

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

In Reply Refer To Mail Code: 3LC62

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vincent Madonna, President
Madonna Enterprises, Inc.
610 3rd St.
Port Carbon, PA 17965

Re: Clean Air Act Complaint and Notice of Opportunity for Hearing
EPA Docket No. CAA-03-2014-0092

Dear Mr. Madonna:

Enclosed please find a copy of the Complaint and Notice of Opportunity for Hearing (“Complaint”) filed today with the Regional Hearing Clerk concerning alleged violations by Madonna Enterprises, Inc. and Whitehall Township of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 *et seq.* The Complaint is based on alleged violations of the National Emission Standard for Hazardous Air Pollutants for Asbestos (“the asbestos NESHAP”), promulgated pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and codified at 40 C.F.R. Part 61, Subpart M, relating to the failure to comply with asbestos notification and work-practice requirements during a demolition project at 896 3rd St., Whitehall, PA 18052 in August and September 2013. The Complaint should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations and proposed penalty.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint by specific Answer within thirty (30) days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer shall result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint without further proceedings

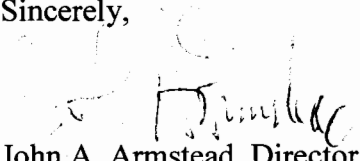
You may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in your Answer to this Complaint. Whether or not a hearing is requested, you may request an informal settlement conference to discuss resolution of this case. The attorney assigned to this case is Jennifer J. Nearhood, Assistant Regional Counsel. If you are represented by legal counsel, you must have your counsel contact Ms. Nearhood on your behalf:

Jennifer J. Nearhood
Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Nearhood can be reached by telephone at (215) 814-2649.

To the extent that Madonna Enterprises, Inc. qualifies as a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA), enclosed is an *Information for Small Businesses* sheet, which provides information on compliance assistance and on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve you of your obligation to file a timely answer to the Complaint, or create for you any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Sincerely,



John A. Armstead, Director
Land and Chemicals Division

Enclosures

cc: Jennifer J. Nearhood (w/o enclosures)
Rich Ponak (w/o enclosures)

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

In Reply Refer To Mail Code: 3LC62

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward D. Hozza, Jr.
Mayor, Whitehall Township
3219 MacArthur Rd.
Whitehall, PA 18052

Re: Clean Air Act Complaint and Notice of Opportunity for Hearing
EPA Docket No. CAA-03-2014-0092

Dear Mr. Hozza:

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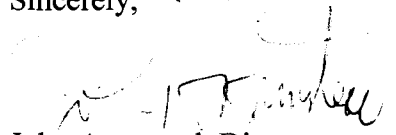
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Sincerely,



John Armstead, Director
Land and Chemicals Division

Enclosures

cc: Jennifer J. Nearhood (w/o enclosures)
Rich Ponak (w/o enclosures)

Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. The authority to issue this Complaint has been duly delegated to the signatory below.

II. APPLICABLE STATUTES AND REGULATIONS

- 2) Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA to publish a list of air pollutants determined to be hazardous and to promulgate regulations establishing emission standards or, where necessary, design, equipment, work practice, or operational standards for each listed hazardous air pollutant.
- 3) Section 114 of the CAA, 42 U.S.C. § 7414, 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 emissions standards.
- 4) Congress listed asbestos as a hazardous air pollutant in Section 112 of the CAA, 42 U.S.C. § 7412. Pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated a National Emission Standard for Asbestos (“the asbestos NESHAP”), codified at 40 C.F.R Part 61, Subpart M, Sections 61.140 - 61.157. 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. Pursuant to Section 112(q) of the CAA, 42 U.S.C. § 7412(q), the above-referenced standards and provisions remain in full force and effect, notwithstanding the November 15, 1990 Clean Air Act Amendments.

- 5) Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), authorizes 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.

