

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

HOMECA RECYCLING CENTER CO., INC.

Respondent

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

Docket No. CAA-02-2024-1201

COMPLAINANT'S INITIAL
PREHEARING EXCHANGE

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Complainant, United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant") herewith submits the following initial prehearing exchange as directed by Administrative Law Judge Michael B. Wright's "Prehearing Order," dated January 19, 2024, and in accordance with the provisions of 40 C.F.R. § 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice").

Complainant commenced this administrative proceeding to assess a civil penalty for the amount of \$184,474 against Homeca Recycling Center Co., Inc. ("Homeca" or "Respondent") for violations of 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").

In accordance with Section 22.5(b)(1) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1), Complainant served the Complaint to Respondent via certified mail with return receipt requested. On November 7, 2023, Respondent's counsel acknowledged receipt of the Complaint. Respondent timely filed its Answer on December 5, 2023.

In compliance with the Prehearing Order, the parties engaged in a settlement conference on February 1, 2024; but no settlement was reached.

1(A) WITNESS LIST

At this time, Complainant expects to call as witnesses the following individuals, whose testimony is expected to include, but may not be limited to, the matters described generally below. Complainant reserves the right to revise and supplement the matters about which each

witness identified below may testify.

Complainant anticipates that it may be appropriate to present the testimony of certain witnesses in written or affidavit form. Consequently, Complainant reserves the right to seek leave of the Tribunal to present in written or affidavit form, all or part of the testimony of some of the witnesses described below. In addition, Complainant anticipates that the parties will be able to stipulate that many of the exhibits are what they purport to be. In the event that parties are unable to so stipulate, Complainant reserves the right to present the testimony of the appropriate records custodians or other witnesses, in-person, virtual, or in written form, for the sole purposes of establishing that certain documents are what they purport to be.

To the extent that the parties can agree on stipulations and narrow the issues, or the issues are narrowed by accelerated decision, the number of witnesses, and/or length of their testimonies, may be reduced.

1. Richard Ponak
Environmental Scientist
Enforcement and Compliance Assurance Division
Toxics Programs Branch-Toxics Section
U.S. EPA Region III

Mr. Ponak was Lead Inspector for the July 31, 2019 inspection at the property located at Road 385 Km 5.4, Tallaboa Ward, Peñuelas, Puerto Rico (the “Facility”). He is an Environmental Scientist at EPA, Region 3, based in Philadelphia, Pennsylvania. Mr. Ponak received a B.S. in Environmental Studies from East Stroudsburg University in 1987. He has been an employee in EPA Region 3 since 1991 and has performed over 1,000 compliance inspections while at EPA.

Mr. Ponak will testify as both a Fact and Expert Witness. Mr. Ponak is duly authorized by EPA to conduct inspections under the authority of the Clean Air Act National Emission Standard for Asbestos (the “Asbestos NESHAP”).¹

Mr. Ponak may be called to testify, including but not limited to: (a) his background, training, and experience, including his training and experiences in conducting inspections to determine compliance with, and his training and experiences in case development, for violations of the CAA and the Asbestos NESHAP; (b) the various types and categories of asbestos-containing materials (“ACM”) and the factors that determine whether ACM is regulated pursuant to the Asbestos NESHAP; (c) relevant provisions of the Asbestos NESHAP violated by Respondent as alleged by Complainant in the Complaint; (d) the bases for such regulatory requirements; (e) the facts and circumstances leading to the July 31, 2019 inspection of the Facility; (f) the asbestos notifications submitted in connection with the demolition project at the Facility; (g) observations, communications, sampling, photographs, and findings made during the July 31, 2019 inspection of the Facility; (h) the practices he employed during the inspection with

¹ Inspector Ponak is currently a credentialed Asbestos NESHAP inspector. EPA is including his 2018 and 2019 Certification, to show that at the time of the inspection conducted by Inspector Ponak, had up-to-date credentials certifying him as an Asbestos NESHAP Inspector.

respect to the collection of samples and the taking of photographs during the July 31, 2019; (i) the chain of custody procedures and practices employed with respect to the samples collected at the Facility; (j) analytical results of the samples provided by Criterion Lab, including correcting and clarifying an error in the laboratory report as to the listing of the date the samples were collected; (k) applicable provisions of relevant EPA guidance documents (identified as exhibits herein) as they pertain to the present facts, circumstances, and conduct of Respondent; (l) reasons supporting conclusion that the Asbestos NESHAP applied to the demolition project at the Facility; and (m) reasons supporting conclusion that the Respondent violated provisions of the CAA and the Asbestos NESHAP.

Mr. Ponak also may be called to testify as a rebuttal witness to provide testimony in rebuttal to that provided by Respondent's witnesses.

2. Victor Tu
Environmental Engineer
Enforcement and Compliance Assurance Division
Air Compliance Branch-Air Senior Enforcement Team
U.S. EPA Region 2

Mr. Tu is an Environmental Engineer at EPA, Region 2, based in New York City, New York. He received a B.S. in Chemical Engineering, from the State University of New York at Buffalo in 1998, and an M.S. in Chemical Engineering, from the State University of New York at Buffalo in 2001. Mr. Tu has been an employee at EPA Region 2 since 2009. He currently serves as the Acting Supervisor for the Stationary Source Compliance Section.

Mr. Tu is duly authorized by EPA to conduct inspections under the authority of the Clean Air Act National Emission Standard for Asbestos (the "Asbestos NESHAP")². Mr. Tu was the Lead Inspector for the June 30, 2021 inspection at the Facility. In his capacity as inspector, case development officer, and sample custodian, Mr. Tu may be called as a Fact Witness.

Mr. Tu may be called to testify, including but not limited to: (a) his background, training and experience, including his training and experiences in conducting inspections to determine compliance with, and his training and experiences in case development for violations of the CAA and the Asbestos NESHAP; (b) the facts and circumstances leading to the June 30, 2021 inspection of the Facility; (c) communications with Respondent's representatives; (d) his observations, communications, sampling, photographs, and findings pertaining to the June 30, 2021 inspection of the Facility; (e) the practices he employed during the June 30, 2021 inspection of the Facility with respect to the collection of samples and the taking of photographs, including correcting and clarifying a typographical error concerning pictures identification number referenced in the inspection report; (f) the chain of custody with respect to the samples taken during the June 30, 2021 inspection of the Facility; (g) analytical results of the samples provided by Criterion Lab, including correcting and clarifying an error in the laboratory report concerning the location where one of the samples had been taken during the June 30, 2021

² Inspector Tu is currently a credentialed Asbestos NESHAP inspector. EPA is including his 2020 and 2021 Certification, to show that at the time of the inspection conducted by Inspector Tu, had up-to-date credentials certifying him as an Asbestos NESHAP Inspector.

inspection and the circumstances out of which it arose; (h) applicable provisions of relevant EPA guidance documents (identified as exhibits herein) as they pertain to the present facts, circumstances, and conduct of Respondent; (i) reasons supporting his conclusion that the Respondent violated provisions of the CAA and the Asbestos NESHAP; and (j) the calculation and appropriateness of the proposed penalty in consideration of the CAA Section 113(e) statutory factors, EPA's "Clean Air Act Stationary Source Civil Penalty Policy," and its Appendix III "Asbestos Demolition and Renovation Civil Penalty Policy."

3. Julian Velez
Physical Scientist
Enforcement and Compliance Assurance Division
Air Compliance Branch-Stationary Source Compliance Section
U.S. EPA Region 2

Mr. Velez is a Physical Scientist at EPA Region 2, based in New York City, New York. Mr. Velez received a B.S. in Chemistry, from Montclair State University in 2012 and an M.S. in Chemistry, with a concentration in Biochemistry, from Montclair State University in 2014. Mr. Velez has been an employee at EPA Region 2 since 2016.

