Decisions & Orders
About the Office of Administrative Law Judges
Statutes Administered by the Administrative Law Judges
Rules of Practice & Procedure
Environmental Appeals Board
Employment Opportunities

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
SCHOOLCRAFT CONSTRUCTION, INC.,	)	DOCKET NO. CAA-010A-1993
	)	
RESPONDENT	)	

DECISION FOLLOWING REMAND

The Environmental Appeals Board (Board) in a Remand Order (1998 EPA App. LEXIS 14) concluded that Respondent is an "operator" as defined by the asbestos NESHAP (National Emission Standards for Hazardous Air Pollutants) renovation standard at 40 C.F.R. § 61.141. The Board directed the Presiding Officer to "make explicit findings on whether the Region met its burden of establishing that the violations alleged in the complaint actually occurred, and if so, [to] consider the appropriate penalty for such violations." An oral hearing was held on September 24 and 25, 1996 in Dayton, Ohio with Administrative Law Judge Daniel Head presiding. (1)

The first five counts of the complaint allege that Respondent violated the asbestos NESHAP and Section 112 of the Clean Air Act, 42 U.S.C. § 7412 during the 1992 renovation of the W.O. Cline Elementary School, Centerville, Montgomery County, Ohio. (2) The complaint alleges that Respondent violated the asbestos NESHAP standard for demolition and renovation operations. 40 C.F.R. § 61.145. Counts I and II allege that Respondent failed to notify by telephone and in writing the Regional Air Pollution Control Agency, Dayton, Ohio (RAPCA) before the original start date of June 15, 1992 that asbestos removal at the Cline Elementary School renovation would begin on a date other than the date specified in the original notice, in violation of 40 C.F.R. § 61.145 (b) (3) (iv) (A) (1) and (2) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C. § 7412 (i) (3) (A).

Count III of the complaint alleges that Respondent failed to adequately wet a dry friable 10 feet by 10 feet section of RACM ceiling material while stripping it from the ceiling component at the facility. Complainant alleges that Respondent's failure to adequately wet all RACM being stripped from a static facility component during the stripping operation in the asbestos abatement enclosure is a violation

of 40 C.F.R. § 61.145 (c) (3) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A). Count IV of the complaint alleges that Respondent failed to adequately wet all RACM, including material that had removed or stripped, and to ensure that it remained wet until collected and contained or treated in preparation for disposal, in violation of 40 C.F.R. § 61.145 (c) (6) (i) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A).

Count V of the complaint alleges that Respondent failed to post evidence of an on-site representative's training in the asbestos NESHAP at the Cline Elementary School renovation, in violation of 40 C.F.R. § 61.145 (c) (8) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A). Complainant proposes assessment of a $20,000 penalty against Respondent, pursuant to § 113 (d) (1) of the Clean Air Act, 42 U.S.C. § 7413 (d) (1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicability of the Notice and Work Practice Requirements of the Renovation Standard

It is undisputed that the renovation at the Cline Elementary School involved the stripping, removal, dislodging, cutting, drilling or similar disturbance of RACM in a combined amount in excess of 260 linear feet on pipes and 160 square feet on other facility components. Therefore, pursuant to 40 C.F.R. § 61.145 (a) (4), all of the notice and work practice requirements of the renovation standard, 40 C.F.R. § 61.145(b) and (c), apply to the Cline Elementary School renovation.

Notice Violations

The owner or operator of a demolition or renovation activity must provide the Administrator with written notice of intention to renovate 10 working days before asbestos stripping or removal work or other activity begins. If the asbestos activity is to begin on a date other than the one noticed originally, the operator must notify the administrator of the new start date by telephone as soon as possible before the original start date and, in addition, provide the administrator with written notice of the new start date, as soon as possible, but no later than, the original start date. 47 C.F.R. § 61.145 (b) (3) (iv) (A) (1) and (2). In Montgomery County Ohio the authority to receive notice has been delegated to the Regional Air Pollution Control Agency (RAPCA). 40 C.F.R. § 61.04 (b).

