

12/1/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Linda Cottrill and Daniel)	Docket No. CAA-016-1994
Cottrill, d/b/a Cottrill)	
Trucking and Wrecking Co.,)	
and Asberry-Chambers)	
Asbestos, Inc.,)	
)	
Respondents)	

ORDER GRANTING MOTION TO SHOW CAUSE

This proceeding commenced with the filing of a Complaint by Region 5 of the United States Environmental Protection Agency ("Complainant") against the Respondents Cottrill Trucking, Inc., Massillon, Ohio ("Cottrill"), and Asberry-Chambers Asbestos, Inc., Canton, Ohio ("Asberry-Chambers"), on April 22, 1994.

Pursuant to an Order by the former Presiding Officer, Chief Administrative Law Judge Jon G. Lotis, Complainant filed an Amended Complaint on December 14, 1994. The Amended Complaint corrected the name of the first Respondent, Cottrill, as reflected in the caption above, and withdrew four of the original six counts in the Complaint. The Amended Complaint charges Respondents with two counts of failure to conduct a thorough inspection for friable asbestos material during their demolition and asbestos containment activities at a school in Massillon, Ohio. The Amended Complaint seeks assessment of a joint civil penalty of \$17,000 against the Respondents.

Asberry-Chambers filed an Answer on May 8, 1994, in which it denied the material allegations of the Complaint. Cottrill filed an Answer on February 7, 1995, in which it also denied the material allegations of the Amended Complaint.


After several extensions duly granted, Judge Lotis issued an order on June 12, 1995 requiring the parties to submit their Prehearing Exchanges pursuant to the EPA Rules of Practice, 40 C.F.R. §22.19(b), by September 1, 1995. Complainant submitted its Prehearing Exchange on that date, but neither of the Respondents have done so to date.

On September 21, 1995 Complainant filed a Motion for an Order to Show Cause. Complainant moves for an order requiring both Respondents to show cause why they should not suffer a default in this proceeding pursuant to 40 C.F.R. §22.17(a). Neither Respondent has responded to Complainant's motion.

40 C.F.R. §22.17(a) provides that "[a] party may be found to be in default . . . after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer." The rule further provides that a default by a respondent constitutes an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing. The amount of the civil penalty sought in the complaint then becomes due and payable without further proceedings 60 days after issuance of a default order.

Thus, Respondents could, under the Rules, be found in default at this time. I construe Complainant's motion, however, as not seeking the immediate issuance of a default order. In effect, it allows the Respondents another chance, by moving for an order requiring them to "show cause" why they should not be found in default. To avoid additional submissions and delays, I will simply allow the Respondents one final deadline to submit their Prehearing Exchanges.

Accordingly, Respondents must file their Prehearing Exchanges in accord with 40 C.F.R. §22.19(b) and Judge Lotis' Order of June 12, 1995 no later than January 8, 1996. No further extensions will be granted. If such Prehearing Exchanges are not made by that date, a default order will issue pursuant to 40 C.F.R. §22.17(a) against the Respondent or Respondents not filing as directed above.



Andrew S. Pearlstein
Administrative Law Judge

Dated: December 1, 1996
Washington, D.C.

IN THE MATTER OF LINDA COTTRILL AND DANIEL COTTRILL, D/B/A COTTRILL
TRUCKING AND WRECKING CO., AND ASBERRY-CHAMBERS ASBESTOS, INC.,
Respondents
Docket No. CAA-016-1994

CERTIFICATE OF SERVICE

I certify that the foregoing Order Granting Motion to Show
Cause, dated December 1, 1995, was sent in the following manner to
the addressees listed below:

Original by Pouch Mail to: . Jodi L. Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Copy by Pouch Mail to:


Counsel for Complainant: Robert Guenther, Esq.
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Copies by Regular Mail to:
Counsel for Respondent:

William Z. Christoff, Esq.
26 South Erie Street
Massillon, OH 44646

Representative for Respondent:

Wm. Gary Chambers, President
Asberry-Chambers Asbestos, Inc.
1501 Fourth Street, N.E.
Canton, OH 44704


Shirley Smith
Legal Assistant
Office of Adm. Law Judges
U.S. EPA
401 M Street SW, Mail Code 1900
Washington, DC 20460

Dated: December / , 1995
Washington, D.C.