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REGIONAL HEARING CLERK

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

| | | |
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| <p>In the Matter of:</p> <p>B.C.S. Enterprises, Inc. and Arizona Department of Transportation</p> <p>Proceeding under Section 113 of the Clean Air Act, 42 U.S.C. § 7413</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Docket No. CAA-9-2007-0002</p> <p>COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING</p> |
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I. STATEMENT OF AUTHORITY

1. Pursuant to Sections 113(a)(3) and 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. §§ 7413(a)(3) and 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 Code of Federal Regulations ("C.F.R.") Part 22 ("Consolidated Rules of Practice"), the Director of the Air Division, EPA Region 9 ("Complainant") commences this administrative action and issues this Complaint and Notice of Opportunity for Hearing ("Complaint"). Complainant is duly delegated the authority to file this action.
2. This Complaint notifies B.C.S. Enterprises, Inc. ("BCS") and Arizona Department of Transportation ("ADOT") (collectively, "Respondents") of Complainant's determination that Respondents have violated Sections 112 and 114 of the CAA,

1 42 U.S.C. §§ 7412 and 7414, and the National Emission
2 Standards for Hazardous Air Pollutants for Asbestos, 40
3 C.F.R. Part 61, Subpart M, 40 C.F.R. §§ 61.140 - 63.157
4 ("Asbestos NESHAP").

5 **II. NATURE OF ACTION**

- 6 3. This is a civil administrative action instituted pursuant to
7 Sections 113(a)(3) and 113(d) of the CAA, 42 U.S.C.
8 §§ 7413(a)(3) and 7413(d), and the Consolidated Rules of
9 Practice. Specifically, Complainant seeks civil penalties
10 under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for
11 Respondent's violations of Sections 112 and 114 of the CAA,
12 42 U.S.C. §§ 7412 and 7414, and the Asbestos NESHAP.

13 **III. STATUTORY AND REGULATORY FRAMEWORK**

- 14 4. Section 112 of the CAA, 42 U.S.C. § 7412, lists various
15 hazardous air pollutants ("HAPs") and requires EPA to
16 establish national emissions standards for these pollutants.
17 Codified as Subpart M of 40 C.F.R. Part 61, EPA promulgated
18 the Asbestos NESHAP, which sets forth the standard for the
19 removal and disposal of asbestos incident to demolition or
20 renovation activities, along with associated notification
21 and recordkeeping requirements under Section 114 of the CAA,
22 42 U.S.C. § 7414.
- 23 5. The Asbestos NESHAP covers anyone who is an "owner or
24 operator of a demolition or renovation activity," within the
25 meaning of 40 C.F.R. § 61.141. Pursuant to 40 C.F.R.
26 § 61.145(a), the notification and control requirements of 40
27

1 C.F.R. §§ 61.145(b) and (c), respectively, apply if the
2 combined amount of regulated asbestos-containing material
3 ("RACM") on a facility being demolished is more than 160
4 square feet on components other than pipes.

5 6. The definition of "RACM" includes, *inter alia*, Category II
6 nonfriable asbestos-containing material ("ACM") that has a
7 high probability of becoming or has become crumbled,
8 pulverized, or reduced to powder by the forces expected to
9 act on the material in the course of demolition or
10 renovation operations. See 40 C.F.R. § 61.141. Category I
11 nonfriable ACM means asbestos-containing packings, gaskets,
12 resilient floor covering, and asphalt roofing products
13 containing more than 1% asbestos using specified test
14 methods. *Id.* Category II nonfriable ACM means any
15 material, excluding Category I nonfriable ACM, containing
16 more than 1% asbestos, determined using specified test
17 methods, that, when dry, cannot be crumbled, pulverized, or
18 reduced to powder by hand pressure. *Id.* Nonfriable
19 asbestos-cement products such as transite roof shingles are
20 an example of Category II material.

21 7. Pursuant to 40 C.F.R. § 61.145(c)(1), each owner or operator
22 of a demolition activity shall remove all RACM from a
23 facility being demolished or renovated before any activity
24 begins that would break up, dislodge, or similarly disturb
25 the material or preclude access to the material for
26 subsequent removal, unless one of the exceptions set forth
27

1 at 40 C.F.R. § 61.145(c)(1)(i) through (iv) apply.

