

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Eastern Sod Farms LLC	:	
525 Black Diamond Road	:	Administrative Complaint and
Smyrna DE 19977-9669	:	Notice of Opportunity for Hearing
	:	
William H. Radford Landscape Contractors	:	
525 Black Diamond Road	:	
Smyrna DE 19977-9669	:	
	:	Docket No. CAA-03-2017-0197
RESPONDENTS	:	
	:	
Old Farmhouse Nursery	:	
525 Black Diamond Road	:	Proceeding under Section 113 of the
Smyrna DE 19977-9669	:	Clean Air Act, 42 U.S.C. § 7413
	:	
FACILITY	:	
	:	

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REGIONAL OFFICE
ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“Complainant”), issues this Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) to Eastern Sod Farms LLC and William H. Radford Landscape Contractors (collectively, “Respondents”), located at 525 Black Diamond Road, Smyrna, Delaware 19977-9669, for violations of Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412, as alleged herein. The authority to issue this Complaint is vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (“*Consolidated Rules*”), a copy of which is enclosed with this Complaint. The

Administrator's authority has been duly delegated to the signatory of this Complaint.

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, a requirement or prohibition 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.

In support of this Complaint, Complainant alleges the following:

STATUTORY AND REGULATORY AUTHORITY

1. EPA and the Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. §§ 22.1(a) (2) and 22.4.
2. Congress listed asbestos as a hazardous air pollutant in Section 112 of the CAA, 42 U.S.C. § 7412. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA 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(a)(1) of the CAA, 42 U.S. § 7414(a)(1), 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 emission standards, work practice, or operational standards for each listed hazardous air pollutant.

4. Pursuant to, *inter alia*, Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated a National Emission Standard for [Hazardous Air Pollutant] Asbestos, codified at 40 C.F.R Part 61, Subpart M (“asbestos NESHAP”), regulating, *inter alia*, the emission, handling, and disposal of asbestos by the owner or operator of a demolition or renovation activity at an affected facility.

5. 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, CAA Amendments.

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, regulated asbestos-containing material waste, and materials contaminated with asbestos including disposable equipment and clothing.

9. Pursuant to 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 1 percent asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy.

10. Pursuant to 40 C.F.R. § 61.141, "Category II nonfriable ACM" means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure.
11. Pursuant to 40 C.F.R. § 61.141, "demolition" means, in pertinent part, the intentional burning of any facility.
12. Pursuant to 40 C.F.R. § 61.141, "facility" means, in pertinent part, any institutional, commercial, public, industrial, or residential structure, installation, or building but excluding residential buildings having four or fewer dwelling units.
13. Pursuant to 40 C.F.R. § 61.141, "facility component" means any part of a facility, including equipment.
14. Pursuant to 40 C.F.R. § 61.141, "friable asbestos material" means, in pertinent part, any material containing more than 1 percent asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.
15. 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 the demolition or renovation operation, or both.
16. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), "person" means, in pertinent part, an individual, corporation, partnership, and association.

17. Pursuant to 40 C.F.R. § 61.141, "regulated asbestos-containing material (RACM)" means a) friable asbestos material, b) Category I nonfriable ACM that has become friable, c) Category I nonfriable ACM that will be or has been subject to sanding, grinding, cutting or abrading, or d) 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 40 C.F.R. Part 61, Subpart M.
18. Pursuant to 40 C.F.R. § 61.141, "remove" means to take out RACM or facility components that contain or are covered with RACM from any facility.
19. Pursuant to 40 C.F.R. § 61.141, "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.
20. Pursuant to 40 C.F.R. § 61.141, "strip" means to take off RACM from any part of a facility or facility components.

GENERAL ALLEGATIONS

21. Respondent Eastern Sod Farms LLC ("Eastern") is a limited liability company organized under the laws of Delaware with a primary business address of 525 Black Diamond Road, Smyrna, DE 19977-9669.
22. Respondent William H. Radford Landscape Contractors ("Radford") is a landscape contractor doing business in the state of Delaware with a primary business address of 525 Black Diamond Road, Smyrna, DE 19977-9669.
23. Each Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. At all times relevant to this Complaint, the Old Farmhouse Nursery (“Facility”) located at 525 Black Diamond Road, Smyrna, Delaware, 19977-9669, was used for commercial purposes and was a “facility” within the meaning of 40 C.F.R. § 61.141.

25. At all times relevant to this Complaint, Respondent Eastern owned, operated, controlled, or supervised the Facility and was an "owner or operator of a demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141.

