



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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September 23, 2008

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

Re: Administrative Complaint and Notice of Opportunity for Hearing
In the Matter of Bilray Demolition Company, Inc.
Docket No. CAA- 01-2008-0105

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of an Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

cc: David Santanelli, Owner, Bilray Demolition Company, Inc.

Enclosures

Toll Free • 1-888-372-7341

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

In the Matter of:)

Bilray Demolition Company, Inc.)
73 Mill Street)
Johnston, Rhode Island 02919)

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

) Docket No. CAA-01-2008-0105

) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”), issues this Complaint and Notice of Opportunity for Hearing to Bilray Demolition Company, Inc. (“Respondent”), 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 Respondent 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 Respondent’s 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.

5. Under the Asbestos NESHAP, each owner or operator of a demolition or renovation activity must thoroughly inspect the affected facility or part of the facility where the demolition or renovation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material (“ACM”), and must provide EPA with prior written notification of intention to demolish or renovate, regardless of any presence of asbestos, in the manner specified by 40 C.F.R. § 61.145(b). 40 C.F.R. §§ 61.145(a)-(b).

6. Under the Asbestos NESHAP, certain inspection, notification, work practice, and waste disposal requirements at 40 C.F.R. §§ 61.145(a), 61.145(b), 61.145(c), and 61.150 apply to each owner or operator of a demolition or renovation activity at a regulated facility if the combined amount of “regulated asbestos-containing material (RACM),” as defined in 40 C.F.R. § 61.141, to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes, at least 15 square meters (160 square feet (ft²)) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously (“Threshold Quantity”). 40 C.F.R. § 61.145(a)(1).

7. Under the Asbestos NESHAP at 40 C.F.R. § 61.141, “Category I nonfriable asbestos-containing material (ACM)” means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent (1%) asbestos.

8. Under the Asbestos NESHAP at 40 C.F.R. § 61.141, “Category II nonfriable ACM” means any material, excluding Category I nonfriable ACM, containing more than 1% asbestos.

9. Under the Asbestos NESHAP at 40 C.F.R. § 61.141, Category I nonfriable ACM becomes RACM if it has become friable or when it will be, or has been, subjected to sanding, grinding, cutting, or abrading.

10. Under the Asbestos NESHAP at 40 C.F.R. § 61.141, Category II nonfriable ACM becomes RACM when it 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.

III. GENERAL ALLEGATIONS

11. Respondent is a Rhode Island corporation, with its principal place of business at 73 Mill Street, Johnston, Rhode Island 02919.

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

13. In 2004, Richard Macera of Mill Street Realty, Inc., Johnston, Rhode Island, retained Respondent to demolish the former Seaboard Foundry, located at 61 John Street in Johnston, Rhode Island (“the Facility”).

14. The Facility is a “facility,” as that term is defined at 40 C.F.R. § 61.141.

15. From approximately December 2004 until approximately September 2005, Respondent conducted a demolition, within the meaning of that term as defined by 40 C.F.R. § 61.141, at the Facility (“the Demolition”).

16. With respect to the Demolition, Respondent was an “owner or operator of demolition or renovation activity,” as that term is defined at 40 C.F.R. § 61.141.

17. The Demolition at the Facility involved a combined amount of at least 35 cubic feet of RACM.

18. On or about May 12, 2005, Rhode Island Department of Health (“RI DOH”) conducted an inspection of the Facility.

19. Laboratory analysis of bulk samples collected on or about May 12, 2005, May 27, 2005, and August 31, 2005 from debris –including roofing materials and transite cement– observed at the Facility showed that such materials contained more than 1% asbestos and were RACM, as defined at 40 C.F.R. § 61.141. These bulk sample analyses also established that the Demolition involved a combined amount of at least the Threshold Quantity of RACM (namely, 35 cubic feet) to be stripped, removed, dislodged, cut, drilled, or similarly disturbed.

