

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

CVS Corporation  
Twinsburg, Ohio

Respondent.

) Docket No. CAA-05- 2002 -0 00 7  
)  
) Proceeding to Assess a  
) Civil Penalty under  
) Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is CVS Corporation, a corporation doing business in Ohio.

Statutory and Regulatory Background

4. The Clean Air Act, 42 U.S.C. § 7401 et seq., establishes a comprehensive scheme that seeks, among other things, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). To further these goals, Section 112(b)(1)(A) of the Act, 42 U.S.C. § 7412(b)(1)(A) (1970), required the Administrator to publish a list of "hazardous air pollutants." To be included on the list, a substance had to be:

. . . an air pollutant . . . which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

42 U.S.C. § 7412(a)(1) (1970). Section 112(b)(1)(B) of the Act, 42 U.S.C. § 7412(b)(1)(B) (1970), required the Administrator to publish an "emission standard" for each designated hazardous air pollutant. These emission standards constitute the National Emission Standards for Hazardous Air Pollutants known as NESHAPs.

5. Asbestos was among the first three pollutants designated as hazardous, 36 *Fed. Reg.* 5931 (March 31, 1971), and the asbestos NESHAP was initially promulgated on April 6, 1973. 38 *Fed. Reg.* 8826.

6. According to Congress, medical science has been unable to determine any safe level of exposure to asbestos fibers. 20 U.S.C. § 3601(a)(3). Asbestos has long been known to cause a wide range of life-threatening illnesses including mesothelioma (a cancer of the chest and abdominal lining that is invariably fatal) and asbestosis, a debilitating lung disease. 36 *Fed. Reg.* 5931 and 39 *Fed. Reg.* 8820. All of these effects seldom manifest themselves until many years after the asbestos exposure. 36 *Fed. Reg.* 5931 (March 31, 1971).

7. The Administrator also found when proposing rules on asbestos under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605, that:

Asbestos presents a particularly insidious threat because of the unique quality of its fibers. These fibers are small, colorless, odorless, often invisible except through a microscope, and indestructible in most uses. They can be transported on clothes and other materials, and they have aerodynamic features that allow them to be easily suspended and resuspended in the air and to travel long distances. Once released, asbestos fibers are difficult to detect and contain, and they readily enter the ambient air. Thus persons are exposed not only at the time and place of release, but long after the release has occurred and far from its source. There is constant renewal of risk as asbestos fibers reenter the atmosphere repeatedly over time.

Asbestos fibers easily reenter the atmosphere after settling out and can travel long distances through the air. A report from Finland found that asbestos had traveled as far as 27 kilometers from a mine under study.

51 *Fed. Reg.* 3742.

Any of the commercially used asbestos materials, when inhaled, can cause disabling fibrosis of the lungs. The victim becomes a respiratory cripple, and the effect is irreversible. Asbestos is a calcium, sodium, magnesium, and/or iron silicate. Its adverse health effects stem not from its chemical composition, but from its physical or morphological properties. The needle-like fiber imbeds itself in the lung or lining. Surrounding tissue is scarred and rendered unusable in its unsuccessful attempt to remove the foreign object. The fiber attracts carcinogenic substances, such as cigarette smoke. Smoking and inhalation of asbestos dust have a synergistic effect, the incidence of cancer for the combined exposure being many times greater than that for exposure to only one or the other. The effects of asbestos inhalation are cumulative, and it is believed that low-level and/or intermittent exposure over a long time may be equally hazardous as high-level and/or continuous exposure over a shorter period. *Id.*

8. On April 5, 1984, the asbestos NESHAP was repromulgated and recodified at 40 C.F.R. Part 61, Subpart M. 49 *Fed. Reg.* 13658. On November 20, 1990, the asbestos NESHAP renovation standard was amended under 40 C.F.R. § 61.145. 55 *Fed. Reg.* 48406, 48419.

9. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), provides, in relevant part, that "[a]fter 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.

10. On June 1, 1988, the Administrator delegated authority to the Ohio Environmental Protection Agency to enforce, among other things, the asbestos NESHAP in the State of Ohio, and provides grant funds to the State of Ohio to facilitate inspections for the purpose of determining violations of the asbestos NESHAP.

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

12. The asbestos NESHAP, 40 C.F.R. § 61.145(a), requires the owner or operator of a demolition or renovation activity prior to the commencement of the demolition or renovation, to, among other things, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos containing materials (ACM).

13. The asbestos NESHAP, at 40 C.F.R. § 61.145(b), requires each owner or operator of a demolition or renovation activity to provide, among other things, the Administrator with timely written notice of intention to demolish or renovate at least ten days before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or disturb asbestos material, and to provide specific information concerning the facility, removal, work practices, emission control and waste handling techniques.