The original notice was given to RAPCA on June 2, 1992 by Seneca Asbestos Removal & Control, Inc. (Seneca), the contractor that performed the asbestos removal at the Cline Elementary School (the facility). Seneca informed RAPCA that the start date would be June 15, 1992 and that the end date would be August 7, 1992. When RAPCA inspector Jack D. Hemp went, on June 16, 1992, to inspect the removal of asbestos at the facility, he found that the removal had not begun and was told it might not begin until June 18, 1992. RAPCA had not received a telephone call nor a written notice advising it that the asbestos removal work would not begin on June 15, 1992, the noticed start date. The revised notification was sent to RAPCA on June 17, 1992, the day on which asbestos removal was begun and the date specified as the start date in the revised notice. The record does not reflect that Respondent's on-site certified Asbestos Hazard Abatement Specialist, Jack Bowman, took any steps to provide a timely revised notice.

Respondent argues that because revised notice was given, and the facility was inspected, the rule was not violated. Respondent believes that the purpose of the notice rule is to prohibit operators from beginning a renovation without providing regulatory agencies an opportunity to inspect the facility. From that assumption it reasons that the purpose of the rule was served. Complainant points out that Respondent's argument is contrary to explicit language of the rule which requires an oral and written revised notice prior to the original start date for asbestos removal when the original notice is not going to be followed. Moreover, Complainant explains, Respondent has misstated the purpose of the rule. Complainant points out that the Agency stated in the preamble to the final regulations that one purpose of the rule and the reason for the revised telephone and written notice prior to the

original start date is to prevent "useless visits to jobs that have been rescheduled because a written renotification of a change in start date was not received in time." 55 Fed. Reg. 48411-48412. In fact, Inspector Hemp testified at the hearing that Respondent's actions in not providing a timely revised notice caused him to make a "useless visit" to the facility. [(3)]

Complainant has established that the Respondent failed to timely notify RAPCA of the new start date to remove asbestos at the facility by telephone and in writing prior to the old start date. Respondent's failure violates 47 C.F.R. § 61.145 (b) (3) (iv) (A) (1) and (2) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C. § 7412 (i) (3) (A). Complainant has met its burden of proof on counts I and II.

Work Practice Violations

On June 30,1992, Jeffrey W. Adams, the Asbestos Coordinator for RAPCA, inspected the Cline Elementary School renovation. The violations alleged in counts III, IV, and V were found during Mr. Adams' inspection.

The asbestos NESHAP at 40 C.F.R. § 61.145 (c) (3) requires that each operator of a renovation activity adequately wet all RACM that is being stripped from a facility component, while the facility component remains in place in the facility, during the stripping operation. Mr. Adams found a dry friable 10 feet by 10 feet portion of RACM ceiling material in the asbestos abatement enclosure at the Cline Elementary School. He concluded that Seneca had failed to adequately wet the 10 feet by 10 feet section of RACM ceiling material while stripping it from the ceiling component at the facility. Mr. Adams found a 100 feet of ceiling material in a pile approximately three feet high. He observed that the material was dry and that it could be crumbled with his hand.

Mr. Adams took a representative sample from the pile which was tested the next day by Jon S. Hilty, who was a Quality Assurance Coordinator at RAPCA. Mr. Hilty tested the samples for asbestos content using the polarized light microscopy method (PLM). Mr. Hilty identified the presence of asbestos in the sample. He did not use the quantification procedure of the PLM method. Nevertheless, he determined that the samples taken by Mr. Adams contained approximately 10 percent asbestos. The samples were tested again at the Agency's Central Regional Laboratory, on December 1, 1992, by Charles Steiner. Mr. Steiner also used the PLM method to identify the asbestos and to quantify the amount of asbestos. His tests verified those taken by Mr. Hilty. Mr. Steiner found that samples taken by Mr. Adams contained approximately11-13 percent chrysotile asbestos. [(4)]

