

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

In re:	:	x
	:	
Albert Azarian d/b/a	:	
D&A Cleaners	:	CAA-02-2002-1273
222 North Center Street	:	
Merchantville, New Jersey 08109	:	
	:	
Respondent.	:	
	:	
Proceeding Pursuant to Section 113(d)	:	
of the Clean Air Act. 42U.S.C. §7413(d)	:	x

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default, Complainant, the Director, Division of Enforcement and Compliance Assistance (“DECA”), United States Environmental Protection Agency’s (“EPA”), Region 2, through counsel, has moved for an Order on Default for Liability and for the Assessment of Civil Penalties. The Motion seeks a finding that the Respondent, Albert Azarian d/b/a D&A Cleaners, is liable for violations of Section 112 and 114 of the Clean Air Act (“CAA”) and 40 C.F.R. Part 63, Subpart M.. The Complainant seeks Three Thousand Two Hundred Dollars (\$3,200) in civil penalties.

Pursuant to the United States Environmental Protection Agency’s (“EPA”) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law and Penalty Determination, the Complainant’s Motion for a Default Order for Liability and for the Assessment of Civil Penalties

is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed in the amount of Three Thousand Two Hundred Dollars \$3,200.

BACKGROUND

This is a proceeding under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules. This proceeding was initiated by a Complaint and Notice of Opportunity for Hearing (“Complaint”), pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), issued by the Director of the Division of Enforcement and Compliance Assistance (“DECA”)¹ against the Respondent, for violations of Section 112 and 114 of the CAA and the “National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities,” (“perc regulations for dry cleaners”), 40 C.F.R. Part 63, Subpart M. The Complaint was dated December 27, 2001 and service of the Complaint, together with attachments thereto, was complete on January 31, 2002.

On June 21, 2004, Complainant moved the Presiding Officer in this proceeding for a Default Order for Liability and for the Assessment of Civil Penalties. To date, Respondent has not replied to the Motion.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record, I make the following findings of fact:

1. Albert Azarian, an individual, owns D&A Cleaners, located at 222 North Center Street in Merchantville, New Jersey 08109.

¹ By delegation from the Administrator of the Environmental Protection Agency, and a further re-delegation from the Regional Administrator of Region 2, the Director of DECA has been authorized to issue Complaints on behalf of the Agency initiating proceedings such as this one under Section 113(d) of the CAA.

2. On May 10, 1999, an authorized EPA inspector conducted a duly authorized inspection (“the inspection”) of D&A Cleaners, located at 222 North Center Street in Merchantville, New Jersey 08109. The purpose of the inspection was to determine whether D&A Cleaners was in compliance with Sections 112 and 114 of the CAA and 40 C.F.R. Part 63 Subpart M.
3. At the time of the inspection, D&A Cleaners was operating a dry-to-dry, dry cleaning machine, equipped with a refrigerated condenser and utilized perchloroethylene as the dry cleaning solvent.
4. At the time of the inspection, D&A Cleaners was not keeping on site, and did not show upon request, receipts of perchloroethylene purchases, as required by 40 C.F.R. § 63.324(d).
5. At the time of the inspection, D&A Cleaners was not keeping and maintaining on site and did not show upon request a log of the volume of perchloroethylene purchased each month as recorded from perchloroethylene purchases, as required by 40 C.F.R. § 63.324(d)(1).
6. At the time of the inspection, D&A Cleaners was not keeping and maintaining on site and did not show upon request a log of the results of yearly consumption of perchloroethylene by the facility as determined on the first day or each month, as required by 40 C.F.R. § 63.324(d)(2).
7. At the time of the inspection, D&A Cleaners was not keeping a log of weekly inspections for leaks, as required by 40 C.F.R. § 63.324(d)(3).