Mr. Velez was present during the June 30, 2021 inspection at the Facility as an assistant inspector. In his capacity as assistant inspector, case developer, and sample custodian, Mr. Velez may be called as a Fact Witness.

Mr. Velez may be called to testify, including but not limited to: (a) his background, training and experience, including his training and experiences in conducting inspections to determine compliance with, and his training and experiences in case development for violations of the CAA; (b) the facts and circumstances leading to the June 30 2021 inspection of the Facility; (c) communications with Respondent's representatives during the inspection; (d) his observations, communications, sampling, photographs, and findings pertaining to the June 30, 2021 inspection of the Facility; (e) applicable provisions of relevant EPA guidance documents (identified as exhibits herein) as they pertain to the present facts, circumstances, and conduct of Respondent; and (f) the calculation and appropriateness of the proposed penalty in consideration of the CAA Section 113(e) statutory factors, EPA's "Clean Air Act Stationary Source Civil Penalty Policy," and its Appendix III "Asbestos Demolition and Renovation Civil Penalty Policy."

4. Joseph G. Cardile
Environmental Engineer
Enforcement and Compliance Assurance Division
Air Compliance Branch-Stationary Source Compliance Section
U.S. EPA Region 2

Mr. Cardile is an Environmental Engineer at EPA Region 2, based in New York City, New York. Mr. Cardile received a B.S. in Electrical Engineering from the City College of New York in 1978. Mr. Cardile has been an employee at EPA Region 2 since 2002. Mr. Cardile has served in the past as the Acting Supervisor for the Stationary Source Compliance Section.

Mr. Cardile may be called as an Expert Witness to testify, including but not necessarily limited to, (a) his background, training, and experience, and (b) as to the calculation and appropriateness of the proposed penalty in consideration of the CAA Section 113(e) statutory factors, EPA's "Clean Air Act Stationary Source Civil Penalty Policy," and its Appendix III "Asbestos Demolition and Renovation Civil Penalty Policy."

5. Kristen Keteles
Senior Toxicologist
U.S. EPA Office of Enforcement and Compliance Assurance
Office of Criminal Enforcement, Forensics and Training
National Enforcement Investigations Center

Mrs. Keteles is a Toxicologist at EPA's National Enforcement Investigations Center, based in Denver, Colorado. Mrs. Keteles received a B.S. in Marine Science from the Coastal Carolina University in 1995, and a Ph.D. in Zoology (Environmental Toxicology emphasis) from Louisiana State University in 2001. Mrs. Keteles has been an employee in EPA's National Enforcement Investigations Center since 2016.

Mrs. Keteles may be called as an Expert Witness to testify, including but not limited to: (a) her background, training, and experience; (b) asbestos exposure pathways, which primarily include inhalation and, to a lesser extent, ingestion routes; (c) the adverse environmental and human health effects associated with asbestos, including that asbestos is a known human carcinogen that increases the risk of lung cancer, mesothelioma, asbestosis, and changes in the pleura in exposed individuals; (d) the factors that increase the likelihood of developing severe asbestos-related disorders, including exposure to high concentrations of asbestos, exposure for long periods of time, or exposure to longer, more durable asbestos fibers; and (e) that health effects from asbestos exposure may continue to progress even after exposure is stopped.

Mrs. Keteles may also be called to testify as a rebuttal witness to provide testimony in rebuttal to that provided by Respondent's witnesses.

6. Andrew Schwab
Laboratory Director
Criterion Laboratories, Inc.

Mr. Schwab is the Laboratory Director of Criterion Laboratories, Inc. ("Criterion"), located in Bensalem, Pennsylvania. Mr. Schwab may be called as both a Fact and Expert Witness to testify, including but not limited to: (a) his background, training, and credentials as Laboratory Director for Criterion; (b) Criterion's receipt of samples that were collected at Work Site Area by Mr. Ponak and Mr. Tu during the July 31, 2019 inspection, and the June 30, 2021 inspection, respectively; (c) the chain of custody methods and other relevant procedures employed by the laboratory, generally and with respect to the subject samples; (d) a description of samples provided by EPA; (e) the methods employed in the care and analysis of samples delivered by EPA; (f) the analytical results of each of these samples; (g) an explanation of the analytical results of these samples and the conclusions that properly may be drawn on the basis of these

analytical results; and (h) Criterion's communication of results back to EPA.

Mr. Schwab may also be called to testify as a rebuttal witness to provide testimony in rebuttal to that provided by Respondent's witnesses.

1(B) EXHIBITS

EPA anticipates offering into evidence the following documents and records, copies of which are annexed hereto (unless otherwise specifically noted below) and will be identified as Complainant's Exhibit ("CX") with each exhibit numbered with the following Arabic numerals:

CX#	Description of Exhibit
1	Complaint and Notice of Opportunity to Request a Hearing*
2	Certificate of Service for Complaint*
3	Certified Mail Receipts and Acknowledgment of Receipt
4	Respondent's Answer to the Complaint
5	EPA Delegation of Authority 7-6-A
6	EPA Region 2 Delegation of Authority 7-6-A
7	DOJ HOMECA Enforcement Waiver Approval dated 12-17-2021*
8	Section 112 of the Clean Air Act, 42 U.S.C. § 7412, available at https://www.law.cornell.edu/uscode/text/42/7412 (printed on 3-1-24)
9	Section 113 of the Clean Air Act, 42 U.S.C. § 7413, available at https://www.law.cornell.edu/uscode/text/42/7413 (printed on 3-1-24)
10	Section 114 of the Clean Air Act, 42 U.S.C. § 7414, available at https://www.law.cornell.edu/uscode/text/42/7414 (printed on 3-1-24)
11	Section 302 of the Clean Air Act, 42 U.S.C. § 7602, available at https://www.law.cornell.edu/uscode/text/42/7602 (printed on 3-1-24)
12	National Emission Standards for Asbestos (Asbestos NESHAP), 40. C.F.R. Part 61, Subpart M, available at https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-61/subpart-M . (*printed version up to date as of 2-27-24)
13	"Work Plan to Comply with Compliance Order CAA-02-2014-1009" prepared for Tallaboa Industrial Park, LLC and Homeca Recycling Center, Inc. (dated September 18, 2015)
14	October 2, 2015 Notice of Approval from U.S. EPA for Homeca's September 18, 2015 Work Plan
15	Environmental Survey and Assessment for Asbestos Containing Materials for Work Area at Tallaboa Industrial Park prepared by Best Environmental Consultants, Inc for Homeca Recycling Center Co. Inc. (dated January 19, 2019)
16	Homeca Notification of Asbestos Demolition and Renovation Forms
17	Resume for Richard Ponak
18	Resume for Joseph Cardile
19	Resume for Andrew Schwab
20	2018 Credential Certification for Richard Ponak*
21	2019 Credential Certification for Richard Ponak*