Mr. Adams concluded that the asbestos ceiling material had been recently removed because it was near the load out area where other portions of stripped material were being broken up for placement into disposal bags. He found no evidence of adequate wetting [(5)] near the ceiling material. Respondent did not introduce any evidence that the asbestos material cited in count III was in any condition other than that observed by the Complainant. Respondent asserts that Complainant must prove actual emissions of RACM in order to demonstrate that RACM was not adequately wet while being stripped. That argument is contrary to the definition of adequately wet in the regulations which states that "the absence of visible emissions is not sufficient evidence of being adequately wet." 40 C.F.R. § 61.141.

Respondent's failure to adequately wet all RACM being stripped from a static facility component during the stripping operation in the asbestos abatement enclosure is a violation of 40 C.F.R. § 61.145 (c) (3) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A). Respondent's failure to adequately wet all RACM, including material that had removed or stripped, and to ensure that it remained wet until collected and contained or treated in preparation for disposal, is a violation of 40 C.F.R. § 61.145 (c) (6) (i) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A). Complainant has met its burden of proof on counts III and IV.

Posting On-site Evidence of Representative's Training

Mr. Adams determined that there was no on-site copy of a site representative's Ohio Department of Health certificate demonstrating training in the asbestos NESHAP. Seneca did have its site supervisor's Ohio Department of Health certificate demonstrating training at its off-site office and, at Mr. Adams' request, it was sent to RAPCA by facsimile on June 30, 1992. Respondent offered no evidence to controvert these facts.

The asbestos NESHAP at 40 C.F.R. § 61.145 (c) (8) requires that evidence of an on-site representative's training be posted and made available for inspection by the Administrator at the renovation site. Respondent's argument that the presence of an on-site properly certified representative amounts to substantive and material compliance with the posting rule is an inaccurate reading of the rule. The presence of the person who has been trained in NESHAP meets only part of the rule. In addition, the rule states that "[e]vidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site." The reason for posting the representative's certificate at the site is to ease the task of the inspector in insuring that the regulations have been met. Respondent's failure to post the certificate had an impact on the agency's ability to monitor substantive compliance of NESHAP.

Respondent's failure to post evidence of an on-site representative's training in the asbestos NESHAP at the Cline Elementary School renovation is a violation of 40 C.F.R. § 61.145 (c) (8) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C. § 7412 (i) (3) (A). Complainant has met its burden of proof on count V.

ASSESSMENT OF PENALTY

The Complainant urges that Respondent should be assessed a total penalty of $20,000 for violation of counts I-V as follows:

Count I/II § 61.145 (b) (3) (iv) (A) (1) and (2)	$1,000
Count III § 61.145 (c) (3)	$4,000
Count IV § 61.145 (c) (6) (I)	$10,000
Count V § 61.145 (c) (8)	$5,000

Complainant used Appendix III of the Clean Air Act Stationary Source Civil Penalty Policy (General Penalty Policy) (October 25, 1991) 1991 LEXIS 7. Appendix III is the Asbestos Demolition and Renovation Civil Penalty Policy (1991 LEXIS 7 at 76) which is applicable to NESHAP.[(6)]

GRAVITY Using the asbestos penalty policy, the Complainant calculated the gravity component of its proposed penalty. The asbestos penalty policy in appendix III of the Clean Air Act penalty policy assigns a different penalty amount depending on the type of violation. If the violation is a late, incomplete or inaccurate notice, the asbestos policy contemplates assessment of a single one-time penalty. It is limited to the largest single penalty assessed for all such notice violations. In this case the highest amount was $2,000 for the violations found in counts I and II. For work practice violations, the asbestos appendix assigns a penalty amount in consideration of the total amount of asbestos involved in the operation, Respondent's history of violation and the duration of the violation. The total amount of asbestos involved in the operation is converted to "units," a unit is 260 linear feet, 160 square feet, or 35 cubic feet, the minimum amount of asbestos subject to regulation pursuant to 40 C.F.R. § 61.145 (a).