26. On or about February 17, 2014, Bata Environmental Associates, Inc., performed an asbestos survey, sampling and analytical analysis of the Facility and identified, *inter alia*, 455 square feet of sheet flooring containing 20-25% chrysotile.

27. The report, dated February 20, 2014, of the survey by Bata Environmental Associates, Inc., stated, *inter alia*, that: “Prior to demolition or any work impacting directly or indirectly on the materials identified as or presumed to be asbestos containing,[sic] the asbestos materials potentially impacted must be removed according to the regulations of the EPA and Delaware Department of Natural Resources and Environmental Control (DNREC). Work on Asbestos materials requires specially trained and licensed workers, supervisors and companies. ... In addition to the specialized removal requirements, there is also a 10-day notification requirement to DNREC/EPA prior to demolition.”

28. On February 25, 2014, EPA received a Notification of Demolition or Renovation (“Asbestos Notice”) from Respondents. Such Asbestos Notice was postmarked February 24, 2014.

29. On March 5, 2014, a duly authorized representative of EPA (“Inspector”) conducted an inspection of the Facility to verify compliance with the asbestos NESHAP.

30. No asbestos removal or renovation or demolition was in progress at the time the EPA Inspector arrived on site at the Facility on March 5, 2014 for the inspection.
31. The Facility was not demolished at the time of the EPA Inspection on March 5, 2014.
32. During the March 5, 2014, inspection, the EPA Inspector observed dry debris from linoleum paper backing inside and outside of the Facility. The EPA inspector also observed numerous closed, translucent plastic bags containing debris, including dry linoleum paper backing debris, in a dumpster outside of the Facility.
33. During the March 5, 2014, inspection, the EPA Inspector photographed and collected a sample of the linoleum paper backing debris on the porch floor outside of the Facility.
34. During the March 5, 2014, inspection, the EPA Inspector photographed and collected a sample of the linoleum paper backing debris on the first floor inside of the Facility.
35. During the March 5, 2014, inspection, the EPA Inspector photographed and collected two samples of linoleum paper backing debris from the closed, translucent plastic bags in the dumpster outside of the Facility.
36. Each sample of the linoleum paper backing debris collected by the Inspector on March 5, 2014, described in paragraphs 33, 34 and 35 herein was determined by Criterion Laboratories, Inc., of Bensalem, Pennsylvania, using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, to contain more than 1 percent asbestos.
37. The linoleum floor paper backing debris observed by the Inspector during the March 5, 2014, inspection and described in paragraph 36 herein constitutes asbestos containing material or ACM within the meaning of 40 C.F.R. § 61.141 because it contained more than 1 percent asbestos.

38. The ACM described in paragraphs 36 and 37 herein contained either friable asbestos material, Category I nonfriable ACM that had become friable, or Category II nonfriable ACM that had a high probability of becoming, or had 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 40 C.F.R. Part 61, Subpart M, and was therefore regulated ACM within the meaning of 40 C.F.R. § 61.141.

39. During the March 5, 2014, inspection, Mr. William Radford informed the Inspector that his employees had performed the asbestos removal at the Facility.

40. On the Asbestos Notice Respondents indicated that the removal contractor was "W[illia]m H. Radford Land[scape] Contractors" and that the "site contact (Supervisor-on-site)" was "Bill Radford."

41. At some time prior to March 5, 2014, Respondent Radford commenced the stripping or removal of RACM from the Facility and/or other Facility components.

42. The combined amount of RACM stripped or removed from the Facility and other Facility components by Respondent as described in paragraph 41 herein was at least 15 square meters or 160 square feet.

43. The removal of RACM from the Facility as described in paragraph 41 herein ("Renovation") is a "renovation" within the meaning of 40 C.F.R. § 61.141.

44. At all times relevant to the violations alleged herein, Respondent Radford operated or controlled or supervised the Renovation at the Facility and was an "owner or operator of a demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141.