2 8. Pursuant 40 C.F.R. § 61.145(b), each owner or operator of a
3 demolition activity shall provide written notification to
4 EPA (or EPA's delegatee if the notification program is
5 delegated) of the intention to demolish at least ten (10)
6 working days before demolition begins. The notification
7 must include, *inter alia*, an estimate of the approximate
8 amount of RACM, scheduled starting and completion dates of
9 the demolition, a description of planned demolition or
10 renovation work to be performed and method(s) employed,
11 including the demolition techniques used and a description
12 of affected facility components, and a description of
13 asbestos removal and waste-handling emission control
14 procedures. See 40 C.F.R. § 61.145(b)(4).

15 9. Pursuant to 40 C.F.R. § 61.150(d)(1), each owner or operator
16 of a demolition activity shall maintain a waste shipment
17 record, and provide a copy of the same to the disposal site
18 owner or operator.

19 10. The waste shipment record that must be maintained and
20 provided pursuant to 40 C.F.R. § 61.150(d)(1) must include,
21 *inter alia*, an accurate description of the materials
22 consigned.

23 11. Pursuant to Section 4 of the Federal Civil Penalties
24 Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as
25 amended by the Debt Collection Improvement Act of 1996, 31
26 U.S.C. 3701 note, EPA is authorized to assess a civil
27

1 penalty of up to \$32,500 per day for each violation of the
2 CAA occurring after March 15, 2004. See 40 C.F.R. Part 19.

3 **IV. GENERAL ALLEGATIONS**

4 12. BCS is a demolition contractor located in Gilbert, Arizona,
5 a corporation incorporated under the laws of the State of
6 Arizona, and a "person" within the meaning of Section 302(e)
7 of the CAA, 42 U.S.C. § 7602(e).

8 13. ADOT is a state agency and a "person" within the meaning of
9 Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10 14. At all times relevant to this Complaint, ADOT was the owner
11 of a single-family house located on Parcel #11-0589, 20929
12 E. Highway 60, Florence Junction, Pinal County, Arizona
13 ("House").

14 15. On or about March 24, 2006, ADOT awarded a demolition
15 contract to BCS to demolish and remove the House.

16 16. In the Pre-Demolition Bulk Asbestos Survey performed on the
17 House for ADOT by Allen Environmental Services ("Allen
18 Environmental"), dated March 31, 2006, Allen Environmental
19 found approximately 2,800 square feet of transite roof
20 shingles with asbestos at or above 1.0% ("transite
21 shingles").

22 17. At all times relevant to this Complaint, the transite
23 shingles were Category II ACM.

24 18. At all times relevant to this Complaint, the transite
25 shingles were asbestos-containing material that had a high
26 probability of becoming crumbled, pulverized, or reduced to
27

1 powder by the forces expected to act on the material in the
2 course of demolition.

3 19. At all times relevant to this Complaint, the transite
4 shingles were "RACM."

5 20. At all times relevant to this Complaint, BCS was an "owner
6 or operator of a demolition or renovation activity," within
7 the meaning of 40 C.F.R. § 61.141, subject to the
8 requirements of 40 C.F.R. §§ 61.145(b) and (c) and 61.150(d)
9 of the Asbestos NESHAP.

10 21. At all times relevant to this Complaint, ADOT was an "owner
11 or operator of a demolition or renovation activity," within
12 the meaning of 40 C.F.R. § 61.141, subject to the
13 requirements of 40 C.F.R. §§ 61.145(b) and (c) and 61.150(d)
14 of the Asbestos NESHAP.

15 22. On or about April 14, 2006, ADOT awarded an abatement
16 contract to Native Environmental, LLC to remove the transite
17 shingles from the House.

18 23. On April 18 and 19, 2006, BCS demolished the House.

19 24. On April 18 and 19, 2006, BCS demolished the House prior to
20 abatement or removal of the transite shingles from the
21 House.

22 **V. SPECIFIC ALLEGATIONS**

23 **COUNT 1 - DEMOLITION PRIOR TO RACM ABATEMENT**

24 25. Complainant incorporates by reference the allegations
25 contained in paragraphs 1 through 24.

26 26. At all times relevant to this Complaint, demolition of the
27
28

1 House would break up, dislodge or similarly disturb the
2 transite shingles or preclude access to the transite
3 shingles for subsequent removal.

4 27. At all times relevant to this Complaint, the transite
5 shingles did not otherwise qualify for any of the exceptions
6 set forth at 40 C.F.R. § 61.145(c)(1)(i) through (iv).

7 28. Pursuant to 40 C.F.R. § 61.145(c)(1), BCS and ADOT were
8 required to remove the transite shingles from the House
9 before demolition.

10 29. BCS and ADOT failed to remove the transite shingles from the
11 House before demolition.

