

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

IN THE MATTER OF:

CVS Project
11-13 York Road
Warminster, Pennsylvania

Facility,

EPA Docket No.: CAA-03-2011-0191

Summit Realty Advisors, LLC
8 Devonshires Court
Blue Bell, Pennsylvania 19422

H. Carlson & Sons
registered as Carlco Construction Corp.
7201 Black Horse Pike
Mays Landing, New Jersey

Leon Ray Martin Excavating Inc.
1435 Dry Tavern Road
Denver, Pennsylvania 17517

Respondents.

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

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113(a)(3) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(a)(3) and (d), the federal regulations set forth at 40 C.F.R. Part 61, Subpart M, 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 of Practice”). The Administrator has delegated her authority, under the CAA, to the Regional Administrators, and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director, Land and Chemicals Division (“Complainant”).

The Respondents in this action are Summit Realty Advisors, LLC (Summit Realty”), H. Carlson & Sons (“H. Carlson”), and Leon Ray Martin Excavating, Inc. (“LRM”), hereinafter,

collectively referred to as "Respondents." By issuing this Complaint, Complainant alleges a violation by Respondents of Section 112 of the CAA, 42 U.S.C. § 7412 and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 61, Subpart M (also known as the "asbestos NESHAP"), in relation to their failure to provide written notice of a demolition activity located at 11-13 York Road, Warminster, Pennsylvania.

In support of its Complaint, Complainant alleges the following:

I. JURISDICTION

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned 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.

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 emission standards.
4. EPA listed asbestos as a hazardous air pollutant under the authority of 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 - 61.156. 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.

III. DEFINITIONS

5. Pursuant to 40 C.F.R. § 61.141, "adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates.

6. Pursuant to 40 C.F.R. § 61.141, "asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
7. Pursuant to 40 C.F.R. § 61.141, "asbestos-containing waste materials" means, in pertinent part, mill tailings or any waste that contains commercial asbestos and is generated by a source, subject to the provisions of the asbestos NESHAP, including regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.
8. Pursuant to 40 C.F.R. § 61.141, "Category I nonfriable asbestos-containing material" 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.
9. 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.
10. Pursuant to 40 C.F.R. § 61.141, "facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building.
11. Pursuant to 40 C.F.R. § 61.141, "facility component" means any part of a facility, including equipment.
12. 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.
13. 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.
14. Pursuant to 40 C.F.R. § 61.141, "regulated asbestos-containing material ("RACM")" means, in pertinent part, friable asbestos material or Category I nonfriable asbestos containing material ("ACM") that has become friable or Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading.

15. 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 regulated asbestos-containing material from a facility component.
16. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include an individual, corporation, partnership, (or) association.

III. GENERAL ALLEGATIONS

17. Respondent H. Carlson is a state of New Jersey corporation which performs nonresidential construction work. At all times relevant to this Complaint, H. Carlson was engaged in a demolition operation which included the demolition of property located at 11-13 York, Road, Warminster, Pennsylvania ("the Facility"). Said demolition operation was operated, controlled or supervised by H. Carlson.
18. Respondent LRM is a Commonwealth of Pennsylvania corporation who operates as an excavation contractor. At all times relevant to this Complaint, LRM was engaged in a demolition operation which included the demolition of the Facility. Said demolition operation was operated, controlled or supervised by LRM.
19. Respondent Summit Realty is a limited liability company registered in the Commonwealth of Pennsylvania. At all times relevant to this Complaint, Summit Realty was the current owner/operator of the subject Facility and remains the title owner of the real property upon which the demolished Facility was built.
20. 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).
21. At all times relevant to this Complaint, each Respondent was the "owner or operator of a demolition or renovation activity" as that term is defined at 40 C.F.R. § 61.141.
22. The Facility is a "facility" within the meaning of 40 C.F.R. § 61.141.
23. On June 2, 2010, pursuant to a tip/complaint, a duly authorized representative of EPA (the "Inspector") conducted an inspection of the remains of the Facility to verify Respondents' compliance with the asbestos NESHAP, 40 C.F.R. §§ 61.141 et seq.
24. At the time of the June 2, 2010 inspection, the EPA Inspector observed that the Facility had been completely demolished; however, demolition debris piles (e.g. pipe insulation, floor tile, plaster, and roofing and other "Category I nonfriable asbestos-containing

material” pursuant to 40 C.F.R. §61.141) were observed at the Facility. The EPA Inspector took samples and photographs of the suspect asbestos containing materials.

