



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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2008 OCT -1 PM 3:32  
REGIONAL HEARING  
CLERK

SEP 30 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Jeffrey Simons, Superintendent  
Rome City School District  
112 East Thomas Street  
Rome, New York 13440

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**  
In the matter of: Sunshine Environmental Services, Inc. & Rome City School District  
Docket No. CAA 02-2008-1221.

Dear Mr. Simons:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Sunshine Environmental Services, Inc., and Rome City School District, 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, National Emissions Standards for Asbestos. The total amount of the penalty proposed by the Complaint is \$104,063.

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 Conference," EPA is prepared to pursue settlement of this matter immediately.

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A  
HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the  
Administrative Assessment of Civil Penalties and the Revocation or  
Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy, and  
Appendix III, Asbestos Demolitions & Renovation Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and  
one copy of both the Complaint and Certificate of Service):

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

Counsel on behalf of EPA:

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

New York State Department of Labor

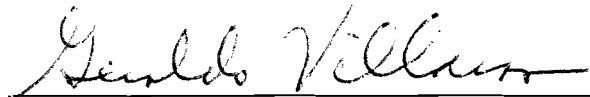
Blaise Thomas, Associate Safety & Health Engineer  
New York State Department of Labor (Building 12 – Room 154)  
State Office Building & Campus  
Albany, NY 12240-0100

bcc: ACB Source File  
R. Hughes, DECA-ACB  
J. Dolinar, ORC-AIR  
F. Mills, ORC-AIR

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY THAT ON September 30, 2008, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBER 7002-2030-0006-5360-1250 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):**

**Mr. Jeffrey Simons, Superintendent  
Rome City School District  
112 East Thomas Street  
Rome, New York 13440**

A handwritten signature in black ink, reading "Gerald Villaran", written over a horizontal line.

**Geraldo Villaran**



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

SEP 30 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Russ Buell, President  
Sunshine Environmental Services, Inc.  
379 North Stafford Avenue  
Waterville, New York 13480

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Dore LaPosta, Director  
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U.S. Environmental Protection Agency, Region 2  
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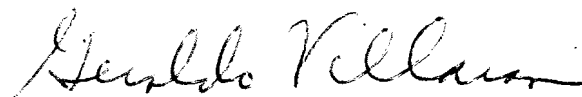
Blaise Thomas, Associate Safety & Health Engineer  
New York State Department of Labor (Building 12 – Room 154)  
State Office Building & Campus  
Albany, NY 12240-0100

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**Mr. Russ Buell, President  
Sunshine Environmental Services, inc.  
379 North Stafford Avenue  
Waterville, New York 13480**

A handwritten signature in cursive script, reading "Gerald Villaran", written over a horizontal line.

**Geraldo Villaran**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2008 OCT - 1 PM 3: 32  
REGIONAL HEARING  
CLERK

In re:  
Sunshine Environmental Services, Inc.  
Waterville, New York  
&  
Rome City School District  
Rome, New York

Respondents

In a proceeding under the Clean Air Act,  
42 U.S.C. § 7401 et seq., Section 113

COMPLAINT  
and  
NOTICE OF OPPORTUNITY  
TO REQUEST A HEARING

CAA-02-2008-1221

**Complaint**

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity to Request a Hearing (Complaint) and proposes to assess penalties pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (CAA or "the Act"), 42 U.S.C. § 7413, Section 113, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who is duly delegated the authority to issue Complaints on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

EPA alleges that Respondents violated, or are in violation of, requirements or prohibitions of Sections 112 and/or 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M, the national emission standard for hazardous air pollutants (NESHAP) promulgated, pursuant to Sections 112 and 114 of the Act, to address asbestos ("Asbestos NESHAP").

Section 112 of the Act authorizes the Administrator to issue emission and/or work practice standards for hazardous air pollutants. Section 114 of the Act authorizes the Administrator to require that information be provided by affected sources to determine compliance with the Act.

## **Preliminary Statement**

1. Respondent, Rome City School District, located in Rome, New York hired Sunshine Environmental Services, Inc. (Respondent Sunshine) located in Waterville, New York, to renovate and demolish the former Rome Free Academy, a school building located on Turin Road in Rome, New York, which contained regulated asbestos-containing material (RACM), as defined by 40 C.F.R. § 61.141.

2. Each of the Respondents is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and is therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

## **Statutory and Regulatory Background**

3. The Asbestos NESHAP specifies a set of work practice standards, set forth at 40 C.F.R. §§ 61.145 and 61.150, which are applicable 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.

4. 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."

5. 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."

6. 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."

7. The term "facility" is defined by 40 C.F.R. § 61.141 to include any commercial, public, industrial, or residential structure of more than four (4) dwelling units.

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

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

10. 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.

11. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

12. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section 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.

13. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

14. 40 C.F.R. § 61.145(c)(3) provides that when RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

15. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

16. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one on site representative, trained in the NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

17. 40 C.F.R. § 61.150(a)(1)(iii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

### **Findings of Fact and Conclusions of Law**

18. Paragraphs 1-17 are realleged and incorporated herein by reference.

19. The former Rome Free Academy, a school building that is part of Rome City School District located on Turin Road in Rome, New York, is a facility within the meaning of 40 C.F.R. § 61.141, which shall hereinafter be called "the Facility".

20. On December 11, 2007, the Respondent submitted to EPA and New York State Department of Labor (NYSDOL) a notice of intent that indicated that renovation would begin on January 7, 2008. On December 19, 2007, an updated notification was sent indicating that renovation would begin on December 26, 2007.