8. At the time of the inspection, D&A Cleaners was not keeping a log of the temperature readings for the refrigerated condenser, as required by 40 C.F.R. § 63.324(d)(5).
9. At the time of the inspection, D&A Cleaners was not inspecting for leaks, as required by 40 C.F.R. § 63.322(k).
10. At the time of the inspection, D&A Cleaners was not measuring the temperature of the air-perc gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine with a temperature sensor on a weekly basis to determine if it is equal or less than 45F, as required by 40 C.F.R. § 63.323(a)(1).
11. On December 27, 2001, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Acting Director of DECA for EPA Region 2 issued a Complaint against Respondent.²
12. The Complaint alleged that Respondent violated Sections 112 and 114 of the CAA and 40 C.F. R. Part 63 Subpart M, the perc regulations for dry cleaners. The Complaint proposed to assess a penalty of Three Thousand Eight Hundred Dollars (\$3,800).
13. The Complaint explicitly stated that “[i]f you [Respondent] fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion seeking that you be found in default. A finding of default constitutes an admission of the facts alleged in the complaint, for the purposes of this matter only, and a

² The December 2001 Complaint alleged violations that occurred in May 1999, some thirty-one (31) months prior to the initiation of this action. Although Section 113(d) of the CAA generally limits the Agency to issuing orders administratively assessing penalties for violations that occur no more than twelve months prior to the initiation of an administrative action, a longer period of violation is authorized where EPA and the Department of Justice jointly determine that such longer period is appropriate. Such a joint determination was made with respect to this case. See, Complainant’s Motion to Supplement Motion for a Default Order for Liability and for the Assessment of Civil Penalties (“Motion to Supplement”), dated August 18, 2004. The Motion to Supplement was granted on August 26, 2004.

waiver of your right to a hearing.”

14. On January 31, 2002, pursuant to 40 C.F.R. § 22.5(b)(1), Respondent was served, by certified mail, return receipt requested, with the Complaint, original cover letter to the Complaint, a true and correct copy of a proposed Consent Agreement and Final Order (“CAFO”), a copy of the Consolidated Rules, a copy of the Region 2 Penalty Policy, and a copy of U.S. EPA Small Business Resources Information Sheet.
12. On January 29, 2002, pursuant to 40 C.F.R. § 22.5(a), the original and one copy of the Complaint were filed with the Regional Hearing Clerk.
13. A signed Domestic Return receipt was received by Complainant, indicating that Respondent received the Complaint on January 31, 2002.
14. The cover letter from the Director of DECA to the Respondent explained EPA’s jurisdiction in this matter and the nature of the enforcement action, and offered terms for settlement which were embodied in the proposed CAFO accompanying the Complaint..
15. The offer of settlement, which would expire thirty (30) days after its receipt, was embodied in the proposed CAFO.
16. To date, Respondent has not: (1) provided EPA with an Answer to the Complaint in this matter; (2) requested a hearing on the allegations contained in the Complaint; (3) submitted payment of the civil penalty proposed in the Complaint; nor accepted Complainant’s offer of settlement.
17. On June 21, 2003, a Motion for a Default Order for Liability and for the Assessment of Civil Penalties was served on Respondent.

18. The "Track and Confirm" document received by Complainant from the US Post Office indicates that Motion was delivered to Respondent on June 24, 2004.
19. To date, Respondent has not replied to the Motion. EPA's records contain no communication from the Respondent concerning this matter.

CONCLUSIONS OF LAW

This Initial Decision is based upon the following:

1. Jurisdiction is conferred by Section 113 of the CAA, 42 U.S.C. § 7413.
12. Albert Azarian, an individual, is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
13. D&A Cleaners is a "dry cleaning facility" within the meaning of 40 C.F.R. § 63.321 and is regulated under Section 112 of the CAA and by the perc regulations for dry cleaners, 40 C.F.R. § 63.320(a).
4. Section 113(d) of the Act, 42 U.S.C. § 7413(d) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that EPA may assess a civil administrative penalty of up to \$27,500 per day for each violation of the CAA occurring after January 30, 1997.
5. The proceeding was commenced in accordance with 40 C.F.R. §§ 22.13 and 22.14 of the Consolidated Rules.
6. The Complaint in this action was served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1) of the Consolidated Rules.