III. DEFINITIONS

- 6) Pursuant to 40 C.F.R. § 61.141, “adequately wet” means to sufficiently mix or penetrate with liquid to prevent the release of particulates.
- 7) Pursuant to 40 C.F.R. § 61.141, “asbestos” means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
- 8) Pursuant to 40 C.F.R. § 61.141, “asbestos-containing waste materials” means, in pertinent part, any waste that contains commercial asbestos and is generated by a source subject to the provisions of the asbestos NESHAP, including friable asbestos waste material and materials contaminated with asbestos including disposable equipment and clothing.
- 9) Pursuant to 40 C.F.R. § 61.141, “Category II nonfriable ACM [asbestos-containing material]” means, in pertinent part, any material that contains more than 1 percent asbestos as determined using the methods specified in 40 C.F.R. Part 763, Polarized Light Microscopy, that, when dry, cannot be crumpled, pulverized, or reduced to powder by hand pressure.
- 10) Pursuant to 40 C.F.R. § 61.141, “demolition” means the wrecking or taking out of any load-

supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

- 11) Pursuant to 40 C.F.R. § 61.141, “facility” means any institutional, commercial, public, industrial, or residential structure, installation, or building.
- 12) Pursuant to 40 C.F.R. § 61.141, “facility component” means any part of a facility including equipment.
- 13) Pursuant to 40 C.F.R. § 61.141, “friable asbestos material” means, in pertinent part, any material containing more than one percent asbestos, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.
- 14) Pursuant to 40 C.F.R. § 61.141, “owner or operator of a demolition or renovation activity” means 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 a demolition or renovation operation, or both.
- 15) Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as 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.
- 16) Pursuant to 40 C.F.R. § 61.141, “regulated asbestos-containing material” (“RACM”) means, in pertinent part, 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 this subpart.

IV. GENERAL ALLEGATIONS

- 17) Respondent Madonna is an excavation construction contractor located at 601 3rd Street, Port Carbon, Pennsylvania 17965, and is a corporation organized under the laws of the Commonwealth of Pennsylvania.
- 18) Respondent Whitehall is a Township located in Lehigh County, in the Commonwealth of Pennsylvania, with headquarters located at 3219 MacArthur Road, Whitehall, Pennsylvania 18052.
- 19) At all times relevant to this Complaint, the former real estate office located at 896 3rd Street, Whitehall, Pennsylvania 18502 (“the Facility”), was a “facility” as that term is defined by 40 C.F.R. § 61.141.
- 20) At all times relevant to this Complaint, Whitehall owned the Facility.
- 21) Whitehall retained Madonna to do general demolition of the Facility.
- 22) At all times relevant to this Complaint, Madonna engaged in and completed a “demolition” project at the Facility, as that term is defined by 40 C.F.R. § 61.141.
- 23) The Respondents are “persons” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
- 24) At all times relevant to this Complaint, Whitehall was the “owner or operator of a demolition or renovation activity” as that term is defined at 40 C.F.R. § 61.141.
- 25) At all times relevant to this Complaint, Madonna was the “owner or operator of a demolition

or renovation activity” as that term is defined at 40 C.F.R. § 61.141.

- 26) As a result of a citizen’s complaint/tip, on August 27, 2013, Richard Ponak, an authorized inspector with the Pesticide and Asbestos Programs Branch of EPA Region III, performed an inspection of the Facility in order to investigate possible violations of the asbestos NESHAP, 40 C.F.R. §§ 61.141 *et seq.* (“August 27 Inspection”).
- 27) At the time of the August 27 Inspection, the Facility had been demolished by Madonna, with a large debris pile and other debris scattered around the Facility. No one was on site at the time of the inspection.
- 28) During the August 27 Inspection, a large tractor trailer loaded with demolition debris left the site.
- 29) During the August 27 Inspection, asbestos-containing transite siding, which is categorized as Category II nonfriable ACM, and which had become crumbled, pulverized, or reduced to powder in the course of demolition, was present at the site.
- 30) The crumbled asbestos-containing transite siding was RACM, as that term is defined at 40 C.F.R. § 61.141.
- 31) During the August 27 Inspection, RACM was present in and around the Facility, including in the parking lot and in a debris pile, as well as along the sidewalk and in a lane of traffic on an adjacent street.
- 32) During the August 27 Inspection, Mr. Ponak took seventeen (17) photographs of the Facility and five (5) samples of the RACM from the Facility.
- 33) The samples taken during the August 27 Inspection were taken from the sidewalk on the

adjacent Grape Street, a lane of traffic on Grape Street, and debris piles and equipment at the Facility.