20. From on or about September 20, 2005 until on or about September 21, 2005, Respondent conducted asbestos abatement work at the Facility. As a result of that abatement, Respondent removed approximately eighty-one cubic feet of RACM from the Facility.

21. On January 29, 2008, EPA issued to Respondent a reporting requirement under Section 114 of the Act, 42 U.S.C. § 7414, seeking information pertaining to the Demolition. EPA received a response to the reporting requirement, dated March 19, 2008, from Respondent.

IV. VIOLATIONS

COUNT 1: FAILURE TO THOROUGHLY INSPECT FOR ASBESTOS

22. 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).

23. Prior to the Demolition, Respondent 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.

24. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(a), and Section 112 of the Act.

COUNT 2: FAILURE TO NOTIFY OF DEMOLITION

25. For all scheduled demolition operations and for all scheduled renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity provide EPA with prior written notification of intention to demolish or renovate in the manner specified by 40 C.F.R. § 61.145(b). 40 C.F.R. § 61.145(b).

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

27. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(b), and Section 112 of the Act.

COUNT 3: FAILURE TO ADEQUATELY WET ASBESTOS DURING THE STRIPPING OPERATION

28. For scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that, when RACM is stripped from a facility component while it remains in place at the facility, each owner or operator of a demolition or renovation activity adequately wet the RACM during stripping, unless prior

written approval to use another emission control method is obtained from EPA. 40 C.F.R. § 61.145(c)(3).

29. During the Demolition, Respondent failed to adequately wet RACM during stripping and failed to obtain prior EPA approval of another control method.

30. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(c)(3), and Section 112 of the Act.

**COUNT 4: FAILURE TO KEEP ASBESTOS ADEQUATELY
WET UNTIL COLLECTED AND CONTAINED FOR DISPOSAL**

31. For scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with Section 61.150 of the Asbestos NESHAP, 40 C.F.R. § 61.150. 40 C.F.R. § 61.145(c)(6)(i).

32. During the Demolition, Respondent failed to adequately wet RACM that had been removed or stripped and to ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

33. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(c)(6)(i), and Section 112 of the Act.

COUNT 5: FAILURE TO PROPERLY DISPOSE OF ASBESTOS WASTE

34. For scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity properly dispose of asbestos-containing waste materials

("ACWM"), as defined at 40 C.F.R. § 61.141, generated by the source by complying with the emission control, site selection, and waste transport requirements in Sections 61.150(a), (b), and (c) of the Asbestos NESHAP. 40 C.F.R. §§ 61.150(a), (b), and (c).

35. During the Demolition, Respondent failed to properly dispose of ACWM generated by the demolition operation in accordance with the requirements of Sections 61.150(a), (b), and (c) of the Asbestos NESHAP.

36. Accordingly, Respondent violated the Asbestos NESHAP, at 40 C.F.R. §§ 61.150(a), (b), and (c), and Section 112 of the Act.

V. PROPOSED CIVIL PENALTY

37. 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. 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.

38. 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 Respondent, for the

violations alleged herein, in an amount of two hundred fifty-six thousand, three hundred and twenty dollars (\$256,320).

39. Attachment I to this Complaint provides a description of the specific penalty amounts proposed for Counts 1 through 5. An adjustment for the economic impact of the penalty on Respondent's business will be considered if properly raised and documented by Respondent.

40. 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 Administrator and the Attorney General for 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 after March 15, 2004.

41. This Complaint alleges violations that occurred more than twelve months ago. EPA and DOJ have jointly determined that this matter is appropriate for administrative action under Section 113(d)(1) of the Act.

42. 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-01-2008-0105) should be written on the check.