14. 40 C.F.R. § 61.145(c)(1) requires each owner or operator of a demolition activity to, among other things, remove

all regulated asbestos containing material (RACM), as defined at 40 C.F.R. 61.141, from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material.

15. The NESHAP, at 40 C.F.R. § 61.145(c)(1) and (iv), requires the owner or operator of a demolition project to remove Category II non-friable asbestos when there is a high probability that the planned demolition activity will result in the ACM becoming crumbled, pulverized, or reduced to powder.

16. The asbestos NESHAP, at 40 C.F.R. § 61.150(b), requires the owner or operator of a demolition or renovation activity, among other things, to dispose of ACM as soon as practical at a waste disposal site operated in accordance with the provisions of § 61.154.

17. The asbestos NESHAP, at 40 C.F.R. § 60.145(c)(8), requires that no RACM shall be stripped, removed, handled or disturbed unless an on-site representative, i.e., foreman or authorized representative, trained in the provisions of the asbestos NESHAP, and with means of complying with the asbestos NESHAP, is available on-site. Evidence that the on-site representative has received the required training shall be posted at the demolition and/or renovation site.

18. The Administrator of U.S. EPA (the Administrator) may 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, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Under 42 U.S.C. § 7413(d)(1), the Administrator's authority to bring certain administrative actions is limited 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. 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**

21. Complainant incorporates paragraphs 1 through 20 of this complaint, as if set forth in this paragraph.

22. CVS Corporation (CVS) owns a property at 6659 East Main Street, Reynoldsburg, Ohio (the Property).

23. At the time of the purchase, in October, 1999, the Property contained four structures.

24. The NESHAP for asbestos applies to current and former structures on the property owned by CVS at 6659 East Main Street, Reynoldsburg, Ohio.

25. On October 12, 1999, CVS, through its affiliate, Revco Discount Drugs, entered into a Development Contract (Contract) with D.S. Skilken, L.L.C. (Skilken), 910 East Broad Street, Columbus, Ohio, for the development of the Property.

26. The contract called for the development and construction of a drug store (the Project).

27. Implicit in the term "development," as evidenced and made explicit in attachments to the Contract and subsequent contractual arrangements entered into by Skilken and others for

the development of the Property, was the demolition of the four structures which were on the Property on October 12, 1999.

28. Skilken, as the Developer, undertook the development and construction of a drug store on the Property.

29. Exhibit C. of the Contract, the CVS Construction Budget, budgeted \$3,674,000 for Total Project Cost. Of this total, \$32,000 was allocated for "demolition."

30. Skilken commissioned an asbestos survey, which was conducted by Toltest, Inc. at the four structures at the Property.

31. The survey indicated 600 square feet of Category II non friable asbestos (Transite siding containing 14% Chrysotile) present in or on one of the structures.

32. On October 18 , 1999, Skilken, acting as "Owner's Agent" entered into a contract (MMC contract) with Mullet/Miller Construction (MMC).

33. The MMC contract concerned the development and construction of a CVS drugstore (CVS Store #6953) at 6659 East Main Street, Reynoldsburg, Ohio.

34. The MMC contract, at Attachment B, Bid breakdown sheet, budgeted \$22,000 for "demolition."

35. The MMC contract, at Attachment C, CVS Schedule of Values, budgeted \$22,000 for "demolition," as a line item in the section devoted to "Site Improvement" costs.

36. Prior to entering this contract, MMC had received a "Site work proposal," dated October 1, 1999, from Darby Creek Excavating, Inc. (Darby) an Ohio corporation with offices at 6790 Brooks-Miller Road in Circleville, Ohio.

37. The Site work proposal ("Darby bid") was for "CVS-Reynoldsburg."

38. The Darby bid estimated \$27,000 for demolition of existing structures on the Property including a house, a restaurant, a car wash, asphalt, concrete and other items.

39. The Darby bid specifically excluded hazardous materials removal.

40. MMC and Darby agreed to proceed on the basis of the Darby bid.

41. By and through its agreement with Darby, MMC subcontracted the demolition of the four structures at the Property to Darby Creek Excavating (Darby).

42. On October 12, 1999, Darby entered into a contract with C.D. Roberts.

43. The contract between Darby and C.D. Roberts required C.D. Roberts to demolish the four structures at the Property.

44. Sometime between October 20 and 30, 1999, the four structures located at 6659 East Main were demolished by C.D. Roberts.

45. On October 6, 1999, Skilken submitted a Notification of Demolition (Notice) to the Ohio EPA for demolition of four structures located at the Property.

46. The Notice listed Skilken as the owner, Darby Creek as the demolition operator, and a track excavator as the demolition method.