22	2020 Credential Certification for Victor Tu*
23	2021 Credential Certification for Victor Tu*
24	2020 Credential Certifications for Julian Velez*
25	2021 Credential Certification for Julian Velez*
26	EPA Inspection Report for July 31, 2019 Inspection at Tallaboa Industrial Park (Inspector – Richard Ponak)
27	Photo Identification Log Sheet – July 31, 2019 Inspection
28-63	Individual Photos from July 31, 2019 Inspection (36 photos)
64	Sample Collection Log – July 31, 2019 Inspection
65	Chain of Custody, Richard Ponak – July 31, 2019 Inspection
66	Chain of Custody, Criterion Laboratories, Inc. – July 31, 2019 Inspection
67	Results of Polarized Light Microscopy, Criterion Laboratories, Inc. – July 31, 2019 Inspection
68	Homeca Waste Manifests (June 18, 2019 – August 16, 2019)
69	November 6, 2020 Letter from Eduardo Ramos, Homeca, to Nancy Rodriguez, U.S. EPA, stating that Homeca has completed Phase II of Work Plan and will Commence Phase III of Work Plan
70	Email dated February 5, 2021 from Rafael Toro to Suzette Melendez-Colon, U.S. EPA, confirming Homeca completion of Phase III of the Work Plan in accordance with its Section 5.0, and confirming Homeca’s execution of the Work Plan
71	EPA Inspection Report for June 30, 2021 Inspection at Tallaboa Industrial Park (Lead Inspector - Victor Tu; Assistant Inspector - Julian Velez)
72-142	Individual Photos from June 30, 2021 Inspection (71 photos)
143	Aerial Photo of Work Site Area, Appendix A of Work Plan
144	Asbestos Bulk Sample Log – June 30, 2021 Inspection, Completed by Victor Tu, Submitted to Criterion Laboratories, Inc.
145	Chain of Custody, Criterion Laboratories, Inc. – June 30, 2021 Inspection
146	Results of Polarized Light Microscopy, Criterion Laboratories, Inc. – June 30, 2021 Inspection
147	April 13, 2020 Administrative Compliance Order, CAA-02-2020-1003
148	Asbestos/NESHAP Adequately Wet Guidance, U.S. Environmental Protection Agency, EPA 340/1-90-19 (December 1990)
149	Asbestos NESHAP Regulated Asbestos Containing Material Guidance, U.S. Environmental Protection Agency (December 1990)
150	Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act), 28 U.S.C. § 2461 note, Pub. L. 114-74, available at https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf .*
151	Civil Monetary Penalty Inflation Adjustment Rule, 88 Fed. Reg. 89,309 (Dec. 27, 2023)
152	40 C.F.R § 19.4, available at https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-19/section-19.4
153	“Clean Air Act Stationary Source Civil Penalty Policy,” issued by the United States Environmental Protection Agency, dated October 25, 1991 (178 pages), available at

	https://www.epa.gov/enforcement/clean-air-act-stationary-source-civil-penalty-policy-october-25-1991).
154	“Asbestos Demolition and Renovation Civil Penalty Policy,” as revised May 11, 1992 (Appendix III to EPA's Asbestos Demolition and Renovation Civil Penalty Policy) (pdf pages 64-81 of 178 pages), available at https://www.epa.gov/enforcement/clean-air-act-stationary-source-civil-penalty-policy-october-25-1991 .
155	“Amendments to EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule” issued by the United States Environmental Protection Agency, dated January 12, 2022, available at https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation_0.pdf *
156	Penalty Calculation Summary Chart for Homeca Recycling Center Co., Inc
157	Dun & Bradstreet, Inc. Finance Report for Homeca Recycling Center Co., Inc. (Duns No: 13-806-2828), printed April 20, 2021
158	Resume Vitae for Kristen Keteles*
159	Asbestos Exposure Pathway Pictorial
160	Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Asbestos. Public Health Service, U.S. Department of Health and Human Services, Atlanta, GA. 2001, available at https://www.atsdr.cdc.gov/ToxProfiles/tp61.pdf
161	Becklake, M.R. 1976. Asbestos-related diseases of the lung and other organs: Their epidemiology and implications for clinical practice. <i>Amer. Rev. Respir. Dis.</i> , 114 pp. 187–227, available at https://pubmed.ncbi.nlm.nih.gov/779552/ **
162	U.S. Environmental Protection Agency. 1988. Integrated Risk Information System Chemical Assessment Summary on Asbestos; CASRN 1332-21-4, available at Office of Research and Development. https://iris.epa.gov/static/pdfs/0371_summary.pdf
163	U.S. Environmental Protection Agency. 2014. Integrated Risk Information System Toxicological Review of Libby Amphibole Asbestos (Final Report), EPA/635/R-11/002F, Office of Research and Development, available at https://cfpub.epa.gov/ncea/iris_drafts/recorddisplay.cfm?deid=292394 **
164	Harless, K.W., Watanabe, S., Renzetti, A.D. 1978. The Acute Effects from Chrysotile Asbestos Exposure on Lung Function. <i>Environmental Research</i> 16: 360–372, available at https://www.sciencedirect.com/science/article/pii/001393517890169X?via%3Dihub
165	Hillerdal G. 1999. Mesothelioma: cases associated with non-occupational and low dose exposures. <i>Occup Environ Med</i> 56:505–513, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1757769/
166	International Agency for Research on Cancer. 1973. Bogovski, P., Gilson, J.C., Timbrell, V., Wagner, J.C. eds. <i>Biological Effects of Asbestos</i> , available at

	https://publications.iarc.fr/Book-And-Report-Series/Iarc-Scientific-Publications/Biological-Effects-Of-Asbestos-1973
167	International Agency for Research on Cancer. 2012. Arsenic, Metals, Fibers, and Dusts: A review of human carcinogens. <i>IARC Monographs on the Evaluation of Carcinogenic Risks to Humans</i> . Volume 100 C, available at https://www.ncbi.nlm.nih.gov/books/NBK304375/
168	Naik, S.L., Lewin M., Young, R., Dearwent, S.M., and Lee, R. 2017. Mortality from asbestos-associated disease in Libby, Montana 1979–2011. <i>Journal of Exposure Science and Environmental Epidemiology</i> , 27, pp. 207–213, available at https://www.nature.com/articles/jes201618
169	National Institute of Occupational Health and Safety. 1972. Criteria for a Recommended Standard: Occupational Exposure to Asbestos, Center for Disease Control, Department of Health and Human Services, HSM-72-10267, available at https://www.cdc.gov/niosh/docs/72-10267/default.html
170	Pairon, J.C., Laurent, F., Rinaldo, M., Clin, B., Andujar, P., Ameille, J., Brochard, P., Chammings, S., Ferretti, G., Galateau-Salle, F., Gislard, A., Letourneux, M., Luc, A., Schorle, E., Paris, C. 2013. Pleural Plaques and the Risk of Pleural Mesothelioma. <i>Journal of the National Cancer Institute</i> , Volume 105, Issue 4, pp. 293–301, available at https://academic.oup.com/jnci/article/105/4/293/925337
171	Selikoff IJ, Hammond EC, Seidman H. 1979. Mortality experience of insulation workers in the United States and Canada, 1943-1976. <i>Ann NY Acad Sci</i> 330:91-116, available at https://nyaspubs.onlinelibrary.wiley.com/doi/10.1111/j.1749-6632.1979.tb18711.x
172	Wright, R.S., Abraham, J.L, Harber, P., Burnett, B.R., Morris, P., and West. P. 2002. Fatal asbestosis 50 years after brief high intensity exposure in a vermiculite expansion plant. <i>Am J Respir Crit Care Med</i> , 15:1145–1149, available at https://www.atsjournals.org/doi/full/10.1164/ajrccm.165.8.2110034
173	Common Questions on the Asbestos NESHAP, U.S. Environmental Protection Agency, EPA 340/1-90-021 (December 1990)

* This exhibit could not be identified/labeled as required by the Prehearing Order as it was electronically signed and/or electronically certified and any edits would render the signature invalid.

**Complainant has requested a pdf copy of this exhibit and intends to supplement the URL provided upon receipt.

1(C) STATEMENT SPECIFYING AMOUNT OF TIME NEEDED BY COMPLAINANT TO PRESENT ITS DIRECT CASE AND WHETHER AN INTERPRETER IS NECESSARY

Complainant estimates that it will require approximately two to three days to present its

case in chief. The length of time required for rebuttal testimony and cross-examination of Respondent's witnesses will depend on the number and substance of documents and witnesses disclosed in Respondent's Prehearing Exchange. Complainant does not anticipate that the services of an interpreter with regards to the testimony of any witnesses will be necessary.

