



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2012 SEP 28 P 4: 41

REGIONAL HEARING
CLERK

SEP 28 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gilberto Padilla
AGA Environmental Inc.
1804 Plaza Avenue
New Hyde Park, NY 11040

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: AGA Environmental Inc.
Docket No. CAA 02-2012-1225

Dear Mr. Padilla:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to AGA Environmental Inc. pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act), 42 U.S.C. § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 61, Subpart M. The total amount of the penalty proposed by the Complaint is \$29,176.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is John F. Dolinar, who can be reached at (212) 637-3204 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement," EPA is prepared to pursue settlement of this matter immediately.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

In re:

AGA Environmental Inc.

Respondent,

In a proceeding under
Section 113(d) of the Clean Air Act

**COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CAA-02-2012-1225

PRELIMINARY STATEMENT

In this Complaint and Notice of Opportunity to Request a Hearing (“Complaint”), the United States Environmental Protection Agency (“EPA”) alleges that Respondent AGA Environmental Inc. (“AGA” or “Respondent”) violated Sections 112 and 114 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7412 and 7414, the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (the “Asbestos NESHAP”), which was promulgated pursuant to those sections of the Act, and an April 2011 CAA Section 113 Compliance Order. The Complaint proposes a civil penalty of \$29,176 for Respondent’s violations and is brought pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and EPA’s 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 (the “Consolidated Rules of Practice”). A copy of the Consolidated Rules of Practice is enclosed with the service copy of this Complaint.

LEGAL BACKGROUND

A. EPA's Authority to Enforce the CAA and its Implementing Regulations

1. Section 113(d)(1) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Section 112 or Section 114 of the Act.

2. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes 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.

3. Section 113(d)(2)(A) of the CAA provides that any administrative penalty assessed under Section 113(d)(1) of the CAA shall be assessed only after notice and an opportunity for a hearing, and that the EPA Administrator shall promulgate rules for such hearings. The Consolidated Rules of Practice contain those rules and apply to this Complaint.

4. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the

State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

B. Sections 112 and 114 of the CAA

5. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.

6. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

7. Section 112(q) of the Act provides that any standard promulgated pursuant to Section 112 and in effect prior to the 1990 CAA amendments remains in force and effect after those amendments.

8. Section 112(c)(1)(B) of the Act as it existed prior to the 1990 CAA amendments, and Section 112(i)(3)(A) of the Act as it exists today, require new and existing sources to comply with standards promulgated pursuant to Section 112.

9. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under the Act.

C. The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M

10. In general, the Asbestos NESHAP, which was promulgated by EPA pursuant to Sections 112 and 114 of the Act, contains work practice requirements that apply to the owners

and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity.

11. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "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."

12. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are "demolitions."

13. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "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."

14. The term "facility" is defined by 40 C.F.R. § 61.141 to include, among other things, "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units)."

15. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

16. The term "regulated asbestos-containing material" (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

17. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

18. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which the Asbestos NESHAP applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins. 40 C.F.R. § 61.145(b) further provides, in subparagraph (iv), that the owner or operator of the demolition or renovation activity must update the original notice if it turns out that the asbestos stripping or removal activity described in that notice will begin on a date other than the one listed in the original notice. The updated notice must be provided no later than the original start date.

19. 40 C.F.R. § 61.141 defines "working day" as Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

FINDINGS OF FACT

20. Respondent is a corporation organized under the laws of the State of New York.

21. In April 2011, EPA Region 2 issued Respondent a Compliance Order pursuant to Section 113 of the CAA.

22. EPA's April 2011 Compliance Order, attached hereto as Exhibit A, found that Respondent had violated the 10 working day notice requirement found in 40 C.F.R. § 61.145(b)(3) of the Asbestos NESHAP in May 2010, September 2010 and February 2011.

23. EPA's April 2011 Compliance Order ordered Respondent to perform all renovation/demolition activities in any facility in which friable asbestos is present "in compliance with all applicable provisions of 40 C.F.R. Part 61, Subpart M, including, without limitation, the notification requirements set forth in 40 C.F.R. § 61.145(b)."

