00-1145-CD
John Lange vs DuBois Area S.D.

00-1145-CD
JOHN H. LANGE -vs- DUBOIS AREA SCHOOL DISTRICT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

(53) John H. Lange, an individual	)	Civil Division
	)	
Plaintiff	)	
	)	
vs.	)	No. 00-1145-CD
(1116) DuBois Area School District	)	
a Pennsylvania Public Agency	)	
	)	
Defendant	)	Type of Pleading: Complaint in Mandamus

Code and Classification:

Filed on Behalf of:
John H. Lange,
an individual,
Plaintiff

Pro se

2366 Route 286, PMB 111
Pittsburgh, PA 15239
724/325-3360

FILED

SEP 14 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

John H. Lange, an individual	)	Civil Division
	)	
Plaintiff	)	
	)	
vs.	)	No.
	)	
DuBois Area School District	)	
a Pennsylvania Public Agency	)	
	)	
Defendant	)	

COMPLIANT IN MANDAMUS

1. Plaintiff is John H. Lange, a citizen of the Commonwealth of Pennsylvania, with a business address of 2366 Route 286, PMB 111, Pittsburgh, PA 15239.

2. Defendant is DuBois Area School District, a Pennsylvania governmental agency, with its principal address of 500 Liberty Boulevard, DuBois, PA 15801.

3. On August 15, 2000, Plaintiff, John H. Lange, made a written request to Superintendent, Ms. Sharon Kirk, of DuBois Area School District ("DuBois") for inspection of records under Pennsylvania Right-to-Know Act ("RTA") and Asbestos Hazard Emergency Response Act ("AHERA"). A copy of this letter/facsimile dated August 15, 1999 is attached hereto as Exhibit A and made a part thereof.

4. Plaintiff requested that records related to asbestos abatement activities at DuBois be made available for examination, inspection and copying.

5. A letter from Mr. William R. Strong, Solicitor for DuBois, dated August 17, 2000 was sent to Plaintiff regarding this request. This letter discusses and presents issues unrelated to the present RTA request dated August 15, 2000. The request to examine records was made separate and independent from any previous request by the Plaintiff. A copy of this letter dated August 17, 2000 is

attached hereto as Exhibit B and made a part thereof.

6. Plaintiff responded to Mr. Strong's letter dated August 17, 2000 through a letter dated August 19, 2000. This letter advised the Solicitor for DuBois that this is a new and separate request for information as allowed under state law and regulation. The time period for information requested is different from any previous request made by Plaintiff. A copy of this letter dated August 19, 2000 is attached hereto as Exhibit C and made a part thereof.

7. Solicitor, Mr. Strong, for Defendant in a letter dated August 21, 2000 informed Plaintiff that DuBois would not supply any records as requested under RTA and AHERA. This letter constitutes a clear refusal to comply with RTA and AHERA laws/regulations. A copy of this letter dated August 21, 2000 is attached hereto as Exhibit D and made part thereof.

8. Plaintiff sent a letter dated August 22, 2000 suggesting alternative dates for RTA and AHERA inspection of records. No response was received from DuBois or it's Solicitor in response to this letter. A letter dated August 29, 2000 was then sent by Plaintiff suggesting a range of dates for inspection of records. Again, no response has been received in regard to this letter as well. These letters from Plaintiff attempt to permit flexibility for DuBois in establishing a date for examination, inspection and copying of records and allow DuBois to exercise administrative remedies to cure it's refusal of Plaintiff's request by Solicitor. Both letters dated August 22, 2000 and August 29, 2000 are attached hereto as Exhibit E and made part thereof.

9. Previous letter dated January 17, 2000 from Solicitor, William R. Strong, advised that when records "are completed, these records will be available for inspection by you at any time." The letter dated August 15, 2000 provides formal notice of such an inspection and provides specificity of records to be examined. Based on the letter dated August 17, 2000, this letter dated January 17, 2000

was misleading and false. A copy of this letter dated January 17, 2000 is attached hereto as Exhibit F and made part thereof.

10. Records to be inspected fall within public record provision of the Pennsylvania Right-to-Know Act. These records are also to be made available under federal regulation of the Asbestos Hazard and Emergency Response Act (40 CFR 763). State and federal regulations require certain records to be maintained regarding asbestos abatement and contracts awarded. State law/regulations incorporate by reference AHERA and require schools to comply with same under state statute.

11. Based on letter dated August 17, 2000 and no response for any alternative date for inspection, DuBois, through it's Solicitor has refused to provide access to a citizen of the Commonwealth public records and is a violation of RTA and AHERA requirements.

12. Plaintiff requests payment by DuBois of any and all fees, costs and expenses as a result of failure to provide records for inspection as allowed by the Right-to-Know Act.

Wherefore, Plaintiff John H. Lange requests this court to compel DuBois to produce for inspection all public records as requested in the letter dated August 15, 2000. It is requested that this inspection be undertaken by Plaintiff at DuBois.

2366 Route 286, PMB 111
Pittsburgh, PA 15239
724/325-3360

John H. Lange
Pro se

VERIFICATION

I, John H. Lange, do hereby verify that the averments contained in the foregoing Complaint in Mandamus are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 PA.C.S. §4904, relating to unsworn falsification to authorities.

Dated: Sept 14, 2005

John H. Lange

Via Facsimile (814/371-2544)
Hard Copy to Follow by US Mail, First Class, Postage Prepaid (Certificate of Mailing)

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
Phone 724/325-3360
Facsimile 724/325-3375
August 15, 2000

Ms. Sharon Kirk, Superintendent
DuBois Area School District
500 Liberty Boulevard
DuBois, PA 15801-2410

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request.

Dear Ms. Kirk:

I am making this request for inspection of records under the Pennsylvania Right-to-Know Act (RTK) and Asbestos Hazard Emergency Response Act (AHERA) (40 CFR 763).

I am requesting to examine, copy and abstract specific asbestos records listed below, including but not limited to those related to AHERA inspection, management plans, air sampling, notifications to parents/teachers and other affected parties, Pennsylvania Department of Environmental Protection ("DEP") notifications, Pennsylvania Department of Labor and Industry ("DLI") notifications, reports by consultants, manifests, documentation received and collected regarding asbestos abatement, and final clearances samples. Records and/or documents specifically requested are noted below.

Specific records that I am requesting to be made available and to examine are for the DuBois Area Senior High School, DuBois Area Middle School, C.G. Johnson Elementary School, Wasson Elementary School, Administration Building, Maintenance Garage, Penfield Elementary School, Oklahoma Elementrary School, and Sykesville Elementary School, and consists as follows for each building/school listed (twelve items):

1). Training records for custodial and maintenance personal (two hour awareness and operations and maintenance [14 hours] or equivalent training). Included in this request item are DLI identification cards for each individual and or copy of fully completed application (application, training certificate and check). These records are requested for the time period January 1, 1995 to present day.

PLAINTIFF'S EXHIBIT "A"
PJ one of three

FAXED 8/15/00

COPY

2). Notices to parents and teachers for the time periods covering January 1, 1995 to present day.

3). Operations and maintenance (O&M) program with list or records of activities, if any. In lieu of this record a signed statement that there were no asbestos-containing materials ("ACM") in the building structure after the time period of January 1, 1995 can be provided and is sufficient to satisfy this request.

4). Record documenting cleaning after completion of asbestos inspection(s).

5). Records of six-month periodic inspections and inspections for the time period January 1, 1995 to present day. In lieu of these records a statement that there were no ACM in the building structure after the time period of January 1, 1995 can be provided and is sufficient to satisfy this request.

6). All letters and documents on selecting any contractor for any asbestos abatement, including all reviewed and information collected. This is for the time period January 1, 1995 to present day.

7). Description and/or mechanism used to inform workers, building occupants and legal guardians about inspections, re-inspections, maintenance activities, periodic surveillance, and training. This is for the time period January 1, 1995 to present day.

8). Documents of any and all major and minor fiber releases, excluding information related to an ongoing abatement. This is for the time period January 1, 1995 to present day.

9). Copies of any and all asbestos contracts that were issued for work to be conducted during the time period January 1, 1995 to present day.

10). Copies of any and all asbestos abatement notifications sent to either or both DEP and/or DLI.

11). Copies of any and all waste manifests for disposal of ACM and/or asbestos-contaminated materials.

12). Copies of all final clearance samples, including chain-of-custody, results and location where samples were collected.

I would like to undertake my inspection at the Administrative Office of DuBois Area School District on Wednesday, August 30, 2000, starting at 10:00 AM.

Sincerely,

John H. Lange

William R. Strong
Attorney at Law
P.O. Box 7 • 616 Main Street
Clarion, PA 16214
Phone: (814) 226-4171
Fax: (814) 226-7610

August 17, 2000

John Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239

Re: DuBois Area School District

Dear Mr. Lange:

Your letter of August 15, 2000 has been referred to me for response.

You have been previously given full access to all the asbestos records at the District. You are presently and in the past have been engaging in a malicious use of the law and the legal system against the DuBois Area School District in retaliation for being an unsuccessful bidder at the District.

I. HISTORY OF THE CASE

By way of background, your company, BASI, was the unsuccessful bidder at the DuBois Area School District for an asbestos abatement project in March of 1999. Following this, you wrote to me by letter dated March 17, 1999 requesting a written response from me as Solicitor for the District as to why BASI was not awarded the project. I responded in a timely fashion by my letter of March 22, 1999 answering your request.

You immediately sent a second letter dated March 24, 1999 requesting that I divulge information I had received and from whom that information was provided in order for me to make my solicitor's opinion. Obviously, this letter requested disclosure of privileged information under the attorney-client privilege. You again sent a third letter dated April 14, 1999 and a fourth letter dated April 29, 1999 seeking the same information.

On May 10, 1999 you changed your request. The previous three letters dealt with disclosure of privileged information under the attorney-client privilege. For the first time, your fifth letter of

Plaintiff's Exhibit "B"
page one of nine

COPY

May 10, 1999 requested to examine records under the Pennsylvania Right to Know Statute and the Asbestos Hazard Emergency Response Act.

Since this request did not demand disclosure of privileged information, I immediately responded by my letter to you of May 12, 1999. I requested that you provide to me the sections of the law and the case decisions entitling you to the specific information you requested.

I then received a sixth letter dated May 17, 1999 from Attorney Balsley which responded to my letter of May 12, 1999. This letter delineated the Pennsylvania Right to Know Statute and numerous cases falling within that. Mr. Balsley's letter did not address the Asbestos Hazardous Emergency Response Act. Therefore, the District treated this request under the Pennsylvania Right to Know Statutue. I immedieatly then responded to Mr. Balsley's letter by my letter of May 19, 1999 indicating that I would now research the law and the cases and get him a response.

You were evidently dissatisfied with your attorney's letter or my response. You then wrote to me directly by the seventh letter dated May 20, 1999 announcing the date of May 25, 1999 or May 28, 1999 to inspect these documents regardless of the outcome of my research. You then sent an eighth letter just four days later on May 24, 1999 threatening to seek an order of mandamus from the Court of Common Pleas of Clearfield County. You were unwilling to allow anyone enough time to complete the proper legal research.

Since you were operating outside of your attorney, I forwarded to your attorney your letters of May 20, 1999 and May 24, 1999.

I then completed my research under the Pennsylvania Right to Know Statute. I forwarded a very thorough letter to your attorney dated May 27, 1999 clearly delineating the law in this area and indicating what documents we could provide and what documents we could not provide. Please note that I responded in eight days.

I then received a ninth letter dated May 31, 1999 from Attorney Balsley requesting that I confirm in writing that the District decided that BASI would not be awarded the contract because I, as Solicitor, had decided that BASI was not a qualified bidder. Once again, this letter sought disclosure of privileged information under the attorney-client privilege. I did respond to your attorney's letter by my letter of June 1, 1999 requesting a date when you would like to appear and receive your documents.

I then received a tenth letter dated June 7, 1999 from your attorney confirming the date of June 11, 1999 for inspection. You then appeared at the District on June 11, 1999 and acknowledged receipt of many of the documents. At that time, the District had fully complied with its obligations under the Pennsylvania Right to Know Statutue. On June 16, 1999 your attorney again sent the eleventh letter attempting to once again have me divulge privileged information under the attorney-client privilege. Additionally, your attorney wrote directly to the District's Construction Manager, Byron K. Horner, on behalf of the Foreman Group on June 16, 1999 requesting additional documents. Obviously, the Foreman Group is an independent contractor and could respond to the letter as they saw fit.

