



Tulane Environmental Law Clinic

June 3, 2008

Via Certified Mail, Return Receipt Requested,
7002 2030 0001 9720 5075

Mr. Stephen Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Via Certified Mail, Return Receipt Requested,
7002 2030 0001 9720 4733

Mr. Nicholas J. Masucci, President
The Louis Berger Group, Inc.
412 Mount Kemble Ave
Morristown, NJ 07960-6654

Via Certified Mail, Return Receipt Requested,
7002 2030 0001 9720 5082

Mr. Craig Taffaro, President
St. Bernard Parish Council
8201 W Judge Perez Dr
Chalmette, LA 70043

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1497

The Louis Berger Group, Inc.
c/o Corporation Service Company
320 Somerulos St.
Baton Rouge, LA 70802-6129

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1527

Mr. Terry D. McKnight
Cross Environmental Services, Inc.
39646 Fig Ave.
Crystal Springs, FL 33524

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1558

Mr. Ian Kline, CEO
The Cadmus Group, Inc.
57 Water Street
Watertown, MA 02472

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1534

Cross Environmental Services, Inc.
c/o Mr. Roger Gentry
1716 Irma St.
Marrero, LA 70072

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1510

RTI International
5615 Corporate Blvd., Ste. 400B
Baton Rouge, LA 70808

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1541

Mr. Brian M. O'Connor
Air Burners, L.L.C.
4390 Cargo Way
Palm City, FL 34990

Via Certified Mail, Return Receipt Requested,
7003 3110 0004 6222 1503

Ms. Victoria F. Haynes, CEO
RTI International
3040 Cornwallis Road
Post Office Box 12194
Research Triangle Park, NC 27709

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Via Certified Mail, Return Receipt Requested,
7005 0390 0002 0055 0323
Harrie Noy, CEO
ARCADIS U.S., Inc.
630 Plaza Drive, Suite 200
Highlands Ranch, CO 80129

Via Certified Mail, Return Receipt Requested,
7005 0390 0002 0055 2242
ARCADIS U.S., Inc.
c/o C T Corporation System
5615 Corporate Blvd., Ste. 400B
Baton Rouge, LA 70808

Via Certified Mail, Return Receipt Requested,
7005 0390 0002 0055 2235
Kevin Tunstall, President
Environmental Enterprise Group, Inc.
10179 Hwy 78
Ladson, SC 29456

Re: Notice of Intent to Sue Pursuant to Section 304 of the Clean Air Act, 42 U.S.C. §
7604

Dear Mr. Johnson:

This notice of intent to sue is being filed on behalf of Concerned Citizens Around Murphy (“CCAM”), a nonprofit Louisiana corporation, and its members. Members of CCAM reside in St. Bernard Parish, Louisiana, and some of them live, work, and travel near the Paris Road Landfill. The address of CCAM is 2201 Despaux Drive, Chalmette, Louisiana 70043.

Introduction

The Environmental Protection Agency (“EPA”) has acknowledged that “there is *no safe level* of exposure to asbestos.” 51 Fed. Reg. 15722, 15728 (1986) (emphasis added). Yet EPA has now begun an experimental asbestos burn and grind test that *will create exposure risks* for St. Bernard Parish residents. EPA admits that its asbestos staging, burning and grinding experiments “may not fully comply with the asbestos [regulatory] requirements.” EPA Memorandum (Feb. 22, 2008). Yet EPA persists in treating a storm-devastated Louisiana parish as a laboratory for illegal experiments, essentially relegating Louisiana citizens to the role of guinea pigs. Indeed, the purpose of EPA’s experiment is to depart from existing—and legally binding—health and safety standards that Congress mandated to protect residents from hazardous air pollutants, including asbestos.

EPA’s planned burning and grinding of asbestos is illegal.

The federal Clean Air Act establishes National Emission Standards for Hazardous Air Pollutants (“NESHAP”). Asbestos is a designated hazardous air pollutant under this Act. 42 U.S.C. § 7412(b)(1). The asbestos NESHAP applies to owners or operators of a demolition activity where the combined amount of regulated asbestos-containing material (“RACM”)

exceeds certain minimum thresholds. 40 C.F.R. § 61.145(a). The owner or operator of a facility subject to the NESHAP must “remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.” 40 C.F.R. § 61.145(c)(1).