24. In October 2011, EPA Region 2 received a "Notification of Demolition and Renovation" notice indicating that Respondent was going to conduct an "Asbestos Removal" beginning on November 1, 2011 at Findlay Plaza, 1201 Findlay Avenue, Bronx, New York. The notice (the "Bronx Notice") was dated October 21, 2011, less than six working days before the November 1, 2011, start date listed in the notice. In addition, the Bronx Notice indicated that Findlay Plaza was an apartment building and that the amount of RACM in question was 420 linear feet of pipe insulation.

25. Sometime after February 6, 2012, EPA Region 2 received a "Notification of Demolition and Renovation" notice indicating that Respondent was going to begin an "Asbestos Removal" at the James E. Allen School at 762 Deer Park Road in Dix Hills, New York, on February 17, 2012. The notice (the "Dix Hills Notice") was dated February 6, 2012, and arrived in an envelope postmarked February 6, 2012, which was less than 10 working days before the February 17, 2012, start date. The Dix Hills Notice indicated that the amount of RACM in question was 1,775 square feet of ceiling fire proofing.

26. Sometime after February 6, 2012, EPA Region 2 received a "Notification of Demolition and Renovation" notice indicating that Respondent was going to begin an "Asbestos Removal" at the James E. Allen High School at 36 Carman Road in Melville, New York, on February 17, 2012. The notice (the "Melville Notice") was dated February 6, 2012, and arrived in an envelope postmarked February 6, 2012, which was less than 10 working days before the

February 17, 2012, start date. The Melville Notice indicated that the amount of RACM in question was 1,950 square feet of ceiling fire proofing.

27. EPA Region 2 did not receive an updated notice for the work identified in the Bronx Notice, the Dix Hills Notice or the Melville Notice.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

28. Respondent is a "person" within the meaning of Section 302(e) of the Act and is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

29. Respondent was the operator of three "renovation" activities within the meaning of 40 C.F.R. § 61.141. The three renovation activities are identified in paragraphs 24, 25 and 26 above.

30. Respondent failed to provided at least ten working days notice, as required by 40 C.F.R. § 61.145(b), of the three renovation activities identified above in paragraphs 24, 25 and 26 above.

COUNT 1

31. Paragraphs 1-30 are re-alleged and incorporated herein by reference.

32. Respondent violated section 40 C.F.R. § 61.145(b) by failing to provide ten working days notice of the Findlay Plaza renovation and asbestos removal activities described in paragraph 24 above.

33. Respondent's violation of 40 C.F.R. § 61.145(b) is a violation of Sections 112 and 114 of the CAA.

COUNT 2

34. Paragraphs 1-30 are re-alleged and incorporated herein by reference.

35. Respondent violated section 40 C.F.R. § 61.145(b) by failing to provide ten working days notice of the James E. Allen School renovation and asbestos removal activities described in paragraph 25 above.

36. Respondent's violation of 40 C.F.R. § 61.145(b) is a violation of Sections 112 and 114 of the CAA.

COUNT 3

37. Paragraphs 1-30 are re-alleged and incorporated herein by reference.

38. Respondent violated section 40 C.F.R. § 61.145(b) by failing to provide ten working days notice of the James E. Allen High School renovation and asbestos removal activities described in paragraph 26 above.

39. Respondent's violation of 40 C.F.R. § 61.145(b) is a violation of Sections 112 and 114 of the CAA.

COUNT 4

40. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

41. Each of the three violations alleged above in Counts 1, 2 and 3 is also a violation of EPA's April 2011 Compliance Order.

PROPOSED CIVIL PENALTY

Based on the statutory penalty assessment criteria set forth in CAA Section 113(e), and on the guidance provided by EPA's Clean Air Act Stationary Source Civil Penalty Policy (the "CAA Penalty Policy"), the Complainant proposes a civil penalty of \$29,176, total, for all of the violations alleged in this Complaint.