7. Respondent's failure to file an Answer to the Complaint (or pay the amount of the penalty set out in the Complaint) constitutes a default by Respondent pursuant to 40 C.F.R. §22.17(a).
8. Default by Respondent constitutes an admission of all of the facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. §§ 2.17(a) and 22.15(d).
9. Respondent's not keeping on-site and not showing upon request receipts of perchloroethylene purchased constitutes a violation of 40 C.F.R. §63.324(d).
10. Respondent's not keeping and maintaining on-site and not showing upon request a log of the volume of perchloroethylene purchased each month as recorded from perchloroethylene purchases constitutes a violation of 40 C.F.R. §63.324(d)(1).
11. Respondent's not keeping the results of yearly consumption of perchloroethylene by the facility, as determined on the first day of each month, constitutes a violation of 40 C.F.R. § 63.324(d)(2).
12. Respondent's not keeping a log of weekly inspections for leaks constitutes a violation of 40 C.F.R. §63.324(d)(3)..
13. Respondent's not keeping a log of the temperature readings for the refrigerated condenser constitutes a violation of 40 C.F.R. § 63.324(d)(5).
14. Respondent's not inspecting for leaks constitutes a violation of 40 C.F.R. § 63.322(k).
15. Respondent's not measuring the temperature of the air-perc gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine with a temperature

sensor on a weekly basis to determine if it is equal or less than 45 F, constitutes a violation of 40 C.F.R. § 63.323(a)(1).

16. Respondent's failure to file a timely Answer to the Complaint is grounds for the entry of an Initial Decision and Default Order against the Respondent assessing a civil penalty for the aforementioned violations pursuant to 40 C.F.R. § 22.17(a).

LIABILITY

Based on the above Findings of Fact and Conclusions of Law, I hereby find that Respondent, Albert Azarian, d/b/a D&A Cleaners, is in default, has violated Sections 112 and 114 of the CAA, and regulations implementing such sections found at 40 C.F.R. Part 63, Subpart M, and is liable for the payment of a civil penalty for such violations.

PENALTY DETERMINATION

Pursuant to Section 22.17(c) of the Consolidated Rules, the relief proposed in the complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute under which the action is brought. As more fully set out below, I find that the Complainant's proposed civil penalty of Three thousand two hundred dollars (\$3,200) is fair and is consistent with the statutory factors under CAA Section 113(e), the Clean Air Act Stationary Source Civil Penalty Policy, and the Region 2 Penalty

Policy.³

Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorized EPA to assess a civil administrative penalty of up to \$27,500 per day for each violation of the CAA that is alleged in a civil administrative complaint issued under the CAA. Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to consider the following factors in determining the amount of a penalty to be assessed: the size of the violator's business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other such factors as justice may require.

The Declaration of Karl Mangels, Attachment A to the Complainant's Motion for a Default Order for Liability and for the Assessment of Civil Penalties, discusses the criteria set forth in the statute and penalty policies, and a detailed explanation of the penalty calculation, and is summarized herein. In order to implement the statutory requirements while ensuring their consistent application, EPA, on October 25, 1991, issued the Clear Air Act Stationary Source Civil Penalty Policy ("General Penalty Policy", Attachment 1 to Complainant's Motion) based on considerations listed in the CAA. In order to apply this policy to dry cleaning operations such as the Respondent, Region 2, in January 2001, developed the EPA Region 2 Dry Cleaner Penalty Policy ("Region 2 Penalty Policy", Attachment 2 to Complainant's Motion) which looked at the

³ 40 C.F.R. §22.27(b) directs that the Presiding Officer consider, in addition to any factors enumerated in the statute, any civil penalty guidelines issued under the statute.

following five General Penalty Policy Criteria: (1) the type of source that is being regulated, (2) the nature and seriousness of the violations that precipitated the enforcement action, (3) the ability to pay when an enforcement action is taken, (4) the size of the violator, and (5) the compliance history.

The Region 2 Penalty Policy is in the form of matrices, one for each type of violation under 40 C.F.R. Part 63, Subpart M. Each matrix contains one axis designating the size of the violator (Small Source or Large Source) and another designating the number of times the same violation occurred. The penalty amount in each block of the matrix was derived using the factors enumerated above.

Rather than applying the statutory maximum, or the amount generated by the General Penalty Policy, EPA applied the Region 2 Penalty Policy tailored for small businesses. As further explained below, EPA proposed a penalty of three thousand eight hundred dollars (\$3,800) in the Complaint.

