E. Durr's copy

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Four Strong Builders, Inc.,	)	**Docket No. CAA-03-2004-0400**
	)	
Respondent	)	

DEFAULT ORDER

This civil administrative penalty proceeding arises under Section 113 (a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a)(3) and (d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. Part 22 (2005). On September 30, 2004, the United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing a Complaint against Four Strong Builders, Inc. ("Respondent" or "Four Strong").[1] The Complaint charges Respondent with failure to comply with the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Asbestos, codified at 40 C.F.R. Part 61, Subpart M ("the Asbestos NESHAP"), and Section 112 of the Clean Air Act, as amended, 42 U.S.C. § 7412. Complainant seeks the imposition of a civil administrative penalty in the amount of $24,310 against Respondent. In the Complaint, EPA proposed a penalty of $37,400. It now seeks a penalty of $24,310.[2]

For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17 (a) of the Rules of Practice, 40 C.F.R. §22.17 (a), and is assessed the proposed penalty of $24,310.

I. Statement of the Case

The EPA initiated this matter by filing a Complaint and Notice of Opportunity for

---

[1]The Complaint also listed DLC Management, Inc., and Levittown, L.P., as co-respondents. DLC Management, Inc., and Levittown, L.P., have entered into a "Consent Agreement" with EPA settling this matter.

[2]This civil penalty reduction reflects the $13,090 to be paid by DLC Management, Inc., and Levittown, L.P.

Hearing pursuant to Sections 113 (a) (3) and (d) of the Clean Air Act, 42 U.S.C. §7413 (a) (3) and (d). In the Complaint, the EPA charges Respondent with three violations of Section 112 (b) of the Clean Air Act, 42 U.S.C. § 7412 (b), for failing to comply with the regulations codified at 40 C.F.R. Part 61, Subpart M. Specifically, Complainant alleges that Respondent, the "owner or operator" of a demolition or renovation activity, violated 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i) and 61.145 (c)(6)(ii). Respondent, through counsel, filed its Answer on November 8, 2004. In its Answer, Respondent denied the charges in the Complaint and requested a hearing. Answer at 9.

On February 17, 2005, the Court entered an Order Setting Prehearing Procedures ("Prehearing Exchange Order") setting forth a schedule for the parties to submit their prehearing exchange information. The Order directed the parties to file Opening Prehearing Exchanges by March 15, 2005, specifying the required content of such exchanges. Prehearing Exchange Order at 1. On March 15, 2005, Complainant filed its Opening Prehearing Exchange as directed. To date, Respondent has not filed a prehearing exchange.

Thereafter, on March 23, 2005, Complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other Appropriate Relief ("Motion to Show Cause") noting that Respondent had failed to file its prehearing exchange as directed. On May 16, 2005, the Court directed Respondent to respond to Complainant's Motion to Show Cause no later than May 30, 2005. To date, a response to the Order has not been received.[3]

Accordingly, as discussed below, Respondent's failure to comply with this Court's February 17, 2005 Prehearing Exchange Order and subsequent order of May 16, 2005 results in the entry of a default judgment.

II. Discussion

A. Liability on Default

Section 22.17 (a) of the Rules of Practice lists those instances in which a party may be found to be in default. 40 C.F.R. 22.17 (a). It provides, in part, that a default judgment may be entered against a party for "failure to comply with the information exchange requirements of § 22.19 (a) or an order of the Presiding Officer." *Id.* That is precisely the case here. In fact, respondent satisfied both criteria in failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order of May 16, 2005.

---

[3]Moreover, a conference call was scheduled to be held at 11:00 a.m. on June 13, 2005, between the Court and the parties. The purpose of this call was to discuss Respondent's failure to respond to the Court's Order of May 16, 2005. Despite the fact that the time and date of the conference call was confirmed with the parties on June 10, 2005, counsel for Respondent was not available for the June 13 conference.

Section 22.17 (a) of the Rules of Practice further provides that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17 (a). Thus, the facts alleged in the instant Complaint establish Respondent's liability for three violations of 40 C.F.R. Part 61, Subpart M. Specifically, the alleged facts, deemed to be admitted, establish that Respondent failed to: provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began, ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal, and remove the RACM without its becoming damaged or disturbed. 40 C.F.R. §§ 61.145 (b), 61.145 (c)(6)(i), and 61.145 (c)(6)(ii). Compl. ¶ ¶ 46, 50, and 54.