45. At some time after March 5, 2014, the Facility was demolished by intentional burning.

COUNT I
**(Failure to Provide Timely and Complete Written
Notice of Intent to Renovate/Demolish)**

46. The preceding paragraphs are incorporated by reference as if fully set forth herein.
47. 40 C.F.R. § 61.145(a)(1) and (4) provide, in pertinent part, that the notification requirements of 40 C.F.R. § 61.145(b) apply to each owner or operator of a demolition or renovation activity if the combined amount of RACM is at least 160 square feet on other facility components.
48. 40 C.F.R. § 61.145(b) requires, *inter alia*, that each owner or operator of a demolition or renovation activity provide EPA with written notice of its intention to demolish or renovate. Such notice must be postmarked or delivered at least 10 working days before the commencement of the asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material).
49. 40 C.F.R. § 61.145(b)(C)(4)(i)-(xvii) requires that each written notice include, *inter alia*, the following information: a description of the facility or affected part of the facility (including size, age, prior use); the procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM; estimates of the approximate amount of RACM to be removed from the facility and approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition; a description of work practices and engineering controls to be used to comply with the requirements of Subpart M, including asbestos removal and waste-handling emission control procedures; name and location of the waste disposal site where the asbestos-containing waste material will be deposited; and a certification that at least one person trained as required by 40 C.F.R. § 61.145(c)(8) will supervise the stripping and removal described by the notice; and the name and address of the waste transporter.

50. Respondents did not provide EPA with written notice of their intent to demolish or renovate the Facility that was postmarked or delivered at least 10 days before the commencement of the RACM removal at the Facility described in paragraph 41 herein as required by 40 C.F.R. § 61.145(b).

51. Respondents did not provide EPA with written notice that included all of the information required by 40 C.F.R. § 61.145(b)(C)(4)(i)-(xvii).

52. Respondents' acts or omissions as described in paragraphs 50 and 51 herein constitute violations of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT II
(Failure to Keep Removed or Stripped RACM Adequately Wet)

53. The preceding paragraphs are incorporated by reference as if fully set forth herein.

54. 40 C.F.R. § 61.145(a)(1) and (4) provide, in pertinent part, that the work practice/emission control requirements of 40 C.F.R. § 61.145(c) apply to each owner or operator of a demolition or renovation activity if the combined amount of RACM is at least 160 square feet on other facility components.

55. 40 C.F.R. § 61.145(c)(10) requires that if a facility is demolished by intentional burning all RACM, including Category I and Category II nonfriable ACM, must be removed in accordance with the asbestos NESHAP before burning.

56. 40 C.F.R. § 61.145(c)(6)(i) requires that all owners and operators of a demolition or renovation activity adequately wet all RACM, including material that has been removed or stripped, and assure that such material remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

57. Respondents failed to assure that all RACM removed or stripped from the Facility or Facility components remained wet until collected and contained or treated in preparation for disposal in

accordance with 40 C.F.R. § 61.150, as required by 40 C.F.R. § 61.145(c)(6)(i).

58. Respondents' acts or omissions as described in paragraph 57 herein constitute a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

COUNT III
(Failure to Have Trained Representative On Site)

59. The preceding paragraphs are incorporated by reference as if fully set forth herein.

60. 40 C.F.R. § 61.145(c)(8) requires, *inter alia*, that 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, and means of compliance with, the asbestos NESHAP regulations, is present at the Facility.

61. During the RACM removal described in paragraph 41 herein there was no on-site representative trained in the provisions of, and means of compliance with, the asbestos NESHAP regulations, present at the Facility, as required by 40 C.F.R. § 61.145(c)(8).

62. Respondents' acts or omissions as described in paragraph 61 herein constitute a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

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 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a civil administrative penalty of up to \$37,500 per day of violation of the CAA that occurred after December 6, 2013, through November 2, 2015. 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 (in addition to such other factors as justice may require) 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 ("statutory factors").

To develop the penalty proposed herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1992 ("CAA Penalty Policy"), and Appendix III thereto, revised May 5, 1992 ("Asbestos Penalty Policy" or "APP"), as amended by the *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation*, dated December 6, 2013 ("2013 Penalty Inflation Memo"). Because the violations alleged herein occurred entirely on or before November 2, 2015, Complainant used the inflation adjustment policy and multipliers contained in the 2013 Penalty Inflation Memo. *Transmittal of the 2017 Annual Civil Monetary Inflation Adjustment Rule*, dated January 13, 2017, at 2. Copies of the APP and applicable excerpts from the CAA Penalty Policy and penalty inflation guidance are enclosed. These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases. The proposed penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Consistent with 40 C.F.R. § 22.14(4)(i), a brief explanation of the proposed penalty follows.