At this point in time, I thought the matter has been resolved. Without prior warning you faxed an eleventh letter to the Superintendent at DuBois School District on September 23, 1999 again making a second request under the Pennsylvania Right to Know Statute and renewing your request under the Asbestos Hazardous Emergency Response Act. This request was very extensive and sought the right to examine and copy all the asbestos records of the District. This letter also requested additional records not dealing with asbestos.

Your company's letter of September 23, 1999 unilaterally established a date of September 30, 1999 at 10:00 a.m. to undertake this inspection. You gave the District just seven days to respond to your demands or face litigation.

I immediately faxed to you my letter of September 23, 1999. This letter indicated that I did not want to communicate directly with you if you were still being represented by an attorney. Additionally, if you were no longer represented by Mr. Balsley, I requested you forward to me any legal reference under the State and Federal Law which would entitle you to this information. I indicated to you that until these matters were resolved, your unilateral inspection date of September 30, 1999 would not be complied with by the District.

You then faxed to me a twelfth letter dated September 24, 1999 outlining certain sections of the Asbestos Hazardous Emergency Response Act entitling you to receive this information. Additionally, you provided the case of Pastor vs. Commonwealth Insurance Department dealing with the Public Right to Know Statute. Your twelfth letter further indicated that no attorney currently represented you. This letter again unilaterally demanded an inspection of the records on September 30, 1999. Additionally, your letter of September 24, 1999 threatened the District with lawsuits under both statutes should the District not comply with your request.

I again timely responded to you by my letter of September 27, 1999. I indicated that I would now do the research. Additionally, I indicated to you that until I had a full opportunity to research the same, the scheduled meeting would not take place. I also informed you that I was in litigation on behalf of the District that week and I that I was going on a cruise for the honeymoon of my stepdaughter and would not be available until after the third week of October.

I received a thirteenth letter dated September 28, 1999 from you falsely stating that my letter was an effort to prevent examination of the records through delay. This letter also indicated that you were also dropping your request under the Pennsylvania Right to Know Statute. Once again, you unilaterally demanded inspection on September 30, 1999 at 10:00 a.m. and further again threatened the District with litigation.

I again faxed to you a letter dated September 29, 1999 acknowledging receipt of your letter of September 28, 1999 and adding a few additional comments. First I indicated that my request for case law or citations was not a pretext criteria for examining the records. Second, I indicated that I was not attempting to prevent examination of records thorough delay. I pointed out that since your first request of September 23, 1999 that only five days including a weekend had elapsed from this request. I reminded you that we had previously provided records to you in the past and would do so again once I had completed my research.

I was present at the District on September 30, 1999. At the commencement of the hearing, you appeared at the District. I stopped the hearing and greeted you outside the Administration Office. As I had previously stated in my letter, I again indicated to you that I was involved in litigation and reminded you of my family commitments and that I would get back to you after the third week of October. I also personally conveyed to you that nobody at the District was attempting to "jerk you around" or prevent you from viewing documents.

You shook my hand and falsely indicated to me that you understood. On Monday, October 4 1999, I received your private complaint against the District and the Superintendent with the EPA Administrator and the Attorney General of the United States. Additionally, you drove that day to Clearfield and instituted a mandamus action in the Court of Common Pleas of Clearfield County against the District.

The District properly responded in writing on October 4, 1999 to your private complaints to the EPA Administrator and to the Attorney General of the United States. Additionally, on October 29, 1999 I entered my appearance and filed preliminary objections with the Court on the grounds

that the Court did not have jurisdiction over the person of the District due to improper service of the complaint.

The Court on its own by Order dated October 22, 1999 granted a rule upon the District to show cause why relief should not be granted with a hearing scheduled for November 2, 1999. The District then filed a motion with the Court to cancel the rule to show cause hearing because the Court lacks jurisdiction.

The Court canceled the rule to show cause hearing. I then on behalf of the District wrote to Judge Reilly on November 1, 1999 indicating that a response to your request would be made by November 15 1999. In the mean time, you then sent a fourteenth letter to me dated October 30, 1999 unilaterally charging the District $750.00 plus mileage for your appearance at the District on September 30, 1999 even though you were told not to come.

I completed my research and forwarded the results to you by my letter dated November 15, 1999. Since the mandamus action dealt with strictly state court and state law, my letter did not contain anything dealing with the research on the federal law. Before receiving my letter, you jumped the gun and wrote a fifteenth letter to Judge Reilly indicating that I had defaulted in my representations to the Court to have my research finished on November 15, 1999. I then wrote to Judge Reilly by letter dated November 17, 1999 indicating how completely in error you were and the obvious reason being the fact that you were not in Pittsburgh to receive my letter but was in South Jersey, New Jersey.

You then filed on November 19, 1999 a motion for sanctions and attorneys fees with the Clearfield County Court. This Motion sought sanctions of $10,000.00 and award of $1,455.91 for fees and costs. The Court by Order dated November 23, 1999 granted a second rule against the District and scheduled a hearing for January 5, 2000. Once again, the District raised the objection of jurisdiction.

I then filed on behalf of the District a motion for the Court to schedule oral argument on the preliminary objections. The Court rescheduled the hearing on the motion for sanctions and attorneys fees and scheduled both motions for January 10, 2000 at 9:00 a.m.

You appeared a second time at the District on December 8, 1999. I had completed my federal research and the same was made available to you at this meeting. You arrived twenty minutes late. I was informed by the personnel that you quickly leafed through the Management Plan and

the Amendments and asked for four notifications to employees which were provided to you. The balance of the time you spent discussing hunting and boardroom tables. You were at the District less than twenty minutes.

You then wrote a sixteenth letter dated December 14, 1999 to the EPA and the Attorney General of the United States falsely accusing the District of lack of asbestos records and documents. Your letter falsely concluded with the statement "Based upon the missing information, I am of the opinion, there exists or existed an eminent of danger and substantial endangerment to the human health or environment as mentioned as Section 763.97". There was absolutely no truth or basis to these accusations. Once again, they were your attempt to maliciously misuse the law and the legal system to cause the District major problems.

At the January 10, 2000 hearing, Judge Reilly entered an Order granting you the right to examine and copy the balance of the asbestos records that were in the possession of Volz Environmental Services which you had requested. After this Order, you wrote a seventeenth letter dated January 13, 2000 indicating that the agreement during the previous hearing was that the records would be examined at the District Offices. Your letter also made a false and malicious accusation that the District was wantonly violating environmental rules and regulations.

I then responded by letter dated January 13, 2000 indicating that there would be no inspection of the District records on January 18, 2000 at the District. You were directed to go to the offices of Volz Environmental in your local Pittsburgh area to examine these records.

You then appeared at Volz Environmental and received the balance of the entire records of the District on January 21, 2000.

You then wrote to me by an eighteenth letter dated January 22, 2000 claiming that there were considerable missing records as required by state and federal law. You then proceeded to list various sections of the law and various records that were not in compliance. Your letter then finished that you were requesting these "other records" made available to you. This letter was completely false in that all records that you had requested had been provided to you by the District. You then again wrote by a nineteenth letter dated January 31, 2000 complaining that I had not responded to your letter of January 22, 2000.

On February 8, 2000, you then filed a second motion for sanctions and award of attorney fees even though the District had fully complied with the Court's Order of January 10, 2000. The

rule to show cause was granted and a hearing was scheduled for May 8, 2000. I then filed a motion for argument on the previous preliminary objections, which was also scheduled for May 8, 2000.

By a twentieth letter of May 3, 2000, you requested a whole list of documents to be supplied to you at the May 8, 2000 hearing. At the May 8, 2000 hearing, I indicated to the Court that the EPA had made an onsite visit and had examined all the District's records and including the letters from you alleging inadequate or missing records. The EPA Representative found the District's records in compliance. Based upon this, Judge Reilly indicated that I was to forward to you the name and address of this person. I then wrote to you by letter dated May 11, 2000 indicating the name, address, phone number and fax number for Harry C. Boyer. Following this, you wrote to Mr. Boyer by letter dated May 19, 2000 again alleging certain information and requesting a letter by Mr. Boyer to you concerning the results of Mr. Boyer's inspection. I immediately responded by letter dated May 23, 2000 pointing out once again your false statements in your letter to Mr. Boyer.

Judge Reilly by Order dated August 10, 2000 denied your motion for hearing and sustained the District' preliminary objections and dismissed your complaint.

You have now forwarded to the Superintendent a letter dated August 15, 2000 requesting the same information that has been previously requested numerous times and provided by the District. Additionally, your gimmick of claiming your requested records were withheld by the District is false and was rejected by the Court.

Your gimmick is simple and deceptive. You write a letter claiming the law mandates certain records. You then state that these "mandated records" were not made available to you for inspection on your previous inspections. You then request the right to inspect these missing "mandated records". When the District fails to produce these "mandated records", you then claim a violation of state and federal law. You then institute a suit seeking the Court to compel the District to supply these missing "mandated records". When the District does not supply these missing "mandated records" because they don't exist, you then seek damages for the District's alleged "refusal" to comply with the law.

This gimmick is false because all the asbestos records have been made available to you on three different occasions. Additionally, the EPA has made an onsite inspection including your gimmick letters and has found the District in compliance.

As you are also aware of, your company filed a second suit by Writ of Summons at No. 1427 of 1999 against the District. This action was filed by your lawyer Donald J. Balsley, Jr. This was filed on December 10, 1999. The District filed preliminary objections. Judge Reilly by Opinion and Order dated April 10, 2000 dismissed your complaint with prejudice and further denied your motion to direct the District to answer interrogatories which you had filed.

II. SUMMARY OF FACTS

The history as outlined above clearly establishes the following:

1. You were the unsuccessful bidder for an asbestos abatement project.

2. You have embarked on massive letter writing, complaint writing, and lawsuits against the District in retaliation for not being awarded the bid.

3. You have requested and received on three different occasions all the asbestos records of the District that you had requested. These were made available to you on visits to the District on June 11, 1999, December 8, 1999 and the visit to Volz Environmental on January 21, 2000.

4. You requested the specific list of information immedieatly prior to the hearing of May 8, 2000 by your letter of May 3, 2000. Your request was discussed at great length before Judge Reilly and was denied because you had been previously provided with these records.

5. Your current letter of August 15, 2000 was obviously written in direct response to Judge Reilly dismissal of your entire lawsuit by his Order of August 10, 2000.

6. Your letter of August 15, 2000 requests the very same information that your letter of May 3, 2000 requested which was denied by Judge Reilly except for the additional items number 9, 10,11, and 12. Those items have been previously supplied or made available to you on the above three visits and inspections.

III. FORMAL NOTICE

This letter is formal notice that your letter of August 15, 2000 is a malicious attempt to use the legal system and the laws to further your retaliatory actions against the DuBois Area School

District for your unsuccessful bid for the asbestos removal in March of 1999. The District has fully complied with the law and has provided you with three separate inspections and opportunity to copy records. Both of your lawsuits against the District were dismissed.

Under Section 8351 of the Judicial Code, 42 Pa. C.S.A. 8351 it provides for a cause of action for wrongful use of civil proceedings with damages as the remedy. I will recommend to the District that they institute a suit against you and/or your company in the event that you continue with this malicious harassment and malicious use of process.

Sincerely,

William R. Strong, Esquire
WRS/pah
CERTIFED AND REGULAR MAIL
C: Sharon Kirk, Superintendent
Rita Gutowski Vice President
Darrell E. Clark
Dr. James M. Martino
Burnell L. Muth
Nicholas F. Shaginaw, President
Paul Orcutt
Kim Clyde
James McKee
Kenna Williams

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 19, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; response to your letter dated August 17, 2000

Dear Mr. Strong:

I am in receipt of your letter dated August 17, 2000.

Please be advised that my requests contained in the letter dated August 15, 2000 under both Right-to-Know and Asbestos Hazard Emergency Response Acts are new and separate from any previous that has been sent to the DuBois Area School District.

In your letter you advise "When the District does not supply these missing 'mandated records' because they do not exist, you then seek damages for the District's alleged 'refusal' to comply with the law." Strictly reading this sentence, it appears that you are informing me that the District does not have requested and mandatory records listed or described in my letter of August 15, 2000 and admit for the District that it is in knowing violation of environmental regulations.

Such an admission ("When the District does not supply these missing 'mandated records' **because they do not exist**...") is, in my belief, the reason why our legislative bodies included public disclosure in the environmental acts.

Based on this admission, it is apparent that the reason for your refusal to not allow inspection of these environmental records is a result of the District's non-compliance and knowing violation of environmental regulations. Your letter suggests that the Distinct has been aware of these environmental violations for some time, and further indicates that such violations are wanton and willful in nature.

