

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

FILED
2010 SEP 28 AM 11:31
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

IN THE MATTER OF:) DOCKET NO. CAA-09-2010-0007
)
El Centro Redevelopment Agency;)
Duggins Construction)
)
Respondents.) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
_____)

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, El Centro Redevelopment Agency and Duggins Construction, 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 regulations are known as the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos. The NESHAP regulations for asbestos are found at 40 C.F.R. Part 61, Subpart M.

In the Matter of El Centro Redevelopment Agency;
Duggins Construction.

Complainant will show that Respondents violated the CAA by violating the asbestos NESHAP at 40 C.F.R. Part 61, Subpart M, a copy of which is enclosed with this Complaint.

GENERAL ALLEGATIONS

1. Respondents are each a “person” doing business in the State of California, as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
2. At all times relevant to this Complaint, Respondent El Centro Redevelopment Agency was the owner of a building located at 1249 Main St., El Centro, California (the “building”).
3. The building constitutes a “facility,” as defined at 40 C.F.R. §61.141.
4. Respondent El Centro Redevelopment Agency hired Respondent Duggins Construction to demolish the building.
5. On or around January 2010, Respondent Duggins Construction “demolished” the building, as that term is defined at 40 C.F.R. § 61.141.
6. On or about January 26, 2010, inspectors from the California Air Resources Board (“CARB”) conducted an inspection of the site and found that the building had been demolished.
7. Respondents are each “an owner or operator of a “demolition activity” as defined at 40 C.F.R. §61.141.
8. On or about January 10, 2008, Respondent Duggins Construction entered into a Consent Agreement with EPA to settle a previous alleged violation of the asbestos NESHAP notification requirements.

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

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

10. An owner or operator of a demolition activity must provide EPA with a written notice of intention to demolish at least ten working days before demolition begins. 40 C.F.R. § 61.145(b)(1)(i).
11. Respondents did not submit a written notice of intention to demolish the building to EPA before demolition began.
12. Respondents' failure to provide written notice of their intent to demolish the building to EPA before demolition began constitutes a violation of 40 C.F.R. § 61.145(b)(1).

PROPOSED CIVIL PENALTY

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000) per day for each violation of the Act, provided that the total amount of penalty assessed does not exceed Two Hundred Thousand Dollars (\$200,000). These maximum amounts have been adjusted to \$37,500 per day not to exceed a total penalty of \$295,000 for violations occurring after January 12, 2009 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461. In this case, EPA proposes the assessment of a civil penalty in the amount of TWENTY-FOUR THOUSAND, ONE HUNDRED DOLLARS (\$ 24,100) against Respondents.

This civil penalty is proposed after consideration of the statutory assessment factors set forth at Section 113(e) of the Act, 42 U.S.C. § 7413(e), and in accordance with EPA's "Clean Air Act Stationary Source Civil Penalty Policy" ("Penalty Policy") dated October 25, 1991 and Appendix III of the Penalty Policy ("Appendix III"), the "Asbestos Demolition and Renovation Civil Penalty Policy" dated May 5, 1992. Copies of the Penalty Policy and Appendix III are enclosed with this Complaint. This section explains the rationale behind the penalty assessed for

Count I and the various penalty factors and adjustments that were used in the calculation of the total penalty amount.

The civil penalty has two components: economic benefit and gravity. The economic benefit is based on the value that the alleged violator realized from delaying or failing to comply with the law. In this action, the economic benefit is \$0, as calculated under Appendix III of the Penalty Policy.

The second component of the civil penalty is valuing the gravity of the alleged violation. The gravity component of the civil penalty addresses the gravity of each violation and assesses a penalty based on the size of the violator. Count I alleges that Respondents violated 40 C.F.R. § 61.145(b)(1) by failing to provide EPA written notice of intention to demolish the building before demolition began. The Penalty Policy adds an adjustment to the gravity component if a Respondent has a previous violation of an asbestos NESHAP regulation. In this case, the violation is a second violation of the asbestos NESHAP notification requirement for Respondent, Duggins Construction. Consequently, the penalty assessed for this violation, as calculated under Appendix III of the Penalty Policy, is \$15,000.

In addition, in accordance with Section 113(e) of the Act, the Penalty Policy requires the assessment of an additional penalty based on the “size of the violator” as a deterrent to future violations. The Penalty Policy assigns a penalty amount based on the net worth of the Respondents. In this case, the “size of the violator” factor equals \$2,000.

Combining the penalty assessed for Count I and the penalty assessed for the size of violator results in a penalty of \$17,000 assessed for gravity. In accordance with the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, this gravity penalty amount is adjusted by 41.63%, resulting in a penalty of \$24,077. Since there is no economic benefit

calculated in this case, the total civil penalty against Respondents is \$24,077, which is rounded to the nearest hundred for a total penalty of \$24,100.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 113(d) of the Act, 42 U.S.C. § 7213(d), you have 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 hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint 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 to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

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

The Answer must be filed with:

**Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105**

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

**Carol Bussey
Office of Regional Counsel
USEPA, Region IX
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105**

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

You are further informed that the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with 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.

INFORMAL SETTLEMENT CONFERENCE

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 hearing, you may confer informally with EPA through Carol Bussey, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

ALTERNATIVE DISPUTE RESOLUTION

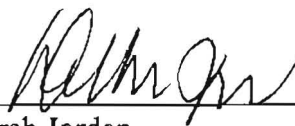
The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts.

Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

CONSENT AGREEMENT AND FINAL ORDER

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

DATE: 9-27-10



Deborah Jordan
Director, Air Division
U.S. EPA, Region 9

Certificate of Service

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing for *In the Matter of El Centro Redevelopment Agency & Duggins Construction*, Docket No. CAA-09-2010-0007, has been filed with the Regional Hearing Clerk, Region IX, and copies sent:

By certified mail, Return Receipt Requested to Respondents:

Ruben Duran
City Manager
City of El Centro
1275 Main St.
El Centro, CA 92243

Certified Mail No. 7009 2820 0001 8697 3686


James L. Duggins
Duggins Construction, Inc.
341 W. Crown Ct.
Imperial, CA 92251

Certified Mail No. 7009 2820 0001 8697 3693

Hand delivered to:

Carol Bussey
Office of Regional Counsel
U.S. EPA Region IX, ORC-2
75 Hawthorne St.
San Francisco, CA 94105

Dated: 09/28/2010



U.S. EPA, Region IX