

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

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ENVIRONMENTAL PROTECTION AGENCY
REGION III
PHILADELPHIA, PA 19103-2029
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CLERK

In the Matter of:
Scranton Products, Inc.
801 Corey Street
Scranton, PA 18505,

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR
HEARING**

Hoffman and Kozlansky Realty Co.,
LLC
300 - A Brook Street
Scranton, PA 18505,

DOCKET NO. CAA-3-2008-0004

and

Wyoming S & P, Inc.
2143 White Haven Road
White Haven, PA 18661

RESPONDENTS

**ANSWER, CROSS CLAIM AND AFFIRMATIVE DEFENSES
OF RESPONDENT, SCRANTON PRODUCTS, INC.**

And now comes Respondent, SCRANTON PRODUCTS, INC., by and through its counsel, Oliver, Price & Rhodes, and files the following ANSWER, CROSSCLAIM AND AFFIRMATIVE DEFENSES to the Administrative Complaint in this matter:

1. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
2. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
3. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.

4. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
5. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
6. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
7. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
8. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
9. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
10. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
11. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
12. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
13. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
14. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.

15. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Denied. Respondent, Scranton Products, Inc., lacks the knowledge or information sufficient to form a belief as to the allegations of this paragraph and demands strict proof thereof at the time of trial.
21. Admitted.
22. Admitted in part; denied in part. It is admitted that prior to May 15, 2007, Scranton Products, Inc., was the owner of the facility. However, it is specifically denied that subsequent to May 15, 2007, Scranton Products, Inc., still controlled and supervised the facility, as it was no longer the owner of the facility.
23. Admitted.
24. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
25. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
26. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the

allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

27. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied. Furthermore, the allegations of this paragraph constitute conclusions of law and are therefore deemed denied.

28. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

29. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

30. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied..

31. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the

allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

32. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

33. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

34. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

35. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

36. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

37. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.
38. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.
39. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.
40. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.
41. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.
42. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the

allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

43. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

44. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

45. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

46. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

47. Denied. Respondent, Scranton Products, Inc., after reasonable investigation, lacks the knowledge sufficient to form a belief as to the allegations contained in this paragraph and demands strict proof thereof at the time of trial; therefore, said allegations are denied.

COUNT I

FAILURE TO WET ADEQUATELY RACM DURING REMOVAL

48. The allegations contained in paragraphs 1 through 47 of this Answer are realleged and incorporated herein by reference thereto.
49. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
50. Denied. Respondent, Scranton Products, Inc., lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph and demands strict proof thereof at the time of trial.
51. Denied. Respondent, Scranton Products, Inc., lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph and demands strict proof thereof at the time of trial.
52. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.

COUNT II

FAILURE TO KEEP STRIPPED RACM ADEQUATELY WET UNTIL COLLECTED FOR DISPOSAL

53. The allegations contained in paragraphs 1 through 52 of this Answer are realleged and incorporated herein by reference thereto.
54. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.
55. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied. Furthermore, Scranton Products, Inc.,

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph and demands strict proof thereof at the time of trial.

56. Denied. The allegations of this paragraph constitute conclusions of law and are therefore deemed denied.

WHEREFORE, Respondent, Scranton Products, Inc, respectfully submits that it is entitled to judgment in its favor in this matter. Respondent, Scranton Products, Inc. further submits that the proposed penalty as set forth in the Administrative Complaint in this matter should not be assessed against Scranton Products Inc. Furthermore, if said penalty is assessed against Scranton Products, Inc., Scranton Products Inc., submits that it is entitled to indemnification and/or contribution of the penalty by Hoffman & Kozlansky Realty Co., LLC and/or Wyoming S & P, Inc.

VI. PROPOSED CIVIL PENALTY

Respondent, Scranton Products, Inc., denies it should be responsible for any of the penalty proposed to be assessed against it by EPA. Additionally, Respondent, Scranton Products, Inc., denies that the proposed penalty is proper and accurate. Finally, as set forth in a Cross Claim below, Respondent, Scranton Products, Inc., submits that it is entitled to indemnification and/or contribution from Respondents Hoffman & Kozlansky Realty Co., LLC and Wyoming S & P, Inc.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent, Scranton Products, Inc., requests a hearing on the issues set forth in the Complaint and the appropriateness of the proposed penalty.