As indicated in my August 15, 2000 letter, I will be at the District Office on Wednesday, August 30, 2000, starting at 10:00 AM.

Sincerely,

John H. Lange COPY

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S EXH. "C"
PS one of one

William R. Strong
Attorney at Law
P.O. Box 7 • 616 Main Street
Clarion, PA 16214
Phone: (814) 226-4171
Fax: (814) 226-7610

August 21, 2000

John Lange
2366 Route 286, PMB111
Pittsburgh, PA 15239

Re: DuBois Area School District

Dear Mr. Lange:

Please be advised that the District will not be supplying you any records on August 30, 2000. Any trip by you to the DuBois Area School District will be voluntary at your own costs and expense.

Sincerely,

William R. Strong, Esquire
WRS/pah
C: Rita Gutowski Vice President (w/encl)
Darrell E. Clark (w/encl)
Dr. James M. Martino (w/encl)
Burnell L. Muth (w/encl)
Nicholas F. Shaginaw, President (w/encl)
Paul Orcutt (w/encl)
Kim Clyde (w/encl)
James McKee (w/encl)
Kenna Williams (w/encl)
Sharon Kirk, Superintendent (w/encl)

PLAINTIFF'S Exhibit "D"
PS one of one

COPY

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 29, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214
Facsimile Number 814/226-7610

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; request for inspection date

Dear Mr. Strong:

As of this date, I have not received a response to my letter dated August 22, 2000.

Please provide me with a date within the time period of August 31, 2000 to September 6, 2000, inclusive, in which I can undertake the previously requested inspection of records.

Should no response with a date be provided, I will consider such non-action and your letter dated August 21, 2000 to be a denial of records and a refusal to comply with Right-to-Know and Asbestos Hazard Emergency Response Acts.

Sincerely,

John H. Lange

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S Exhibit "E"
page one of TWO

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 22, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214
Facsimile Number 814/226-7610

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; response to your letter dated August 21, 2000

Dear Mr. Strong:

I am in receipt of your letter dated August 21, 2000.

If the date August 30, 2000 is not suitable, as indicated in your letter of August 21, 2000, for inspection of records as allowed by Right-to-Know and Asbestos Hazard Emergency Response Acts, I am available to undertake this inspection on any of the following dates: August 25, 2000, August 28, 2000 or August 29, 2000.

Please inform me as to which date is most suitable. The time for this inspection for any of the dates is requested to be 10:00 o'clock a.m.

Sincerely,

John H. Lange

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S Exhibit "E"
page Two of Two

William R. Strong
Attorney at Law
P.O. Box 7 • 616 Main Street
Clarion, PA 16214
Phone: (814) 226-4171
Fax: (814) 226-7610

January 17, 2000

John Lange
Black Ash Services, Inc.
2366 Route 286, PMB 111
Pittsburgh, PA 15239

Re: DuBois Area School District

Dear Mr. Lange:

This letter acknowledges receipt of your letter of January 15, 2000.

By way of background, Judge Reilly entered an Order dated January 10, 2000 granting you the right to examine and copy the balance of the asbestos records that were in the possession of Volz Environmental Services which you had requested. Judge Reilly in your presence was specifically told that these records would be made available to you and that they were located at the offices of Volz Environmental until the project was completed at which time they would be bound and a copy kept in the District in compliance with Federal Law. At that meeting in the library, you neither requested or did Judge Reilly order that these records currently housed by Volz Environmental Services be brought up to Clearfield County at the District's office from Pittsburgh so that you could drive from Pittsburgh to DuBois to review them and copy the same.

Your initial letter after the Court's Order dated January 13, 2000 states "the agreement during the previous hearing was that the records would be examined at the District offices". There was no such agreement arrived at that hearing. Additionally, you never mentioned the fact of having the records brought to the DuBois office especially since the records are in the Pittsburgh area and you are in the Pittsburgh area. You are now citing Federal Regulations saying that we have to maintain an updated copy of the Management Plan in the Administrative Offices.

You forgot one thing. The very Federal Regulation which you cited does not state that the updated copy has to be continually maintained until it is completed. There is no such requirement. The only requirement is that the updated copy be kept at the Administrative Office.

PLAINTIFF'S Exhibit "F"
Page one of two

COPY

The updated copy when it is completed will be kept at the District's office. Your argument that the District must continually keep uncompleted updates at the District office is specifically not required by the Federal Regulation and is also absurd.

Your statement that I am continually willfully and wantonly violating environmental rules and regulations is likewise absurd. As I previously indicated, there will be no inspection of the Volz Environmental Service Asbestos Records at the District on January 18, 2000 or at any other time at the District until they are completed. Once they are completed, these records will be available for inspection by you at any time. You are free to copy and inspect them at the offices of Volz Environmental.

Sincerely,

William R. Strong, Esquire
WRS/phs
C: Sharon Kirk, Superintendent (w/encl)
C: Rita Gutowski Vice President (w/encl)
Darrell E. Clark (w/encl)
Dr. James M. Martino (w/encl)
Burnell L. Muth (w/encl)
Nicholas F. Shaginaw, President (w/encl)
Paul Orcutt (w/encl)
Kim Clyde (w/encl)
James McKee (w/encl)
Kenna Williams (w/encl)

FILED 3cc
012:34 BCL
SEP 14 2000 Plff
William A. Shaw, Plff pd.
Prothonotary 80.00

IN THE COURT OF COMMON PLEAS OF CLEAFIELD COUNTY, PENNSYLVANIA

JOHN H. LANGE, AN INDIVIDUAL PLAINTIFF	:
VS.	:CIVIL ACTION
DUBOIS AREA SCHOOL DISTRICT A PENNSYLVANIA PUBLIC AGENCY, DEFENDANT	: :NO. 00-1145-CD

ENTRY OF APPERANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendant, DuBois Area School District.

William R. Strong, Esquire
PO Box 7, 616 Main Street
Clarion, PA 16214
814-226-4171
Pa. Id. No. 19980

FILED

SEP 28 2000

01:35/no cc

William A. Shaw
Prothonotary

E/ES4

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10180

LANGE, JOHN H.

VS.

DUBOIS AREA SCHOOL DISTRICT

00-1145-CD

COMPLAINT IN MANDAMUS

SHERIFF RETURNS

NOW SEPTEMBER 18, 2000 AT 1:00 PM DST SERVED THE WITHIN COMPLAINT IN MANDAMUS ON DUBOIS AREA SCHOOL DISTRICT, DEFENDANT AT EMPLOYMENT 500 LIBERTY BLVD., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SHARON KIRK, SUPERINTENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MANDAMUS AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCINTOSH/COUDRIET

Return Costs

Cost	Description
28.21	SHFF. HAWKINS PAID BY: PLFF.
10.00	SURCHARGE PAID BY: PLFF.

FILED

OCT 04 2000
013:45pm
William A. Shaw
Prothonotary

Sworn to Before Me This

4th Day Of October 2000

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

So Answers,

Chester A. Hawkins
by Marilyn Hamp
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN H. LANGE, AN INDIVIDUAL, PLAINTIFF	:
VS.	:CIVIL ACTION
DUBOIS AREA SCHOOL DISTRICT, A PENNSYLVANIA PUBLIC AGENCY, DEFENDANT	: :NO. 1145 CD 2000

NOTICE TO PLEAD

TO: JOHN H. LANGE

You are hereby notified to file a written response to the enclosed Demurrer within twenty (20) days from service hereof or a judgment may be entered against you.

Date: October 9, 2000

William R. Strong, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN H. LANGE, AN INDIVIDUAL, PLAINTIFF	:
VS.	:CIVIL ACTION
DUBOIS AREA SCHOOL DISTRICT, A PENNSYLVANIA PUBLIC AGENCY, DEFENDANT	:NO. 1145 CD 2000

DEFENDANT'S PRELIMINARY OBJECTIONS

The Defendant, DuBois Area School District, by and through their Attorney, William R. Strong, files these Preliminary Objections and alleges the following:

DEMURRER

1. The Plaintiff filed an identical action against the District at No. 99 1108 CD on September 30, 1999.
2. The District by Orders of Court produced and made available to Plaintiff all asbestos records of the District. In particular, Plaintiff appeared in person at the District on June 11, 1999 and received many documents. Plaintiff appeared a second time in person at the District on December 8, 1999 and received the balance of all the asbestos records in possession of the District. Additionally, Plaintiff appeared at Volz Environmental to receive the balance and the entire records of the District on January

William K. Strong
Attorney at Law
P.O. Box 7 • 616 Main Street
Clarion, PA 16214
Phone: (814) 226-4171
Fax: (814) 226-7610

August 17, 2000

John Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239

Re: DuBois Area School District

Dear Mr. Lange:

Your letter of August 15, 2000 has been referred to me for response.

You have been previously given full access to all the asbestos records at the District. You are presently and in the past have been engaging in a malicious use of the law and the legal system against the DuBois Area School District in retaliation for being an unsuccessful bidder at the District.

I. HISTORY OF THE CASE

By way of background, your company, BASI, was the unsuccessful bidder at the DuBois Area School District for an asbestos abatement project in March of 1999. Following this, you wrote to me by letter dated March 17, 1999 requesting a written response from me as Solicitor for the District as to why BASI was not awarded the project. I responded in a timely fashion by my letter of March 22, 1999 answering your request.

You immediately sent a second letter dated March 24, 1999 requesting that I divulge information I had received and from whom that information was provided in order for me to make my solicitor's opinion. Obviously, this letter requested disclosure of privileged information under the attorney-client privilege. You again sent a third letter dated April 14, 1999 and a fourth letter dated April 29, 1999 seeking the same information.

On May 10, 1999 you changed your request. The previous three letters dealt with disclosure of privileged information under the attorney-client privilege. For the first time, your fifth letter of

EX A

COPY

May 10, 1999 requested to examine records under the Pennsylvania Right to Know Statute and the Asbestos Hazard Emergency Response Act.

Since this request did not demand disclosure of privileged information, I immediately responded by my letter to you of May 12, 1999. I requested that you provide to me the sections of the law and the case decisions entitling you to the specific information you requested.

I then received a sixth letter dated May 17, 1999 from Attorney Balsley which responded to my letter of May 12, 1999. This letter delineated the Pennsylvania Right to Know Statute and numerous cases falling within that. Mr. Balsley's letter did not address the Asbestos Hazardous Emergency Response Act. Therefore, the District treated this request under the Pennsylvania Right to Know Statutue. I immedieatly then responded to Mr. Balsley's letter by my letter of May 19, 1999 indicating that I would now research the law and the cases and get him a response.

You were evidently dissatisfied with your attorney's letter or my response. You then wrote to me directly by the seventh letter dated May 20, 1999 announcing the date of May 25, 1999 or May 28, 1999 to inspect these documents regardless of the outcome of my research. You then sent an eighth letter just four days later on May 24, 1999 threatening to seek an order of mandamus from the Court of Common Pleas of Clearfield County. You were unwilling to allow anyone enough time to complete the proper legal research.

Since you were operating outside of your attorney, I forwarded to your attorney your letters of May 20, 1999 and May 24, 1999.

I then completed my research under the Pennsylvania Right to Know Statute. I forwarded a very thorough letter to your attorney dated May 27, 1999 clearly delineating the law in this area and indicating what documents we could provide and what documents we could not provide. Please note that I responded in eight days.

I then received a ninth letter dated May 31, 1999 from Attorney Balsley requesting that I confirm in writing that the District decided that BASI would not be awarded the contract because I, as Solicitor, had decided that BASI was not a qualified bidder. Once again, this letter sought disclosure of privileged information under the attorney-client privilege. I did respond to your attorney's letter by my letter of June 1, 1999 requesting a date when you would like to appear and receive your documents.

I again timely responded to you by my letter of September 27, 1999. I indicated that I would now do the research. Additionally, I indicated to you that until I had a full opportunity to research the same, the scheduled meeting would not take place. I also informed you that I was in litigation on behalf of the District that week and I that I was going on a cruise for the honeymoon of my stepdaughter and would not be available until after the third week of October.

I received a thirteenth letter dated September 28, 1999 from you falsely stating that my letter was an effort to prevent examination of the records through delay. This letter also indicated that you were also dropping your request under the Pennsylvania Right to Know Statute. Once again, you unilaterally demanded inspection on September 30, 1999 at 10:00 a.m. and further again threatened the District with litigation.