2.(A) DOCUMENTATION SHOWING THAT SERVICE OF THE COMPLAINT WAS COMPLETED IN ACCORDANCE WITH SECTION 22.5(b)(1) OF THE RULES OF PRACTICE, 40 C.F.R. § 22.5(b)(1)

Documentation of service of the Complaint can be found in CX 2 and CX 3.

2(B) A BRIEF NARRATIVE STATEMENT, AND A COPY OF ANY DOCUMENTS IN SUPPORT, EXPLAINING IN DETAIL THE FACTUAL AND/OR LEGAL BASES FOR THE ALLEGATIONS DENIED OR NOT OTHERWISE ADMITTED IN RESPONDENT'S ANSWER

In its Answer, Respondent did not deny, admit or otherwise comment on anything regarding the Legal Background Section of the Complaint; therefore, this narrative does not contain a discussion regarding the regulatory scheme therein. Also, the Complaint's last three sections pertain to procedural matters and contain no factual or legal allegations, and thus are not discussed below.

Discussed below are Complainant's response to Respondent's factual and legal allegations denied in its answer dated December 4, 2023, which will be supported by both the testimony of the witnesses identified in Section 1(A) as well as the documents located in Section 1(B) of the instant Initial Prehearing Exchange, some of which are specifically cited to in Complainant's narrative responses below.

Preliminary Statement

In this section, Complainant summarizes the five counts for which it is seeking a civil penalty from Respondent. Respondent denied Complainant's allegations contained in the Complaint by asserting that it has complied with the requirements under the Asbestos NESHAP and the cleanup required by Phase III of the Work Plan referenced in the Compliance Order (CAA-02-2020-1003).

In responding to this section in its Answer, Respondent provides some background history of the Facility. Respondent admitted in its Answer that it was hired by the owner of the Tallaboa Industrial Park Complex ("TIPC") 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 TIPC. This 10-acre area is referred to in the Complaint as the "Work Site Area." Respondent also admitted that the Work Site Area includes distillation columns and pipes, containing ACM, formerly used in petrochemical operations that ceased during the 1970s. Moreover, Respondent admitted that as operator Respondent conducted demolition activities at the Work Site Area and that pursuant to *Homeca Recycling Center, Inc. et al v. United States Environmental Protection Agency*, Case No. 14-447

(1st Cir. 2015), it developed a Work Plan and received EPA approval on October 2, 2015, for remediating asbestos contamination at the Work Site Area.

Respondent had the obligation to implement the Work Plan, as approved by EPA, and to comply with the Asbestos NESHAP. Respondent is liable for the alleged violations in the Complaint as the operator who conducted asbestos stripping activities at the Work Site Area.

Complainant reasserts that it commenced this proceeding to assess administrative civil penalties under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

Findings of Fact

Paragraph 46

Respondent denied paragraph 46 as drafted. Paragraph 46 of the Complaint describes the conditions observed by the EPA NESHAP Inspector during the inspection performed on July 31, 2019 (CX 26). The EPA NESHAP Inspector was accompanied by a Homeca representative, who should have observed the same conditions described by the EPA NESHAP Inspector in its inspection report.

In the denial to this paragraph, Respondent further explained that the bags accumulated inside the waste containers were part of the purported “work in progress for re-bagging prior to off-site transportation” and that this “procedure” was being followed due to the alleged working conditions consisting of “ACM removal from distillation columns over 100 feet high, inside enclosures supported by scaffolding structure in a very hot and dry ambient, typical of the southern part of the Island in the Tallaboa Ward of Peñuelas.”

The procedure described by Respondent to wet ACM and to ensure that ACM remains wet as required by the Asbestos NESHAP deviates from what is stated, and that which Respondent agreed to in the EPA approved Work Plan. The Work Plan does not include the re-bagging process described by Respondent as the method they used prior to off-site transportation, nor does the Work Plan allow deviation from the wetting requirement of the Asbestos NESHAP due to the alleged working conditions at the Work Site Area described by Respondent.

The Work Plan states that the towers will be abated starting from top to the bottom, the ACM will be wetted and sealed in bags within the specific section and lowered manually down the scaffolding by the workers (*see* Section 4.2.e of the Work Plan, CX 13). The procedure in the Work Plan further states that all ACM removed will be maintained wetted and placed in labeled 6 mils polyethylene double bags and placed in closed containers, except for the refractory bricks which will be disposed in bulk, covered with a liner, and that the containers will be labeled as required by DOT 49 C.F.R. § 172 regulation (*see* Section 4.2.f of the Work Plan, CX 13).

Paragraphs 47 through 50

Respondent denied paragraphs 47 through 50 as drafted, indicating that ACM that

covered the metal tanks and columns was adequately wetted when it was cut and stripped, and the observations made by the inspector were not indicative of the procedure followed by Homeca.

In Paragraphs 47 through 50, the Complaint describes the process that the EPA NESHAP Inspector took to randomly select leak-tight bags, that were sealed with duct tape and not torn, from each of the four waste containers. The EPA NESHAP Inspector inspected the content of the leak-tight bags in the presence of a Homeca representative. Each time the EPA NESHAP Inspector opened a leak-tight bag from each of waste container it showed no presence of moisture which is indicative that the RACM was not adequately wet when it was placed in the leak-tight bag by Respondent.

EPA's Asbestos/NESHAP Adequately Wet Guidance (CX 148) states in its introduction that the primary method used to control asbestos emissions is to adequately wet the ACM with a wetting agent prior to, during, and after demolition/renovation activities. Moreover, Sections 4 and 6 of the Guidance discuss the requirements for adequately wetting ACM under the different section of the Asbestos NESHAP, and techniques for wetting ACM, respectively.

Paragraph 55

Respondent denied paragraph 55 as drafted indicating that it has no personal knowledge if all the locations marked were inside the Work Area.

Respondent admitted Complainant's allegation in paragraph 51, accepting that Phase III of the Work Plan required that Respondent 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. Also, Respondent admitted Complainant's allegation in paragraph 54, which states that during the June 30, 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 TIPC. (CX 71). As stated in paragraph 55, the EPA NESHAP Inspector identified locations where suspected ACM were present in the immediate vicinity and inside the Work Site Area. The EPA NESHAP Inspector placed marking flags at thirty-one (31) locations, within the immediate vicinity and inside the Work Site Area and took pictures, seventy-one (71) in total (CX 72 to 142). The EPA NESHAP Inspector took samples of visible debris left in the area. Of the nine (9) samples taken, seven (7) sample results came back as ACM. Contrary to the certification submitted in an email dated February 5, 2021 (CX 70), Homeca did not complete the execution of the Work Plan for remediating asbestos contamination at the Work Site Area in compliance with the Administrative Compliance Order (CAA-02- 2020-1003) dated April 13, 2020. (CX 147).

Conclusions of Law

Respondent denies the finding of liability regarding all five counts alleged in the Complaint. Each count in this Section is discussed separately below.

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

until collected

Paragraph 66 of the Complaint states that 40 C.F.R. § 61.145(c)(6) 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.

Respondent denied paragraph 66, as drafted, and commented that reference should have been to 40 C.F.R. § 61.145(c)(3) instead of 40 C.F.R. § 61.145(c)(6). Complainant agrees with the comment made by Respondent. Complainant made a typographical error when drafting paragraph 66 of the Complaint. Complainant should have referenced 40 C.F.R. § 61.145(c)(3) in paragraph 66.³

Paragraph 67 of the Complaint states that 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 to adequately wet all regulated asbestos containing material (“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. Respondent denied paragraph 67, as drafted, and commented that the referenced section is subject to the applicable standard in 40 C.F.R. § 61.150. Complainant agrees that the work practice required under 40 C.F.R. § 61.145(c)(6)(i) is subject to the standard in 40 C.F.R. § 61.150 and re-alleges its reference to 40 C.F.R. § 61.145(c)(6)(i).