47. On September 26, 2001, U.S. EPA issued a finding of violation to CVS for violations of C.F.R. § 61.145 and § 61.150.

48. On November 1, 2001, U.S. EPA and an attorney representing Skilken and purporting to represent CVS as well held a conference to discuss the September 26, 2001, finding of violation. Representatives of MMC and C.D. Roberts participated via teleconference in these discussions.

**Count I**

49. Complainant incorporates paragraphs 1 through 48 of this complaint, as if set forth in this paragraph.

50. The asbestos survey report conducted by Toltest Inc., referred to in paragraphs 30 and 31, above, contained the following sentences on the second page of section 9.0 *Asbestos Survey*,

"Often materials are located in confined or inaccessible locations with little or no visible manifestation of their presence. ... Accordingly, our survey may serve as a first reference but cannot be looked upon as a comprehensive listing of each material present that contains asbestos."

51. This disclaimer is an admission that the inspection conducted was not a "thorough inspection" as required by the NESHAP regulation codified at 40 C.F.R. § 61.145(a), and cited in paragraph 12, above.

52. As owner of the property, CVS is specifically required, by the regulation cited, to thoroughly inspect the affected facility to detect any asbestos that may be present, including Category I and Category II nonfriable ACM, where demolition is to occur.

53. CVS is in violation of 40 C.F.R. § 61.145(a) for failing to perform a thorough inspection.

**Count II**

54. Complainant incorporates paragraphs 1 through 53 of this Complaint, as if set forth in this paragraph.

55. As owner of the property, CVS is required, as necessary, to provide the Administrator with an update to the

required written notice of intention to demolish or renovate (Notice). -

56. An updated Notice was necessary to include the additional operators in the demolition, MMC and CD Roberts, whose names did not appear on the original Notice and to repair the other deficiencies on the original Notice, as noted below.

57. CVS is in violation of 40 C.F.R. § 61.145 (b) (2) for failing to provide Ohio EPA with an update to the Notice. "

### **Count III**

58. Complainant incorporates paragraphs 1 through 57 of this Complaint, as if set forth in this paragraph.

59. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes the name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

60. The submitted Notice did not include the name, address, and telephone number of CVS as the owner, and the Notice submitted also failed to identify and provide the name, address, and telephone number of MMC and CD Roberts as asbestos removal contractors and operators.

61. CVS is in violation of 40 C.F.R. § 61.145 (b) (4) (ii) for failing to provide Ohio EPA with a written Notice identifying CVS as the owner and for failing to identify MMC and CD Roberts as asbestos removal contractors and operators.

### **Count IV**

62. Complainant incorporates paragraphs 1 through 61 of this Complaint, as if set forth in this paragraph.

63. The submitted Notice did not include the ages of the

structures to be demolished.

64. As owner of the property, CVS is required by 40 C.F.R. § 61.145 (b) (4) (iv) to provide the Administrator with a written Notice that includes a description of the facility that includes the size (square feet and number of floors), age, and present and prior use of the facility.

65. CVS is in violation of 40 C.F.R. § 61.145 (b) (4) (iv) for failing to provide Ohio EPA with a written Notice that included an adequate description, including the ages of the facilities.

#### **Count V**

66. Complainant incorporates paragraphs 1 through 65 of this Complaint, as if set forth in this paragraph.

67. The submitted Notice did not include the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

68. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

69. CVS is in violation of 40 C.F.R. § 61.145 (b) (4) (v) for failing to provide Ohio EPA with a written Notice that included the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

**Count VI**

70. Complainant incorporates paragraphs 1 through 69 of this Complaint, as if set forth in this paragraph.

71. The submitted Notice did not include the amount of RACM to be removed and an estimate of the Category I and Category II nonfriable ACM not to be removed prior to demolition.

72. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes an estimate of the amount of RACM to be removed from the facility in terms of surface area in square feet. Also, the Notice must include an estimate of the approximate amount of Category I and Category II nonfriable ACM in the affected facility that will not be removed before demolition.

73. CVS is in violation of 40 C.F.R. § 61.145 (b)(4)(vi) for failing to provide Ohio EPA with a written Notice that included an estimate of the amount of RACM to be removed from the facility and an estimate of the approximate amount of Category I and Category II nonfriable ACM not to be removed before demolition.

**Count VII**

74. Complainant incorporates paragraphs 1 through 73 of this Complaint, as if set forth in this paragraph.

75. The Notice submitted did not include scheduled dates for the removal of ACM.

76. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes the scheduled starting and completion dates of the asbestos removal work in a demolition project.

77. CVS is in violation of 40 C.F.R. § 61.145 (b)(4)(viii)

for failing to provide Ohio EPA with a written Notice that included a schedule for asbestos removal.

**Count VIII**

78. Complainant incorporates paragraphs 1 through 77 of this Complaint, as if set forth in this paragraph.

79. The submitted Notice did not include a complete description of demolition methods, techniques, and affected facility components.

80. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes a description of the planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and a description of affected facility components.