A. The Statutory Penalty Assessment Criteria and EPA's Penalty Policy for Violations of the Asbestos NESHAP

Section 113(d) of the CAA provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act, including but not limited to violations of any requirements or prohibitions of any rules or orders issued or promulgated under the Act. However, the statutory maximum of \$25,000 per day has been adjusted upward to account for inflation, pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"). Thus, the statutory maximum is \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004, \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and \$37,500 for violations that occurred after January 12, 2009. See 40 C.F.R. Part 19, Table 1. Part 19 indicates that the maximum civil penalty has been upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted 17.23% for violations that occurred between March 15, 2004 and January 12, 2009, for a total of 28.95%, and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, Section 113(e) of the CAA requires that the Administrator consider 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, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

EPA's CAA Penalty Policy reflects EPA's application of the factors set forth in Section 113(e) of the Act and includes an appendix, Appendix III, which provides guidance on how EPA is to calculate penalties for violations of the Asbestos NESHAP. The CAA Penalty Policy

indicates that EPA is to develop a proposed penalty based on two components: the economic benefit component and the gravity component, although the economic benefit can be omitted where it is less than \$5000. The gravity component includes of specific dollar amounts for specific types of penalties, as well as specific dollar amounts depending on the size of the violator. Finally, consistent with the DCIA and 40 C.F.R. Part 19, when proposing a penalty for a specific violation, EPA adjusts the dollar figures listed in the CAA Penalty Policy and Appendix III upward for inflation. Specifically, the penalties are upwardly adjusted 10% for violations that occurred on or after January 30, 1997, adjusted an additional 17.23% for violations that occurred after March 15, 2004 for a total of 28.95% and adjusted again for a total of 41.63% upward adjustment for violations occurring after January 12, 2009.

B. EPA's Proposed Penalty in this Case

EPA has considered the statutory penalty assessment factors and the CAA Penalty Policy and determined that the total penalty for the violations alleged in this Complaint should be \$29,176. The short narrative below explains the reasoning behind EPA's proposed penalty.

First, with respect to the economic benefit component, EPA has determined that the economic benefit of the violations was less than \$5000. Therefore, EPA has not included an economic benefit component in its proposed penalty.

Second, with respect to the gravity component, Appendix III to the CAA Penalty Policy (the "Asbestos Penalty Policy") directs EPA to propose a \$200 penalty for all asbestos notifications that the agency determines were submitted later than they were required to be submitted, but still prior to commencement of the renovation or demolition in question, which is the case with the three notices at issue here. Therefore, EPA proposes a \$200 penalty for each of the violations alleged in Counts 1 through 3. In addition, the CAA Penalty Policy directs EPA to

propose a \$15,000 penalty for a violation of a compliance order. Therefore, EPA proposes a \$15,000 penalty for the violation alleged in Count 4. Finally, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator determined by the violator's net worth. Based on the number of asbestos abatement jobs performed by Respondent in 2012, EPA estimates that Respondent's net worth is between \$100,001 and \$1,000,000, which falls within the range for which the CAA Penalty Policy directs a \$5,000 penalty. Therefore, EPA proposes a penalty of \$5,000 for the size of violator component. However, EPA may adjust the size of violator component upward or downward should information be discovered that indicates the Respondent's net worth is less or more than estimated.

The penalties proposed above result in a total proposed penalty of \$20,600, prior to adjusting for inflation. Consistent with the DCIA and 40 C.F.R. Part 19, EPA has adjusted that penalty upward by 41.63%, because the violations occurred after January 12, 2009. The total inflation adjustment is \$8,576, resulting in a final proposed penalty of \$29,176.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. The hearing is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.*, and the procedures set forth in EPA's Consolidated Rules of Practice.

In order to request a hearing you must file a written Answer to this Complaint along with a written request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

John Dolinar
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege to constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

SETTLEMENT

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibility of settlement by engaging in informal settlement communications with EPA counsel. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Those times are set by the Consolidated Rules of Practice.

You may contact EPA counsel at the address listed above to discuss settlement, the alleged violations and/or the amount of the proposed penalty, whether or not you intend to file an Answer and/or request a hearing. If you are represented by legal counsel, your counsel should contact EPA. If a settlement is reached, it will be in the form of a written Consent Agreement and accompanying Final Order.

PAYMENT OF PENALTY IN LIEU OF ANSWER, HEARING AND/OR SETTLEMENT

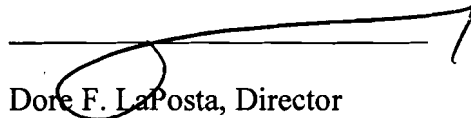
Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed

penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: SEPTEMBER 28, 2012



Dore F. LaPosta, Director
Division of Enforcement and Compliance Assistance

TO: Mr. Gilberto Padilla
AGA Environmental Inc.
1804 Plaza Avenue
New Hyde Park, NY 11040

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

In re:

AGA Environmental Inc.

