

at 40 C.F.R. Part 61, Subpart M. 49 *Fed. Reg.* 13658. On November 20, 1990, U.S. EPA amended the asbestos NESHAP standard under 40 C.F.R. § 61.145. 55 *Fed. Reg.* 48406, 48419.

7. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), provides, in relevant part, that "after the effective date of any emission standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation." Thus, a violation of the asbestos NESHAP constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

8. The asbestos NESHAP applies to, among other things, the demolition and renovation of buildings.

9. The asbestos NESHAP, at 40 C.F.R. § 61.145(b)(1), requires owners or operators of an affected facility to notify the Administrator of intent to demolish the facility.

10. The asbestos NESHAP, at 40 C.F.R. § 61.145(c)(1), requires the owner or operator of a demolition activity to, among other things, remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material.

11. The asbestos NESHAP, at 40 C.F.R. § 61.145(c)(6)(i), requires the owner or operator of a demolition activity to adequately wet RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with the regulations.

12. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to issue an administrative penalty order whenever the Administrator finds that any person has violated a NESHAP.

13. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for asbestos NESHAP violations that occurred on or after January 31, 1997.

14. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

16. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

17. Respondent owns and operates properties at 12750 West Grand River, 14845 Mack Avenue, 21231 Fenkell Street, 22351 Fenkell Street, and 8042 Michigan Avenue, Detroit, Michigan.

18. Respondent is an "owner or operator", as defined at 40 C.F.R. § 61.141, of the facilities described in paragraph 17, above.

19. On or about July 21, 1999, DPW conducted the demolition, as defined at 40 C.F.R. § 61.141, of the former commercial facility located at 12750 West Grand River, Detroit, Michigan.

20. On or about August 22, 1999, DPW conducted the demolition, as defined at 40 C.F.R. § 61.141, of the former commercial facility located at 14845 Mack Avenue, Detroit, Michigan.

21. On or about August 6, 1999, DPW conducted the demolition, as defined at 40 C.F.R. § 61.141, of the former commercial facility located at 21231 Fenkell Street, Detroit Michigan.

22. On or about August 6, 1999, DPW conducted the demolition, as defined at 40 C.F.R. § 61.141, of the former commercial facility located at 22351 Fenkell Street, Detroit, Michigan.

23. On or about February 28, 2000, DPW commenced the demolition, as defined at 40 C.F.R. § 61.141, of the former commercial facility located 8042 Michigan Avenue, Detroit, Michigan.

24. The former commercial facilities described in paragraphs 19-23, above, are facilities, as defined at 40 C.F.R. § 61.141.

25. On August 23, 2000, the U.S. EPA issued a Finding of Violation to the City of Detroit, Department of Public Works, Demolition Division for violations of the asbestos NESHAP governing the removal and disposal of material containing asbestos at, inter alia, its properties at 12750 West Grand River, 14845 Mack Avenue, 21231 Fenkell Street, 22351 Fenkell Street, and 8042 Michigan Avenue.

Count I

26. Complainant incorporates paragraphs 1 through 25 of this complaint, as if set forth in this paragraph.

27. 40 C.F.R. § 61.145(b)(1) requires owners or operators of an affected facility to notify the Administrator of intent to demolish a facility.

28. On July 21, 1999, Respondent demolished the facility located at 12750 West Grand River, Detroit, Michigan without prior notice to the Administrator.

29. On August 22, 1999, Respondent demolished the facility located at 14845 Mack Avenue, Detroit, Michigan without prior notice to the Administrator.

30. On August 6, 1999, Respondent demolished the facility located at 21231 Fenkell Street, Detroit, Michigan without prior notice to the Administrator.

31. On August 6, 1999, Respondent demolished the facility located at 22351 Fenkell Street, Detroit, Michigan without prior notice to the Administrator.

32. Each of Respondent's failures to provide prior written notice of demolition, as described above, constitutes a separate violation of 40 C.F.R. § 61.145(b)(1), and Section 112 of the Act, 42 U.S.C. § 7412.

Count II

33. Complainant incorporates paragraphs 1 through 25 of this complaint, as if set forth in this paragraph.

34. 40 C.F.R. § 61.145(c)(1) requires each owner or operator of an affected facility to remove all regulated asbestos containing material (RACM) from the facility being demolished prior to demolition.

35. On February 28, 2000, Thomas Vincent, Air Quality Inspector for the Wayne County Department of Environment, inspected the demolition, which had commenced, at 8042 Michigan Avenue.

