

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Homeca Recycling Center Co., Inc.
PMB-323
Luis Muñoz Marín Ave. #20
Caguas, Puerto Rico 00725

Respondent

In a proceeding under Section 113(d) of the
Clean Air Act, 42 U.S.C. § 7413(d)

**AMENDED COMPLAINT AND
NOTICE OF OPPORTUNITY TO
REQUEST A HEARING**

Docket No. CAA-02-2024-1201

PRELIMINARY STATEMENT

In this Complaint and Notice of Opportunity to Request a Hearing (“Complaint”), the United States Environmental Protection Agency (“EPA”) alleges that Homeca Recycling Center Co., Inc. (hereinafter, “Homeca” or “Respondent”) violated Sections 112 and 113 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7412 and 7413, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (the “Asbestos NESHAP”). The Complaint proposes a civil penalty of \$187,487 for Respondent’s failure to: (1) adequately wet the regulated asbestos-containing material, including material that has been stripped, to ensure that it remains wet until collection for disposal; (2) after wetting, seal all asbestos containing waste material (“ACWM”) in leak tight containers while wet; (3) label the bags or wrap materials containing ACWM with the name of the waste generator and the location at which the waste was generated; (4) deposit all ACWM as soon as is practical at a waste disposal site; and, (5) remove all ACWM from the ground and the concrete surface areas as required by Phase III of the Work Plan referenced in the Compliance Order (CAA-02-2020-1003).

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action where the Administrator and the Attorney General, through their respective delegates,

jointly determine that such an action is appropriate. On December 17, 2021, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

This Complaint 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, Issuance of Compliance or Corrective Action Orders, and Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice").

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 and/or 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 Caribbean Environmental Protection Division, through the Region 2 Regional Administrator, the authority, among others, 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 Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

5. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on December 17, 2021, the United States Department of Justice (“DOJ”) granted the EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

B. Sections 112 and 114 of the CAA

6. 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.

7. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator to periodically review the list and, where appropriate, revise it.

8. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

9. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. The NESHAPs promulgated under the CAA, as it existed prior to the 1990 CAA amendments, are set forth in 40 C.F.R. Part 61.

10. Section 112(h) of the Act authorizes EPA to promulgate design, equipment, work practice, or operational standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP.

11. Pursuant to Section 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under Section 112(h) of the Act, are treated as emission standards.

12. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

13. 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 Sections 112 of the Act.

14. Section 114(a)(2) of the Act provides that for the purpose of determining whether any person is in violation of any emission standard, EPA representatives shall have a right of entry, upon presentation of credentials, to any premises to inspect and sample certain emissions.

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

15. On April 5, 1984, EPA promulgated 40 C.F.R. Part 61, Subpart M (“Subpart M”), pursuant to Sections 112 and 114 of the CAA. 49 Fed. Reg. 13661 (Apr. 5, 1984).

16. 40 C.F.R. §§ 61.145 and 61.150 set forth a set of work practice standards as part of the Asbestos NESHAP.

17. In general, the Asbestos NESHAP contains work practice requirements that apply to the owners and operators of renovation or demolition activities in which the combined amount of “regulated asbestos-containing material” (“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) where the length or area could not be measured prior to the asbestos removal/demolition activity. However, as set forth in 40 C.F.R. § 61.145(a) of the Asbestos NESHAP, certain notice requirements apply even when the amount of RACM is less than those thresholds.

18. 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."

19. 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.”"

20. 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."

21. 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)."

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

23. Asbestos-containing material ("ACM") is material containing more than 1 percent asbestos.

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

25. The term "asbestos-containing waste material" ("ACWM") is defined by 40 C.F.R. § 61.141 as friable asbestos waste material, filters from control devices, bags or other similar packaging contaminated with commercial asbestos, RACM and materials contaminated with asbestos including disposable equipment and clothing.

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

27. 40 C.F.R. § 61.141 defines "leak-tight" as "that solids or liquids cannot escape or spill out. It also means dust-tight."

28. 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.

29. 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.