25. Subsequent Polarized Light Microscopy tests of the bulk samples were taken by the EPA Inspector on June 2, 2010. The samples collected were found to be positive for “chrysotile” asbestos, as described in the table below:

Material Type	Percent Asbestos
Brown Floor Tile 100795-001RP	18%
Tan Floor Tile 100795-002RP	15%
Brown Floor Tile 100795-005RP	20%
Tan Floor Tile 100795-007RP	12%
Gray Floor Tile 100795-008RP	12%
Gray Material 100795-009RP	60%
Gray Material 100795-010RP	60%

26. During the inspection, the EPA Inspector observed that some suspect asbestos-containing materials could be crumbled, pulverized, or reduced to powder by hand pressure and was therefore “friable”. The EPA Inspector also observed that some suspect ACM were “Category I nonfriable ACM” that had become “friable” as well as “Category I nonfriable ACM” that had been subjected to sanding, grinding, cutting, or abrading.
27. Some of the demolition debris observed by the EPA Inspector at the Facility during the June 2, 2010 inspection constitutes “Friable asbestos material,” within the meaning of 40 C.F.R. §61.141 because it contained more than one percent asbestos, as determined using the method specified in 40 C.F.R. Part 763, Polarized Light Microscopy and because it was able to be crumbled, pulverized or reduced to powder by hand pressure. The EPA Inspector also observed that some suspect ACM were “Category I nonfriable asbestos-containing material” within the meaning of 40 C.F.R. §61.141, that had become “friable,” as well as “Category I nonfriable ACM” that had been subjected to sanding, grinding, cutting, or abrading.

28. Pursuant to 40 C.F.R. § 61.145(a)(1), and in relevant part only, the notification requirements of paragraph (b) of 40 C.F.R. § 61.145 apply to the owner or operator of a Facility being demolished if the combined amount of RACM is more than 260 linear meters on pipes, or 160 square feet on other facility components.
29. Pursuant to 40 C.F.R. § 61.145(a)(2), and in relevant part only, the notification requirements of paragraph (b) of 40 C.F.R. § 61.145 apply to the owner or operator of a Facility being demolished if the combined amount of RACM is less than 260 linear meters on pipes, or 160 square feet on other facility components.
30. Before the time of inspection, and based upon observations and evidence collected by the EPA Inspector during the June 2, 2010 inspection, Respondents were engaged in a demolition of a facility which contained unknown amounts of RACM. Therefore, pursuant to 40 C.F.R. § 61.145(a), the foregoing requirement(s) of paragraph (b) of 40 C.F.R. § 61.145 applied to the demolition.
31. The activities conducted by Respondents in removing RACM from the Facility referenced above constitute a “demolition” or “demolition activity” within the meaning of 40 C.F.R. § 61.141.

IV. VIOLATION

32. The allegations contained in Paragraphs 1 - 31, above, are incorporated herein by reference.
33. Pursuant to 40 C.F.R. § 61.145(b), and in relevant part only, owners and operators of demolition activities must provide the Administrator with, inter alia, written notice of intention to demolish at least 10 working days before demolition activity begins.
34. At or about the time of the June 2, 2010 inspection, the EPA Inspector determined that the Facility, which contained an unknown amount of RACM, had been demolished without providing the requisite written notice of intent to demolish set forth at 40 C.F.R. § 61.145(b).
35. Respondents’ failure to comply with the requirement of 40 C.F.R. § 61.145(b) prior to

demolition of the Facility constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

V. 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. Parts 19 and 27, authorize a penalty of not more than \$32,500 for each violation of the CAA that occurred after March 15, 2004. EPA proposes to assess a civil penalty of twenty three thousand, two hundred forty-five dollars (\$23,245.00) against Respondents as follows:

A. Gravity Component

Failure to provide notice of intention to demolish	\$15,000.00
40 C.F.R. § 61.145(b) - Size of the Violator	<u>\$ 2,000.00</u>

Subtotal \$ 17,000.00

B. Adjusted Gravity Component
Multiplication by 1.4163
Upwards Adjustment for Inflation
40 C.F.R. Parts 19 & 27 \$ 21,245.00

C. Economic Benefit \$ 0.00

TOTAL PROPOSED PENALTY: \$23,245.00

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 Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004), dated September 21, 2004 ("Inflation Policy"). Copies of the CAA Penalty Policy, Asbestos Penalty Policy, and the Inflation Policy 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, Respondents' 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 businesses and the economic impact of the proposed penalty on their businesses. 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 proposed civil penalty assessed in the Complaint.

EPA's applicable 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 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.

VI. 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 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 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 denied 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 Donzetta Thomas (3RC50), Senior Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

If any 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 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).

VII. 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 Donzetta Thomas, Senior Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Ms. Thomas at (215) 814-2474 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. Thomas 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.

VIII. 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 the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Ms. Donzetta Thomas (3RC50), Senior Assistant Regional Counsel, 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' rights 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 Treasurer of the United States of America, in care of:

EPA Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be mailed at the same time payment is made to: Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Donzetta Thomas (3RC50), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

5/25/2011
Date

Harry J. Dow for AF
Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Administrative Complaint and Notice of Opportunity for Hearing (re: Docket No. CAA-03-2011-0191) was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified return receipt requested first-class U.S. Mail, to the following persons:

John J. Zaharchuk, Principal
Summit Realty Advisors, LLC
8 Devonshires Court
Blue Bell, Pennsylvania 19422

Harry K. Carlson, President
H. Carlson & Sons
7201 Black Horse Pike
Mays Landing, New Jersey

Leon Ray Martin, President
Leon Ray Martin Excavating Inc.
1435 Dry Tavern Road
Denver, Pennsylvania 17517

5/25/11
Date



Donzetta Thomas (3RC50)
Sr. Assistant Regional Counsel