12 30. The failure of BCS and ADOT to have the transite shingles
13 removed from the House before demolition constitutes a
14 violation of Section 112 of the CAA and 40 C.F.R.
15 § 61.145(c)(1).

16 **COUNT 2 - FAILURE TO PROVIDE PROPER NOTIFICATION**

17 31. Complainant incorporates by reference the allegations
18 contained in paragraphs 1 through 24.

19 32. In the NESHAP Notification for Renovation and Demolition
20 Activities, dated April 4, 2006, for demolition of the House
21 ("Original Notification"), BCS did not provide an estimate
22 of the approximate amount of RACM to be removed from the
23 House.

24 33. The failure of BCS and ADOT to provide notification at least
25 ten (10) days before demolition regarding an estimate of the
26 approximate amount of RACM to be removed from the House
27

1 constitutes a violation of Section 114 of the CAA and 40
2 C.F.R. § 61.145(b)(4)(vi).

3 34. In the Original Notification, BCS stated that the asbestos
4 in the House was to be removed by others prior to
5 demolition.

6 35. BCS's inaccurate representation in the Original Notification
7 that the RACM in the House will be removed by others prior
8 to demolition constitutes a violation of Section 114 of the
9 CAA and 40 C.F.R. § 61.145(b)(4).

10 36. In the Original Notification, BCS stated that the demolition
11 start date of the House was April 19, 2006.

12 37. The failure of BCS and ADOT to provide notification at least
13 ten (10) days before demolition regarding the demolition
14 start date of the House (April 18, 2006) constitutes a
15 violation of Section 114 of the CAA and 40 C.F.R.
16 § 61.145(b)(4)(ix).

17 **COUNT 3 - FAILURE TO MAINTAIN AND PROVIDE PROPER**
18 **WASTE SHIPMENT RECORD**

19 38. Complainant incorporates by reference the allegations
20 contained in paragraphs 1 through 24.

21 39. In the Asbestos NESHAP Waste Shipment Record ("Waste
22 Shipment Record"), dated April 26, 2006, BCS represented
23 that the RACM removed from the House was nonfriable.

24 40. The failure of BCS and ADOT to accurately represent in the
25 Waste Shipment Record that the RACM removed from the House
26 was friable constitutes a violation of Section 114 of the
27 CAA and 40 C.F.R. §61.150(d).

1
2 **VI. PENALTY ASSESSMENT**

3 41. Based on application of the statutory penalty factors set
4 forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and
5 embodied in the Clean Air Act Stationary Source Civil
6 Penalty Policy, dated October 25, 1991 ("CAA General Penalty
7 Policy") and Appendix III thereto, dated May 5, 1992, a CAA
8 civil penalty of **Forty-Five Thousand Five Hundred Twelve**
9 **Dollars (\$45,512)** is hereby proposed to be assessed against
BCS and ADOT.

10 42. Payment shall be made by electronic fund transfer ("EFT") or
11 cashier's or certified check. Payment by EFT shall be
12 transferred to the following address:

13 Mellon Bank
14 ABA 043000261
15 Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

16 Payment made by cashier's or certified check shall be
17 payable to the "Treasury, United States of America," and
18 shall be sent by certified mail, return receipt requested,
19 to the following address:

20 U.S. Environmental Protection Agency
21 Region 9
P.O. Box 371099M
22 Pittsburgh, PA 15251

23 The check shall note the case title and docket number.

24 Concurrent with the delivery of payment, Respondent shall
25 send a copy of the check to the following addresses:

26 Regional Hearing Clerk (ORC-1)
27 U.S. Environmental Protection Agency
Region IX

1 75 Hawthorne Street
2 San Francisco, CA 94105

3 Robert Trotter
4 Enforcement Office (AIR-5)
5 U.S. Environmental Protection Agency
6 Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105

9 and

10 Brian P. Riedel
11 Assistant Regional Counsel
12 U.S. Environmental Protection Agency
13 Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

16 **VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

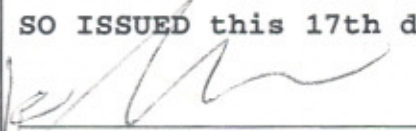
- 17 43. As provided by Section 113(d) of the CAA, Respondents have a
18 right to request a hearing on the issues raised in this
19 Complaint. Any such hearing will be conducted in accordance
20 with the Consolidated Rules of Practice. Note that a
21 request for a hearing must be incorporated in a written
22 answer ("Answer") filed with the Regional Hearing Clerk
23 within thirty (30) days of service of this Complaint. See
24 40 C.F.R. § 22.15.
- 25 44. In their Answer(s), Respondent(s) may contest, among other
26 things, any material fact contained in the Complaint. The
27 Answer(s) shall clearly and directly admit, deny or explain
28 each of the factual allegations contained in the Complaint
 as to which Respondent(s) have any knowledge. Where
 Respondent(s) have no knowledge as to a particular factual
 allegation and so states, the allegation is deemed denied.
 The Answer(s) shall also state: (1) the circumstances or