As soon as June 10, 2008, or shortly thereafter, EPA plans to conduct a pilot project that will grind six homes in a large grinding machine. Six additional homes will be burned in a large Air Curtain Destructor. Nine of these twelve homes contain sufficient RACM to be subject to the asbestos NESHAP. The asbestos in these homes will not be removed before the homes are demolished, or before the debris from those demolitions is ground up and burned. The test will take place at the Paris Road Landfill in St. Bernard Parish. This test is further described in the documents found at http://www.epa.gov/region6/6xa/burn_and_grind_pilot.htm, which we hereby incorporate into this notice.

In addition to EPA’s general control over the asbestos burn and grind project, St. Bernard Parish owns the Paris Road Landfill property and controls the homes to be burned and ground. Also, the following entities are acting with control as operators of the demolition related handling operations for the pilot project: The Cadmus Group, Inc.; The Louis Berger Group, Inc.; RTI International; ARCADIS U.S., Inc.; Air Burners, L.L.C.; Cross Environmental Services, Inc.; and Environmental Enterprise Group, Inc.

Grinding and burning asbestos debris is illegal. The test will violate NESHAP requirements to remove RACM before demolition, to dispose of asbestos-containing debris as soon as is practical, to keep the debris wet until it is collected for disposal, and to discharge no visible emissions during demolition and disposal. 40 C.F.R. § 61.145(c), 61.150(a) and (b). The test will also violate the ban on intentional burning. “If a facility is demolished by intentional burning, all RACM . . . must be removed in accordance with the NESHAP before burning.” *Id.* at § 61.145(c)(10).

EPA has no authority to waive Clean Air Act requirements.

On February 22, 2008, EPA issued a “no action assurance” letter promising not to sue anyone for performing these grinding and burning tests. EPA admits in this letter that “[t]he existing asbestos NESHAPs do not allow use of these technologies.”

EPA has no legal authority to excuse NESHAP violations or approve an alternative NESHAP standard by simply issuing a “no action assurance” letter. Nor does it have statutory authority to conduct pilot tests using illegal standards. EPA can only approve an alternative standard if, “after notice and opportunity for comment,” it finds that the alternative standard

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achieves emissions reductions equivalent to those achieved by the NESHAP standard. 42 U.S.C. § 7412(h)(3). EPA has not published its proposal in the Federal Register for public comment, nor has it made the equivalency determination that the statute requires.

EPA is not promoting these techniques because they are safe, but instead because they are cheaper and would reduce the volume of the debris. EPA has not demonstrated that landfill capacity is exhausted or prohibitively expensive. In any event, the asbestos NESHAP does not provide an exception merely because compliance is time-consuming or costly.

***EPA's asbestos burn and grind experiment
risks Louisiana residents' health and welfare.***

As EPA recognized in its July 9, 2003 letter to the City of St. Louis, Missouri when it sought to cut corners by leaving RACM in place in hundreds of demolished buildings for an airport expansion:

There is no known safe level of asbestos exposure. Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, asbestos has been determined to be a hazardous air pollutant, presenting a significant risk to human health as a result of air emissions. Diseases associated with asbestos exposure include asbestosis, mesothelioma, cancer of the lung, and cancer of the gastrointestinal tract.

EPA and St. Bernard Parish cannot legally and knowingly decide that saving money is more important than protecting the health of the public and the environment and complying with federal law.

As a result of the planned violations of the Clean Air Act described in this letter, the individuals giving this notice and other members of the public will be at risk of exposure to asbestos through inhalation and through contamination of their property. Each additional disturbance of the soil, dust, and structures in the vicinity of the planned tests will create the risk of re-suspending asbestos in the air, and causing further human exposure and environmental contamination.

Under the Clean Air Act, CCAM may file a citizen suit against the EPA, St. Bernard Parish, and the contractors performing the tests without waiting the normal 60 days. 42 U.S.C. § 7604(i)(3)(A). CCAM intends to file suit and reserves the right to seek any available relief, including civil penalties of up to \$32,000 per day per violation.

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Conclusion

We would be pleased to discuss these matters further in advance of litigation. In addition, we would appreciate for EPA to designate a contact person on this matter. We have tried to obtain information about the parameters and timing of the pilot test through FOIA, email, and telephone communications with EPA. However, we have been unable to confirm the exact start date for the project. We request your cooperation in providing information on these issues as soon as possible in the interest of settlement and to avoid wasting judicial resources.

Sincerely,



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Counsel for CCAM

cc: Richard Greene, Regional Administrator
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