

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

10 MAR 24 PM 2:53

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Kansas Department of Corrections)
Topeka Correctional Facility) Docket No. CAA-07-2010-0017
)
Topeka, KS)
)
Respondent)

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), the Kansas Department of Corrections (KDOC) and the Topeka Correctional Facility (TCF) is hereby ordered by the United States Environmental Protection Agency, Region VII (EPA) to comply with Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the National Emission Standard for Asbestos, codified at 40 C.F.R. Part 61, Subpart M.

I. Statutory and Regulatory Background

1. Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, EPA determined that asbestos presents a significant risk to human health and is therefore a hazardous air pollutant. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 C.F.R. Part 61; specifically, the asbestos NESHAP is codified at 40 C.F.R. Part 61, Subpart M.

2. The asbestos NESHAP requires owners or operators of demolition and renovation operations to conduct a thorough inspection for asbestos-containing materials prior to commencing any such operation. The owner or operator must provide advance notification to the EPA Administrator (or his designee) at least 10 working days prior to commencing any operation in which a threshold quantity (or greater) of regulated asbestos-containing material will become disturbed. Owners and operators must adhere to specific work practices for asbestos abatement, and must ensure proper disposal of asbestos-containing waste materials.

3. Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), grants the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to make a finding of violation of a requirement or prohibition of Section 112, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition. This authority has been delegated to the Director, Air and Waste Management Division, Region VII.

II. Definitions

4. "Facility" is defined at 40 C.F.R. § 61.141, as "any institutional, commercial, public, industrial, or residential structure, installation, or building...."

5. "Owner or operator of a demolition or renovation activity" is defined at 40 C.F.R. § 61.141, as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both."

6. "Renovation" is defined at 40 C.F.R. § 61.141, as "altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."

III. Factual Background

7. Respondent is the owner and/or operator of the TCF, a "Facility", located at 815 SE Rice Road, Topeka, Kansas. The TCF is a correctional institution for female inmates in the state of Kansas.

8. At all times relevant to this Administrative Compliance Order, Respondent conducted a renovation operation at its TCF, E-Dorm building.

9. EPA inspected the facility on February 4, 2010, to determine compliance with Section 112(d) of the Clean Air Act and 40 C.F.R. Part 61, Subpart M. Information collected as a result of this inspection revealed that KDOC-TCF initiated a renovation project at its E-Dorm building on or about April 2005 through October 2006.

IV. Finding of Violation

10. Based on information available to EPA, including information gathered during the inspection performed by EPA at the facility, EPA has determined that Respondent failed to thoroughly inspect for the presence of asbestos-containing materials prior to commencing a renovation operation as required by 40 C.F.R. § 61.145(a). Therefore, Respondent violated the provisions of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

V. Compliance Order

11. Based upon the foregoing Finding of Violation, it is hereby ordered that Respondent, KDOC, shall comply with the requirements of Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Specifically, for a period of one year subsequent to the effective date of this Order, Respondent shall comply with the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M, for any demolition or renovation operations conducted at the TCF. In addition, Respondent shall within 30 days of the effective date of this order:

- a) Provide a list of all renovation or demolition projects scheduled to be conducted at TCF for the next year beginning from the effective date of this order; and
- b) Provide a description of the procedures to be used during the project(s) in order to comply with the requirements of the CAA, including a description of how Respondent will:

Perform a thorough inspection for asbestos-containing materials prior to commencing a renovation or demolition project;

Notify EPA and the Kansas Department of Health and Environment at least 10 working days prior to any demolition or renovation activity which would meet or exceed the regulatory threshold quantity for regulated asbestos-containing materials; and

Perform abatement of regulated asbestos-containing materials, and ensure proper disposal, in accord with the applicable regulatory requirements.

V. Potential Liability

12. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator may, inter alia: issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, this penalty maximum was increased to \$32,500 per day for violations occurring on or after March 15, 2004. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the Clean Air Act, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in Section 113(c) of the Clean Air Act, Section 113(c) provides for criminal penalties or imprisonment, or both.

13. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to Section 112 of the Clean Air Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

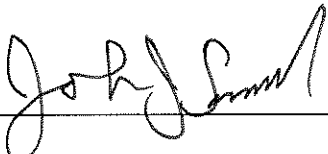
Kansas Department of Corrections
Topeka Correctional Facility
CAA Docket No. 07-2010-17

14. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, the KDOC requests a conference with EPA. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. To request such a conference, contact Kent Johnson, Attorney, Office of Regional Counsel, EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, telephone (913) 551-7284.

15. All information and documents submitted by the KDOC to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by the KDOC in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date 3/24/11



for Becky Weber
Director
Air and Waste Management Division