Respondent denied paragraphs 68 and 69 of the Complaint stating that it reaches a conclusion that does not conform to nor takes into consideration the reality of the ambient and working conditions at the project site, nor is it supported by substantial evidence in the administrative record. Asbestos is one of the hazardous air pollutants (HAPs) listed in the initial list of Section 112(b)(1) of the Act. The list of HAPs, includes specific compounds that are known or suspected to have a carcinogenic effect or other serious health effects. The Asbestos NESHAP contains a series of work practice requirements that apply to the owners and operators of renovation or demolition activities, such as the Respondent. The Asbestos NESHAP allows two exceptions to wetting RACM during demolition or renovation project and to ensure it remains wet until collected for final disposal: (1) when the temperature at the point of wetting is below 0 °C (32 °F) (40 C.F.R. § 61.145(c)(7)(i)), and (2) when the use of water would unavoidably damage equipment or present a safety hazard, for which a written approval from the Administrator of the EPA must be obtained (40 C.F.R. § 61.145(c)(3)(i)(A)). (*see* CX 148 pg 9). The Asbestos NESHAP does not make any exception from the adequately wet standard for the removal of ACM under conditions inside enclosures installed around scaffolding structures around the distillation towers, 100 to 150 feet above ground elevation, in extremely hot and dangerous conditions as suggested by Respondent. If Respondent had determined that the conditions were in fact a safety hazard, Respondent should have gotten written approval from the EPA Administrator.

Complainant re-alleges that 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

³ Complainant will be seeking leave from the Tribunal to correct the typographical error. Complainant contacted opposing counsel, and he stated he will not oppose to the motion.

disposal in violation to 40 C.F.R. §§ 61.145(c)(3) and 61.145(c)(6) of the Asbestos NESHAP.

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

Respondent denied paragraphs 72 and 73 of the Complaint stating that it reaches a conclusion that does not conform to nor takes into consideration the reality of the ambient and working conditions at the project site, nor is it supported by substantial evidence in the administrative record.

Complainant re-states its answer to Respondent's denial of paragraphs 68 and 69, above. The Asbestos NESHAP does not make any exception from the adequately wet standard for the removal of ACM in the ambient and working conditions alleged by Respondent to have existed at the project Work Site Area. Respondent has an obligation pursuant to the Asbestos NESHAP to keep ACWM wet at all times until disposal at an asbestos landfill. The evidence shows that during the July 31, 2019 inspection, the inspector found torn leak-tight bags, with dry ACWM and no sign of moisture, and visible dust in all four waste containers (*see* CX 28 through 63; CX 26). Respondent could have set a schedule to periodically wet the waste containers to comply with the adequately wetting requirement. The work practice of sealing via leak-tight bags ensures the ACWM continues to stay wet until disposal at a permitted landfill.

Complainant re-alleges that Respondent failed to seal all RACM in leak-tight containers while wet in violation 40 C.F.R. § 61.150(a)(1)(iii).

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

Respondent admitted paragraph 75 of the Complaint, where Complainant references 40 C.F.R. § 61.150(a)(1)(v), which 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.

Respondent denied paragraphs 76 and 77, as drafted, alleging that it fails to recognize that the accumulation was a "work in progress" as part of the purported "procedure for final transportation off the facility;" thus, the Respondent suggests that "the controversy was not ripe for a conclusion of law to be based thereon."

Based on the observations made by the inspector during the July 31, 2019, there were four waste containers containing torn leak-tight bags, and visible dust. Three of the four waste containers were full, and the fourth one was $\frac{3}{4}$ full. At the time of the inspection, none of the bags in all four containers had generator labels on them. At the time of the inspections, it was not apparent that labeling of the bags was being done.

The procedure in Part 4.2.f of the Work Plan (CX 13) states that all ACM removed will be maintained wetted and placed in labeled 6 mils polyethylene double bags and placed in closed

containers, except for the refractory bricks which will be disposed in bulk, covered with a liner, and that the containers will be labeled as required by DOT 49 C.F.R. § 172 regulation. Part 4.2.g of the Work Plan further states that “when the container is full, manifest will be prepared, and the container will be shipped to the approved Ponce Republic’s disposal site.”

Respondent’s allegation about the work in progress as part of the procedure for final transportation off the Facility deviates from what is stated and Respondent agreed to in the EPA approved Work Plan.

Complainant re-alleges the conclusion contained in paragraph 77. Complainant clarifies that it made a typographical error when referencing 40 C.F.R. § 61.150(a)(1)(iv) in paragraph 77 of the Complaint. Complainant should have referred to 40 C.F.R. § 61.150(a)(1)(v) as it did in paragraph 75 of the Complaint.⁴

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

Respondent denied paragraphs 81 and 82 of the Complaint, as drafted, stating as it does not understand what is meant by vacated, and it reaches a conclusion that is not supported by substantial evidence regarding the origin of the suspected ACM and its location.

Paragraph 81 of the Complaint is a succinct summary of paragraphs 52 through 56 of the Findings of Fact Section of the Complaint. Respondent admitted paragraphs 51, 52, 53 and 54, denied paragraph 55, and neither admitted nor denied paragraph 56.

In an email dated February 5, 2021 (CX 70), Respondent notified EPA that it had completed the Phase II of the Work Plan (CX 13). The general meaning of the word *vacated* means to leave a room, building, chair, etc, so that is available for other people.⁵ By using the word “vacated,” Complainant meant that Respondent left the premises, that is the Work Site Area, after asserting in its February 2021 email that it has completed the work required under Phase III of the Work Plan.

As it states in the Work Plan, “[t]he purpose of the Phase III [was] 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.” (CX 13)

During the June 30, 2021 inspection, the EPA NESHAP Inspector walk through of the Work Site Area and place marking flags at location where potential ACM was visually observed. Thirty-one (31) locations were marked, and nine (9) samples of visible debris were taken (CX 71). Of the nine (9) samples taken, seven (7) sample results came back as ACM. Pictures were also taken at all locations depicting visible debris in the area. (CX 146).

⁴ Complainant will be seeking leave from the Tribunal to correct the typographical error. Complainant contacted opposing counsel regarding this error, and he stated he will not oppose Complainant’s motion.

⁵ Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/vacated>.

Complainant re-alleges that 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).

Count 5: Failure to comply with an administrative compliance order

Respondent denied paragraph 86, stating that it is based on facts of which Respondent has no personal knowledge, and the reference order was already terminated based on its own terms and applicable law.

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 for remediating ACM at the Work Site Area. In April 2020, EPA issued Respondent an Administrative Compliance Order (CAA-02-2020-1003), to require Respondent to continue with the implementation of the Work Plan and 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.

On February 5, 2021, Respondent notified EPA that it had completed the implementation of the Work Plan. (CX 70). On June 30, 2021, an inspection was performed at the Work Site Area where visible debris were observed (CX 71). Nine samples taken during the inspection, seven (7) of the nine (9) came back as ACM after lab analysis. (CX 146).

The statute of limitations provides a five-year period to initiate a civil penalty action, beginning on the date the claim “first accrued.” Complainant issued a Complaint alleging that Respondent failed to comply with the Order in October 2023. Complaint is well within the statute of limitations to initiate a civil penalty action against Respondent.

