

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

In the Matter of:)	
)	
Madonna Enterprises, Inc.)	DOCKET NO. CAA-03-2014-0092
610 3rd St.)	
Port Carbon, PA 17965,)	
)	
and)	
)	
Whitehall Township)	
3219 MacArthur Rd.)	
Whitehall, PA 18052,)	
)	
RESPONDENTS.)	

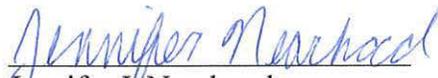
NOTIFICATION OF PARTIAL SETTLEMENT

Counsel for Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“EPA”), hereby provides notice to the Court that on September 25, 2014 a Consent Agreement and Final Order (“CAFO”) was filed with the Regional Hearing Clerk settling the matter referenced above *with respect to Respondent Madonna Enterprises, Inc.* A true and correct copy of the CAFO is attached to this Notification.

Counsel for Complainant further advises the Court and notifies Respondent that it is Complainant's intent to explain modifications to the penalty proposed against Respondent Whitehall Township as part of Complainant’s Initial Prehearing Exchange, to be filed by December 5, 2014 as per Judge Buschmann’s October 23, 2014 Prehearing Order. See Prehearing Order at 3. These modifications will account for changes to the proposed penalty due to settlement with Respondent Madonna Enterprises, Inc.

Respectfully Submitted,

10/30/14
Date


Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch St.
Philadelphia, PA 19103
nearhood.jennifer@epa.gov
(215) 814-2649

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, the attached Complainant's Notification of Partial Settlement was served upon the persons listed in the manner indicated.

Original and one copy via THE OALJ E-Filing System

Sybil Anderson, Headquarters Hearing Clerk

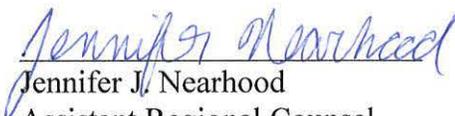
One copy via THE OALJ E-Filing System

M. Lisa Buschmann, Administrative Law Judge

Copy by UPS Next Day Air:

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

10/30/14
Date


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Assistant Regional Counsel
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**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103**

REGIONAL HEARING CLERK
 EPA REGION III PHILA. PA

2014 SEP 25 AM 10:56

RECEIVED

IN RE:

Madonna Enterprises, Inc.
 610 3rd St.
 Port Carbon, PA 17965,

and

Whitehall Township
 3219 MacArthur Rd.
 Whitehall, PA 18052,

Respondents,

896 3rd St.
 Whitehall, PA 18052,

Facility.

Docket No. CAA-03-2014-0092

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

CONSENT AGREEMENT AS TO MADONNA ENTERPRISES, INC.

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. Pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), initiated this administrative proceeding for the assessment of civil penalties against Madonna Enterprises, Inc. (“Madonna” or “Respondent”) and Whitehall Township, 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 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 3rd Street, Whitehall, Pennsylvania 18052 (“the Facility”), which occurred on or around August 27, 2013. This Consent Agreement and the accompanying Final Order (“CAFO”), resolve the violations alleged in the Complaint against Madonna only.
2. For purposes of this proceeding, Respondent Madonna 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 and legal conclusions set forth in the Complaint and herein.
4. For the purpose of this proceeding, Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
5. For purpose of this proceeding, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
6. For the purpose of this proceeding, Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. For the purpose of this proceeding, Respondent consents to the payment of a civil penalty in the amount and in the manner set forth in this CAFO.
8. Each party to this Consent Agreement shall bear its own costs and attorney's fees.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

III. SETTLEMENT RECITATION

10. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Two Hundred and Fifty Dollars (\$250.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
11. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a true and correct copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.
12. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), *i.e.*, 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. These factors were applied to the particular facts and circumstances of this case with specific

reference to EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991, as clarified January 17, 1992 and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.

13. Payment of the civil penalty amount shall be made by either cashier's check, certified check, or electronic wire transfer in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2014-0092;
 - b. All checks shall be made payable to "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. 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

14. Respondent may also pay the amount described in Paragraph 10 above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's checks or a copy of Respondent's electronic transfers shall be sent simultaneously to:

Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

15. 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 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 Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
16. 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 account rate in accordance with 40 C.F.R. § 13.11(a).
17. The costs of the EPA'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.
18. A late penalty payment of six percent (6%) 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).
19. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

IV. EFFECT OF SETTLEMENT

20. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under the CAA for the specific violations alleged in Section II ("Findings of Fact and Conclusions of Law") above. 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.

VIII. OTHER APPLICABLE LAWS

21. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

22. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is complying with applicable provisions of the CAA and 40 C.F.R. Part 61.

X. RESERVATION OF RIGHTS

23. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against Respondent Madonna in the Complaint. 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under the CAA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

24. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, and Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

25. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

26. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those

expressed in this CAFO.

XIV. EXECUTION

27. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent:

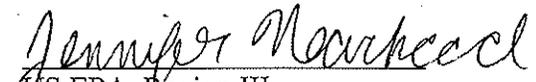
Date:

 9/15/14

Madonna Enterprises, Inc.
Vincent Madonna, President
(570) 573-2787

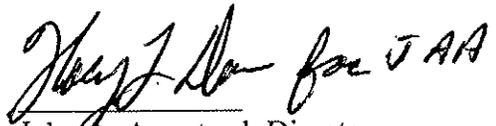
For Complainant:

Date: 9/15/2014


US EPA, Region III
Jennifer J. Nearhood, 3RC50
Assistant Regional Counsel
(215) 814-2649

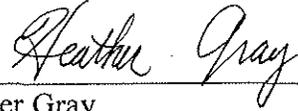
After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 9/17/2014

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

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

Date: 9-25-14



Heather Gray
Regional Judicial Officer
U.S. EPA, Region III