30. 40 C.F.R. § 61.145(c)(3) requires that when RACM is stripped from a facility component while it remains in place in a facility subject to the Asbestos NESHAP, the owner and/or operator must adequately wet the RACM during the stripping operation.

31. 40 C.F.R. § 61.145(c)(6)(i) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP adequately to 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.

32. 40 C.F.R. § 61.150(a)(1)(iii) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to, after wetting, seal all RACM in leak-tight containers while wet.

33. 40 C.F.R. § 61.150(a)(1)(iv) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to label the containers or wrapped materials specified in 40 C.F.R. § 61.150(a)(1)(iii) using warning labels printed in letters of sufficient size and contrast so as to be readily visible and legible.

34. 40 C.F.R. § 61.150(a)(1)(v) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that involves ACWM to be transported off the facility to label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

35. 40 C.F.R. § 61.150(b) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that involves ACWM to deposit all asbestos-containing waste material as soon as is practical at a waste disposal site.

FINDINGS OF FACT

36. Respondent is a for-profit corporation duly organized under the laws of the Commonwealth of Puerto Rico.

37. Respondent is engaged in the business of scrap metal removal, processing and export of recyclable materials, together with abatement of lead-based paint (LBP) and asbestos containing materials (ACM) that are typically associated with demolition projects from which scrap metals are recycled.

38. Respondent main address is PMB 323-200 Ave. Rafael Cordero 140, Caguas, Puerto Rico 00725.

39. Tallaboa Industrial Park, LLC is the owner of the Tallaboa Industrial Park Complex located at Road 385 Km. 5.4, Tallaboa Poniente Ward, in Peñuelas, Puerto Rico.

40. Respondent was hired by the owner of the Tallaboa Industrial Park Complex to dismantle structures and perform asbestos removal and demolition of the structures for scrap recycling activities from an area of approximately 10 acres in size and located entirely within the Tallaboa Industrial Park Complex. This 10-acre area will hereinafter be called the “Work Site Area”.

41. The Work Site Area includes distillation columns and pipes, containing RACM, formerly used in petrochemical operations that ceased during the 1970s.

42. Respondent, as operator, conducted demolition activities at the Work Site Area.

43. Pursuant to *Homeca Recycling Center, Inc. et al v. United States Environmental Protection Agency*, Case No. 14-447 (1st Cir. 2015), Respondent developed a Work Plan and received EPA approval on October 2, 2015, for remediating asbestos contamination at the Work Site Area.

44. Homeca provided notification to EPA, signed and dated March 18, 2019, indicating that the demolition project involves the removal of over 1,500 linear feet of RACM and 150,000 square feet of RACM at the Work Site Area.

45. On July 31, 2019, an EPA Asbestos NESHAP-certified inspector (“EPA NESHAP Inspector”) conducted an inspection of the Work Site Area (“EPA July 2019 Inspection”) as part of a compliance evaluation. Demolition and/or renovation activities were performed at the Work Site Area, or portions thereof, prior to the date of inspection on July 31, 2019.

46. The following conditions were observed by the EPA NESHAP Inspector at the Work Site Area at the time of the EPA July 2019 Inspection:

- a. Respondent was setting up containment around a multi-story stack.
- b. Four waste containers were on the Work Site Area at the time of the inspection.
- c. An Homeca representative, present during the inspection, stated that the waste found in the containers was from the RACM abatement of the distillation columns on site from March to July 2019.
- d. The EPA NESHAP Inspector opened all four waste containers and saw that the outside of the leak-tight bags was dry and contaminated with RACM.
- e. The EPA NESHAP Inspector saw that some leak-tight bags in the waste containers were broken.

f. No labels were found on any of the leak-tight bags with the name of the waste generator and the location at which the waste was generated.

