



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION
 San Francisco, California



IN THE MATTER OF:)
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 ROSE & ALEX PILIBOS)
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 RESPONDENTS) DOCKET NO. TSCA-09-91-0011
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INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Order dated September 24, 1991, Complainant, the Director of the Air and Toxics Division of the United States Environmental Protection Agency, Region 9, moved for an Order assessing a civil penalty in the amount of four thousand dollars (\$4,000) against Respondent, Rose & Alex Pilibos Armenian School. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules") at 40 C.F.R. Part 22, and 40 C.F.R. §22.17 thereunder, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Civil Penalty Amount, Complainant's Motion for Default Order is hereby GRANTED.

I. FINDINGS OF FACT

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

1. On May 15, 1991, the Complaint in this action was served on Respondent.

2. Respondent has failed to file an Answer to the Complaint within twenty (20) days of service of the Complaint on Respondent. 3. The Complaint alleged the facts set forth in paragraphs (a) through (i) below.

(a) The Respondent is a "Local Educational Agency" ("LEA"), as defined in TSCA Section 202(7), 15 U.S.C. 2642(7), and 40 CFR 763.83.

(b) The Respondent owns, at the minimum, one building, located in Los Angeles, California.

(c) The building referred to in Paragraph [b] is a "school building," as defined in TSCA Section 202(13), 15 U.S.C. 2642(13), and 40 CFR 763.83.

(d) 40 CFR 763.93, promulgated pursuant to TSCA Section 203(i), 15 U.S.C. 2643(i), and TSCA Section 205(d), require that Respondent, by October 12, 1988, either have developed a valid management plan for each school building which Respondent owns, or submitted a valid request for deferral of submission of the management plan until May 9, 1989 ("deferral request").

(e) TSCA Section 205(e), 15 U.S.C. 2645(e), requires each State to submit to EPA, by December 31, 1988, a written statement on the status of management plan submissions and deferral requests by LEAs in the State ("status report"). An updated status report from each state provides the status of management plan submissions as of May 9, 1989.

(f) The status reports submitted to EPA by the State of California indicate that Respondent has neither submitted a valid management plan nor a valid deferral request for the building described in paragraph [b].

(g) TSCA Section 207(a) (3), 15 U.S.C. 2647(a) (3), and 40 CFR 763.97(a), make it unlawful for any LEA to fail to develop a management plan, and provide that each failure to comply with respect to a single school building constitutes a violation of TSCA Section 207(a) and 40 CFR 763.97(a).

(h) On July 9, 1990, EPA issued a Notice of Noncompliance ("NON") to Respondent notifying Respondent of the violations alleged in the Complaint. The NON provided Respondent with sixty days from the issuance of the NON to correct the violations, notify EPA thereof, and provide documentation of such compliance.

(i) As of the date of issuance of the Complaint, Respondent failed to provide EPA with adequate notice and documentation of compliance.

4. The building referred to in Paragraph 3(b) is located at 1615 N. Alexandria Avenue, Los Angeles, California, 90027.

5. On September 24, 1991 Complainant filed a Motion for Default Order. The Motion was served on the Respondent by certified mail on September 30, 1991. Respondent had twenty days from the date of service to reply. As of this date the Respondent has failed to reply to the Motion.

II. CONCLUSIONS OF LAW

_Pursuant to 40 C.F.R. §22.17(c), and based on the entire record, I make the following conclusions of law:

6. The Complaint in this action was lawfully and properly served upon the Respondent, in accordance with 40 C.F.R. §22.05(b)(1) of the Consolidated Rules.

7. The Consolidated Rules required the Respondent to file an Answer to the Complaint within twenty (20) days of the service of the Complaint on Respondent. 40 C.F.R. §22.15(a).

8. Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes an admission of all of the factual allegations in the Complaint, including the allegations set forth in paragraphs 3(a) through (i) above, and a waiver of Respondent's right to a hearing on such factual issues. 40 C.F.R. §§22.15(d) and 22.17(a).

9. Respondent is a "Local Educational Agency" ("LEA"), as defined in TSCA Section 202(7), 15 U.S.C. 2642(7), and 40 CFR 763.83.

10. Respondent violated Section 203(i) of TSCA, 15 U.S.C. 2643(i), and the requirements of 40 C.F.R. 763.97(a) by failing to develop and submit a management plan for its school building located at 1615 N. Alexandria Avenue, Los Angeles, California, 90027.

11. Section 207(a) of TSCA, 15 U.S.C. 2647(a), authorizes the assessment of a civil penalty of up to \$5,000 per day for each violation of TSCA by a Local Educational Agency. The Complaint sought a penalty of \$4,000.

12. When the Regional Administrator finds that a default has occurred, he shall issue a Default Order against the defaulting party, and the default order shall constitute the Initial Decision. 40 C.F.R. §22.17(b). This authority of the Regional Administrator has been delegated to the Regional Judicial Officer pursuant to 40 C.F.R. §22.04(a)(3).

13. Respondent's failure to file a timely Answer to the Complaint, or otherwise respond to the Complaint, is grounds for the entry of a Default Order against the Respondent assessing a civil penalty for the violation described above.

III. DETERMINATION OF CIVIL PENALTY AMOUNT

Having found that Respondent has violated Section 203(i) of TSCA, 15 U.S.C. 2643(i), and the requirements of 40 C.F.R. 763.97(a) by failing to develop and submit a management plan for its school building, I have determined pursuant to 40 C.F.R. §22.17(a) and (c) that four thousand dollars (\$4,000), the penalty amount proposed in the Complaint, is the appropriate

civil penalty to be assessed against the Respondent.