Respondent,

In a proceeding under
Section 113(d) of the Clean Air Act

CAA-02-2012-1225

Exhibit A to Complaint

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

AGA Environmental, Inc.
New Hyde Park, New York

Respondent

COMPLIANCE ORDER

Index No. CAA-02-2011-1003

STATUTORY AUTHORITY

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (DECA) issues this COMPLIANCE ORDER, pursuant to 42 U.S.C. § 7401 et. seq., Clean Air Act (Act), Section 113(a), to AGA Environmental, Inc. (Respondent) located in New Hyde Park, New York. The authority to find a violation and issue this Compliance Order has been delegated to the Director of DECA from the Administrator through the Regional Administrator.

Section 112 of the Act requires the Administrator to promulgate regulations establishing emission standards, referred to as National Emission Standards for Hazardous Air Pollutants (NESHAPs), for each category or subcategory of major and area sources of hazardous air pollutants (HAPs).

Section 114(a)(1) authorizes the EPA Administrator to require owners or operators of stationary emission sources to submit specific information regarding their facilities, establish and maintain records, make reports, sample and analyze stack and fugitive emissions, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act. Section 113(a)(3) of the Act authorizes issuance of Orders where EPA finds a person violated rules promulgated pursuant to Sections 112 and 114 of the Act. These standards include 40 C.F.R. Part 61, Subpart M, the Asbestos NESHAP.

STATUTORY AND REGULATORY BACKGROUND

1. 40 C.F.R. § 61.141 defines "renovation" to include altering a facility or one or more facility components in any way, including the stripping or removal of Regulated Asbestos-Containing Material (RACM) from a facility component.
2. 40 C.F.R. § 61.141 defines "demolition" to include an operation in which load-supporting structural members are wrecked or taken out.
3. 40 C.F.R. § 61.141 defines "facility" as any institutional, commercial, public, industrial, or residential structure or building including condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units.
4. 40 C.F.R. § 61.145(a)(1)(i) and (ii) and 40 C.F.R. § 61.145(a)(4)(i) and (ii) provide that the requirements of 40 C.F.R. § 61.145(b) and (c) apply to the owners and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear

meters (260 linear feet) on 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 where the length or area could not be measured previously.

5. 40 C.F.R. § 61.141 defines an "owner or operator of a demolition or renovation activity" as "any person who owns, leases, operates, controls or supervises the facility being renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operations, or both."

6. 40 C.F.R. § 61.145(b) requires an owner or operator of an affected demolition or renovation activity to provide the Administrator with written notice of intention to demolish or renovate. For demolition or renovation activities described in 40 C.F.R. § 61.145(a), said notice must be given at least 10 working days before asbestos stripping or removal work or any other activity begins, as required by 40 C.F.R. § 61.145(b)(3), and must include all of the information described in 40 C.F.R. § 61.145(b)(4).

7. 40 C.F.R. § 61.141 defines working day as Monday through Friday.

FINDINGS OF FACT

8. In September 2010, November 2010 and February 2011, Respondent submitted notices to EPA that indicated that it was the operator of asbestos renovation activities in New York State.

9. Respondent is an owner or operator of an affected demolition or renovation activity, as defined by 40 C.F.R. § 61.141 and 40 C.F.R. § 61.145(b).

10. The notifications regarding the sites listed in the table below indicated the start dates of asbestos removal provided in the table and were postmarked on the dates provided in the table.

Site Name	Site Address	Postmark Date	Job Start Date	Leadtime in Net Workdays
Manhattan Psychiatric Center	600 East 125 th Street (Wards Island) New York, NY 10035	9/21/2010	10/1/2010	8
Pomonok Houses – Building #4	65-60 Parsons Boulevard Fresh Meadows, NY 11365	5/5/10	5/15/10	7
Nathan Kline Research Center	140 Old Orangeburg Road Orangeburg, NY 10962	2/5/2011	2/14/2011	5

11. Respondent's failures to submit the notifications, discussed above in paragraph 10, required by 40 C.F.R. § 61.145(b)(3) and specified in paragraph 6, constitute violation of Sections 112 and 114 of the Act and 40 C.F.R. § 61.145(b) of the Asbestos NESHAP.

