160 square feet) of RACM from other facility components (that is, tiles and fire proofing), pursuant to 40 C.F.R. § 61.145(a)(4)(i), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145 apply to the subject renovation.

Count I

(Failure to Notify EPA of Intention to Renovate)

74. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
75. Pursuant to 40 C.F.R. § 61.145(b), each owner and operator of a renovation activity to which 40 C.F.R. § 61.145 applies must provide EPA with prior written notice of its intention to renovate.
76. The Respondent did not provide EPA with the required written notice of its intention to renovate the Facility.
77. The Respondent has violated 40 C.F.R. § 61.145(b) by not providing the required written notice to EPA.

78. The Respondent's failure to comply with the requirements of 40 C.F.R.

§ 61.145(b) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

Count II

(Failure to Wet Asbestos During Stripping)

79. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.

80. Pursuant to 40 C.F.R. § 61.145(c)(3), when RACM is stripped from a component at a facility and the component remains in place in the facility, each owner and operator of such renovation activity must adequately wet all RACM during the stripping operation.

81. Neither of the exemptions from wetting the RACM allowed by 40 C.F.R.

§§ 61.145(c)(3)(i) or (ii) applied to the renovation of the Facility.

82. Because the Box 1 pipe insulation was RACM, the Respondent violated 40 C.F.R.

§ 61.145(c)(3) by not adequately wetting the Box 1 pipe insulation as it was stripped.

83. The Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(c)(3) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

Count III

(Failure to Wet Removed Asbestos Prior to Disposal)

84. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.

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

86. The Respondent did not adequately wet the RACM after it was removed and ensure that the RACM remained wet until collected and contained or treated in preparation for disposal.
87. The Respondent has violated 40 C.F.R. § 61.145(c)(6)(i) by not adequately wetting the RACM that was removed ensuring that the RACM remained wet until collected and contained or treated in preparation for disposal.
88. The Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

V. PROPOSED CIVIL PENALTY

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the Administrator of EPA to assess a penalty not to exceed \$25,000 per day per of violation and not to exceed \$200,000 per administrative enforcement action. The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note), and the subsequent *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. § 19.4, raised the maximum civil penalty to \$37,500 per day per of violation and not to exceed \$20,000 per administrative enforcement action for violations that occurred after December 6, 2013 through November 2, 2015.

In matters such as these, EPA seeks to assess a Gravity Component and to recover of any Economic Benefit that a violator may have gained as a result of its violative conduct.

In this matter, EPA's Gravity Component calculations for the proposed penalty is detailed in the following table:

PROPOSED CIVIL PENALTY – GRAVITY COMPONENT

COUNT	DATES OF VIOLATIONS	VIOLATION	NUMBER OF UNITS	CITATION	PENALTY
COUNT I	April 27, 2015, May 5, 2015	Failure to provide written notice of renovation operations	≤ 10 units	40 C.F.R. § 61.145(b)(1)	\$ 15,000
COUNT II	April 27, 2015, May 5, 2015	Failure to adequately wet RACM during removal operations	≤ 10 units	40 C.F.R. § 61.145(c)(3)	\$ 5,000
COUNT III	April 27, 2015, May 5, 2015	Failure to keep RACM adequately wet	≤ 10 units	40 C.F.R. § 61.145(c)(6)(i)	\$ 5,000
	April 27, 2015 - May 5, 2015				\$4,500
Size of the Violator			\$ 2,000		
SUBTOTAL			\$ 31,500		
Inflation Adjustment Factor			Gravity component subtotal x 1.4163		
TOTAL GRAVITY COMPONENT			\$ 44,613		

Because EPA has determined that the Respondent did not gain any economic benefit as a result of its violative conduct, EPA seeks a penalty of forty-four thousand six hundred thirteen dollars (\$ 44,613) in this matter.

The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1992 ("*CAA Penalty Policy*"), and Appendix III thereto ("*Asbestos Penalty Policy*"); and "*Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*" (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004), dated December 29, 2008 ("*Inflation Policy*"). Copies of

the *CAA Penalty Policy*, *Asbestos Penalty Policy*, and the *Inflation Policy* are enclosed with this Complaint.

The proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the *Asbestos Penalty Policy* as well as the *CAA Penalty Policy*, which were interpreted in light of the need to index for inflation consistent with 40 C.F.R. Part 19.

If EPA learns of facts or circumstances after issuance of the Complaint that it did not know when it issued the Complaint, EPA may also consider such facts and circumstances as a basis for adjusting the civil penalty proposed in the Complaint. Such factors include the Respondent's ability to pay the proposed civil penalty. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. It is up to the Respondent to raise and demonstrate an inability to pay the proposed penalty.

EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty

proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed.

The gravity component of the penalty accounts for the amount of asbestos involved (more than 1 Unit but less than 10 Units) and the substantive nature of the violation. No further adjustment of the penalty appears warranted under the applicable penalty policies at this time. If appropriate, further penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new or undiscovered evidence supports such assessment.

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

The Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within 30 days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All

material facts not denied in the Answer will be considered admitted pursuant to 40 C.F.R. § 22.15(d) of the *Consolidated Rules*.

If Respondent fails to file a written Answer within 30 days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against the Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by the Respondent will be held at a location to be determined at a later date pursuant to the *Consolidated Rules* at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the *Consolidated Rules*.

A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Philip Yeany, at:

Philip Yeany (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SETTLEMENT CONFERENCE

EPA encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of the Clean Air Act. Whether or not a hearing is requested, the Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer to the Complaint.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

If the Respondent wishes to arrange a settlement conference, Respondent or, if the Respondent is represented by legal counsel, Respondent's legal counsel should contact Mr. Yeany at (215) 814-2495 prior to the expiration of the 30-day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve the Respondent of its responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.

VIII. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules*, the Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If the Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules*, no Answer need be filed.

If the Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the *Consolidated Rules*, Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R.

§ 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk and a copy shall be provided to Mr. Yeany. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules*.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules*, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

Payment of the civil penalty amount required under the terms of this Complaint shall be made as follows:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, CAA-03-2018-0054.
- b. All checks shall be made payable to "**United States Treasury**;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Primary Contact: Craig Steffen 513-487-2091
Secondary Contact: Heather Russell 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. Martin Luther King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Craig Steffen 513-487-2091

- h. On-Line Payment Option:

<https://www.pay.gov/public/form/start/11751879>
Open and complete the form.

- i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the Regional Hearing Clerk, and Mr. Yeany.

IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: The Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that pursuant to 40 C.F.R. § 22.8 of the *Consolidated Rules* prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the

decision of the case, after the Complaint is issued.

1-26-2018
Date


Martha Shimkin, Acting Director
Land and Chemicals Division

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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

I hereby certify that on the date noted below, I hand delivered to the Regional Hearing Clerk, EPA Region III, the original Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the same. In addition, I caused a true and correct copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing to be served as follows:

Certified Mail,
Return Receipt
Requested:

Donald Dolittle
President
Wesco Construction Co.
902 Saginaw Road
West Grove, PA 19422

2/1/18

Date

Philip Yeany

Philip Yeany
Senior Assistant
Regional Counsel

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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RECEIVED

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I hand delivered to the Regional Hearing Clerk, EPA Region III, the original Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the same. In addition, I caused a true and correct copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing to be served as follows:

Certified Mail,
Return Receipt
Requested:

Donald Dolittle
President
Wesco Construction Co.
902 Saginaw Road
Oxford, PA 19363

2/15/18
DATE

Philip Yeany
Philip Yeany
Senior Assistant
Regional Counsel

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA.

2018 FEB 15 AM 11:00

RECEIVED