43. At the time of payment, Respondent shall send notice of such payments and copies of the checks 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

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

VI. OPPORTUNITY TO REQUEST A HEARING

44. As provided by Section 113(d) of the CAA, Respondent has 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.

45. 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, Respondent must 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 Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to admit, deny, or explain an allegation constitutes an admission of that allegation. 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 Respondent intends to place at issue. Further, the Answer must specifically request an administrative hearing if such a hearing is desired. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The 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

46. Respondent should also send a copy of the Answer and all other documents that Respondent files in this action to Amanda J. Helwig, who has been authorized to accept service on behalf of the Complainant, at:

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

47. Instead of filing an Answer, Respondent may choose to pay the proposed penalty within 30 days after receiving the Complaint, or may file a statement with the Regional Hearing Clerk within 30 days of receiving the Complaint, stating that it agrees to pay the proposed penalty within 60 days of receipt of the Complaint. See 40 C.F.R. § 22.18(a).

VII. SETTLEMENT CONFERENCE

48. Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent 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 I. 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 Amanda J. Helwig, Enforcement Counsel, at (617) 918-1180. 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 Studien
Susan Studien
Director, Office of Environmental Stewardship
EPA Region I

Date: 09/23/08

ATTACHMENT I

In the Matter of Bilray Demolition Company, Inc.

The following penalty calculation is based on the Act and applicable EPA guidance (i.e., the Penalty Policy and Appendix III). The calculation reflects EPA's understanding that the amount of RACM involved in the violations was less than 10 "units," as described by Appendix III, and that these violations should be considered first-time violations by Respondent since Respondent has no known prior history of Asbestos NESHAP violations.

GRAVITY COMPONENT

Count 1 [61.145(a): Failure to Thoroughly Inspect Facility for Asbestos (1 day)]	\$5,000
Count 2 [61.145(b): Failure to Submit Notification for Demolition (1 day)].....	\$5,000
Count 3 [61.145(c)(3): Failure to Adequately Wet the ACM While Stripping (1 day)]	\$5,000
Count 4 [61.145(c)(6)(i): Failure to Keep Asbestos Wet until Collected and Contained for Disposal Wet (189 days; 1 day at \$5000, 2-189 days at \$500 each)] ¹	\$99,000
Count 5 [61.150(b)(1) and (b)(2): Failure to Deposit ACWM at Proper Disposal Site (189 days; 1 day at \$5000, 2-189 days at \$500 each).....	\$99,000
Total Gravity	\$213,000
Size of Violator [based on an assumed net worth between \$100,001 and \$1 million].....	\$5,000
Inflation Under Civil Monetary Inflation Adjustment Rule [17.23% for those violations after March 15, 2004]	\$36,700

ECONOMIC BENEFIT COMPONENT

Appendix III recommends applying an amount of \$20.00 per cubic foot of asbestos to calculate economic benefit, unless information on actual economic benefit is available. The following economic benefit calculation is based on actual estimated costs for remediating the RACM involved in the violations (approximately 81 cubic feet).

Total Economic Benefit (based on actual estimate)	\$1,620
<u>TOTAL PROPOSED PENALTY</u>	<u>\$256,320</u>

¹ The duration of the violations identified in Counts IV and V is based on evidence indicating that RACM was first encountered during the first or second week of March 2005 and that asbestos abatement work began on or about September 20, 2005. A March 15, 2005 start date is used since the exact date in the first or second week of March is not presently known. Accordingly, the duration of 189 days for Counts IV and V represents the time period from March 15, 2005 to September 20, 2005.

CERTIFICATE OF SERVICE

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

Original and one copy,
by hand:

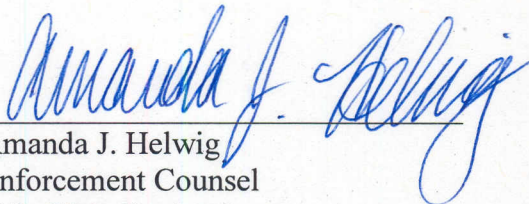
Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

One copy of Complaint and
40 C.F.R. Part 22, by certified mail,
return receipt requested:

David Santanelli, Owner
Bilray Demolition Company, Inc.
73 Mill Street
Johnston, RI 02919

Date:

9/23/08


Amanda J. Helwig
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023
Phone: (617) 918-1180
Fax: (617) 918-0180