Respondent denied paragraph 87, as drafted, alleging that it does not understand what is meant by abandoning the Work Site Area, and suggested that it reaches a conclusion that is not supported by substantial evidence regarding the origin of the suspected ACM that allegedly remained present and its location. The general meaning of the word *abandon* is “to leave a place, thing, or person, usually forever.”⁶⁷

Complainant re-alleges that Respondent violated Section 113 of the Act, by failing to comply with Administrative Compliance Order (CAA-02- 2020-1003) dated April 13, 2020 (CX 147), by leaving the Work Site Area without fully remediating asbestos contamination as required by approved Work Plan. (CX 13).

Affirmative Defenses

Respondent’s Answer contains a number of general affirmative defenses (Defenses 1-16). Because these defenses are presented generally and not in response to specific allegations in the Complaint, Complainant is not addressing them herein. Pursuant to the Prehearing

⁷ Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/abandon?q=abandoning+>

Complainant's Initial Prehearing Exchange Order, if Respondent raises any of these affirmative defenses in its pre-hearing exchange, Complainant will address them in its rebuttal prehearing exchange. *See* Prehearing Order, Paragraphs 3.b and 4.

2(C) FACTUAL INFORMATION AND SUPPORTING DOCUMENTS RELEVANT TO PENALTY

Paragraph 2(C) of the Prehearing Order calls for “all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty.”

Complainant relied on a consideration of all of the evidence listed in Section 1(B), above, in conjunction with the information presented in Section 2(B), above, when calculating the proposed penalty.⁸ Especially relevant to Complainant's calculation of the penalty was the following evidence:

- Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act), 28 U.S.C. § 2461 note, Pub. L. 114-74, available at <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>. (CX 150)
- Civil Monetary Penalty Inflation Adjustment Rule, 88 Fed. Reg. 89,309 (Dec. 27, 2023). (CX 151)
- 40 C.F.R. § 19.4, available at <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-19/section-19.4> (CX152)
- Section 112 of the Clean Air Act, 42 U.S.C. § 7412, available at <https://www.law.cornell.edu/uscode/text/42/7412> (printed on 3-1-24) (CX 8)
- Section 113 of the Clean Air Act, 42 U.S.C. § 7413, available at <https://www.law.cornell.edu/uscode/text/42/7413> (printed on 3-1-24) (CX 9)
- “Clean Air Act Stationary Source Civil Penalty Policy,” issued by the United States Environmental Protection Agency, dated October 25, 1991 (178 pages), available at <https://www.epa.gov/sites/default/files/documents/penpol.pdf> (CX 153)
- “Asbestos Demolition and Renovation Civil Penalty Policy,” as revised May 11, 1992 (Appendix III to EPA's Asbestos Demolition and Renovation Civil Penalty Policy) (pdf pages 64-81 of 178 pages), available at <https://www.epa.gov/sites/default/files/documents/penpol.pdf>. (CX 154)
- “Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule” issued by the United States Environmental Protection Agency, dated January 12, available at https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation_0.pdf (CX 155)
- Penalty Calculation Summary Chart for Homeca Recycling Center Co., Inc. (CX 156)
- Dun & Bradstreet, Inc. Finance Report for Homeca Recycling Center Co. Inc. (Duns No: 13-806-2828), printed April 20, 2021 (CX 157)

⁸ Complaint has also considered the information presented by Respondent in its Answer and has determined that no adjustment in the proposed penalty is warranted at this time based on the information presented.

- Homeca Notification of Asbestos Demolition and Renovation Forms (CX 16)
- Homeca Waste Manifests from June 18, 2019 – August 16, 2019 (CX 68)
- EPA Inspection Report for July 31, 2019 Inspection at Tallaboa Industrial Park (Inspector – Richard Ponak) (CX 26)
- EPA Inspection Report for June 30, 2021 Inspection at Tallaboa Industrial Park (Lead Inspector - Victor Tu; Assistant Inspector - Julian Velez) (CX 71)
- April 13, 2020 Administrative Compliance Order, CAA-02-2020-1003 (CX 148)
- “Work Plan to Comply with Compliance Order CAA-02-2014-1009” prepared for Tallaboa Industrial Park, LLC and Homeca Recycling Center, Inc. (dated September 18, 2015) (CX 13)
- Environmental Survey and Assessment for Asbestos Containing Materials for Work Area at Tallaboa Industrial Park prepared by Best Environmental Consultants, Inc for Homeca Recycling Center Co. Inc. (dated January 19, 2019) (CX 15)

2(D) GUIDANCE AND POLICIES REGARDING REGULATORY VIOLATION ALLEGED IN COMPLAINT

In Section 1(B) above, Complainant has included a description of EPA guidance documents and/or policies it currently is intending to rely on to support the allegations set forth in the Complaint.

2(E) CIVIL PENALTY CALCULATION/JUSTIFICATION

In accordance with 40 C.F.R. § 22.19(a)(3), and as required by Paragraph 2(E) of the Pre-Hearing Order,⁹ Complainant provides the following information:

The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (“CAA Penalty Policy” or “CAAPP”), and Appendix III thereto (“Asbestos Penalty Policy” or “APP”), revised May 11, 1992; and the memorandum “Amendments to EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule” issued by EPA, dated January 12, 2022 (“2022 Inflation Memo”).¹⁰

1. Overview of Laws and Policies

Section 113(d) of the Act provides that the Administrator may assess a civil

⁹ Paragraph 2(E) calls for “a detailed explanation of the factors considered, and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and any policies referenced in the proposed civil penalty section of the Complaint.”

¹⁰ Note that on January 10, 2024, EPA issued the memorandum “Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2024)” (2024 Inflation Memo). The 2024 Inflation Memo amends EPA’s existing civil penalty policies to account for inflation, and it provides inflation adjustment factors that supersede those set forth in the 2022 Inflation Memo for civil penalties assessed on or after January 15, 2024. However, because the instant complaint, filed on October 23, 2023 pre-dates the January 15, 2024 effective date of the 2024 Inflation Memo, EPA’s asserted penalty of \$187,487, as set forth in the Complaint, relies on the 2022 Inflation Memo and the inflation adjustment factor therein.

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. 114-74, Section 701). Most recently, on December 27, 2023, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, which adjust the statutory maximum and minimum civil penalties under the various environmental laws implemented by the EPA to account for inflation.

Section 113(e) of the CAA, 42 U.S.C. § 7413(e), enumerates the factors to be considered when assessing a CAA penalty: 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, the seriousness of the violation, and such other factors as justice may require. The CAA Penalty Policy was developed to apply these statutory factors in a consistent and equitable manner so that members of the regulated community are treated similarly for similar violations across the country. The CAA Penalty Policy seeks to achieve the goal of deterrence by deriving a penalty that removes the economic benefit of noncompliance and that reflects the gravity of the violation (CAAPP pg. 4).¹¹

The Asbestos Penalty Policy, which is an appendix to the CAA Penalty Policy, was created specifically for asbestos demolition and renovation cases, due to their unique nature (see APP pg. 1). It provides separate guidance for determining the gravity and economic benefit components of the penalty, while referring to the CAA Penalty Policy for determining some of the factors within the gravity component, including size of violator (*see* APP pg. 6).

Finally, the 2022 Inflation Memo, effective January 15, 2022, and applicable at the time of Complainant's penalty assessment, directs the EPA on amending the agency's existing civil penalty policies to account for inflation. For each violation occurring after November 2, 2015, the 2022 Inflation Memo first directs EPA to find the applicable penalty policy in Table A of the Memo and to use that policy to determine the initial calculated gravity-based penalty for a case (2022 Inflation Memo pg. 3, 7). In the instant case, the applicable penalty policies include both the CAA Penalty Policy and the Asbestos Penalty Policy.