I again faxed to you a letter dated September 29, 1999 acknowledging receipt of your letter of September 28, 1999 and adding a few additional comments. First I indicated that my request for case law or citations was not a pretext criteria for examining the records. Second, I indicated that I was not attempting to prevent examination of records thorough delay. I pointed out that since your first request of September 23, 1999 that only five days including a weekend had elapsed from this request. I reminded you that we had previously provided records to you in the past and would do so again once I had completed my research.

I was present at the District on September 30, 1999. At the commencement of the hearing, you appeared at the District. I stopped the hearing and greeted you outside the Administration Office. As I had previously stated in my letter, I again indicated to you that I was involved in litigation and reminded you of my family commitments and that I would get back to you after the third week of October. I also personally conveyed to you that nobody at the District was attempting to "jerk you around" or prevent you from viewing documents.

You shook my hand and falsely indicated to me that you understood. On Monday, October 4 1999, I received your private complaint against the District and the Superintendent with the EPA Administrator and the Attorney General of the United States. Additionally, you drove that day to Clearfield and instituted a mandamus action in the Court of Common Pleas of Clearfield County against the District.

The District properly responded in writing on October 4, 1999 to your private complaints to the EPA Administrator and to the Attorney General of the United States. Additionally, on October 29, 1999 I entered my appearance and filed preliminary objections with the Court on the grounds

that the Court did not have jurisdiction over the person of the District due to improper service of the complaint.

The Court on its own by Order dated October 22, 1999 granted a rule upon the District to show cause why relief should not be granted with a hearing scheduled for November 2, 1999. The District then filed a motion with the Court to cancel the rule to show cause hearing because the Court lacks jurisdiction.

The Court canceled the rule to show cause hearing. I then on behalf of the District wrote to Judge Reilly on November 1, 1999 indicating that a response to your request would be made by November 15 1999. In the mean time, you then sent a fourteenth letter to me dated October 30, 1999 unilaterally charging the District $750.00 plus mileage for your appearance at the District on September 30, 1999 even though you were told not to come.

I completed my research and forwarded the results to you by my letter dated November 15, 1999. Since the mandamus action dealt with strictly state court and state law, my letter did not contain anything dealing with the research on the federal law. Before receiving my letter, you jumped the gun and wrote a fifteenth letter to Judge Reilly indicating that I had defaulted in my representations to the Court to have my research finished on November 15, 1999. I then wrote to Judge Reilly by letter dated November 17, 1999 indicating how completely in error you were and the obvious reason being the fact that you were not in Pittsburgh to receive my letter but was in South Jersey, New Jersey.

You then filed on November 19, 1999 a motion for sanctions and attorneys fees with the Clearfield County Court. This Motion sought sanctions of $10,000.00 and award of $1,455.91 for fees and costs. The Court by Order dated November 23, 1999 granted a second rule against the District and scheduled a hearing for January 5, 2000. Once again, the District raised the objection of jurisdiction.

I then filed on behalf of the District a motion for the Court to schedule oral argument on the preliminary objections. The Court rescheduled the hearing on the motion for sanctions and attorneys fees and scheduled both motions for January 10, 2000 at 9:00 a.m.

You appeared a second time at the District on December 8, 1999. I had completed my federal research and the same was made available to you at this meeting. You arrived twenty minutes late. I was informed by the personnel that you quickly leafed through the Management Plan and

the Amendments and asked for four notifications to employees which were provided to you. The balance of the time you spent discussing hunting and boardroom tables. You were at the District less than twenty minutes.

You then wrote a sixteenth letter dated December 14, 1999 to the EPA and the Attorney General of the United States falsely accusing the District of lack of asbestos records and documents. Your letter falsely concluded with the statement "Based upon the missing information, I am of the opinion, there exists or existed an eminent of danger and substantial endangerment to the human health or environment as mentioned as Section 763.97". There was absolutely no truth or basis to these accusations. Once again, they were your attempt to maliciously misuse the law and the legal system to cause the District major problems.

At the January 10, 2000 hearing, Judge Reilly entered an Order granting you the right to examine and copy the balance of the asbestos records that were in the possession of Volz Environmental Services which you had requested. After this Order, you wrote a seventeenth letter dated January 13, 2000 indicating that the agreement during the previous hearing was that the records would be examined at the District Offices. Your letter also made a false and malicious accusation that the District was wantonly violating environmental rules and regulations.

I then responded by letter dated January 13, 2000 indicating that there would be no inspection of the District records on January 18, 2000 at the District. You were directed to go to the offices of Volz Environmental in your local Pittsburgh area to examine these records.

You then appeared at Volz Environmental and received the balance of the entire records of the District on January 21, 2000.

You then wrote to me by an eighteenth letter dated January 22, 2000 claiming that there were considerable missing records as required by state and federal law. You then proceeded to list various sections of the law and various records that were not in compliance. Your letter then finished that you were requesting these "other records" made available to you. This letter was completely false in that all records that you had requested had been provided to you by the District. You then again wrote by a nineteenth letter dated January 31, 2000 complaining that I had not responded to your letter of January 22, 2000.

On February 8, 2000, you then filed a second motion for sanctions and award of attorney fees even though the District had fully complied with the Court's Order of January 10, 2000. The

rule to show cause was granted and a hearing was scheduled for May 8, 2000. I then filed a motion for argument on the previous preliminary objections, which was also scheduled for May 8, 2000.

By a twentieth letter of May 3, 2000, you requested a whole list of documents to be supplied to you at the May 8, 2000 hearing. At the May 8, 2000 hearing, I indicated to the Court that the EPA had made an onsite visit and had examined all the District's records and including the letters from you alleging inadequate or missing records. The EPA Representative found the District's records in compliance. Based upon this, Judge Reilly indicated that I was to forward to you the name and address of this person. I then wrote to you by letter dated May 11, 2000 indicating the name, address, phone number and fax number for Harry C. Boyer. Following this, you wrote to Mr. Boyer by letter dated May 19, 2000 again alleging certain information and requesting a letter by Mr. Boyer to you concerning the results of Mr. Boyer's inspection. I immediately responded by letter dated May 23, 2000 pointing out once again your false statements in your letter to Mr. Boyer.

Judge Reilly by Order dated August 10, 2000 denied your motion for hearing and sustained the District' preliminary objections and dismissed your complaint.

You have now forwarded to the Superintendent a letter dated August 15, 2000 requesting the same information that has been previously requested numerous times and provided by the District. Additionally, your gimmick of claiming your requested records were withheld by the District is false and was rejected by the Court.

Your gimmick is simple and deceptive. You write a letter claiming the law mandates certain records. You then state that these "mandated records" were not made available to you for inspection on your previous inspections. You then request the right to inspect these missing "mandated records". When the District fails to produce these "mandated records", you then claim a violation of state and federal law. You then institute a suit seeking the Court to compel the District to supply these missing "mandated records". When the District does not supply these missing "mandated records" because they don't exist, you then seek damages for the District's alleged "refusal" to comply with the law.

This gimmick is false because all the asbestos records have been made available to you on three different occasions. Additionally, the EPA has made an onsite inspection including your gimmick letters and has found the District in compliance.

As you are also aware of, your company filed a second suit by Writ of Summons at No. 1427 of 1999 against the District. This action was filed by your lawyer Donald J. Balsley, Jr. This was filed on December 10, 1999. The District filed preliminary objections. Judge Reilly by Opinion and Order dated April 10, 2000 dismissed your complaint with prejudice and further denied your motion to direct the District to answer interrogatories which you had filed.

II. SUMMARY OF FACTS

The history as outlined above clearly establishes the following:

1. You were the unsuccessful bidder for an asbestos abatement project.

2. You have embarked on massive letter writing, complaint writing, and lawsuits against the District in retaliation for not being awarded the bid.

3. You have requested and received on three different occasions all the asbestos records of the District that you had requested. These were made available to you on visits to the District on June 11, 1999, December 8, 1999 and the visit to Volz Environmental on January 21, 2000.

4. You requested the specific list of information immedieatly prior to the hearing of May 8, 2000 by your letter of May 3, 2000. Your request was discussed at great length before Judge Reilly and was denied because you had been previously provided with these records.

5. Your current letter of August 15, 2000 was obviously written in direct response to Judge Reilly dismissal of your entire lawsuit by his Order of August 10, 2000.

6. Your letter of August 15, 2000 requests the very same information that your letter of May 3, 2000 requested which was denied by Judge Reilly except for the additional items number 9, 10,11, and 12. Those items have been previously supplied or made available to you on the above three visits and inspections.

III. FORMAL NOTICE

This letter is formal notice that your letter of August 15, 2000 is a malicious attempt to use the legal system and the laws to further your retaliatory actions against the DuBois Area School

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN H. LANGE, AN INDIVIDUAL, PLAINTIFF	:
VS.	:CIVIL ACTION
DUBOIS AREA SCHOOL DISTRICT, A PENNSYLVANIA PUBLIC AGENCY, DEFENDANT	: :NO. 1145 CD 2000

CERTIFICATE OF SERVICE

I, William R. Strong, Esquire, do hereby certify that a true and correct copy of the within Demurrer was served on John B. Lange at 2366 Route 286, PMB 111, Pittsburgh, Pennsylvania 15239 by depositing a copy of the same in the Untied States Mail, first class, postage pre-paid, and mailing the same on October 9, 2000.

William R. Strong, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

John H. Lange, an individual	)	Civil Division
	)	
Plaintiff	)	
	)	
vs.	)	No. 1145 CD 2000
	)	
DuBois Area School District	)	
a Pennsylvania Public Agency	)	
	)	
Defendant	)	

RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS

The Plaintiff, John H. Lange, here within is providing a Response to Defendant's Preliminary Objections.

History

The case at hand is a Complaint in Mandamus and is a result of the DuBois Area School District's ("DuBois") refusal to provide documents that are within the public domain. A request to examine records and documents was made by letter dated August 15, 2000. A copy of this letter dated August 15, 2000 is attached hereto as Exhibit A and made a part thereof.

This request was made in accordance with the Pennsylvania Right-to-Know Act ("RTA") and Asbestos Hazard Emergency Response Act ("AHERA"). Both acts allow examination of certain records and documents. Solicitor for Dubois, William R. Strong, ("Solicitor") advised Plaintiff by letter dated August 17, 2000 that DuBois would not allow examination of public records. This letter references and refers to a previous RTA request and a case which the Plaintiff is not a party. The previous RTA/AHERA request is separate and distinct from the current request made by Plaintiff. The previous request referenced by the Solicitor was made approximately one year ago. This current request asks to examine information on various schools and is related to asbestos abatement activities, whereas the previous request referred by the Solicitor's letter was more

specifically related to the high school. The current request also includes information and documents related to asbestos abatement activities that occurred in the calendar year 2000 and the previous request was made in the calendar 1999. Thus, there is obviously no relationship between the previous RTA/AHERA and current RTA/AHERA requests, except both ask to examine asbestos and related records. Even if the current request has some relationship with any previous request, a second or additional request is not prohibited under RTA. 65 P.S. §§ 66.1-66.4; Hunt v. Department of Corrections, 698 A.2d 147 (Pa. Cmwlth, 1997). In regard to a second request for information under RTA, Commonwealth Court in Hunt specifically stated in this issue:

> "No provision of the Right-to-Know Act limits a person seeking information to a single request; in fact, it is likely that someone granted access may learn in the course of inspection of other materials that he or she wishes to examine."

It is unclear why Solicitor refers and references a case that the Plaintiff is not a party. The lawsuit referenced in his letter dated August 17, 2000 is in reference to a case on appeal before the Commonwealth Court involving a Pennsylvania Corporation and DuBois. It appears that the Solicitor is attempting to combine a case under appeal by a corporation in Commonwealth Court with both the previous and current RTA/AHERA requests. Each of these cases, events and requests are separate and distinct issues and are unrelated. Regardless, an additional RTA request is not prohibited by statute (65 P.S. §§ 66.1-66.4) and Plaintiff's right in filing additional requests is supported by interpretation of Act by Commonwealth Court. Hunt.

Plaintiff responded to Solicitor's by a letter dated August 19, 2000. A copy of the letter dated August 19, 2000 is attached hereto as Exhibit B and made a part thereof.

Solicitor responded by letter dated August 21, 2000 and stated "Please be

advised that the District will not be supplying you any records on August 30, 2000." Based on this statement alone, there is a clear denial by District to provide public records as required by RTA and AHERA. Such denial is inconsistent with purposes of RTA. It appears that the District is attempting to avoid scrutiny of activities associated with asbestos abatement. This is in direct conflict with the purpose of the RTA. Commonwealth Court in Tribune-Review Publishing Company v. Department of Community and Economic Development, 751 A.2d 689, (Pa. Cmwlth, 2000), stated

> "Indeed, the purpose of the Act is to scrutinize the acts of public officials and to make them accountable for their use of public funds. Envirotest Partners v. Department of Transportation, 664 A 2d. 208 (Pa. Cmwlth. 1995)."