47. During the EPA July 2019 Inspection, the EPA NESHAP Inspector randomly selected six (6) different leak-tight bags, from different locations within the first container identified as trailer number four by the Respondent, that were sealed with duct tape and not torn.

a. The EPA NESHAP Inspector opened the six (6) leak-tight bags and thoroughly inspected the contents of each leak-tight bag, including breaking insulation blocks and checking for any moisture in the bottom of the leak-tight bags.

b. No moisture was observed in any of the six (6) leak-tight bags which is indicative that the RACM was not adequately wet when it was placed in the leak-tight bags to ensure that it remains wet until collected and contained or treated in preparation for disposal.

c. Bulk samples were taken from each of the six (6) leak-tight bags.

d. The six (6) samples taken from the first container identified as trailer number four were tested and confirmed to be ACM.

48. The EPA NESHAP Inspector randomly selected two (2) different leak-tight bags, from different locations in the second waste container identified as trailer number one by the Respondent, that were sealed with duct tape and not torn.

a. The EPA NESHAP Inspector opened the two (2) leak-tight bags and thoroughly inspected the contents of each leak-tight bag, including breaking insulation blocks and checking for any moisture in the bottom of the leak-tight bags.

b. No moisture was observed in any of the two (2) leak-tight bags which is indicative that the RACM was not adequately wet when it was placed in the leak-tight

bags to ensure that it remains wet until collected and contained or treated in preparation for disposal.

c. Bulk samples were taken from each of the two (2) leak-tight bags.

d. The two (2) samples taken from the second container identified as trailer number one were tested and confirmed to be ACM.

49. The EPA NESHAP Inspector randomly selected two (2) different leak-tight bags, from different locations within the third waste container identified as trailer number three by the Respondent, that were sealed with duct tape and not torn.

a. The EPA NESHAP Inspector opened the two (2) leak-tight bags and thoroughly inspected the contents of each leak-tight bag, including breaking insulation blocks and checking for any moisture in the bottom of the leak-tight bags.

b. No moisture was observed in any of the two (2) leak-tight bags which is indicative that the RACM was not adequately wet when it was placed in the leak-tight bags to ensure that it remains wet until collected and contained or treated in preparation for disposal.

c. Bulk samples were taken from each of the two (2) leak-tight bags.

d. The two (2) samples taken from the third container identified as trailer number three were tested and confirmed to be ACM.

50. The EPA NESHAP Inspector randomly selected two (2) different leak-tight bags, from different locations within the fourth waste container identified as trailer number two by the Respondent, that were sealed with duct tape and not torn.

a. The EPA NESHAP Inspector opened the bags and thoroughly inspected the contents of each leak-tight bag, including breaking insulation blocks and checking for any moisture in the bottom of the leak-tight bags.

b. No moisture was observed in any of the leak-tight bags which is indicative that the RACM was not adequately wet when it was placed in the leak-tight bags to ensure that it remains wet until collected and contained or treated in preparation for disposal.

c. Bulk samples were taken from each of the two (2) leak-tight bags.

d. The two (2) samples taken from the fourth container identified as trailer number two were tested and confirmed to be ACM.

51. On April 13, 2020, EPA issued Respondent an Administrative Compliance Order (CAA-02-2020-1003) which required, among other things, that Respondent continue implementation of EPA's approved Work Plan for remediating asbestos contamination at the Work Site Area. Specifically, Phase III of the work plan required the Respondent to remove from the Work Site Area any ACM that may have fallen onto the ground and the concrete surface areas by removing and replacing the surface of the bare-exposed soil and vacuum cleaning the hard concrete surfaces.

52. In an electronic mail dated February 5, 2021, Homeca communicated to EPA that it had completed the execution of the Work Plan. Homeca also provided two (2) aerial videos taken with a drone that showed the Work Site Area covered by the Work Plan.

53. On June 30, 2021, an EPA Asbestos NESHAP Inspector conducted an inspection of the Work Site Area ("EPA June 2021 Inspection") as part of a compliance evaluation.

54. At the time of the EPA June 2021 Inspection, the EPA NESHAP Inspector did not observe any chain-link fence around the perimeter of the Work Site Area or any type of marker that separated the Work Site Area from the rest of the Tallaboa Industrial Park Complex.

55. During the EPA June 2021 Inspection, the EPA NESHAP Inspector identified thirty-one (31) locations where suspected asbestos containing material were present in the immediate vicinity and inside the Work Site Area.