Under the Consolidated Rules, the amount of the proposed civil penalty "shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." 40 C.F.R. §22.14(c). Administrative civil penalties under Section 207(a) of TSCA, 15 U.S.C. 2647(a), are to be assessed and collected pursuant to Section 16 of TSCA, 15 U.S.C. 2615, which provides that EPA shall take into account the nature, circumstances, extent and gravity of the violation, as well as ability to pay, ability to continue to do business, history of prior violations, the degree of culpability and any other factors as justice may require. Additional criteria for determining the amount of a civil penalty are set forth in Section 207(c) of TSCA, 15 U.S.C. 2647(c), as follows:

- (A) the significance of the violation;
- (B) the culpability of the violator, including any history of previous violations under this chapter;
- (C) the ability of the violator to pay the penalty; and
- (D) the ability of the violator to continue to provide educational services to the community.

The applicable civil penalty guideline is the Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act, dated January 31, 1989. The policy is attached to Complainant's Statement in Support of the Proposed Penalty, and is incorporated herein by reference.

In considering the nature, circumstances, extent, and gravity of the violation, it should be noted that the violation alleged in the Complaint is the failure to develop a management plan. The key provision in TSCA for preventing the exposure of children to asbestos in public and nonprofit private elementary and secondary schools is the requirement that LEAs develop asbestos management plans. Such plans include inspection results, inspection plans, detailed descriptions for dealing with asbestos incidents, and detailed descriptions of the asbestos-containing materials in and around the school buildings, as well as other information geared towards developing an effective, efficient, and safe program for dealing with asbestos-containing materials in schools. The Respondent's failure to develop an asbestos management plan demonstrates a lack of regard for the health and safety of the children, teachers, and employees who must work and study in the Respondent's building, as well as a disregard for the law.

Under the Interim Final Enforcement Policy the base (unadjusted) penalty is calculated on a matrix, using on one axis circumstance levels ranging from 1 (highest) to 6 (lowest) and on the other axis the extent of potential harm caused by the violation (major to minor) based on the quantity of asbestos-containing materials involved in the violation. The circumstance level in the Interim Final Enforcement Response Policy for failing to develop an

asbestos management plan is level two. Since no management plan exists for the Pilibos Armenian School, there is no information available to EPA on the exact amount of asbestos-containing materials in the school building. Where the amount of asbestos-containing materials involved in the violation is unknown, the Policy states that the extent of the violation should be considered as major. The base (unadjusted) penalty amount for a level two violation of major extent is \$4000.00.

No upward or downward adjustment has been made in the penalty amount for culpability. On the one hand, there is apparently no indication that the violation is willful, but on the other the Respondent has taken no action to come into compliance after being contacted by EPA and after the issuance of a Notice of Noncompliance notifying the Respondent of the violations subsequently alleged in the Complaint.

No upward adjustment has been made for history of violations, since at the time the Complaint was filed the Respondent had no prior violations of TSCA.

Respondent has failed to produce any data that indicate an inability to pay or inability to continue to provide educational services. In the absence of such information, it would be inappropriate to mitigate the penalty amount. In addition, under Section 207 of TSCA, any civil penalty assessed against an LEA is to be used to comply with TSCA, with any remainder going in an asbestos trust fund. The penalty will therefore not deprive the Respondent of funds needed to remedy the violation.

There are no other factors apparent that would warrant a penalty adjustment in the interests of justice.

Accordingly, the appropriate civil penalty is four thousand dollars (\$4,000).

IV. DEFAULT ORDER

WHEREFORE, pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §22.17, Complainant's Motion for Default Order is hereby GRANTED. Respondent is hereby ORDERED to comply with all of the terms of this Default Order:

A. Respondent is hereby assessed a civil penalty in the amount of four thousand dollars (\$4,000) and ordered to pay such civil penalty as directed in this Default Order.

B. Pursuant to 40 C.F.R. §22.27(c), this Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the EPA Administrator or the Administrator elects, sua sponte, to review it.

C. Respondent shall make use of the civil penalty assessed against it in the amount of four thousand dollars (\$4,000) to pay for the development of a management plan in compliance with TSCA. Any amount of the penalty remaining shall be payable by cashier's

or certified check to the order of the "Treasurer of the United States of America." The check shall state on the reverse side, "For Deposit Into The Asbestos Trust Fund, 20 U.S.C. § 4022" and shall be accompanied by a cover letter identifying the Default Order, Docket No. TSCA-09-91-0011. Respondent shall send the cover letter and cashier's or certified check by certified mail, return receipt requested, to the following address:

U.S.E.P.A.
Headquarters Accounting Operations Branch
Attention: Asbestos Trust Fund
P.O. Box 360227M
Pittsburgh, PA 15251

In addition, Respondent shall mail a copy of the check, by first class mail, to:

Regional Hearing Clerk (RC-1)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

D. Within thirty (30) days after the date of the final Order issued upon default, the Respondent shall submit by certified mail, return receipt requested, documentation confirming an arrangement between the Respondent and an accredited asbestos contractor to develop a management plan in compliance with TSCA, and a cover letter identifying the Default Order, Docket No. TSCA-09-91-0011, to:

Jo Ann Semones
Chief, Asbestos Programs Section (A-4-4)
Air & Toxics Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

IT IS SO ORDERED.

Date: 11/27/91

/s/

Steven W. Anderson

Regional Judicial Officer
Region 9

U.S. EPA -

Last Updated: October 18, 1999