The Asbestos Penalty Policy directs that Complainant determine an economic benefit component and a gravity component, which may be adjusted upward or downward as appropriate. In administrative cases under Section 113(d)(1) of the CAA the calculated penalty is plead. The gravity component of the penalty accounts for the substantive nature of the violation and the amount of units

of asbestos involved. (One unit equals the combined amount of RACM on at least 80 linear meters (260 linear feet) of pipes, or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components.) The economic benefit component seeks to recover economic benefit that a violator accrued as a result of its violative conduct.

Complainant proposes to assess a civil penalty of **Forty Thousand One Hundred Dollars (\$40,100)** against Respondent, calculated as follows:

A. Gravity Component (≤ 10 units (1600 sq. feet) of asbestos)

Count 1 - 40 C.F.R. § 61.145(b)		\$15,000
Count 2 - 40 C.F.R. § 61.145(c)(6)(i)		5,000
Count 3 - 40 C.F.R. § 61.145(c)(8)		5,000
Size of the Violator		<u>2,000</u>
SUBTOTAL		\$27,000
Inflation adjustment (unrounded)	X	<u>1,4853</u>
		\$40,103

B. Economic Benefit Unknown

TOTAL PROPOSED PENALTY: \$40,100

EPA will consider, among other factors, Respondents' ability to pay to the civil penalty proposed herein. The proposed penalty reflects a presumption of Respondents' ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. Complainant has insufficient information to determine the net worth of Respondents at this time, but presumes it is less than \$100,000 (putting Respondents in the smallest category). 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 herein.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Each Respondent has 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 the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 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 each Respondent has any knowledge. If a Respondent has 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 each Respondent disputes; 3) the basis for opposing any proposed relief; and 4) whether a hearing is requested. All material facts not denied in the Answer will be considered as admitted. A copy of the Answer filed with the Regional Hearing Clerk must be sent to Janet E. Sharke (3RC50), Senior Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

If a Respondent fails 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 as to that Respondent 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 penalty 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*, 40 C.F.R. Part 22.

SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondents may request a settlement conference with Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE EACH RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the settling parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the settling Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please have your counsel contact Janet E. Sharke, Senior Assistant Regional Counsel, at (215) 814-2689, prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve each Respondent of its responsibility to file an Answer within thirty (30) days following service of this Complaint.

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. If Respondents pay the specific penalty proposed in this Complaint within 30 days of receiving this

Complaint, then, pursuant to Section 22.18(a)(1) of the *Consolidated Rules*, 40 C.F.R. § 22.18(a)(1), 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 Section 22.18(a)(2) of the *Consolidated Rules*, 40 C.F.R. § 22.18(a)(2), 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 the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and a copy shall be provided to Janet E. Sharke (3RC50), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 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 Respondents to default pursuant to Section 22.17 of the *Consolidated Rules*, 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with Section 22.18(a)(3) of the *Consolidated Rules*, 40 C.F.R. § 22.18(a)(3), 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 herein and to appeal the final order.

Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below:

All checks shall be made payable to 'Treasurer, United States of America' and shall be mailed to the attention of 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. Overnight deliveries shall be sent to U.S. Bank, Government Lockbox 979077, US EPA Fines & Penalties, 1005 Convention Plaza, SL-MO-C2-GL, St. Louis, MO 63101. Contact Craig Steffen: 513-487-2091.

All electronic funds transfer payments shall be directed to Federal Reserve Bank of New York, ABA: 021030004, Account No: 68010727, SWIFT address: FRNYUS33, 33 Liberty Street, New York NY 10045. (Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”)

Payments through ACH shall be directed to 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

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.

All payments also shall reference Respondents’ names and addresses and the EPA Docket No. CAA-2017-03-0197. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer shall be mailed to Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Janet E. Sharke (3RC50), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent Complainant as the party in this case: the Region III Office of Regional Counsel; the Region III Land & Chemicals Division; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding.

Please be advised that the *Consolidated Rules* prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

9-27-2017

Date



Martha Shimkin, Acting 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, Docket No. CAA-03-2017-0197 (“Complaint”), and further, that I caused true and correct copies of the foregoing Complaint to be transmitted via United Parcel Service overnight delivery and Certified Mail - Return Receipt Requested, to:

William H. Radford
President, Eastern Sod Farms LLC
William H. Radford Landscape Contractors
525 Black Diamond Road
Smyrna, DE 19977-9669

Thomas H. Kovach, Esq.
A.M. Saccullo Legal LLC
27 Crimson King Drive
Bear, DE 19701

9/28/2017
Date



Janet E. Sharke
Senior Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