56. During the June 2021 Inspection, the EPA NESHAP Inspector took nine (9) samples of visible debris, left from the renovation activities, in the immediate vicinity and inside the Work Site Area. These samples were sent to a National Voluntary Laboratory Accreditation Program certified laboratory for analysis. Of the nine (9) samples taken, seven (7) sample results came back as ACM.

CONCLUSIONS OF LAW

57. From the Findings of Fact as set forth above, 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.

58. Respondent, at the time period relevant to this Complaint, was an "operator" within the meaning of Sections 112 (a)(9) of the CAA, 42 U.S.C. §§ 7412(a)(9) and 40 C.F.R. § 61.02.

59. The Work Site Area where Respondent conducted demolition or renovation activities is a facility within the meaning of 40 C.F.R. § 61.141.

60. Respondent's demolition or renovation activity conducted at the Work Site Area is subject to Asbestos NESHAP.

61. Respondent was, at the time period relevant to this Complaint, an operator of asbestos demolition or renovation activity within the meaning of 40 C.F.R. § 61.141.

62. By conducting demolition or renovation activity, Respondent disturbed RACM as defined in 40 C.F.R. § 61.141.

63. By conducting demolition or renovation activity that disturbed RACM in an amount that exceeded the thresholds of 260 linear feet on pipes, 160 square feet on other components, or at least 35 cubic feet off facility components where the length or area could not be measured previously, Respondent is subject to Asbestos NESHAP.

64. Pursuant to 40 C.F.R. § 61.145(c)(6) Respondent is required to adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150.

Count 1: Failure to adequately wet asbestos containing material and ensure that it remains wet until collected

65. Paragraphs 36-64 are re-alleged and incorporated herein by reference.

66. 40 C.F.R. § 61.145(c)(3) requires that when RACM is stripped from a facility component while it remains in place in a facility subject to the Asbestos NESHAP, the owner and/or operator must adequately wet the RACM during the stripping operation.

67. 40 C.F.R. § 61.145(c)(6)(i) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP adequately to 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.

68. During the EPA July 2019 Inspection, the EPA Asbestos NESHAP Inspector randomly selected and opened twelve (12) leak-tight bags containing RACM from different locations at each of the four containers. The content of each of the twelve (12) leak-tight bags were thoroughly examined and inspected for evidence of any moisture in the bottom of the leak-tight bags. When properly wet, material would remain wet when put in leak-tight bags. No moisture was observed in any of the twelve (12) leak-tight bags which is indicative of

Respondents failure to adequately wet the RACM during the stripping process and ensuring that RACM remains wet when it was placed in the leak-tight bags for final disposal.

69. Respondent failed to adequately wet the RACM during the stripping process and ensuring that it remains wet until collected and contained or treated in preparation for disposal in violation to 40 C.F.R. §§ 61.145(c)(3) and 61.145 (c)(6) of the Asbestos NESHAP, a provision of a regulation promulgated pursuant to Section 112 of the Act.

Count 2: Failure to wet and seal all asbestos containing waste material in leak tight containers while wet

70. Paragraphs 36-64 are re-alleged and incorporated herein by reference.

71. 40 C.F.R. § 61.150(a)(1)(iii) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that after wetting, seal all RACM in leak-tight containers while wet.

72. During the EPA July 2019 Inspection, EPA Asbestos NESHAP Inspector did not observe any evidence of moisture in the twelve leak-tight bags containing RACM that were opened. When properly wet, material would remain wet when put in leak-tight bags.

73. Respondent failed to seal all RACM in leak-tight containers while wet in violation 40 C.F.R. § 61.150(a)(1)(iii), a provision of a regulation promulgated pursuant to Section 112 of the Act.

Count 3: Failure to label the container or wrap materials containing Asbestos-waste containing material

74. Paragraphs 36-64 are re-alleged and incorporated herein by reference.

75. 40 C.F.R. § 61.150(a)(1)(v) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that involves ACWM to be transported off

the facility to label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

76. During the EPA July 2019 Inspection, the EPA Asbestos NESHAP Inspector noticed that the leak-tight bags containing ACWM that were placed in the four waste containers had no labels with the name of the waste generator and the location at which the waste was generated.