Request to examine records is simply for the purpose stated by Commonwealth Court. Denial is not allowed because citizen-making request fails to disclose intent or legitimate purpose for examination of records. Envirotest Partners v. Department of Transportation, 664 A 2d. 208 (Pa. Cmwlth. 1995). A copy of the letter dated August 21, 2000 is attached hereto as Exhibit C and made a part thereof.

Plaintiff attempted to resolve denial by District through a letter dated August 22, 2000. No response was received from either Solicitor or District and an additional letter was sent by Plaintiff dated August 29, 2000. The August 29, 2000 letter attempted to provide the District with even more flexibility in producing records. No response has been received to this letter as well. Copies of letters dated August 22, 2000 and August 29, 2000 are attached hereto as Exhibit D and made a part thereof.

After Plaintiff received no response to either letter dated August 22, 2000 or August 29, 2000 a Complaint in Mandamus was filed with the Court of Common Pleas of Clearfield County. This Complaint is based on denial of a RTA request

by District and as allowed by statute (65 P.S. § 66.4 Appeal from denial of right). Scope of review by Common Pleas Court is to determine if agency's denial "was for just and proper cause." Section 4 of the Act, 65 P.S. § 66.4; Philadelphia Newspapers, Inc. v. Haverford Township, 686 A.2d 256, Cmwlth, 1996, appeal granted 698 A.2d 56, 548 Pa. 676, appeal dismissed as improvidently granted 705 A.2d 1301, 550 Pa. 343.

RTA does not allow discovery proceedings. Commonwealth v. Kauffman, 605 A.2d 1243, 413 Pa. Super. 527 (Super.1992); Shultz v. Board of Supervisors of Jackson Township, 505 A.2d 1127, 95 Pa. Cmwlth. 550 (Cmwlth. 1986). Rules of Civil Procedure also do not apply to RTA. Knopsnider v. Derry Township Board of Supervisors, 725 A.2d 245 (Pa.Cmwlth.1999); Morning Call, Inc. v. Lower Saucon Township, 627 A.2d 297, 156 Pa. Cmwlth 397 (Cmwlth.1993). Thus, filing of a Preliminary Objections in the form of a Demurrer is improper and can not be sustained by the Court. Knopsnider. The only scope of review under RTA by Court is to determine if agency's denial was just and for proper cause (65 P.S. § 66.4 Appeal from denial of right; City of Chester v. Getek, 572 A.2d 1319, Pa. Cmwlth, 1990; Pennsylvania Newspapers, Inc.; Coal Association v. Environmental Hearing Board, 654 A.2d 122, Cmwlth, 1995; Philadelphia. The Act (65 P.S. § 66.4) specifically states:

> "Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act, may appeal from such denial. If such court determines that such denial was not for just and proper cause under the terms of this act, it may enter such order for disclosure as it may deem proper."

Specific Responses to Demurrer

1. The Plaintiff's previous request is different from the current request by time period incorporating information and scope of records requested to be examined. A previous request included documents up to the approximate time period September 30, 1999 and was generally limited to the DuBois High School.

This current request asks to examine documents up to the time period August 30, 2000 and includes several buildings owned, operated or leased by the District, DuBois. The previous RTA and AHERA request was made through a letter dated September 23, 1999. Examination of both the 1999 request and that made by letter dated August 15, 2000, current request by Plaintiff, are obviously and clearly different. However, such issue is irrelevant since RTA does not prohibit a second or subsequent requests. Hunt. A copy of the previous RTA/AHERA request dated September 23, 1999 is attached hereto as Exhibit E and made a part thereof.

In a letter from the Solicitor dated January 17, 2000, he advised that when asbestos abatement work was completed for the High School, the Plaintiff was invited to examine and inspect said records. The specific statement by the Solicitor was:

> "As I previously indicated, there will be no inspection of the Volz Environmental Service Asbestos records as the District on January 18, 2000 or at any other time at the District until they are complete. Once they are completed, these records will be available for inspection by you at any time."

Based on examination of previous records, completion of abatement work at DuBois was scheduled for mid August, 2000. Solicitor has never advised that this work has not been completed. This current request follows completion of the asbestos abatement work.

2. For the previous RTA, an Order of Court was issued for production of documents by Defendant, DuBois. However, since this Complaint is for a different and separate request, issues of previous requests and associated court proceedings are moot and irrelevant. The request at hand is for a different time period and encompasses different documents and records. Regardless, RTA does not limit a person to a single request. Hunt. Commonwealth Court in Hunt stated:

> "Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act, may appeal from such denial to Court of Common Pleas of Dauphin County (now the Commonwealth Court] if an agency of the Commonwealth is involved, or to the court of common pleas of the appropriate judicial district if a political subdivision or any agency thereof is involved." Levine v. Redevelopment Authority of City of New Castle, 333 A.2d 190 (Cmwlth. 1975).

The court of appropriate jurisdiction is the Court of Common Pleas of Clearfield County. 65 P.S. § 66.4.

District has not "fully complied by making available to Plaintiff all of the District asbestos records." and its refusal to comply is based on the current request being related to a previous request, which was approximately one year ago. Even though a previous RTA request was made and some records inspected, additional requests are allowed and permitted by the Act. Hunt. Current denial by District is a mechanism to stall and delay production and examination of public documents. In this matter, Commonwealth Court has stated there "is no room for gamesmanship in the agency's handling of a Right-to-Know Act request". Hunt. This appears to be the issue at hand before the Court.

Letters from Solicitor support that denial has occurred and District is refusing to comply with RTA. However, by District allowing examination of records previously and statement in letters from Solicitor support that District agrees that such records are within the public domain and are available for inspection. Further, any issues raised by Defendant's Attorney's Letter dated August 17, 2000 is inappropriate to this Complaint, since this current request is unrelated to any previous request. Hunt. Defendant, DuBois, is attempting to interrelate this request with others and such comparison is not relevant to the issue at hand. Hunt. The only issue is whether denial is for just and proper cause.

It is alleged by Plaintiff that such records may not exist and/or are incomplete. Records requested are required to be maintained and be available for public

inspection upon notice under Asbestos Regulations and Laws, as well as RTA. These records are also required to be maintained in a specific a manner. Should these records exist, the District could simply provide Plaintiff with notebooks or binders that contain said records and issues within Complaint would cease to exist.

Preliminary Objections, specifically Rule 1028(a)(4), were filed by Solicitor as a mechanism of denying Plaintiff's request to District Records. Application of Rule 1028(a)(4) is inappropriate and moot. Rules of Civil Procedure are not applicable [emphasis applied] to RTA. Knopsnider; Morning Call, Inc. For this issue Commonwealth Court stated:

> "(1) On appeal, Knopsnider argues that the trial court erred in dismissing here appeal based on Pa. R.C.P. no. 1028 because the rules of civil procedure do not apply to a statutory appeal involving the Right-to-Know Act. We agree. The rules of civil procedure only apply to actions brought by a praecipe for a writ of summons or a complaint."

The only issue before this Court is to determine if agency's denial was just and for proper cause. 65 P.S. § 66.4; City of Chester; Pennsylvania Coal Association; Philadelphia Newspapers, Inc.

School Districts have been determined to be an agency within the Commonwealth of Pennsylvania. Wiles v. Armstrong School District, 66 Pa. D. & C. 2d 499, 1974. Thus, the appropriate venue is within jurisdiction of Common Pleas Court. 65 P.S. § 66.4; Levine v. Redevelopment Authority of City of New Castle, 333 A.2d 190 (Cmwlth. 1975).

Thus, filing of Preliminary Objections, specifically under rule 1028, is not applicable and does not apply to this action. Preliminary Objections can not be sustained for case involving appeal to Court for denial of records under RTA. Knopsnider.

Therefore, Preliminary Objections must be dismissed and Order of Court issued for District to allow Plaintiff to inspect records requested in letter dated August 15, 2000.

2366 Route 286, PMB 111
Pittsburgh, PA 15239
724/325-3360

John H. Lange
Pro se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Compliant in Mandamus was served by United States First Class Mail, Postage Prepaid, this 21st day of October, 2000, upon the below named persons at the following addresses:

Ms. Sharon Kirk, Superintendent
DuBois Area School District
500 Liberty Boulevard
DuBois, PA 15801

Mr. William R. Strong, Esquire
P.O. Box 7 - 616 Main Street
Clarion, PA 16214
(Solicitor for DuBois Area School District)

Prothonoary
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

John Lange

Via Facsimile (814/371-2544)
Hard Copy to Follow by US Mail, First Class, Postage Prepaid (Certificate of Mailing)

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
Phone 724/325-3360
Facsimile 724/325-3375
August 15, 2000

Ms. Sharon Kirk, Superintendent
DuBois Area School District
500 Liberty Boulevard
DuBois, PA 15801-2410

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request.

Dear Ms. Kirk:

I am making this request for inspection of records under the Pennsylvania Right-to-Know Act (RTK) and Asbestos Hazard Emergency Response Act (AHERA) (40 CFR 763).

I am requesting to examine, copy and abstract specific asbestos records listed below, including but not limited to those related to AHERA inspection, management plans, air sampling, notifications to parents/teachers and other affected parties, Pennsylvania Department of Environmental Protection ("DEP") notifications, Pennsylvania Department of Labor and Industry ("DLI") notifications, reports by consultants, manifests, documentation received and collected regarding asbestos abatement, and final clearances samples. Records and/or documents specifically requested are noted below.

Specific records that I am requesting to be made available and to examine are for the DuBois Area Senior High School, DuBois Area Middle School, C.G. Johnson Elementary School, Wasson Elementary School, Administration Building, Maintenance Garage, Penfield Elementary School, Oklahoma Elementrary School, and Sykesville Elementary School, and consists as follows for each building/school listed (twelve items):

1). Training records for custodial and maintenance personal (two hour awareness and operations and maintenance [14 hours] or equivalent training). Included in this request item are DLI identification cards for each individual and or copy of fully completed application (application, training certificate and check). These records are requested for the time period January 1, 1995 to present day.

FAXED 8/15/00

PLAINTIFF's Exhibit "A" page one of three

COPY

2). Notices to parents and teachers for the time periods covering January 1, 1995 to present day.

3). Operations and maintenance (O&M) program with list or records of activities, if any. In lieu of this record a signed statement that there were no asbestos-containing materials ("ACM") in the building structure after the time period of January 1, 1995 can be provided and is sufficient to satisfy this request.

4). Record documenting cleaning after completion of asbestos inspection(s).

5). Records of six-month periodic inspections and inspections for the time period January 1, 1995 to present day. In lieu of these records a statement that there were no ACM in the building structure after the time period of January 1, 1995 can be provided and is sufficient to satisfy this request.

6). All letters and documents on selecting any contractor for any asbestos abatement, including all reviewed and information collected. This is for the time period January 1, 1995 to present day.

7). Description and/or mechanism used to inform workers, building occupants and legal guardians about inspections, re-inspections, maintenance activities, periodic surveillance, and training. This is for the time period January 1, 1995 to present day.

8). Documents of any and all major and minor fiber releases, excluding information related to an ongoing abatement. This is for the time period January 1, 1995 to present day.

9). Copies of any and all asbestos contracts that were issued for work to be conducted during the time period January 1, 1995 to present day.

10). Copies of any and all asbestos abatement notifications sent to either or both DEP and/or DLI.

11). Copies of any and all waste manifests for disposal of ACM and/or asbestos-contaminated materials.

page two of three

COPY

12). Copies of all final clearance samples, including chain-of-custody, results and location where samples were collected.

I would like to undertake my inspection at the Administrative Office of DuBois Area School District on Wednesday, August 30, 2000, starting at 10:00 AM.

Sincerely,

COPY

John H. Lange

page three of three

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 19, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; response to your letter dated August 17, 2000

Dear Mr. Strong:

I am in receipt of your letter dated August 17, 2000.

Please be advised that my requests contained in the letter dated August 15, 2000 under both Right-to-Know and Asbestos Hazard Emergency Response Acts are new and separate from any previous that has been sent to the DuBois Area School District.

In your letter you advise "When the District does not supply these missing 'mandated records' because they do not exist, you then seek damages for the District's alleged 'refusal' to comply with the law." Strictly reading this sentence, it appears that you are informing me that the District does not have requested and mandatory records listed or described in my letter of August 15, 2000 and admit for the District that it is in knowing violation of environmental regulations.