Next, the 2022 Inflation Memo directs EPA to multiply the initial calculated gravity-based portion of the penalty by the multiplier associated with the applicable penalty policy (2022 Inflation Memo pg. 3). For Counts 1-4 of the Complaint, which represent Respondent's alleged violations of the Asbestos NESHAP regulations, the adjusted gravity component is calculated pursuant to both the CAA and Asbestos Penalty Policies and multiplied by 1.95056 (the inflation adjustment multiplier applicable to the Asbestos Penalty Policy). For Count 5 of the Complaint, Respondent's alleged violation of Section 113 of the CAA for failure to comply with EPA's April 13, 2020 Administrative Compliance Order (CAA-02-2020-1003), the adjusted gravity

¹¹ Please note that all page citations to documents referenced in Section 2(C) are to the page numbers as listed in the documents themselves (as opposed to PDF pg. numbers).

component is calculated pursuant to the CAA Penalty Policy and multiplied by 2.01302 (the inflation adjustment multiplier for the CAA Penalty Policy). Finally, once the total gravity-based penalty has been calculated, the 2022 Inflation Memo directs EPA to incorporate economic benefit and any other factors that apply as instructed by the penalty policy to arrive at the total penalty (2022 Inflation Memo pg. 3-4).

2. Application of Policies

i. Units of RACM (Applicable to Respondent's Asbestos NESHAP Violations, Counts 1-4 of Complaint)

The Asbestos Penalty Policy has a matrix setting out penalties for Asbestos NESHAP work practice and emission violations, which includes consideration of past violations, the amount of asbestos involved, which relates to the potential for environmental harm associated with improper removal and disposal, and days of violation (APP pg. 17). The matrix groups penalties by “units” of asbestos involved in the operation, with one unit—260 linear feet, 160 square feet or 35 cubic feet—being the threshold for the applicability of the substantive requirements. Proposed penalties under the Asbestos Penalty Policy are smallest where there are between 1 and 10 units, greater where there are more than 10 units but 50 or fewer units, and greatest where there are more than 50 units of asbestos.

a. Counts 1-3

As applicable to the violations alleged in Counts 1-3 of the Complaint¹², on July 31, 2019, the day of EPA Inspector Richard Ponak's inspection, four containers holding ACWM were located onsite wherein ACWM was found to be bone dry in sealed bags. Inspector Ponak observed that three of the four containers were full and one of the containers was one-third full (thus, 3.33 containers were full). Based on the manifest provided by Homeca, the containers used during that timeframe were 40 cubic-yard containers. From this information, and in accordance with the Asbestos Penalty Policy, Complainant determined that the units of RACM involved in the operation associated with the violation, for purposes determining the gravity portion of the penalty, was 102.8 units:

$$3.33 \text{ containers} * 40 \frac{yd^3}{\text{container}} * 27 \frac{ft^3}{yd^3} * \frac{1 \text{ unit}}{35 ft^3} = 102.8 \text{ units}$$

Thus, for the violations alleged in Counts 1-3 of the Complaint, the units of RACM associated with each respective violation is 102.8 units.

b. Count 4

As applicable to the violation of 40 C.F.R. § 61.150(b) alleged in Count 4 of the Complaint, which was identified on June 30, 2021 by EPA Inspectors Victor Tu and Julian

¹² Count 1 alleges Respondent's violation 40 C.F.R. § 61.145(c)(6). Count 2 alleges Respondent's violation of 40 C.F.R. § 61.150(a)(1)(iii). Count 3 alleges Respondent's violation of 40 C.F.R. § 61.150(a)(1)(v). See Complaint at paragraphs 65-77.

Velez, pursuant to the Notification of Asbestos Demolition and Renovation provided by Homeca to EPA, 150,000 square feet of ACWM was being removed from the facility. Based on this information, and in accordance with the threshold requirements set forth in the Asbestos Penalty Policy, EPA was able to determine the units of RACM involved in the operation associated with this violation as follows:

$$150,000 \text{ sq ft} / 160 \text{ sq ft per unit} = 937.5 \text{ units}$$

Thus, the units of RACM associated with Count 4 of the Complaint are 937.5 units.

ii. Economic Benefit

Based on the information presently available, and in accordance with the CAA Penalty Policy, Complainant has determined that the economic benefit derived by Respondent's non-compliance with the violations alleged in Count 1-4 is insignificant. As such, at this time, and in accordance with the discretion afforded to Complainant under the CAA Penalty Policy, Complainant is not including an economic benefit component in its proposed penalty.

iii. Gravity-based penalty

In Count 1, Complainant alleges that Respondent violated the 40 C.F.R. § 61.145(c)(6) work practice requirement to ensure that all RACM remains wet prior to disposal. Complainant is assessing this as a first-time violation by Respondent. Given that the total amount of asbestos involved in the operation associated with the alleged violation is greater than 50 units, the Asbestos Penalty Policy recommends the assessment of an initial gravity-based penalty of \$15,000 for a first-time violation (APP pg. 17). The evidence indicates that this violation occurred on at least one day—the date of Inspector Ponak's July 31, 2019 inspection. So, the proposed initial gravity-based penalty for violation will be \$15,000, in accordance with the Asbestos Penalty Policy (*see* APP pg. 17).

In Count 2, Complainant alleges that Respondent violated the 40 C.F.R. § 61.150(a)(1)(iii) work practice requirement to seal all RACM in leak-tight containers while wet. Given that the total amount of asbestos involved in the operation associated with the alleged violation is greater than 50 units, the Asbestos Penalty Policy recommends the assessment of an initial gravity-based penalty of \$15,000 for a first-time violation (APP pg. 17). The evidence indicates that this violation occurred on at least one day—the date of Inspector Ponak's July 31, 2019 inspection. So, the proposed initial gravity-based penalty for violation will be \$15,000, in accordance with the Asbestos Penalty Policy (*see* APP pg. 17).

In Count 3, Complainant alleges that Respondent violated the 40 C.F.R. § 61.150(a)(1)(v) work practice requirement to label all containers of ACWM to be transported off the facility site with the name of the waste generator and the location at which the waste was generated. Given that the total amount of asbestos involved in the operation associated with the alleged violation is greater than 50 units, the Asbestos Penalty Policy recommends the assessment of an initial gravity-based penalty of \$15,000 for a first-time violation (APP pg. 17). The evidence indicates that this violation occurred on at least one day—the date of Inspector Ponak's July 31, 2019 inspection. So, the proposed initial gravity-based penalty for violation will be \$15,000, in

accordance with the Asbestos Penalty Policy (*see* APP pg. 17).

In Count 4, Complainant alleges that Respondent violated the 40 C.F.R. § 61.150(b) work practice requirement of depositing all ACWM as soon as practical at a waste disposal site. Given that the total amount of asbestos involved in the operation associated with the alleged violation is greater than 50 units, the Asbestos Penalty Policy recommends the assessment of an initial gravity-based penalty of \$15,000 for a first-time violation (APP pg. 17). The evidence indicates that this violation occurred on at least one day—the date of Inspector Tu and Inspector Velez’s June 30, 2021 inspection. So, the proposed initial gravity-based penalty for violation will be \$15,000, in accordance with the Asbestos Penalty Policy (*see* APP pg. 17).