36. During the inspection described in paragraph 35, above, Mr. Vincent noted in the demolition debris RACM, which had not been removed prior to the commencement of the demolition. Mr. Vincent took samples of the debris, the test results for which indicated that it contained 5 - 7% chrysotile asbestos.

37. On March 7, 2000, the Wayne County Department of Environment received a revised Notification of Intent to Demolish the facility at 8042 Michigan Avenue from Ferguson Enterprises, Inc., 8655 Military, Detroit, Michigan, DPW's demolition contractor. The revised notification indicated that the estimated amount of RACM to be removed at 8042 Michigan Avenue exceeded 600 cubic feet, which exceeds the minimum threshold of 35 cubic meters for applicability of, *inter alia*, 40 C.F.R. § 61.145(c), as set forth in 40 C.F.R. §61.145(a)(1)(ii).

38. Respondent's failure to remove all RACM from the facility at 8042 Michigan Avenue prior to the commencement of demolition is a violation of 40 C.F.R. § 61.145(c)(1) and of Section 112 of the Act, 42 U.S.C. § 7412.

Count III

39. Complainant incorporates paragraphs 1 through 25 of this complaint, as if set forth in this paragraph.

40. 40 C.F.R. § 61.145(c)(6)(i) requires the owner or operator of a demolition operation to adequately wet all RACM that has been removed or stripped and to ensure that it remains wet until collected and contained or treated in preparation for disposal.

41. On February 28, 2000, Thomas Vincent, Air Quality Inspector for the Wayne County Department of Environment, inspected the demolition, which had commenced, at 8042 Michigan Avenue.

42. During the inspection described in paragraph 41, above, Mr. Vincent noted that the RACM in the demolition debris was dry.

43. As stated in paragraph 37, above, DPW's demolition contractor notified the Wayne County Department of Environment that the estimated amount of RACM to be removed from 8042 Michigan Avenue exceeded 600 cubic yards and therefore exceeded the applicability threshold for 40 C.F.R. § 61.145(c).

44. Respondent's failure to adequately wet the RACM and ensure that it remained wet until collection and proper disposal is a violation of 40 C.F.R. § 61.145(c)(6)(1) and Section 112 of the Act, 42 U.S.C. § 7414, and Section 112 of the Act, 42 U.S.C. § 7412.

Proposed Civil Penalty

45. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

46. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$49,500. Complainant evaluated the facts and circumstances of this case -- with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

47. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

48. 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” (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

49. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan Tennenbaum to receive any answer and subsequent legal documents that the Respondent serves in this proceeding. You may telephone Ms. Tennenbaum at (312) 886-0273. Her address is:

Susan Tennenbaum (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

50. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

51. Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Susan Tennenbaum and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

52. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). The Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, the Respondent must specifically make the request in its answer, as discussed in the following paragraphs.

Answer

53. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 49, above.

54. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

55. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where a Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

56. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

57. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;

- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

58. If Respondent does not file a written answer meeting the requirements of the Consolidated Rules within 30 calendar days after receiving this complaint, the Presiding Officer may issue a default order, after motion, under 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. 40 C.F.R. § 22.17(a). Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

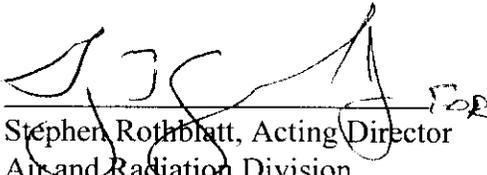
59. Whether or not a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, the Respondent may contact Susan Tennenbaum at the address or phone number specified in paragraph 49, above.

60. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

61. Neither the assessment nor payment of a civil penalty will affect a Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

8/2/07.
Date


Stephen Rothblatt, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05- 2002 -0 01 0

In the Matter of the City of Detroit, Department of Public Works, Demolition Division
Docket No.

CAA-05- 2002 -0 01 0

CERTIFICATE OF SERVICE

I, Shane Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies 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" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Dwight W. Smith
City of Detroit
Department of Public Works
Demolition Division
8221 West Davison
Detroit, Michigan 48238-3098

Timothy McGarry, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
Hollister Building, PO Box 30260
Lansing, Michigan 48909-7393

Sarah D. Lyle, Director
City of Detroit, Department of Environmental Affairs
660 Woodward Avenue
1800 First National Building
Detroit, Michigan 48226

US
PROTECTION
REGION 5

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11:08

RECEIVED
REGION 5

on the 5th day of August, 2002.

Shane Rucker
Shane Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001032000602016934