Such an admission ("When the District does not supply these missing 'mandated records' **because they do not exist**...") is, in my belief, the reason why our legislative bodies included public disclosure in the environmental acts.

Based on this admission, it is apparent that the reason for your refusal to not allow inspection of these environmental records is a result of the District's non-compliance and knowing violation of environmental regulations. Your letter suggests that the Distinct has been aware of these environmental violations for some time, and further indicates that such violations are wanton and willful in nature.

As indicated in my August 15, 2000 letter, I will be at the District Office on Wednesday, August 30, 2000, starting at 10:00 AM.

Sincerely,

John H. Lange

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S Exhibit "B"

COPY

William R. Strong
Attorney at Law
P.O. Box 7 • 616 Main Street
Clarion, PA 16214
Phone: (814) 226-4171
Fax: (814) 226-7610

August 21, 2000

John Lange
2366 Route 286, PMB111
Pittsburgh, PA 15239

Re: DuBois Area School District

Dear Mr. Lange:

Please be advised that the District will not be supplying you any records on August 30, 2000. Any trip by you to the DuBois Area School District will be voluntary at your own costs and expense.

Sincerely,

William R. Strong, Esquire
WRS/pah
C: Rita Gutowski Vice President (w/encl)
Darrell E. Clark (w/encl)
Dr. James M. Martino (w/encl)
Burnell L. Muth (w/encl)
Nicholas F. Shaginaw, President (w/encl)
Paul Orcutt (w/encl)
Kim Clyde (w/encl)
James McKee (w/encl)
Kenna Williams (w/encl)
Sharon Kirk, Superintendent (w/encl)

PLAINTIFF'S Exhibit "A"

COPY

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 22, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214
Facsimile Number 814/226-7610

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; response to your letter dated August 21, 2000

Dear Mr. Strong:

I am in receipt of your letter dated August 21, 2000.

If the date August 30, 2000 is not suitable, as indicated in your letter of August 21, 2000, for inspection of records as allowed by Right-to-Know and Asbestos Hazard Emergency Response Acts, I am available to undertake this inspection on any of the following dates: August 25, 2000, August 28, 2000 or August 29, 2000.

Please inform me as to which date is most suitable. The time for this inspection for any of the dates is requested to be 10:00 o'clock a.m.

Sincerely,

John H. Lange COPY

John H. Lange

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S Exhibit "D"
page one of two

VIA FACSIMILE
HARD COPY TO FOLLOW BY US MAIL

John H. Lange
2366 Route 286, PMB 111
Pittsburgh, PA 15239
August 29, 2000

Mr. William R. Strong
P.O. Box 7
616 Main Street
Clarion, PA 16214
Facsimile Number 814/226-7610

Re: DuBois Area School District, asbestos abatement records - Right-to-Know Act and Asbestos Hazard Emergency Response Act Request; request for inspection date

Dear Mr. Strong:

As of this date, I have not received a response to my letter dated August 22, 2000.

Please provide me with a date within the time period of August 31, 2000 to September 6, 2000, inclusive, in which I can undertake the previously requested inspection of records.

Should no response with a date be provided, I will consider such non-action and your letter dated August 21, 2000 to be a denial of records and a refusal to comply with Right-to-Know and Asbestos Hazard Emergency Response Acts.

Sincerely,

COPY

John H. Lange

Copy to: Ms. Sharon Kirk, via US Mail

PLAINTIFF'S Exhibit "D"
Page two of two

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

John H. Lange, an individual Plaintiff vs. DuBois Area School District a Pennsylvania Public Agency Defendant	)))))))))	Civil Division No. 00-1145-CD Type of Pleading: Complaint in Mandamus Motion for Leave by Court to Amend Complaint Code and Classification: Filed on Behalf of: John H. Lange, an individual, Plaintiff Pro se 2366 Route 286, PMB 111 Pittsburgh, PA 15239 724/325-3360

FILED

DEC 20 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

John H. Lange, an individual	)	Civil Division
	)	
Plaintiff	)	
	)	
vs.	)	No. 1145 CD 2000
	)	
DuBois Area School District	)	
a Pennsylvania Public Agency	)	
	)	
Defendant	)	

MOTION FOR LEAVE BY COURT TO AMEND COMPLAINT

The Plaintiff, John H. Lange, is requesting Leave of Court to Amend Complaint.

1. Plaintiff is requesting Honorable Court to Amend Complaint.

2. Amendments in changing Complaint are as follows: (changes are in bold and underlined)

a. Type of Pleading: Complaint in Mandamus **and Appeal Pursuant to P.S. 65 Section 66.4 of Right to Know Act**;

b. Title on first page of Complaint: COMPLIANT IN MANDAMUS **AND APPEAL PURSUANT TO 65 P. S. SECTION 66.4 of RIGHT TO KNOW ACT**;

c. In paragraph 3, the following sentences are to be added – **This is an Appeal of Denial Pursuant to 65 P.S. 66.4 of Pennsylvania Right to Know Act. Defendant is also notified of Complaint for failure to comply with AHERA and Air Pollution Control Act of Pennsylvania ("APCA") (35 P.S. § 4001 et seq.) as it references, refers, cites, and incorporates the federal Clean Air Act ("CAA") and National Emissions Standards for Hazardous Air Pollutants ("NESHAP"). These federal Acts are included in Complaint as incorporated into state law, regulation and rule, and as enforced by agencies of the Commonwealth. Complaint for AHERA and APCA is made under common law and as allowed by law, regulation and rule. APCA incorporates NESHAP by reference which is part of CAA. A copy of DEP document 273-4130-001 is attached hereto as Exhibit A1**; and

d. In paragraph 7, the following sentences are to be added - **AHERA is incorporated by reference and regulation/rule as identified in the Asbestos Occupations Accreditaion and Certification Act (63 P.S. § 2101 et seq.). DuBois agreed to comply with AHERA when it submitted signed true and correct statement and initial Management Plan(s) to Governor. DuBois submitted initial Management Plan to what is now called Pennsylvania Department of Environmental Protection ("DEP"). AHERA is incorporated by reference into regulation/rule by DEP.**

Amendments listed above further clarify the original Complaint. Defendant had knowledge that this Complaint involved Right to Know Act and was appeal from denial as advised in paragraph three. Defendant was also informed in Complaint of violation of AHERA requirements. Tanner v. Allstate, 467 A.2d 1164, Pa. Super. 1983; Horowitz v. Universal Underwriters, 580 A.2d 395, Pa.Super. 1990.

Since even the most rigorous limitation of time has not passed, Leave of Court to Amend Complaint should be granted

Respectfully submitted

John Lange
2366 Route 286
Pittsburgh, PA 15239
724/325-3360

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

John H. Lange, an individual	)	Civil Division
	)	
Plaintiff	)	
	)	
vs.	)	No. 1145 CD 2000
	)	
DuBois Area School District	)	
a Pennsylvania Public Agency	)	
	)	
Defendant	)	

ORDER

And now to-wit this _____ day of _____, 2000, upon consideration of Plaintiff's Motion for Leave to Amend Complaint said Motion in the above-captioned case is granted. Plaintiff shall have a twenty (20) day period from the date of this order to Amend Complaint.

BY THE COURT:

_____ J.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Air Quality

DOCUMENT NUMBER: 273-4130-001

TITLE: DEP/EPA Asbestos Demolition/Renovation Civil Penalty Policy

AUTHORITY: Act of January 8, 1960, P.L. (1959) 2119, No 787, as amended, known as The Air Pollution Control Act, (35 P.S. § 4001 et seq.)

POLICY: Outlines the procedures to be followed for assessing civil penalties for asbestos violations.

PURPOSE: Provides guidance for Regional personnel in assessment of penalties for asbestos violations.

APPLICABILITY: Staff/Regulated Public

DISCLAIMER:

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect applicable statutory or regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework for the exercise of DEP's administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 15 pages

LOCATION: Vol 02, Tab 27

Exhibit # A1
Pg 1 of 15

COPY

DEP/EPA ASBESTOS DEMOLITION AND RENOVATION CIVIL PENALTY POLICY

The Clean Air Act Stationary Source Civil Penalty Policy ("General Penalty Policy") provides guidance for determining the amount of civil penalties the Department of Environmental Protection (DEP) will seek in pre-trial settlement of civil judicial actions under Section 113 (b) of the Clean Air Act ("the Act"). In addition, the General Penalty Policy is used by the DEP in determining an appropriate penalty in administrative penalty actions brought under Section 113 (d)(1) of the Act. Due to certain unique aspects of asbestos demolition and renovation cases, the following policy provides separate guidance for determining the gravity and economic benefit components of the penalty. Adjustment factors should be treated in accordance with the General Penalty Policy.

This policy is to be used for settlement purposes in civil judicial cases involving asbestos NESHAP demolition and renovation violations, but the DEP retains the discretion to seek the full statutory maximum penalty in all civil judicial cases which do not settle. In addition, for administrative penalty cases, the policy is to be used in conjunction with the U.S. Environmental Protection Agency 's (EPA) General Penalty Policy to determine an appropriate penalty to be pled in the administrative complaint, as well as serving as guidance for settlement amounts in such cases. If the Region is referring a civil action under Section 113(b) of the Clean Air Act against a demolition or renovation source, it should recommend a minimum civil penalty settlement amount in the referral. For administrative penalty cases under Section 113 (d)(1), the Region will plead the calculated penalty in its complaint. In both instances, consistent with the EPA's General Penalty Policy, the Region should determine a "preliminary deterrence amount" by assessing an economic benefit component and a gravity component. This amount may then be adjusted upward or downward by consideration of other factors, such as degree of willfulness and/or negligence, history of noncompliance,[1] ability to pay, and litigation risk.

The "gravity" component should account for statutory criteria such as the environmental harm resulting from the violation, the importance of the requirement to the regulatory scheme, the duration of the violation, and the size of the violator. Since asbestos is a hazardous air pollutant, the penalty policy generates an appropriately high gravity factor associated with substantive violations (i.e., failure to adhere to work practices or to prevent visible emissions from waste disposal). Also, since notification is essential to DEP enforcement, a notification violation may also warrant a high gravity component, except for minor violations as set forth in the chart for notification violations on page 15.

[1] As discussed in EPA's General Penalty Policy, history of noncompliance takes into account prior violations of all environmental statutes. In addition, the litigation team should consider the extent to which the gravity component has already been increased for prior violations by application of this policy.

Exh. 111

I. GRAVITY COMPONENT

The chart on pages 13-14 sets forth penalty amounts to be assessed for notification and waste shipment violations as part of the gravity component of the penalty settlement figure. A matrix for calculating penalties for work-practice, emission and other violations of the asbestos NESHAP also is found on page 15.

A. Notice Violations

1. No Notice

The figures in the first line of the Notification and Waste Shipment Violations chart (pp. 14) apply as a general rule to failure to notify, including those situations in which substantive violations occurred and those instances in which DEP has been unable to determine if substantive violations occurred

If DEP does not know whether substantive violations occurred, additional information, such as confirmation of the amount of asbestos in the facility obtained from owners, operators, or unsuccessful bidders, may be obtained by using Section 114 requests for information or administrative subpoenas. If there has been a recent purchase of the facility, there may have been a pre-sale audit of environmental liabilities that might prove useful. Failure to respond to such a request should be assessed an additional penalty in accordance with the General Penalty Policy. The reduced amounts in the second line of the chart apply only if the DEP can conclude from its own inspection, or other reliable information, that the source probably achieved compliance with all substantive requirements.

2. Late Incomplete or Inaccurate Notice

Where notification is late, incomplete or inaccurate, the Region should use the figures in the chart, but has discretion to insert appropriate figures in circumstances not addressed in the matrix. The important factor is the impact the company's action has on the DEP's ability to monitor substantive compliance.

B. Work-Practice Emission and Other Violations

Penalties for work-practice, emissions and other violations are based on the particular regulatory requirements violated. The figures on the chart (page 15) are for each day of documented violations, and each additional day of violation in the case of continuing violations. The total figure is the sum of the penalty assigned to a violation of each requirement. Apply the matrix for each distinct violation of sub-paragraphs of the regulation that would constitute a separate claim for relief if applicable (e.g.,§ 61.145 (c)(6)(i), (ii) and (iii)).

The gravity component also depends on the amount of asbestos involved in the operation, which relates to the potential for environmental harm associated with improper removal and disposal.