In Count 5, Complainant alleges Respondent failed to comply with the April 13, 2020 Administrative Compliance Order (CAA-02-2020-1003) issued by EPA to Respondent, by abandoning the Work Site Area without fully remediating the asbestos contamination as required by the approved Work Plan.¹³ The General Penalty Policy recommends the assessment of an initial gravity-based penalty of \$15,000 for violations of Administrative Orders. (*see* CAA Penalty Policy pg. 13).

iv. Size of Violator

The statute and the CAA and Asbestos Penalty Policies instruct Complainant to consider the size of a violator's business (CAAPP pg. 14-15; APP pg. 6). The Asbestos Penalty Policy refers to the CAA Penalty Policy to calculate size of violator, only adding that the Region may choose to use the size of the more culpable defendant in a case with multiple defendants (APP pg. 6). The CAA Penalty Policy states that to determine the size of the violator, Complainant should calculate the net worth of corporations or the net current assets for partnerships or sole proprietorships (CAAPP pg. 14). Complainant consulted and utilized a Dun & Bradstreet Report in an effort to determine Respondent’s net worth. Based on an April 20, 2021 Dun & Bradstreet Report, which shows Respondent’s Annual Revenue to be \$10,000,000, Complainant determined the size of violator adjustment for purposes of the penalty calculation to be \$20,000. This is because Respondent falls into the size of violator category of \$5,000,001 - \$20,000,000, as set forth in the CAA Penalty Policy, which then translates to an assessment of \$20,000 for the size of violator component of the penalty calculation (CAAPP pg. 14).

v. CAA Penalty Policy Adjustment Factors

Under the CAA Penalty Policy, additional adjustment factors may be applied to the gravity penalty amount to promote flexibility and consistency in the gravity penalty policy component. These factors include a violator’s degree of willfulness or negligence (CAAPP pg. 16); degree of cooperation, which includes prompt reporting of noncompliance, prompt correction of environmental problems, and cooperation during pre-filing investigation (CAAPP pgs. 16-17); history of noncompliance (CAAPP pgs. 17-19); and environmental damage

¹³ Complainant’s April 13, 2020 Administrative Compliance Order (CAA-02-2020-1003) required Respondent to, among other things, implement the approved Work Plan. Phase III of the approved Work Plan required Respondent to remove from the Work 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. (*See* Work Plan, pgs. 12-14).

(CAAPP pg. 19). Application of the adjustment factors may raise or lower a penalty. No additional adjustments have been applied to the gravity penalty component based on the aforementioned adjustment factors.

vi. Penalty Calculation Summary

Complainant's proposed penalty can be broken down and summarized as follows:

Count #	Violation	Gravity-based Penalty	Inflation Adjustment
1.	Violated 40 C.F.R. § 61.145 (c)(6) for failing to adequately wet and ensure that it remains wet until collected.	\$15,000	\$29,258*
2.	Violated 40 C.F.R. § 61.150(a)(1)(iii) for failing to wet and seal all asbestos containing waste material in leak tight containers while wet.	\$15,000	\$29,258*
3.	Violated 40 C.F.R. § 61.150(a)(1)(v) for failing to label all containers of ACWM to be transported off the facility site with the name of the waste generator and the location at which the waste was generated.	\$15,000	\$29,258*
4.	Violated 40 C.F.R. § 61.150(b) for failing to remove and deposit all asbestos-containing waste material as soon as is practical at a waste disposal site.	\$15,000	\$29,258*
5.	Violated Section 113 of the CAA for failing to comply with Administrative Compliance Order (CAA-02-2020-1003) dated April 13, 2020 when Respondent ended work without fully implementing the Work Plan. Respondent failed to remove all ACM from the ground and the concrete surface areas as required by Phase III of the Work Plan.	\$15,000	\$30,195**
Size of Violator		\$20,000	\$40,260**
Total Unadjusted Gravity-based Penalty		\$95,000	
Total Inflation-Adjusted Penalty		\$187,487	

*Inflation Adjustment Factor of 1.95056 (for counts 1, 2, 3, and 4) is based on January 12, 2022- Asbestos Demolition and Renovation Civil Penalty Policy in the Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule (pg. 8)

**Inflation Adjustment Factor of 2.01302 (for count 5 and size of violator) is based on January 12, 2022- Clean Air Act Stationary Source Civil Penalty Policy in the Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule (pg. 8).

Description of Calculation

Step 1: Calculate Economic Benefit \$0

Step 2: Calculate Gravity Component as Adjusted for Inflation:

Count 1: Failure to keep all RACM adequately wet prior to disposal \$29,258

Date of Violation: July 31, 2019

Units of RACM: Greater than 50 units

Regulation Violated: 40 C.F.R. § 61.145(c)(6)

Breakdown of Calculation:

\$15,000 (initial pre-inflation adjusted gravity component) x 1.95056 (inflation multiplier per 2022 Inflation Memo as applicable to Asbestos Penalty Policy) = \$29,258 (inflation adjusted gravity component)

Count 2: Failure to seal all RACM in leak-tight containers while wet \$29,258

Date of Violation: July 31, 2019

Units of RACM: Greater than 50 units

Regulation Violated: 40 C.F.R. § 61.150(a)(1)(iii)

Breakdown of Calculation:

\$15,000 (initial pre-inflation adjusted gravity component) x 1.95056 (inflation multiplier per 2022 Inflation Memo as applicable to Asbestos Penalty Policy) = \$29,258 (inflation adjusted gravity component)

Count 3: Failure to label all containers of ACWM to be transported off the facility site with the name of the waste generator and the location at which the waste was generated. \$29,258

Date of Violation: July 31, 2019

Units of RACM: Greater than 50 units

Regulation Violated: 40 C.F.R. § 61.150(a)(1)(v)

Breakdown of Calculation:

\$15,000 (initial pre-inflation adjusted gravity component) x 1.95056 (inflation multiplier per 2022 Inflation Memo as applicable to Asbestos Penalty Policy) = \$29,258 (inflation adjusted gravity component)

Count 4: Failure to deposit all ACWM as soon as practical at a waste disposal site \$29,258

Date of Violation: June 30, 2021

Units of RACM: Greater than 50 units

Regulation Violated: 40 C.F.R. § 61.150(b)

Breakdown of Calculation:

\$15,000 (initial pre-inflation adjusted gravity component) x 1.95056 (inflation multiplier per 2022 Inflation Memo as applicable to Asbestos Penalty Policy) = \$29, 258 (inflation adjusted gravity component)

Count 5: Failure to comply with the April 13, 2020 Administrative Compliance Order (CAA-02-2020-1003) by abandoning the Work Site Area without fully remediating the asbestos contamination as required by the approved Work Plan \$30,195

Date of Violation: June 30, 2021

Statutory Violation: Section 113 of the CAA

Breakdown of Calculation:

\$15,000 (initial pre-inflation adjusted gravity component) x 2.01302 (inflation multiplier per 2022 Inflation Memo as applicable to CAA Penalty Policy) = \$30,195 (inflation adjusted gravity component)

Size of Violator \$40,260

Homeca Revenue per D&B Report = \$10,000,000

Per CAA Penalty Policy, falls within range of \$5,000,001 - \$20,000,000

= \$20,000 (initial pre-inflation adjusted size of violator penalty amount)

Breakdown of Calculation:

\$20,000 (initial pre-inflation adjusted size of violator penalty amount) x 2.01302 (inflation multiplier per 2022 Inflation Memo as applicable to CAA Penalty Policy) = \$40,260

= GRAVITY COMPONENT TOTAL (Adjusted for Inflation) \$187,487

Breakdown of Calculation:

Count I (\$29, 258) + Count II (\$29, 258) + Count III (\$29, 258) + Count IV (\$29, 258) + Count V (\$30,195) + Size of Violator (\$40,260) = \$187,487 (Gravity Component Adjusted for Inflation)

Step 3: Add Economic Benefit and Gravity Component Adjusted for Inflation

\$0 (Economic Benefit) + \$187,487 (Gravity Component Adjusted for Inflation) \$187,487

Step 4: Apply CAA Penalty Policy Additional Adjustment Factors \$0

(None applied)

= TOTAL PROPOSED PENALTY AGAINST RESPONDENT: \$187,487

RESERVATIONS

Complainant reserves the right to call all witnesses named by Respondents. Complainant further reserves the right to submit the names of additional witnesses and to submit additional exhibits and information prior to the hearing of this matter, upon timely notice to the Court and to Respondents.

RESPECTFULLY SUBMITTED this 1st day of March 2024.

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