



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

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

NOV 10 2015

Kimberly G. Krupka  
Charles J. Fonzone  
Gross McGinley, LLP  
33 South Seventh Street  
P.O. Box 4060  
Allentown, PA 18105-0406

Re: Consent Agreement and Final Order  
EPA Docket No.: CAA-03-2014-0092

Dear Ms. Krupka and Mr. Fonzone:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson  
Senior Assistant Regional Counsel

Enclosures

cc: Richard Ponak, EPA



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

RECEIVED  
 2015 NOV 10 PM 1:42  
 REGIONAL HEARING CLERK  
 EPA REGION III, PHILA. PA

<b>IN RE:</b>	)	
	)	
Madonna Enterprises, Inc.	)	CONSENT AGREEMENT
610 3 <sup>rd</sup> St.	)	AS TO WHITEHALL TOWNSHIP
Port Carbon, PA 17965,	)	
	)	
and	)	
	)	
Whitehall Township	)	DOCKET NO. CAA-03-2014-0092
3219 MacArthur Rd.	)	
Whitehall, PA 18052,	)	
	)	
<b>Respondents,</b>	)	
	)	
896 3 <sup>rd</sup> St.	)	
Whitehall, PA 18052,	)	
	)	
<b>Facility.</b>	)	

**CONSENT AGREEMENT AS TO WHITEHALL TOWNSHIP**

**I. PRELIMINARY STATEMENT**

1. Pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), the Director of the Land and Chemicals Division for the United States Environmental Protection Agency, Region III (“Complainant”), initiated this administrative proceeding for the assessment of civil penalties against Madonna Enterprises, Inc. and Whitehall Township (“Respondent”), by issuance of a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) filed with the Regional Hearing Clerk on March 31, 2014. The Complaint, incorporated herein by reference, alleges that Madonna Enterprises, Inc. and Whitehall Township violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during a demolition at 896 3<sup>rd</sup> Street in Whitehall, Pennsylvania, which occurred on or around August 27, 2013. On September 25, 2014, a Consent Agreement and Final Order was filed resolving the violations alleged in the Complaint against Madonna Enterprises, Inc. This Consent Agreement and the accompanying Final Order (“CAFO”) resolve the violations alleged in the Complaint against Whitehall Township.
  
2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint and herein.
  
3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations contained in the Complaint and herein.
  
4. For the purpose of this proceeding, Respondent consents to the assessment and payment of a civil penalty in the amount and in the manner set forth in this CAFO.

5. For the purpose of this proceeding, Respondent agrees to comply with the conditions of this CAFO.
6. For the purpose of this proceeding, Respondent waives its right to contest the allegations in the Complaint and herein, and its right to appeal the Final Order accompanying this Consent Agreement.
7. Respondent shall bear its own costs and attorney fees.

## II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

## III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

## IV. SETTLEMENT RECITATION

10. In settlement of the violations alleged in the Complaint, Respondent consents to the assessment of a civil penalty of thirty thousand dollars (\$30,000), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

11. The aforesaid settlement amount is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991; Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992; and adjustments for inflation pursuant to 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of Paragraph 10, above, shall be made as follows:

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

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO, 63197-9000.  
Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

- c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

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

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency")

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

U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 – checking  
Contact: John Schmid  
202-874-7026

- f. Online payments can be made at [WWW.PAY.GOV](http://WWW.PAY.GOV) by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

The payment shall also reference the above case caption and docket number (Docket No.: CAA-03-2014-0092). At the same time that any payment is made, Respondent shall mail a copy of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy	Jennifer M. Abramson (3RC50)
Regional Hearing Clerk (3RC00)	Senior Asst. Regional Counsel
U.S. EPA, Region III	U.S. EPA, Region III
1650 Arch Street	1650 Arch Street
Philadelphia, PA 19103-2029	Philadelphia, PA 19103-2029

13. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11; EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

#### V. CERTIFICATION

15. Respondent certifies, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with all applicable requirements of the CAA and 40 C.F.R. Part 61, Subpart M.