The amount of RACM ceiling material involved in the Cline Elementary School renovation was 24,340 square feet or 50 units. Respondent dry stripped approximately 100 square feet of RACM ceiling material. The asbestos policy determines the gravity of the violation in terms of total amount of asbestos involved in the operation. Complainant, however, in computing the penalty considered only the amount RACM cited in the violation. In this regard Complainant's assessment varies from the asbestos policy to Respondent's benefit.

While Respondent had no history of violation, the other operator at the renovation site, Seneca, did.[7] Seneca had received notices of violation for at least four other renovation operations. In one case, Seneca paid a $7,500 penalty. Complainant considered these violations in assessing the overall penalty and it also considered the violation to have been one day in duration. The penalty derived from the asbestos penalty policy was $25,000 for count III.

Respondent failed to adequately wet RACM located throughout the entire abatement enclosure. Complainant estimated that 18,000 square feet of asbestos had been involved in the project by the date of the inspection. It divided that amount by 160 square feet and found that the amount involved was more than 50 units. Again the previous violations of Seneca were considered in light of one day's violation. The gravity penalty assessed for count IV by Complainant was $25,000.

Respondent also failed to post evidence of an on-site representative's training in the asbestos NESHAP. Initially, Complainant applied the same analysis that it did in the assessing the penalty in count IV. However, Complainant believed that the $25,000 penalty that resulted from applying the asbestos policy did not fairly reflect the gravity of the violation since Respondent did send a copy of the representative's training certificate to RAPCA on the day of the inspection. Under these circumstances, Complainant believed that the gravity assessment of $25,000 for count V should be lowered to $10,000.

ECONOMIC BENEFIT

Complainant determined that Respondent received an economic benefit from non-compliance in counts III and IV. But because the gravity component for counts III and IV had already raised the penalty to the statutory limit, complainant concluded that the economic benefit calculation did not affect the gravity component. Complainant found that the preliminary deterrence amount (the total gravity and economic benefit calculations) should be $62,000 and that the total unadjusted preliminary deterrence amount, which included counts VI-IX --counts only applicable to the operator Seneca-- should be $89,000.

ADJUSTMENTS AND APPORTIONMENT OF THE PENALTY Complainant determined that Respondent's ability to pay did not warrant an adjustment in the penalty. Complainant apportioned the penalty in order to prevent Seneca's history of violation from unfairly affecting the penalty to be assessed against Respondent. First, Complainant divided the $2,000 penalty assessed for counts I and II. Complainant assessed Respondent $1,000, or one-half of the penalty for counts I and II, because it was one of two operators. Respondent was assigned an amount equal to that assigned to Seneca because the penalty assessment was not altered by Seneca's history of violations.

Complainant apportioned $4,000 of the $25,000 assessed for the count III violation to Respondent. This was done to exclude from consideration Seneca's past violations. In reaching this conclusion, Complainant determined what Respondent would have paid if Seneca had not been involved in the violation. Had Seneca not been one of the operators, Respondent would have paid $5,000 under the asbestos penalty policy. Complainant tempered that amount and lowered the assessment to $4,000. Complainant applied a similar apportionment rationale to the assessment of $25,000 for count IV. Respondent was assigned $10,000 of the preliminary deterrence amount. (If the Respondent had been the only operator the penalty policy would have required an assessment of $15,000.)

The preliminary deterrence amount for count V was $10,000 and it was apportioned evenly between Respondent and the operator Seneca. Complainant believes that the nature of violation warrants equal apportionment. Complainant determined that if Respondent had been the only operator, the penalty assessed would have been $15,000.

Complainant's apportionment results in the assessment of a $20,000 total penalty against the Respondent. Complainant urges that its consideration of the penalty was reasonable and appropriate and that the penalty it assessed had been mitigated

enough. Complainant points out that if Respondent had been the only operator at the facility the penalty would have been over $37,000 and that that amount could have been increased for a number of reasons. On the other hand, it urges that if additional mitigation of count III and IV are undertaken, the mitigation should be offset by an increase in the penalty based upon Complainant's economic benefit calculation.