77. Respondent failed to label the leak-tight bags containing ACWM that were placed in the four waste containers in violation of 40 C.F.R. § 61.150(a)(1)(v), a provision of a regulation promulgated pursuant to Section 112 of the Act.

Count 4: Failure to remove and deposit all asbestos-containing waste material at a waste disposal site

78. Paragraphs 36-64 are re-alleged and incorporated herein by reference.

79. 40 C.F.R. § 61.150(b) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that involves ACWM to deposit all asbestos-containing waste material as soon as is practical at a waste disposal site.

80. In an electronic mail dated February 5, 2021, Homeca communicated to EPA that it had completed the execution of the Work Plan.

81. EPA conducted an inspection in June 2021 at the Work Site Area where Homeca indicated that all work has been completed and has vacated the premises. During the June 2021 Inspection, EPA Asbestos NESHAP Inspector identified thirty-one (31) locations where suspected asbestos containing material were present. Nine (9) samples of visible debris, left from renovation activities, were taken in the immediate vicinity and inside the Work Site Area, which were sent to a National Voluntary Laboratory Accreditation Program certified laboratory for analysis. Seven (7) sample results came back as ACM.

82. Respondent failed to remove and deposit all ACWM as soon as is practical at a waste disposal site in violation to 40 C.F.R. § 61.150(b), a provision of a regulation promulgated pursuant to Section 112 of the Act.

Count 5: Failure to comply with an administrative compliance order

83. Paragraphs 36-64 are re-alleged and incorporated herein by reference.

84. On April 13, 2020, EPA issued to Respondent an Administrative Compliance Order (CAA-02-2020-1003) which required, among other things, the completion of the implementation of the approved Work Plan for remediating asbestos contamination at the Work Site Area.

85. In an electronic mail dated February 5, 2021, Homeca communicated to EPA that it had completed the execution of the Work Plan developed by Respondent for remediating asbestos contamination at the Work Site Area.

86. During the EPA June 2021 Inspection, the EPA Asbestos NESHAP Inspector noticed thirty-one (31) locations (ground and concrete surface areas) where suspected ACM were present at the immediate vicinity and inside of the Work Site Area and took nine (9) samples of visible debris, seven (7) of which came back as ACM after analysis by a National Voluntary Laboratory Accreditation Program certified laboratory.

87. Respondent failed to comply with Administrative Compliance Order (CAA-02-2020-1003) dated April 13, 2020, by abandoning the Work Site Area without fully remediating asbestos contamination as required by approved Work Plan. As a result of Respondent action, ACM remained present at the Work Site Area in violation of Section 113 of the Act.

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. This amount has

been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 14-74, Section 701). On January 6, 2023, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, which provide that the maximum civil penalty per day should be adjusted to \$55,808 per day for each violation; but, not to exceed the amount of \$446,456 for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

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's October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy ("CAA Penalty Policy"), and Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy to the CAA Penalty Policy, dated May 5, 1992 ("Asbestos Penalty Policy") reflects EPA's application of the factors set forth in Section 113(e) of the Act and provide guidance on the penalty calculation for CAA violations. EPA considered these factors and proposes a total penalty for the violations alleged in this Complaint, of one hundred eighty-seven thousand four hundred eighty-seven dollars (**\$187,487**).

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 service 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:

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel
Office of Regional Counsel – Caribbean Team
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km 1.2
Guaynabo, PR 00968-8069
(787) 977-5859
rivera-ocasio.evelyn@epa.gov

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, Evelyn Rivera-Ocasio, by phone (787) 977-5859 or by email rivera-ocasio.evelyn@epa.gov 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 using a method provided on the website

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>, identifying the payment with “Docket No. CAA-02-2024-1201.”

Within 24 hours of payment of the EPA Penalty, Respondent shall send proof of payment 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.

Date: _____

Héctor L. Vélez Cruz, Esq.
Acting Director
Caribbean Environmental Protection Division