#### VI. OTHER APPLICABLE LAWS

16. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

VII. RESERVATION OF RIGHTS

17. This CAFO resolves only EPA's civil claims for penalties against Respondent for the specific violations alleged in the Complaint and herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

18. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondent under Sections 113(d) of the CAA, 42 U.S.C. § 7413(d), for the specific violations alleged in the Complaint and herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

IX. PARTIES BOUND

19. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

X. EFFECTIVE DATE

20. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XI. ENTIRE AGREEMENT

21. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

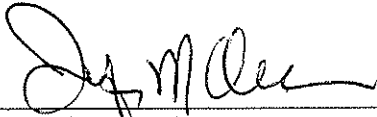
11/9/15.  
Date

Edward D. Hozza Jr.,  
Edward D. Hozza Jr., Mayor  
Whitehall Township



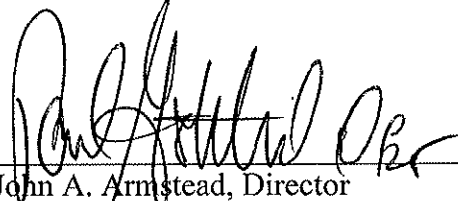
For EPA:

11/3/15  
Date

  
\_\_\_\_\_  
Jennifer M. Abramson  
Office of Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

11-5-15  
Date

  
\_\_\_\_\_  
John A. Armstead, Director  
Land and Chemicals Division



**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

Madonna Enterprises, Inc.  
610 3<sup>rd</sup> St.  
Port Carbon, PA 17965

and

Whitehall Township  
3219 MacArthur Rd.  
Whitehall, PA 18052

**Respondents,**

896 3<sup>rd</sup> St.  
Whitehall, PA 18052,

**Facility.**

**EPA Docket No. CAA-03-2014-0092**

**FINAL ORDER AS TO  
WHITEHALL TOWNSHIP**

**Proceeding under Section 113(d) of  
the Clean Air Act, 42 U.S.C. § 7413(d)**

**FINAL ORDER AS TO WHITEHALL TOWNSHIP**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Whitehall Township have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.


Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991; Appendix III to the Clean Air Act Stationary Source

Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992; 40 C.F.R. Part 19, and the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

**NOW, THEREFORE, PURSUANT TO** Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **THIRTY THOUSAND DOLLARS (\$30,000)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Nov. 10, 2015  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

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

IN RE: )  
)  
Madonna Enterprises, Inc. ) CONSENT AGREEMENT  
610 3<sup>rd</sup> St. ) AS TO WHITEHALL TOWNSHIP  
Port Carbon, PA 17965, )  
)  
and )  
)  
Whitehall Township ) DOCKET NO. CAA-03-2014-0092  
3219 MacArthur Rd. )  
Whitehall, PA 18052, )  
)  
Respondents, )  
)  
896 3<sup>rd</sup> St. )  
Whitehall, PA 18052, )  
)  
Facility. )

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

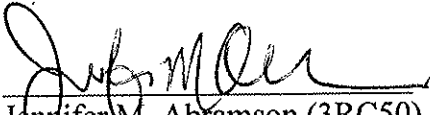
**Original and one copy by hand-delivery:** Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail:**

Kimberly G. Krupka  
Charles J. Fonzone  
Gross McGinley, LLP  
33 South Seventh Street  
P.O. Box 4060  
Allentown, PA 18105-0406

NOV 10 2015

Date

  
Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III





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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order  
Docket No.: CAA-03-2014-0092

FROM: Mary B. Coe *SMA for Rural Source*  
Acting Regional Counsel (3RC00) *11/5/15*

John A. Armstead, Director *JAA for 11-5-15*  
Land and Chemicals Division (3LC00)

TO: Joseph J. Lisa *JJL* *11/10/2015*  
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with Whitehall Township ("Respondent") in settlement of actionable alleged Clean Air Act ("CAA") violations. The compliance issues addressed in the CAFO involve the failure to comply with requirements of the National Emission Standard for Asbestos ("Asbestos NESHAP") regulations promulgated at 40 C.F.R. Part 61, Subpart M in connection with a demolition of a two story building in 2013 located at 896 3<sup>rd</sup> Street in Whitehall, Pennsylvania, which subjects Respondent to civil penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

The litigation team calculated a civil penalty of thirty thousand dollars (\$30,000) in accordance with the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), *i.e.*, size of the business, economic impact of the penalty on the business, violator's full compliance history and good faith efforts to comply, duration of the violation, payment by the violator of penalties previously assessed for the same violation, economic benefit of noncompliance, and seriousness of the violation; EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991; Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992; and adjustments for inflation pursuant to 40 C.F.R. Part 19.

We recommend that you sign the attached Final Order assessing thirty thousand dollars (\$30,000) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of Office of Regional Counsel for further processing.

Respondent's Counsel Contact Information:

Kimberly G. Krupka  
[KKrupka@grossmcginley.com](mailto:KKrupka@grossmcginley.com)

Charles J. Fonzone  
[Cfonzone@grossmcginley.com](mailto:Cfonzone@grossmcginley.com)

Gross McGinley, LLP  
33 South Seventh Street  
P.O. Box 4060  
Allentown, PA 18105-0406  
Phone: (610) 820-5450

cc: Kimberly G. Krupka  
Charles J. Fonzone