Complainant argues that the penalty is appropriate because of Respondent's supervisory role at the renovation site. In this regard, Complainant points out, Respondent held itself out to be an expert at asbestos management and supervision of asbestos related renovations. Complainant explains that the Centerville school system relied on that representation for insuring that all asbestos would be safely removed. Respondent's failure to perform its job, Complainant demonstrates, resulted in the spread of dry RACM throughout the enclosure, dry removal of RACM ceiling panels and an abatement enclosure full of rips, tears and breaches that provided a transmission path for carcinogenic asbestos fibers outside the containment area into the halls of the school. Complainant maintains that the extent of the breaches indicates that they had been made on previous days of work. It is Complainant's belief that there may have been an actual harm in the form of the release of asbestos fibers outside the containment area. Respondent's failure to provide proper notice resulted in the inspector making an unnecessary trip to the renovation site, the very inefficiency the notice rule seeks to avoid. Finally, Complainant urges that the proposed penalty is warranted because Respondent refuses to accept any responsibility for the violations, despite its role as an operator at the renovation site.

While the Respondent argues that Complainant's analysis does not follow the statutory scheme, that claim is not supported by the record. The asbestos penalty policy, and Complainant's application of it, follow 42 U.S.C. § 7413 (e) (1). Respondent has failed to demonstrate in which respect Complainant's penalty assessment avoids the statutory criteria. Respondent argues that Complainant failed to consider its small size in computing the penalty. The record evidence does not support that assertion. The Dun & Bradstreet credit report introduced by the Complainant does not indicate that Respondent's size restricts its ability to pay the penalty assessed. In any event, Complainant points out that Respondent assiduously withheld all information about its finances.

Respondent's attempt to introduce its financial statements at the hearing supports Complainant's claim that Respondent has refused to substantiate its assertion about its size. The presiding officer refused to admit Respondent's financial statements into the record because the Respondent was unwilling to subject them to cross-examination. Without detailed examination the proffered statements have no probative value in determining Respondent's financial condition. It proffered financial statements contain the representation of its accountant that Respondent "elected to omit substantially all of the informative disclosures ordinarily included in financial statements prepared on a modified cash basis of accounting." Moreover, The Dun & Bradstreet credit report which complainant consulted did not indicate that Respondent could not pay the penalty because of its financial condition or its size. Finally, the record reflects that Respondent was paid more than the $20,000 penalty as a fee for overseeing the renovation for Centerville. Complainant took into account these factors and concluded that there was no evidence that the proposed penalty would have an adverse impact on Respondent's ability to do business. Respondent has not shown that Complainant's assessment is unreasonable.

Respondent also argues that the penalty is out of proportion to the size of the fee that it received for supervising the renovation. The Complainant did not increase the penalty assessed because of Respondent's economic benefit. The penalty was calculated in consideration of the gravity of the violations. Because the violations were serious and many, this would not be an appropriate case to apply Respondent's rationale that if little money is made on a transaction, the penalty should be small. Such a theory dilutes the deterrent effect of the penalty and ignores the gravity of the violations. An important fact which Respondent fails to address is that its income is derived from promising clients that it will insure that they are in compliance with the NESHAP regulations. Complainant's proposed penalty assessment in this case is reasonable and appropriate; it should result in

deterring Respondent, and persons providing the the same service to schools, from violating the NESHAP rules. [8]

ACCORDINGLY IT IS FOUND that, as alleged in Counts I and II, Respondent violated 47 C.F.R. § 61.145 (b) (3) (iv) (A) (1) and (2) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C. § 7412 (i) (3) (A), that, as alleged in Count III, Respondent violated 40 C.F.R. § 61.145 (c) (3) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A), that, as alleged in Count IV, Respondent violated 40 C.F.R. § 61.145 (c) (6) (i) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C § 7412 (i) (3) (A), and that, as alleged in Count V, Respondent violated 40 C.F.R. § 61.145 (c) (8) and Section 112 (i) (3) (A) of the Clean Air Act, 42 U.S.C. § 7412 (i) (3) (A).