There are three categories based on the amount of asbestos, expressed in "units," a unit being the threshold for applicability of the substantive requirements.[2] If a job involves friable asbestos on pipes and other facility components, the amounts of linear feet and square feet should each be separately converted to units, and the numbers of units should be added together to arrive at a total. Where the only information on the amount of asbestos involved in a particular demolition or renovation is in cubic dimensions (volume), 35 cubic feet is the applicability limit which is specified in § 61.145(a)(1)(ii).

Where the facility has been reduced to rubble prior to the inspection, information on the amount of asbestos can be sought from the notice, the contract for removal or demolition, unsuccessful bidders, depositions of the owners and operators or maintenance personnel, or from blueprints if available. The Region may also make use of § 114 requests and § 307 subpoenas to gather information regarding the amount of asbestos at the facility. If the Region is unable to obtain specific information on the amount of asbestos involved at the site from the source, the Region should use the maximum unit range for which it has adequate evidence.

Where there is evidence indicating that only part of a demolition or renovation project involved improper stripping, removal, disposal or handling, the Region may calculate the number of units based upon the amount of asbestos reasonably related to such improper practice. For example, if improper removal is observed in one room of a facility, but it is apparent that the removal activities in the remainder of the facility are done in full compliance with the NESHAP, the Region may calculate the number of units for the room, rather than the entire facility.

C. Gravity Component Adjustments

1. Second and Subsequent Violations

Gravity components are adjusted based on whether the violation is a first, second, or subsequent (i.e., third, fourth, fifth, etc.) offense.[3] A "second" or "subsequent" violation should be determined to have occurred if, after being notified of a violation by the local agency, State or EPA at a prior demolition or renovation project, the owner or operator violates the Asbestos NESHAP regulations during

[2] This applicability threshold is prescribed in 61.14S(a)(1) as the combined amount of regulated-asbestos containing material (RACM) on at least 80 linear meters (260 linear feet) of pipes, or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components.

[3] Continuing violations are treated differently than second or subsequent violations. See, Duration of Violation, below.

another project, even if different provisions of the NESHAP are violated. This prior notification could range from simply an oral or written warning to the filing of a judicial enforcement action. Such prior notification of a violation is sufficient to trigger treatment of any future violations as second or subsequent violations; there is no need to have an admission or judicial determination of liability.

Violations should be treated as second or subsequent offenses only if the new violations occur at a different time and/or a different jobsite. Escalation of the penalty to the second or subsequent category should not occur within the context of a single demolition or renovation project unless the project is accomplished in distinct phases or is unusually long in duration. Escalation of the violation to the second or subsequent category is required, even if the first violation is deemed to be "minor".

A violation of a § 113(a) administrative order (AO) will generally be considered a "second violation" given the length of time usually taken before issuing an AO and should be assessed a separate penalty in accordance with the General Penalty Policy.

If the case involves multiple potential defendants and any one of them is involved in a second or subsequent offense, the penalty should be derived based on the second or subsequent offense. In such instance, the Government should try to get the prior-offending party to pay the extra penalties attributable to this factor. (See discussion below on apportionment of the penalty).

2. Duration of the Violation

The Region should enhance the gravity component of the penalty according to the chart (p. 14) to reflect the duration of the violation. Where the Region has evidence of the duration of a violation or can invoke the benefit of the presumption of continuing violation pursuant to Section 113(e)(2) of the Act, the gravity component of the penalty should be increased by the number of additional days of violation multiplied by the corresponding number on the chart.

In order for the presumption of continuing noncompliance to apply, the Act requires that the owner or operator has been notified of the violation by EPA or the DEP and that a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice. When these requirements have been met, the length of violation should include the date of notice and each day thereafter until the violator establishes the date upon which continuous compliance was achieved.

When there is evidence of an ongoing violation and facts do not indicate when compliance was achieved, presume the longest period of noncompliance for which there is any credible evidence and calculate the duration of the violation based on that date. This period should include any violations which occurred prior to the notification date

if there is evidence to support such violations. However, if the violations are based upon the statutory presumption of continuing violation, only those dates after notification may be included. When the presumption of continuing noncompliance can be invoked and there is no evidence of compliance, the date of completion of the demolition or renovation should be used as the date of compliance.(U.S. v. Tzavah Urban Renewal Corp., 696 F. Supp. 1013 (D.N.J. 1988)) [4] Where there has been no compliance and the demolition or renovation activities are ongoing, the penalty should be calculated as of the date of the referral and revised upon a completion date or the date upon which correction of the violation occurs.

Successive violations exist at the same facility when there is evidence of violations on separate days, but no evidence (or presumption) that the violations were continuing during the intervening days. For example, where there has been more than one inspection and no evidence of a continuing violation, violations uncovered at each inspection should be calculated as separate successive violations. As discussed in Section C (1) above, successive violations occurring at a single demolition or renovation project will each be treated as first violations, unless they are initially treated as second or subsequent violations based upon a finding of prior violations at a different jobsite or because they warrant escalation based upon the fact that the current job is done in distinct phases or is unusually long in duration. The chart on page 16 reflects that additional days of violation for which there is inspection evidence are assessed the full substantive penalty amount while additional days based upon the presumption of continuing violation are assessed only ten percent of the substantive penalty per day.

Since asbestos projects are usually short-lived, any correction of substantive violations must be prompt to be effective. Therefore, DEP expects that work practice violations brought to the attention of an owner or operator will be corrected promptly, thus ending the presumption of continuing violation. This correction should not be a mitigating factor, rather this policy recognizes that the failure to promptly correct the environmental harm and the attendant human health risk implicitly increases the gravity of the violation. In particularly egregious cases the Region should consider enhancing the penalty based on the factors set forth in the General Penalty Policy.

3. Size of the Violator

An increase in the gravity component based upon the size of the violator's business should be calculated in accordance with the General Penalty Policy. Where there are multiple defendants, the Region has discretion to base the size of the violator calculation

[4] The court in Tzavah held that for purposes of asbestos NESHAP requirements, a demolition or renovation project has not been completed until the NESHAP has been complied with and all asbestos waste has been properly disposed. 696 F. Supp. at 1019.

Ex. A1

PJ 6 of 15

on any one or all of the defendants' assets. The Region may choose to use the size of the more culpable defendant if such determination is warranted by the facts of the case or it may choose to calculate each defendant's size separately and apportion this part of the penalty (see discussion of apportionment below).

II. ECONOMIC BENEFIT COMPONENT

This component is a measure of the economic benefit accruing to the operator (usually a contractor), the facility owner, or both, as a result of noncompliance with the asbestos regulations. Information on actual economic benefit should be used if available. It is difficult to determine actual economic benefit, but a comparison of unsuccessful bids with the successful bid may provide an initial point of departure. A comparison of the operator's actual expenses with the contract price is another indicator. In the absence of reliable information regarding a defendant's actual expenses, the attached chart provides figures which may be used as a "rule of thumb" to determine the costs of stripping, removing, disposing of and handling asbestos in compliance with § 61.145(c) and §61.150. The figures are based on rough cost estimates of asbestos removal nationwide. If any portion of the job is done in compliance, the economic benefit should be based only on the asbestos improperly handled. It should be assumed, unless there is convincing evidence to the contrary, that all stripping, removal, disposal and handling was done improperly if such improper practices are observed by the inspector.

III. APPORTIONMENT OF THE PENALTY

This policy is intended to yield a minimum settlement penalty figure for the case as a whole. In many cases, more than one contractor and/or the facility owner will be named as defendants. In such instances, the DEP should generally take the position of seeking a sum for the case as a whole, which the multiple defendants can allocate among themselves as they wish. On the other hand, if one party is particularly deserving of punishment so as to deter future violations, separate settlements may ensure that the offending party pays the appropriate penalty.

It is not necessary in applying this penalty policy to allocate the economic benefit to each of the parties precisely. The total benefit accruing to the parties should be used for this component. Depending on the circumstances, the economic benefit may actually be split among the parties in any combination. For example, if the contractor charges the owner fair market value for compliance with asbestos removal requirements and fails to comply, the contractor has derived an economic benefit and the owner has not. If the contractor underbids because it does not factor in compliance with asbestos requirements, the facility owner has realized the full amount of the financial savings. (In such an instance, the contractor may have also received a benefit which is harder to quantify - obtaining the contract by virtue of the low bid.)

Ex L KM
pg 7 of 15

There are circumstances in which the DEP may try to influence apportionment of the penalty. For example, if one party is a second offender, the DEP may try to assure that such party pays the portion of the penalty attributable to the second offense. If one party is known to have realized all or most of the economic benefit, that party may be asked to pay for that amount. Other circumstances may arise in which one party appears more culpable than others. We realize, however, that it may be impractical to dictate allocation of the penalties in negotiating a settlement with multiple defendants. The DEP should therefore adopt a single "bottom line" sum for the case and should not reject a settlement which meets the bottom line because of the way the amount is apportioned.

Apportionment of the penalty in a multi-defendant case may be required if one party is willing to settle and others are not. In such circumstances, the DEP should take the position that if certain portions of the penalty are attributable to such party (such as economic benefit or second offense), that party should pay those amounts and a reasonable portion of the amounts not directly assigned to any single party. However, the DEP should also be flexible enough to mitigate the penalty for cooperativeness in accordance with the General Penalty Policy. If a case is settled as to one defendant, a penalty not less than the balance of the settlement figure for the case as a whole should be sought from the remaining defendants. This remainder can be adjusted upward, in accordance with the general Civil Penalty Policy, if the circumstances warrant it. Of course, the case can also be litigated against the remaining defendants for the maximum attainable penalty. In order to assure that the full penalty amount can be collected from separate settlements, it is recommended that the litigation team use ABEL calculations, tax returns, audited financial statements and other reliable financial documents for all defendants prior to making settlement offers.

IV. OTHER CONSIDERATIONS

The policy seeks substantial penalties for substantive violations and repeat violations. Penalties should generally be sought for all violations which fit these categories. If a company knowingly violates the regulations, particularly if the violations are severe or the company has a prior history of violations, the Region should consider initiating a criminal enforcement action.

The best way to prevent future violations of notice and work practice requirements is to ensure that management procedures and training programs are in place to maintain compliance. Such injunctive relief, in the nature of environmental auditing and compliance certification or internal asbestos control programs, are desirable provisions to include in consent decrees settling asbestos violations.

V. EXAMPLES

Following are two examples of application of this policy[5].

Example 1 (This example illustrates calculations involving proof of continuing violations based on the inferences drawn from the evidence)

XYZ Associates hires America's Best Demolition Contractors to demolish a dilapidated abandoned building containing 1300 linear feet of pipe covered with friable asbestos, and 1600 square feet of siding and roofing sprayed with asbestos. Neither company notifies EPA or State officials prior to commencing demolition of the building on November 1. Tipped off by a citizen complaint, DEP inspects the site on November 5 and finds that the contractor has not been wetting the suspected asbestos removed from the building, in violation of 40 C.F.R. § 61.145(c)(3). In addition, the contractor has piled dry asbestos waste material on a plastic sheet in the work area pending its disposal, in violation of 40 C.F.R § 61.14S(c)(6)(i). There is no evidence of any visible emissions from this pile. During the inspection, the site supervisor professes complete ignorance of asbestos NESHAP requirements. An employee tells the inspector that workers were never told the material on-site contained asbestos and states "since this job began we've just been scraping the pipe coverings off with our hammers." The inspector observes there is no water at the site. The inspector takes samples and sends them to an EPA approved lab which later confirms that the material is asbestos. Work is stopped until the next day when a water tank truck is brought to the facility for use in wetting during removal and storage.

On November 12 the inspector returns to the site only to find that the workers are dry stripping the siding and roofing because the water supply had been exhausted and the tank truck removed. A worker reports that the water supply had lasted four days before it ran out at the close of the November 9 work day. The inspector observes a new pile of dry asbestos containing debris in tall grass at the back of the property. Unlike the pile observed inside the facility during the first inspection, this pile is presumed to have produced visible emissions. At the time of the second inspection 75% of the asbestos had been removed from the building 50% of which is deemed to have been improperly removed[6].

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[5] The examples are intended to illustrate application of the civil penalty policy. For purposes of this policy, any criminal conduct that may be implied in the examples hasbeen ignored. Of course, in appropriate cases, prosecution for criminal violations should be pursued through appropriate channels.

[6] America's Best completed 75% of the work over a 12 day period. For 4 of the 12 days (Nov.6-9) there is evidence that water was used and asbestos properly handled. Assume that equal amounts of asbestos were removed each day. Thus, 50% of the asbestos was properly removed (25% by America's Best, 25% by the new contractor.)