VIII. SETTLEMENT CONFERENCE

Respondent, Scranton Products, Inc., desires and hereby requests that an informal settlement conference be arranged in this matter.

**CROSS CLAIM
COUNT I**

SCRANTON PRODUCTS, INC., v. WYOMING S & P, INC.

1. The allegations contained in paragraphs 1 through 4 of this Answer are realleged and incorporated herein by reference thereto.
2. At all relevant times herein, Wyoming S & P was engaged in the removal of asbestos containing material from the facility during the renovation of the facility.
3. It further controlled, operated and/or supervised the renovation of the Facility.
4. Scranton Products, Inc. did not control, operate and/or supervise the renovation at the facility, but relied upon Wyoming to do so.
5. As such, Scranton Products, Inc., has the right to be indemnified by Wyoming S & P, Inc., in tort and in contract.

WHEREFORE, Scranton Products, Inc. respectfully submits that it is fully indemnified by Wyoming S & P, Inc., and therefore any and all penalties assessed against Scranton Products, Inc., are the responsibility of Wyoming S & P, Inc.

CROSS CLAIM
COUNT II

SCRANTON PRODUCTS, INC., v. WYOMING S & P, INC.

6. The allegations contained in paragraphs 1 through 9 of this Answer are realleged and incorporated herein by reference thereto.
7. Scranton Products, Inc., is entitled to and hereby seeks contribution of the total amount of the penalty that may be assessed against Scranton Products, Inc., by Wyoming S & P, Inc.

WHEREFORE, Scranton Products, Inc. respectfully submits that it is entitled to full contribution by Wyoming S & P, Inc., and therefore any and all penalties assessed against Scranton Products, Inc., are the responsibility of Wyoming S & P, Inc.

WHEREFORE, Respondent, Scranton Products, Inc., respectfully submits that the proposed penalty as set forth in the Administrative Complaint in this matter should not be assessed against Scranton Products Inc. Furthermore, if said penalty is assessed against Scranton Products, Inc., Scranton Products Inc., submits that it is entitled to indemnification and/or contribution of the penalty by Hoffman & Kozlansky Realty Co., LLC and/or Wyoming S & P, Inc.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim against Respondent, Scranton Products, Inc.

SECOND DEFENSE

Scranton Products, Inc., was not own an owner or operator or in control of the demolition or renovation activity.

THIRD DEFENSE

Scranton Products, Inc., is entitled to indemnity by Wyoming S & P, Inc., since it was not the owner or operator of the Facility, and further did not control or oversee the renovation at the Facility.

FOURTH DEFENSE

Scranton Products, Inc., is entitled to contribution by Wyoming S & P, Inc., since it was not the owner operator of the Facility, and further did not control or oversee the renovation at the Facility.

FIFTH DEFENSE

At all times relevant to this matter, Respondent, Scranton Products, Inc., acted in good faith and with the reasonable belief that its conduct was authorized and lawful.

SIXTH DEFENSE

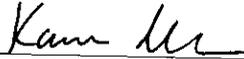
Penalties cannot be assessed against Respondent, Scranton Products, Inc., due to the actions or inactions of Hoffman & Kozlansky Realty Co., LLP, and Wyoming S & P, Inc.

Respectfully submitted,

OLIVER, PRICE & RHODES



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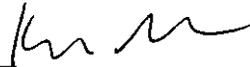
CERTIFICATE OF SERVICE

I, **KAROLINE MEHALCHICK, ESQUIRE**, of Oliver, Price & Rhodes, hereby certify that on the 19th day of November, 2007, I served a true and correct copy of the foregoing ANSWER, CROSS CLAIM AND AFFIRMATIVE DEFENSES by placing the same in the United States Mail, First Class Postage Prepaid, at Clarks Summit, Pennsylvania, addressed as follows:

Donna L. Mastro
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Bruce S. Postupak
President
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2143 White Haven Road
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Karoline Mehalchick, Esquire