IT IS ORDERED that pursuant to § 113 (d) (1) of the Clean Air Act, 42 U.S.C. § 7413 (d) (1), Respondent is assessed a penalty of $20,000.

Payment of the full amount of the civil penalty assessed must be made within sixty (60) days of the service date of the final order by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

U. S. EPA, Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, Ill.60673

A transmittal letter identifying the subject case and the EPA docket number, plus respondent's name and address must accompany the check.

Failure by respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

Pursuant to 40 C.F.R. § 22.27 (c), this initial decision shall become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties and without further proceeding unless (1) an appeal to the Environmental Appeals Board is taken from it by a party to this proceeding or (2) the Environmental Appeals Board elects, sua sponte, to review this initial decision. If an appeal is taken, it must comply with § 22.30. A notice of appeal and an accompanying brief must be filed with the Environmental Appeals Board and all other parties within twenty (20) days after this decision is served upon the parties.

_____

Edward J. Kuhlmann
Administrative Law Judge

June 23, 1998
Washington, D. C.

1. Administrative Law Judge Daniel Head, who wrote the initial decision reviewed by the Board, has retired. Therefore, the undersigned has been designated as the presiding officer to comply with the Board's remand order. The parties were expected to have addressed all issues raised in the proceeding in their proposed findings, conclusions and briefs filed in 1996. That coupled with the fact that no demeanor issues are presented permits making a decision on the current record. The parties continue to be represented by the same counsel. Timothy J. Chapman, Esq. represents the Complainant and Martin Lewis, Esq. represents the Respondent.

2. The complaint was brought against Respondent and Seneca Asbestos Removal & Control, Inc. (Seneca). The complaint alleges IX counts but only the first five apply to the Respondent. Seneca entered into a consent agreement with the Agency and was not party to the hearing or the appeal which gave rise to this remand.

3. Respondent has also argued that reporting a change in the start date was not its responsibility. That claim is contrary to § 61.145 (a)-(c) which places the responsibility on "each owner or operator." As an operator at the facility, Respondent was responsible with other operators at the facility to report changes in the start date.

4. Regulated asbestos-containing material is friable if it contains more than 1 percent asbestos according to the PLM method and can be crumbled with the hand. 40 C.F.R. § 61.141.

5. The renovation standard defines adequately wet to mean that the material is sufficiently mixed or penetrated with liquid to prevent the release of particulates. "If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet." 40 C.F.R. § 60.141

6. In civil administrative cases pursuant to Section 113 (d), 42 U.S.C. § 7413 (d), penalties may be assessed up to $25,000 per day per violation, but not more than $200,000. The statutory factors that the Clean Air Act directs the Agency to consider in computing the penalty include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. 42 U.S.C. § 7413 (e) (1). The Agency is not limited to the enumerated factors, it may also consider such other factors as justice may require.

7. Although the Respondent Seneca entered into a settlement agreement with the Agency before the hearing, the penalty computation considered the violations of both operators, Schoolcraft and Seneca. The penalty policy directs this computation and then states that the Complainant "should try to get the prior-offending party to pay the extra penalties attributable to this factor." After the full penalty is calculated, the penalty is apportioned in consideration of the difference between the respondents.

8. Respondent also argues that because the Centerville school system was not assessed a penalty, it should not be penalized. The reason for different treatment is apparent. Respondent was hired by Centerville to insure compliance with NESHAP at the renovation site and to select a reliable and trained contractor. Centerville relied on Respondent and assumed it would be in compliance if Respondent did its job. That difference alone warrants different treatment. In addition, Respondent denies liability for any violation of the rules and Centerville has cooperated in coming into compliance with the rules.