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After discussion with DEP officials, work is halted at the site and XYZ Associates hires another contractor to properly dispose of the asbestos wastes and to remove the remaining 25% of the asbestos in compliance with the asbestos NESHAP. The new contractor completes disposal of the illegal waste pile on November 18.

Neither XYZ Associates nor America's Best Demolition Contractors has ever been cited for asbestos violations by EPA or the State. Both companies have assets of approximately $5,000,000.00 and have sufficient resources to pay a substantial penalty.

The defendants committed the following violations: one violation of the notice provision (§ 61.145(b)(1)); one violation for failure to wet during stripping (§61.145(c)(3)) and failure to keep wet until disposal (§ 61.145(c)(6)(i)), each detected at the first inspection and lasting a duration of five days (Nov. 15); a second separate dry stripping violation (§ 61.145(c)(3)), observed at the second inspection and lasting for three days (Nov. 10-12); an improper disposal violation (§ 61.150(b)), discovered during the second inspection, lasting a duration of nine days (the violation began on November 10 and continued to November 18 per Tzavah) and a visible emissions violation (§61.150(a)) discovered during the second inspection, lasting a duration of seven days (Nov. 12-18). Thus, the defendants are liable for a statutory maximum of $750,000 (29 days of work practice violations x $25,000 (statutory maximum Penalty per day of each separate substantive violation) + $25,000 [7] for the notice violation = $750,000).

The penalty is computed as follows:

Gravity Component

Notice violation, § 61.145(b) (first time)		$15,000
--First Inspection Violations		
Violation of § 61.145(c)(3) (10 + 5 = 15 units of asbestos)	(1 x $10,000)	$10,000
Additional days of violation) ($1,000 x 4 days of violations)		$ 4,000
Violation of § 61.145(c)(6) (i) (1 x $10,000)		$10,000
Additional days of violation ($1,000 x 4 days of violations)		$ 4,000

[7] Arguably, for purposes of calculating the statutory maximum, the notice violation can be construed to have lasted at least until the EPA or DEP has actual notice of the demolition (or renovation, as the case may be).

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-- Second Inspection Violations

New violation of § 61.145(c) (3) (1 x $10,000)	$10,000	
Additional days of violation ($1,000 x 2 days of violations)	$ 2,000	
Violation of §61.150(a) (1 x $10,000)	$10,000	
Additional days of violation ($1,000 x 6 days of violations)	$ 6,000	
Violation of § 61.150(b) (1 x $10,000)	$10,000	
Additional days of violation ($1,000 x 8 days of violations)	$ 8,000	
	$109,000	
-- Size of Violator (size of both defendants combined)	$20,000	
Total Gravity Component		$129,000
Economic Benefit Component		
$20/sq. foot x 1600 sq. feet	$32,000	
$20/linear foot x 1300 linear feet	+ 26,000	
	$58,000	
$58,000 x 50% (% of asbestos improperly handled)		$ 29,000
Preliminary Deterrence Amount		$158,000

Adjustment factors - No adjustment for prompt correction of environmental problem because that is what the defendant is supposed to do.

Minimum Penalty settlement amount $158.000

NOTE: If the statutory maximum had been smaller than this sum, then the minimum penalty would have to be adjusted accordingly. Also, for the dry stripping violations, no additional days were added for the period between the two inspections because there was no evidence that the dry stripping had continued in the interim period.

Example 2 (This example illustrates calculations involving proof of continuing violations based on the statutory inference drawn from the notice of violation)

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Consolidated Conglomerates, Inc. hires Bert and Ernie's Trucking Company to demolish a building which contains 1,000 linear feet of friable asbestos on pipes. Neither party gives notice to EPA or to the state prior to commencement of demolition. A DEP inspector acting on a tip, visits the site on April 1, the first day of the building demolition. During the inspection he observes workers removing pipe coverings dry. Further inquiry reveals there is no water available on site. He also finds a large uncontained pile of what appears to be dry asbestos-containing waste material at the bottom of an embankment behind the building. He takes samples and issues an oral notice of violation citing to 40 C.F.R. §§ 61.145(c)(3) (dry removal), 61.145(c)(6)(i) (failure to keep wet until disposal), and 61.150(a) (visible emissions)[8], and gives the job supervisor a copy of the asbestos NESHAP. Test results confirm the samples contain a substantial percentage of asbestos.

On April 12, the inspector receives information from a reliable source that the pile of dry asbestos debris has not been properly disposed of and there is still no access to water at the facility. This information supports a new violation of §61.150(b) (improper disposal). The inspector revisits the site on April 22 and determines that the waste pile has been removed. A representative of Consolidated Conglomerates, Inc. gives the inspector documents showing that actual work at the demolition site concluded on April 17, but the contractor cannot document when the debris pile was removed. Thus, there are at least 61 days of violation (17 days of dry removal in violation of § 61.145(c)(3) 22 days of failure to keep wet until disposal in violation of §61.145(c)(6)(i), 11 days of visible emissions in violation of §61.150(a) and 11 days of improper disposal in violation of § 61.150(b)) times $25,000 per day, plus $25,000 for the notice violation[9], or a statutory maximum of $1,550,000.

Consolidated Conglomerates is a corporation with assets of over $100 million and annual sales in excess of $10 million. Bert and Ernie's Trucking is a limited partnership of two brothers who own tow trucks and have less than $2S,000 worth of business each year. This contract was for $50,000. Bert and Ernie's was once previously cited by the State Department of Environmental Protection for violations of asbestos regulations. As a result. all violations are deemed to be second violations.

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[8] Regardless of whether the inspector observes emissions of asbestos during a site inspection, where there is circumstantial evidence (such as uncontained, dry asbestos piles outside), that supports a conclusion that visible emissions were present, the Region has discretion to include this violation.

[9] See footnote 3.

The penalty is computed as follows:

Gravity component		
No notice (2nd violation)	$ 20,000	
Violation of §61.145(c)(3) (approx. 3.85 units) (second violation)	$ 15,000	
Additional days of violation (per presumption) (16 x $1,500)	$ 24,000	
Violation of §61.145(c)(6)(i) (second violation)	$ 15,000	
Additional days of violation (per presumption) (21 x $1,500)	$ 31,500	
Violation of §61.150(a) (second violation)	$ 15,000	
Additional days of violation (per presumption) (10 x $1,500)	$ 15,000	
Violation of §61.150(b) (second violation)	$ 15,000	
Additional days of violation (per presumption) (10 x $1,500)	$ 15.000	
	$180.500	
Size of Violator (based on Bert and Ernie's size only)	$ 2,000	
Total Gravity Component		$182.500
Economic Benefit Component		
$20/linear foot x-1,000 linear feet		$ 20,000
Preliminary Deterrence Amount		$202,500
Adjustment factors - 10% increase for willfulness		$ 18,250
Minimum Settlement Penalty Amount		$220,750

NOTE: Since this example assumes there was a proper factual basis for invoking the statutory presumption of continuing noncompliance, the duration of the §61.150(a) visible emissions and § 61.150(b) disposal violation runs to April 21 and the §61.145(c)(3) dry removal violation

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runs to April 17, the longest periods for which noncompliance can be presumed.

Apportionment of the Penalty

The calculation of the gravity component of the penalty in this case reflects a $5,000 increase in the notice penalty and a $48,500 increase in the penalty for substantive violations because it involves a second violation by the contractor. Ordinarily, the DEP should try to get Bert and Ernie's to pay at least these additional penalty amounts. However, Consolidated Conglomerate's financial size compared to the contractor's may dictate that Consolidated pay most of the penalty.

Notification and Waste Shipment Record Violations

Notification Violations	1st Violation	2nd Violation	Subsequent
No notice	$15,000	$20,000	$25,000
No notice but probable substantive compliance	$ 5,000	$15,000	$25,000

Late, Incomplete or Inaccurate notice.

For each notice, select the single largest dollar figure that applies from the following table. These violations are assessed a one-time penalty except for waste shipment vehicle marking which should be assessed a penalty per day of shipment. Add the dollar figures for each notice or waste shipment violation:

Notice submitted after asbestos removal completed tantamount to no notice.	$15,000
Notice lacks both job location and asbestos removal starting and completion dates.	4,000
Notice submitted while asbestos removal. is in progress	2,000
Notice lacks either job location or asbestos removal starting and completion dates.	2,000
Failure to update notice when amount of asbestos changes by at least 20%	2,000
Failure to provide telephone and written notice when start date changes	2,000
Notice lacks either asbestos removal starting or completion dates, but not both.	1,000

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Amount of asbestos in notice is missing, improperly dimensioned, or for multiple facilities.	500
Notice lacks any other required information.	200
Notice submitted late, but still prior to asbestos removal starting date.	200

Waste Shipment Violations

Failure to maintain records which precludes discovery of waste disposal activity	2,000
Failure to maintain records but other information regarding waste disposal available	1,000
Failure to mark waste transport vehicles during loading and unloading (assess for each day of shipment)	1,000

Work-Practice, Emission and Other Violations

Gravity Component

Total amount of asbestos involved in the operation	First violation	Each add. day of violation	Second violation	Each add. day of violation	subsequent violations	Each add. day of violation
< or = 10 units	$ 5,000	$ 500	$15,000	$ 1,500	$25,000	$ 2,500
> 10 units but < or = 50 units	$10,000	$ 1,000	$20,000	$ 2,000	$25,000	$ 2,500
> 50 units	$15,000	$ 1,500	$25,000	$ 2,500	$25,000	$ 2,000

Unit = 260 linear feet, 160 square feet or 35 cubic feet - if more than one is involved, convert each amount to units and add together

Apply matrix separately to each violation of §61.145(a) and each sub-paragraph of § 61.145(c) and § 61.150, except §61.150(d) (waste shipment records) which is treated as a one time violation and §61.150(c) (vehicle marking) (see chart on pages 15-16); calculate additional days of violation, when applicable, for each sub-paragraph - add together

Benefit Component

For asbestos on pipes or other facility components:

$20 per linear, square or cubic foot of asbestos for any substantive violation.

Exhibit AM
PJ 15715

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Compliant in Mandamus and Motion for Leave by Court to Amend Complaint was served by United States First Class Mail, Postage Prepaid or Certified/Return Receipt Mail, this 18th day of December, 2000, upon the below named persons at the following addresses:

Ms. Sharon Kirk, Superintendent
DuBois Area School District
500 Liberty Boulevard
DuBois, PA 15801
(First Class Mail)

Mr. William R. Strong, Esquire
P.O. Box 7 - 616 Main Street
Clarion, PA 16214
(Solicitor for DuBois Area School District)
(Certified Return Receipt Mail Z322812707)

Prothonotary
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
(Firs Class Mail)

Honorable John K. Reilly, Jr.
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830
(First Class Mail)

John Lange

IN THE COURT OF COMMON PLEAS OF CLARION COUNTY, PENNSYLVANIA

JOHN H. LANGE, AN INDIVIDUAL,
PLAINTIFF

VS.

DUBOIS AREA SCHOOL DISTRICT, A PENNSYLVANIA PUBLIC AGENCY,
DEFENDANT

:NO. 1145 CD 2000

ANSWER TO MOTION FOR LEAVE TO AMEND COMPLAINT

The Defendant, DuBois Area School District, by and through their attorney, William R. Strong, files this Answer to Plaintiff's Motion and alleges the following:

1. Admitted

2. a,b,c & d. Admitted. The balance of the averment is denied. On the contrary, Plaintiff is attempting to change the entire cause of action through changing the heading and a few sentences. The granting of this amendment would be prejudicial to the District because Mr. Lange is untimely in any appeal under the Right to Know Statutue.

Respectfully submitted,

William R. Strong, Esquire
Attorney for DuBois Area School District
PO Box 7, 616 Main Street
Clarion, PA 16214
814-226-4171

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

JOHN H. LANGE, an individual :

-VS- : No. 00 – 1145 – CD

DUBOIS AREA SCHOOL DISTRICT, A :

PENNSYLVANIA PUBLIC AGENCY :

ORDER

NOW, this 2nd day of January, 2001, following argument and briefs into Preliminary Objections filed on behalf of Defendant above-named, it is the ORDER of this Court that said Objections be and are hereby sustained and Plaintiff's Complaint in Mandamus dismissed with prejudice.

By the Court,

President Judge

FILED

JAN 03 2001

William A. Shaw
Prothonotary

FILED

JAN 03 2001

01849/1cc Plf

William A. Shaw
Prothonotary

1cc Atty Strong