21. On December 17, 2007, NYSDOL inspected the Facility for purposes of assessing compliance to Asbestos regulations. Further inspections were conducted on December 28, 2007, January 4, January 22, January 25, and March 20, 2008.

22. During the inspection on December 17, 2007, referenced in paragraph 21, NYSDOL inspectors observed the Facility preparing for renovation activity, within the meaning of 40 C.F.R. § 61.145. On the inspections on and after December 28, 2007, NYSDOL observed Sunshine Environmental performing Asbestos removal and renovation activities.

23. During the inspections, referenced in paragraph 21, NYSDOL inspectors observed workers sweeping and shoveling suspected asbestos containing material into a debris chute and dumpster constructed at the site.

24. Respondents are owners and/or operators of a renovation activity within the meaning of 40 C.F.R. § 61.141.

25. During the inspection of January 4, 2008, the NYSDOL inspectors observed and took bulk samples of dry material that had not been removed from an area that was slated for renovation and that had been left scattered about the Facility.

26. After the inspection, referenced in paragraph 25, the samples taken during the inspection were analyzed and the sample results indicated the material sampled contained greater than 1% asbestos.

### **COUNT 1**

27. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(b)(3), a regulation promulgated pursuant to Section 112 of the Act, by failing to submit notice at least ten (10) working days before renovation activity begins.

### **COUNT 2**

28. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(1), a regulation promulgated pursuant to Section 112 of the Act, by failing to remove all RACM from a facility being demolished before beginning any activity that would disturb the material.

### **COUNT 3**

29. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(3), a regulation promulgated pursuant to Section 112 of the Act, by failing to adequately wet all RACM during the stripping operations.

### **COUNT 4**

30. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.145(c)(6)(i), a regulation promulgated pursuant to Section 112 of the Act, by failing to wet all RACM that has been removed and ensure that it remains wet until collected or contained for disposal.

### **COUNT 5**

31. Based on the Findings of Fact and Conclusions of Law, EPA determined that Respondents violated 40 C.F.R. § 61.150(a)(1)(iii), a regulation promulgated pursuant to Section 112 of the Act, by failing to seal all RACM in leak-tight containers while wet.

### **Proposed Civil Penalty**

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Part 19), which provide that the maximum civil penalty per day should be adjusted to \$27,500 per day for each violation that occurred from January 30, 1997 through March 14, 2004 and \$32,500 per day for each violation that occurred on or after March 15, 2004. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997 and further adjusted 17.23% for violations that occurred on or after March 15, 2004 for a total of 28.95%.

In determining the amount of penalty to be assessed, Section 113(e) of the Act 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 considered these factors and proposes a total penalty, for

the violations alleged in this Complaint, of One Hundred Four Thousand Sixty Three Dollars (\$104,063).

The proposed penalty has been prepared in accordance with Section 113(e) of the Act, EPA's "Clean Air Act Stationary Source Civil Penalty Policy" ("CAA Penalty Policy"), and Appendix III to the CAA Penalty Policy, the "Asbestos Demolition and Renovation Civil Penalty Policy" dated May 5, 1992 ("Asbestos Penalty Policy"), copies of which are enclosed with this Complaint. The CAA Penalty Policy is EPA's policy concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing a penalty for violations of the Act. The short narrative below explains the reasoning behind the penalty proposed for the violations alleged.

The Asbestos Penalty Policy directs EPA to propose a \$15,000 penalty for work practice violations involving quantities of asbestos defined as "large." Therefore, EPA proposed a \$15,000 penalty for each of Counts 2, 3, 4 and 5. The Policy also includes penalties for additional days of noted violations. Because violations were noted on various days, an additional \$1,500 is proposed for each of Count 2 on January 22, 2008, Count 4 and Count 5 on January 22, January 25, and March 20, 2008 for a total of an additional penalty of \$10,500. The Policy directs a proposed penalty of \$200 for late notification of renovation activity, or Count 1.

Violation	12/17/07	12/28/07	1/4/08	1/22/08	1/25/08	3/20/08
Count 1	Notification Violation					
Count 2			X	X		
Count 3			X			
Count 4			X	X	X	X
Count 5			X	X	X	X

In addition, the CAA Penalty Policy directs that a penalty be proposed based upon the size of the violator, determined by the violator's net worth. The Respondents' estimated net worth, based on the amount of the Sunshine Environmental contract with Rome City School District, falls within the range for which the CAA Penalty Policy directs a \$10,000 penalty. Therefore, EPA proposes a penalty of \$10,000 for the size of violator component. The size of violator penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less or more than estimated.

The penalties proposed above comprise what both penalty policies term the "gravity component". Therefore, EPA proposes an unaggravated and unadjusted gravity component for these violations of Eighty Thousand Seven Hundred Dollars (\$80,700).

The DCIA and Part 19 direct EPA to adjust the gravity component 10% for violations occurring before March 15, 2004 and 28.95% for violations occurring on or after March 15, 2004. The DCIA and Part 19 inflation adjustment for these violations is \$23,363, resulting in an adjusted proposed penalty of \$104,063.

The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy provides EPA the discretion for not seeking economic benefit where the benefit derived is less than \$5,000. EPA determined that, in this case, the economic benefit resulting from noncompliance is de minimus, therefore the total penalty proposed remains at \$104,063.

### **Notice of Opportunity to Request a Hearing**

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 et seq. The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

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. In order to request a hearing you must file a written Answer to this Complaint along with the 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 Conference**

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, John Dolinar, at (212) 637-3204 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

### **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:


US 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 30, 2008



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

TO: Mr. Russ Buell, President  
Sunshine Environmental Services, Inc.  
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Waterville, New York 13480

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**Geraldo Villaran**