1 arguments alleged to constitute the grounds of any defense;
2 (2) the facts which Respondent(s) dispute; (3) the basis for
3 opposing any proposed relief; and, (4) whether a hearing is
4 requested. Any failure of Respondent(s) to admit, deny or
5 explain any material fact contained in the Complaint
6 constitutes an admission of that allegation.

7 **VIII. POSSIBILITY OF DEFAULT**

8 45. If Respondent(s) fail to file a timely Answer to the
9 Complaint, Respondent(s) may be found to be in default
10 pursuant to 40 C.F.R. § 22.17. For purposes of this action
11 only, default by Respondent(s) constitutes an admission of
12 all facts alleged in the Complaint and a waiver of the right
13 of Respondent(s) to contest such factual allegations.

14
15 **SO ISSUED this 17th day of April 2007:**

16 
17 _____
18 Deborah Jordan
19 Director, Air Division
20 United States Environmental
21 Protection Agency, Region 9
22 75 Hawthorne Street
23 San Francisco, California 94105
24
25
26
27
28

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:

Victor Mendez
Director
Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, AZ 85007-3213
Certified Mail No. 7000 0520 0025 3713 4911

W. Michael Sumner
President
BCS Enterprises, Inc.
1275 W. Houston Ave.
Gilbert, AZ 85223
Certified Mail No. 7000 0520 0025 3713 4928

Dated: 4/17/07

By: Robert Trotter
Air Enforcement Office
USEPA Region 9.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 17 2007

CERTIFIED MAIL NO. 7000 0520 0025 3713 4928
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
REFER TO: Docket No. CAA-9-2007-0002

W. Michael Sumner
President
BCS Enterprises, Inc.
1275 W. Houston Ave.
Gilbert, AZ 85223

Dear Mr. Sumner:

Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The Complaint alleges that, during renovation/demolition of the structure(s) located at 20929 E. Highway 60, Florence Junction, Arizona, BCS Enterprises, Inc. ("BCS"), and Arizona Department of Transportation ("ADOT") failed to comply with notification and work practice requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated pursuant to Section 112 of the Act. These alleged violations are more specifically set forth in the Complaint.

As set forth in the Complaint, you are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure may constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: (1) the asbestos NESHAP regulations (40 C.F.R. Part 61, Subpart M); (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; (3) the Clean Air Act Stationary Source Civil Penalty Policy and Appendix III.

If you wish to discuss this Complaint, your attorney may contact Brian Riedel, Assistant Regional Counsel, at (415)972-3924, or you may contact Robert Trotter, Enforcement Officer, at (415)972-3989.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", is written over the typed name.

Deborah Jordan
Director, Air Division

Enclosures

cc: Pinal County Air Quality Department



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

APR 17 2007

CERTIFIED MAIL NO. 7000 0520 0025 3713 4911
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
REFER TO: Docket No. CAA-9-2007-0002

Victor Mendez
Director
Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, AZ 85007-3213

Dear Mr. Mendez:

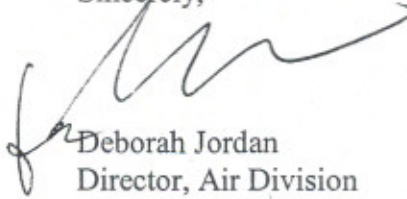
Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The Complaint alleges that, during renovation/demolition of the structure(s) located at 20929 E. Highway 60, Florence Junction, Arizona, BCS Enterprises, Inc. ("BCS"), and Arizona Department of Transportation ("ADOT") failed to comply with notification and work practice requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated pursuant to Section 112 of the Act. These alleged violations are more specifically set forth in the Complaint.

As set forth in the Complaint, you are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure may constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: (1) the asbestos NESHAP regulations (40 C.F.R. Part 61, Subpart M); (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; (3) the Clean Air Act Stationary Source Civil Penalty Policy and Appendix III.

If you wish to discuss this Complaint, your attorney may contact Brian Riedel, Assistant Regional Counsel, at (415)972-3924, or you may contact Robert Trotter, Enforcement Officer, at (415)972-3989.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosures

cc: Pinal County Air Quality Department