- 34) The samples of the RACM were sent to Criterion Laboratories, Inc. ("Criterion"), 3370 Progress Drive, Suite J, Bensalem, Pennsylvania 19020, for analysis to determine the percentage of asbestos in each sample.
- 35) Criterion is certified by the National Institutes of Standards and Technology, National Voluntary Laboratory Accreditation Program ("NVLAP").
- 36) Criterion analyzed the samples collected during the August 27 Inspection using Polarized Light Microscopy with Dispersion Staining in accordance with EPA Interim Method (EPA-600/M4-82-020, or 40 C.F.R. Part 763, Appendix E).
- 37) Analysis of the samples taken during the August 27 Inspection from Grape Street and the Facility showed that five (5) of the five (5) samples contained more than one (1) percent asbestos.
- 38) All of the RACM observed during the August 27 Inspection was dry, friable, and not enclosed in leak-tight bags.
- 39) On August 28, 2013 Mr. Ponak conducted a second inspection at the Facility ("August 28 Inspection").
- 40) During the August 28 Inspection, there were visible emissions from a pile of RACM and debris being disturbed by a backhoe, despite the fact that it was raining heavily.
- 41) During the August 28 Inspection, Mr. Ponak spoke with a worker who was using the backhoe to load RACM debris into an open dump truck.

- 42) At all times relevant to this Complaint the worker was employed by Madonna.
- 43) During the August 28 Inspection, there was no trained asbestos supervisor on site.
- 44) During the August 28 Inspection, Mr. Ponak informed the worker that Mr. Ponak suspected that RACM debris was scattered throughout the site. The worker immediately called his boss, Mr. Vincent Madonna, president of Madonna Enterprises, Inc.
- 45) During the August 28 Inspection, Mr. Ponak informed Mr. Madonna that he had found suspected RACM mixed in with debris on the site. Because of this, Madonna would need to dispose of the debris as "asbestos-containing waste materials," as that term is defined in 40 C.F.R. § 61.14, and have a trained asbestos supervisor on site.
- 46) During the August 28 Inspection, Mr. Ponak also visited the Whitehall Township municipal building, located at 3219 MacArthur Road, Whitehall, Pennsylvania 18052.
- 47) During the August 28 Inspection, Mr. Ponak spoke with Jack Meyers, Deputy Mayor, and Lee Rackus, Bureau Chief.
- 48) At all times relevant to this Complaint, Mr. Meyers and Mr. Rackus were employed by Whitehall Township.
- 49) During the August 28 Inspection, Mr. Ponak informed Mr. Meyers and Mr. Rackus that there were potential asbestos NESHAP violations at the 896 3rd Street project, and that the RACM at the Facility needed to be properly disposed of, under the supervision of an on-site, trained asbestos supervisor.
- 50) On September 3, 2013, Mr. Ponak conducted a third inspection at the Facility ("September 3 Inspection").

51) During the September 3 Inspection, there was still crushed RACM debris throughout the site.

No one was at the site.

52) During the September 3 Inspection, Mr. Ponak took six (6) photographs of the Facility.

53) All of the RACM observed during the September 3 Inspection was dry, friable, and not enclosed in leak-tight bags.

54) On September 4, 2013, Mr. Ponak spoke to Mr. Madonna over the phone ("September 4 Phone Conversation").

55) During the September 4 Phone Conversation, Mr. Ponak informed Mr. Madonna that Mr. Ponak had visited the Facility on September 3, and had observed crushed RACM debris throughout the site.

56) During the September 4 Phone Conversation, Mr. Ponak again informed Mr. Madonna that the company would need to clean up the Facility and dispose of the debris as asbestos-containing waste material.

57) On September 9, 2013, Mr. Ponak spoke to Mr. Madonna over the phone ("September 9 Phone Conversation").

58) During the September 9 Phone Conversation, Mr. Ponak informed Mr. Madonna that he would inspect the Facility to determine whether Madonna's alleged cleanup of the site was satisfactory.

59) On September 18, 2013, Mr. Ponak conducted a fourth and final inspection at the Facility ("September 18 Inspection").

60) During the September 18 Inspection, the site was backfilled, and all but a few minor pieces

of debris had been removed.