81. CVS is in violation of 40 C.F.R. § 61.145 (b)(4)(x) for failing to provide Ohio EPA with a written Notice that included demolition techniques to be used and a description of the affected facility components.

**Count IX**

82. Complainant incorporates paragraphs 1 through 81 of this Complaint, as if set forth in this paragraph.

83. The submitted Notice did not include a description of the work practices and engineering controls to be used.

84. As owner of the property, CVS is required to provide the Administrator with a written Notice that includes a description of work practices and engineering controls to be used to comply with the requirements of 40 C.F.R. § 61.145, including asbestos removal and waste handling emission control procedures.

85. CVS is in violation of 40 C.F.R. § 61.145(b)(4)(xi) for failing to provide Ohio EPA with a written Notice that included work practices and engineering controls to be used to comply with the requirements of this subpart.

**Count X**

86. Complainant incorporates paragraphs 1 through 85 of this Complaint, as if set forth in this paragraph.

87. The submitted Notice did not include the certification that a trained person will supervise the removal of the asbestos.

88. As owner of the property, CVS is required by 40 C.F.R. § 61.145(b)(4)(xiii) to provide the Administrator with a written Notice that includes the certification that at least one person trained as required by 40 C.F.R. § 61.145(c)(8) will supervise the stripping and removal of the asbestos.

89. CVS is in violation of 40 C.F.R. § 61.145(b)(4)(xiii) for failing to provide Ohio EPA with a written Notice that included such a certification.

**Count XI**

90. Complainant incorporates paragraphs 1 through 89 of this Complaint, as if set forth in this paragraph.

91. EPA guidance documents, including but not limited to A Guide to Normal Demolition Practices Under the Asbestos NESHAP (September, 1992), state that heavy machinery razing operations cause sufficient force to turn Category II nonfriable ACM into RACM and that the use of track excavators constitutes heavy machinery razing operations.

92. Patrick Fribley, an inspector with the Ohio EPA, performed an inspection of the demolition site at 6659 East Main.

Mr. Fribley took pictures of a track excavator performing the demolition work.

93. CVS, Skilken, MMC, Darby, and C.D. Roberts have all stated that they did not remove the Category II nonfriable asbestos prior to or after demolition.

94. As owner of the property, CVS is responsible for removal of all RACM prior to demolition.

95. The use of a track excavator for demolition would cause sufficient force to change Category II non friable asbestos into RACM.

96. CVS is in violation of 40 C.F.R. § 61.145(c)(1) for failing to remove all RACM before demolition.

#### **Count XII**

97. Complainant incorporates paragraphs 1 through 96 of this Complaint, as if set forth in this paragraph.

98. As an owner of the property, CVS is required by 40 C.F.R. § 61.150(b)(1) to dispose of all asbestos-containing waste materials as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 C.F.R. § 61.154.

99. The facility where the waste was deposited, Scotts Wrecking Inc., 5336 Ebright Road, Canal Winchester, Ohio, does not meet the standards of 40 C.F.R. § 61.154.

100. CVS is in violation of 40 C.F.R. § 61.150(b)(1) for failing to dispose of asbestos-containing waste at a waste disposal site in accordance with 40 C.F.R. § 61.154.

#### **Proposed Civil Penalty**

101. 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).

102. 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 \$54,200. 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) and Appendix III of the penalty policy, Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992. Enclosed with this complaint is a copy of Appendix III of the penalty policy.

103. 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**

104. 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**

105. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as

part of the record in this proceeding. The Regional Hearing Clerk's address is:

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

106. 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 Thomas C. Nash to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Thomas C. Nash at (312) 886-0552. Mr. Nash's address is:

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

#### **Penalty Payment**

107. 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

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 Thomas C. Nash 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**

108. 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). 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, Respondent must specifically make the request in its answer, as discussed in paragraphs 109 through 114 below.

**Answer**

109. 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 105, above, and must serve copies of the written answer on the other parties.

110. 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.

111. 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 Respondent states that

it has no knowledge of a particular factual allegation, the allegation is deemed denied.

112. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

113. Respondent's answer must also state with specificity:

- a. any circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. any facts that Respondent disputes;
- c. any basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 108 above.

114. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 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. 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**

115. Whether or not Respondent requests a hearing, 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, Respondent may contact Thomas C. Nash at the address or phone number specified in paragraph 106, above.

116. 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**

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

5/10/2002  
Date

  
Stephen Rothblatt, Acting Director  
Air and Radiation Division

CAA-05- 2002-0007

REC'D  
MAY 13 10:32 AM '02

CERTIFICATE OF SERVICE

I, Barbara Mack, 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 Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 13<sup>th</sup> day of May, 2002.

Barbara Mack  
Barbara Mack  
AECAS Secretary

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9592 0238