ORDER

In concurrence with the Findings of Fact above, pursuant to Section 113(a)(4) of the Act, IT IS DETERMINED AND ORDERED that:

I.

The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

II.

Respondent shall perform all renovation/demolition operations in these facilities, and any and all other facilities in which friable asbestos is present, in compliance with all applicable provisions of 40 C.F.R. Part 61, Subpart M, including, without limitation, the notification requirements set forth in 40 C.F.R. § 61.145(b), at all times.

BUSINESS CONFIDENTIALITY

Respondent may assert a business confidentiality claim covering part or all of the information this Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B and 41 Fed. Reg. 36,902 (1976). If Respondent does not assert a confidentiality claim, EPA may make the information available to the public without further notice to Respondent.

ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation of the Act:

- issue an administrative penalty order, for penalties up to \$25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004, \$32,500 per day for each violation that occurs on or after March 15, 2004, and \$37,500 per day for each violation that occurs after January 12, 2009, in accordance with the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq.* (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA; and
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Failure to comply with this Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act and nothing in this Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party may be declared ineligible for federal contracts, grants, and loans. (42 U.S.C. § 7606, 40 C.F.R. Part 15, and Executive Order 11738).

PENALTY ASSESSMENT CRITERIA

Section 113 (e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or Section 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of a penalty to be assessed, 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, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and such other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of the violation. For purposes of determining the number of the days of the violation, the days of violation shall be presumed to include the day the violation began and every day thereafter until Respondent establishes that

continuous compliance has been achieved. If Respondent can prove, by the preponderance of the evidence, that there were intervening days during which no violation occurred or that the violation was not continuous in nature, then the EPA will reduce the penalty accordingly.

EFFECTIVE DATE

OPPORTUNITY FOR A CONFERENCE

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violation(s) alleged in this Order. This conference will enable Respondent to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may arrange to have legal counsel.


Respondent's request for a conference, to be held no later than thirty (30) days from receipt of this Order, must be confirmed in writing within five (5) days of receipt of this Order. If the requested conference is held, the Order shall become effective ten (10) days after the conference is held.

If the Respondent does not request a meeting within five (5) days of receipt of this Order, the above Order shall become effective five (5) days from its receipt. The request for a conference, or other inquiries concerning this Order, should be made in writing to:

John F. Dolinar, Esq.
U.S. Environmental Protection Agency-Region 2
Office of Regional Counsel, Air Branch
290 Broadway - 16th Floor
New York, NY 10007-1866
(212) 637-3204

Notwithstanding the effective date of this Order and opportunity for conference discussed above, the Respondent must comply with all applicable requirements of the Act.

Dated: APRIL 19, 2011



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency – Region 2

To: Gilberto Padilla, Chief Executive Officer
AGA Environmental, Inc.
1804 Plaza Avenue
New Hyde Park, NY 11040

cc: Christopher Alonge, Associate Safety & Health Engineer
New York State Department of Labor (Building 12–Room 154)
State Office Building & Campus
Albany, NY 12240-0100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON April 19, 2011, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7005-3110-0000-5947-5119 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Gilberto Padilla, CEO
AGA Environmental, Inc.
1804 Plaza Avenue
New Hyde Park, New York 11040**


Geraldo Villaran

CERTIFICATE OF SERVICE

I certify that I caused the attached Compliant and Notice of Opportunity to be sent in the following manner to the addressees listed below on September 28, 2012.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

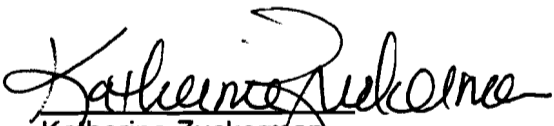
Copy by Hand to:

John Dolinar
Assistant Regional Counsel
U.S. Environmental Protection Agency
Air Branch, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by (*Certified*) Mail to:

Mr. Gilberto Padilla
AGA Environmental Inc.
1804 Plaza Avenue
New Hyde Park, NY 11040

Dated: September 28, 2012


Katherine Zuckerman
Air Branch Secretary
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2