61) 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 demolition activity if the combined amount of RACM in the facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components.

62) Based on EPA's inspection evidence, Respondents were engaged in the demolition of the Facility, which included the removal from the Facility of more than 160 square feet of RACM from other facility components (i.e., siding). Therefore, 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 subject demolition.

V. VIOLATIONS

COUNT I

FAILURE TO PROVIDE WRITTEN NOTIFICATION OF INTENTION TO DEMOLISH

63) Complainant realleges the allegations contained in paragraphs 1 through 62, above.

64) Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(b).

65) Pursuant to 40 C.F.R. § 61.145(b), in relevant part only, each owner and operator of a regulated demolition activity must provide the EPA with written notice of its intention to demolish. The notice must be postmarked or delivered at least ten (10) working days before

asbestos stripping and removal work or any other activity begins.

- 66) At the time of the violations alleged in this Complaint, found in Counts I through IV, Respondent Madonna had demolished the Facility as that term is defined by 40 C.F.R. § 61.141.
- 67) The asbestos-containing transite siding referenced herein constitutes RACM as that term is defined by 40 C.F.R. § 61.141.
- 68) Respondent Madonna failed to provide written notice of its intention to demolish the Facility as required by 40 C.F.R. § 61.145(b).
- 69) Respondents' failure to comply with the notice 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 REMOVE RACM BEFORE DEMOLITION

- 70) Complainant realleges the allegations contained in paragraphs 1 through 69, above.
- 71) Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(c).
- 72) 40 C.F.R. § 61.145(c)(1) provides, in pertinent part, that each owner or operator of a demolition activity must remove all RACM from a facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
- 73) Respondents did not remove all RACM from the Facility before activity began that would,

and did, break up, dislodge, or similarly disturb the RACM.

74) Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(c)(1) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT III

FAILURE TO ADEQUATELY WET RACM

75) Complainant realleges the allegations contained in paragraphs 1 through 74, above.

76) Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(c).

77) Pursuant to 40 C.F.R. § 61.145(c)(6)(i), each owner and operator of a demolition 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.

78) At the time of the August 27 Inspection, RACM, in the form of transite siding debris, was present in debris piles around the Facility and on the adjacent Grape Street. The uncollected RACM was friable and very dry, and therefore not "adequately wet" as that term is defined at 40 C.F.R. § 61.141.

79) At the time of the September 3 Inspection, RACM, in the form of transite siding debris, was present in a debris pile and scattered throughout the site. The uncollected RACM was friable and very dry, and therefore not "adequately wet" as that term is defined at 40 C.F.R. § 61.141.

80) Respondents' failures to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) on August 28 and September 3 each constitute a separate "per day" violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT IV

FAILURE TO HAVE TRAINED REPRESENTATIVE PRESENT ON-SITE

- 81) Complainant realleges the allegations contained in paragraphs 1 through 80, above.
- 82) Pursuant to 40 C.F.R. § 61.145(a)(1), each owner and operator of a demolition activity at a facility with one hundred and sixty (160) square feet or more of RACM on other facility components must comply with the requirements of 40 C.F.R. § 61.145(c).
- 83) Pursuant to 40 C.F.R. § 61.145(c)(8), in relevant part, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility unless at least one on site representative trained in the provisions of the asbestos NESHAP regulations, and the means of complying with them, is present.
- 84) During the August 28 Inspection, there was no asbestos NESHAP trained representative (such as a foreman or management level person) on site during asbestos handling operations.
- 85) Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(c)(8), by failing to have at least one on site representative trained in the provisions of the asbestos NESHAP present during the handling of RACM, constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

VI. PROPOSED CIVIL PENALTY

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation

Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a penalty of not more than \$37,500 for each violation of the CAA that occurred after January 12, 2009. EPA proposes to assess a civil penalty of fifty two thousand, four hundred and three dollars (\$52,403) against Respondents as follows:

A. Gravity Component

Count I:

<i>August 27, 2013</i>	\$ 15,000
Failure to provide written notice of demolition (≤ 10 units) 40 C.F.R. § 61.145(b)(1)	

Count II:

<i>August 27, 2013</i>	\$ 5,000
Failure to remove RACM prior to demolition (≤ 10 units) 40 C.F.R. § 61.145(c)(1)	