A party's failure to comply with an order of the Administrative Law Judge subjects the defaulting party to a default order under Section 22.17 (a) of the Rules of Practice, unless the record shows good cause why a default order should not be issued. Here, Respondent failed to offer any explanation for its noncompliance. Based on the "totality of the circumstances," Respondent is found to be in default, and the record does not show good cause why a default order should not be issued. *See Pyramid Chemical Co.*, RCRA Appeal No. HQ-2003-0001, 11 E.A.D. __ , (EAB Sept. 16, 2004).

B. Penalty on Default

The Rules of Practice also direct that where a party is found in default, as is the case here, "the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17 (c). In that regard, Section 22.17 (c) of the Rules of Practice states, in pertinent part:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. *The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act....*

40 C.F.R. § 22.17 (c). (Empahsis added).

Here, EPA proposes that Four Strong, the sole remaining respondent, be assessed a civil administrative penalty in the amount of $24,310 for violating the Asbestos NESHAP. Pursuant to 40 C.F.R. 22.17 (c), it is held that an administrative penalty in the amount of $24,310 is

appropriate under the circumstances of this case.

III. Conclusions of Law

1. Respondent is found to be in default for failing to comply with the Prehearing Exchange Order of February 17, 2005, as well as the related order dated May 16, 2005. Moreover, the record does not show good cause why such a default order should not be issued. 40 C.F.R. § 22.17 (a).

2. The default by Respondent constitutes, for purposes of the above-cited matter only, an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations. 40 C.F.R. § 22.17 (a).

3. Respondent's failure to: (1) provide EPA with written notice of the intent to renovate or demolish a facility at least 10 working days before the asbestos stripping or removal work began violated the notification requirements of 40 C.F.R. § 61.145 (b) of the Asbestos NESHAP; (2) ensure that "regulated asbestos-containing material" ("RACM") was kept wet until its collection and disposal violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(i) of the Asbestos NESHAP; and (3) remove the RACM without its becoming damaged or disturbed violated the work practice requirements of 40 C.F.R. § 61.145 (c)(6)(ii) of the Asbestos NESHAP, during a demolition project at the Levittown Shopping Center which began in March, 2002. These three violations of Section 112 of the Clean Air Act subject Respondent to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7416 (d).

4. Inasmuch as this order "resolves all outstanding issues and claims in the proceeding" it constitutes an initial decision under the rules of practice. 40 C.F.R. 22.17 (c). *See* 40 C.F.R. 22.27 (c).

IV. Order

Four Strong Builders, Inc., is found to be in default and, accordingly, is found to have violated Section 112 of the Clean Air Act and the Asbestos NESHAP as charged in the Complaint. For these violations, Respondent is assessed a civil administrative penalty of $24,310.

Payment of the full amount of this civil penalty shall be made within "30 days after the default order becomes final under [40 C.F.R.] § 22.27 (c)." 40 C.F.R. 22.17 (d). Respondent is directed to submit a cashier's check or certified check in the amount of $24,310, payable to "Treasurer, United States of America," and mailed to:

Attn: U.S. EPA Region 3
P.O. Box 360515
Pittsburgh, PA 15251-6515[4]

Failure to pay the penalty within the prescribed period after the entry of this Order may result in the additional assessment of interest. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

Carl C. Charneski
Administrative Law Judge

Issued: July 6, 2005
Washington, D.C.

[4] Respondent and EPA may arrange for an alternative method of payment.

In the Matter of *Four Strong Builders, Inc.*
Docket No. CAA-03-2004-0400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Default Order**, dated July 6, 2005, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

Copy by Certified Mail to:

Jennifer M. Abramson, Esq.
Assistant Regional Counsel (3RC10)
U.S. EPA-Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.3113

Copy by Certified Mail:

Paul Faugno, Esq.
Faugno & Associates, LLC
125 State Street, Suite 101
Hackensack, NJ 07601
Fx: 201.342.2010

Dated: July 6, 2005
Washington, DC