1. As set forth in the Findings of Fact, above, during the inspection of Respondent's facility, the inspector determined that D&A Cleaners was violating the following sections of the dry cleaning perc regulations at 40 C.F.R. Part 63, Subpart M: 40 C.F.R. § 63.322(k), 40 C.F.R. § 63.323(a)(1), 40 C.F.R. § 63.324(d), 40 C.F.R. § 63.324(d)(1), 40 C.F.R. § 63.324(d)(2), 40 C.F.R. § 63.324(d)(3) and 40 C.F.R. § 63.324(d)(5). These regulations deal with record keeping and document retention requirements.
2. During the inspection, the inspector determined that D&A Cleaners is a dry-to-dry source that consumes more than 140 gallons of perchloroethylene per year, and is therefore

considered a “large” area source under the Region 2 Dry Cleaner Penalty Policy.

3. Following the Region 2 Penalty policy matrix and based on the information available, Respondent was properly classified as a “Large source” and as a first time violator of all alleged violations
4. The figures in the table below are derived from the penalty assessment criteria in Clean Air Act Section 113(e), the General Penalty Policy, and the Region 2 Penalty Policy.

Violation	Penalty
40 C.F.R. § 63.322(k)	\$ 600
40 C.F.R. § 63.323(a)(1)	\$ 600
40 C.F.R. § 63.324(d)	\$ 400
40 C.F.R. § 63.324(d)(1)	\$ 400
40 C.F.R. § 63.324(d)(2)	\$ 400
40 C.F.R. § 63.324(d)(3)	\$ 400
40 C.F.R. § 63.324(d)(5)	\$ 400
TOTAL PROPOSED PENALTY	\$3,200

5. The lower penalties for the Region 2 Penalty Policy take into account the size of the business, one of the factors in CAA Section 113(e). As mentioned above, the size of the business is further taken into account in the Region 2 Penalty Policy by distinguishing between small and large sources in the penalty matrix. This adjustment, based on size, acknowledges the economic impact on the business, another factor in CAA Section 113(e). The matrix also provides for increasing penalties with successive violations, thereby addressing another CAA Section 113(e) assessment criterion, the violator’s full compliance history. In addition, the figures in the matrix vary by violation depending on the seriousness of the violation.

6. The assessment criteria discussed above are addressed in the Gravity Component portion of the General Penalty Policy. The other main component of the General Penalty Policy is the Economic Benefit component. No proposed assessment was made in this matter for economic benefit.

Evaluating all of the information, I have determined that the proposed civil penalty is appropriate and was calculated in accordance with statutory factors under CAA Section 113(e), the General Penalty Policy and the Region 2 Penalty Policy. Further, the record in the proceeding supports this penalty. A penalty of Three Thousand Two Hundred Dollars (\$3,200) is hereby assessed against Respondent.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, an Initial Decision and Default Order is hereby ISSUED and Respondent is ordered to comply with all the terms of this Order:

- (1) Respondent is assessed and ordered to pay a civil penalty in the amount of Three Thousand Two Hundred Dollars (\$3,200).
- (2) Respondent shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 C.F.R. § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

Regional Hearing Clerk
EPA Region 2

Initial Decision and Default Order
In re: Albert Azarian d/b/a D&A Cleaners
CAA-02-2002-1273

P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

A copy of the payment shall be mailed to:

Regional Hearing Clerk
EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007

(3) This Default Order constitutes an Initial Decision pursuant to 40 C.F.R. § 22.17(c). Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a Final Order forty-five (45) days after its service upon the parties unless (1) a party appeals the Initial Decision to the Environmental Appeals Board, (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board chooses to review the Initial Decision *sua sponte*.

IT IS SO ORDERED.

Dated: August 26, 2004


Warren H. Llewellyn
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the Initial Decision and Default Order by Regional Judicial Officer Warren H. Llewellyn in the matter of Albert Azarian d/b/a D&A Cleaners, Docket No. CAA-02-2003-1273, was served on the parties as indicated below:

Federal Express -

*Mr. Albert Azarian
D&A Cleaners
222 North Center Street
Merchantville, New Jersey 08109*

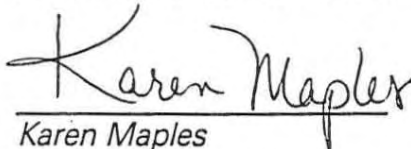
*Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
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Pouch Mail -

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*Karen Maples
Regional Hearing Clerk
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Dated: August 26, 2004