Count III:

<i>August 27, 2013; September 3, 2013</i>	\$ 10,000
Failure to keep RACM adequately wet (≤ 10 units) 40 C.F.R. § 61.145(c)(6)(i)	

Count IV:

<i>August 28, 2013</i>	\$ 5,000
Failure to have trained representative on site (≤ 10 units) 40 C.F.R. § 61.145(c)(8)	

Size of the Violator	\$ 2,000
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SUBTOTAL	<u>\$ 37,000</u>
B. Inflation Adjustment Factor (subtotal x 1.4163)	<u>\$ 52,403</u>
C. Economic Benefit	<u>\$ 0</u>
TOTAL PROPOSED PENALTY:	\$52,403

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 the memorandum "Amendments to U.S. Environmental Protection Agency's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule," dated December 29, 2008 ("Inflation Memo"). Copies of the CAA Penalty Policy, Asbestos Penalty Policy, and the Inflation Memo 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 EPA's Asbestos Penalty Policy as well as the CAA Penalty Policy, both of

which were indexed for inflation in keeping with 40 C.F.R. Part 19.

EPA will consider, among other factors, a Respondent's ability to pay, to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondents' ability to pay the penalty and to continue in business based on the size of their business and the economic impact of the proposed penalty on their business. The burden of raising and demonstrating an inability to pay rests with Respondents. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the civil penalty proposed in the Complaint.

EPA's applicable Asbestos 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 (10 or fewer 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.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondents have the right to request a hearing to contest any matter of law or material

fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondents must file a written Answer to this Complaint with Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 within **thirty (30) days** of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondents dispute; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. All material facts not admitted, denied, or explained in the Answer will be considered as admitted. A copy of the Answer and all other documents filed with the Regional Hearing Clerk related to this Complaint must be sent to Jennifer J. Nearhood, Assistant Regional Counsel (3RC50), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

If Respondents fail to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing under Section 113 of the CAA, 42 U.S.C. § 7413. Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules at 40 C.F.R. Part 22. A

copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

VIII. SETTLEMENT CONFERENCE

EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

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. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Jennifer J. Nearhood, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Ms. Nearhood at (215) 814-2649 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Ms. Nearhood on your behalf. Please be advised that the Consolidated Rules at 40 C.F.R. § 22.8 prohibit any unilateral discussion of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

IX. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules, Respondents may

resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondents pay 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 Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules, Respondents may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondents agree 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 Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Jennifer J. Nearhood, Assistant Regional Counsel (3RC50), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondents 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 Respondents 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 Respondents shall constitute a waiver of Respondents' right to contest the allegations and to appeal the final order.

Payment of the penalty shall be made by sending a certified or cashier's check made payable to the "United States Treasury," as follows:

a. Mailing (via first class U.S. Postal Service Mail) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Mailing (via Overnight Delivery) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

c. All payment 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. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33

33 Liberty Street
NY, NY 10045
(Field tag 4200 of Fedwire message should read "D 68010727
Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

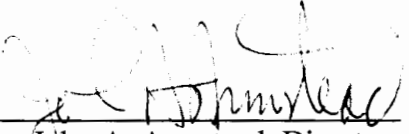
U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

- f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.
- g. Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

All payments shall also reference the above case caption and docket number, CAA-03-2014-0092. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Richard Ponak, Pesticide and Asbestos Programs Branch (3LC62), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

3.28.14
Date



John A. Armstead, Director
Land and Chemicals Division

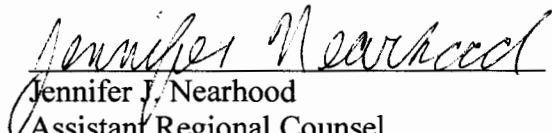
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), Docket No. CAA-03-2014-0092, and further, that I caused true and correct copies of the foregoing Complaint to be transmitted via Certified Mail – Return Receipt Requested, to the following addressees:

Vincent Madonna,
President, Madonna Enterprises, Inc.
610 3rd St.
Port Carbon, PA 17965

Edward D. Hozza, Jr.,
Mayor, Whitehall Township
3219 MacArthur Rd.
Whitehall, PA 18052

03/31/14
Date


Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029