11/21/91

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
HICO, INCORPORATED	)	**Docket No. TSCA-III-389**
	)	
Respondent	)	

Proceeding pursuant to section 15(1) of the Toxic Substances Control Act, 15 U.S.C. § 2614, involving the Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2641, et seq. Respondent found in violation of 15 U.S.C. § 2614 and 40 C.F.R. § 763.90(g)

INITIAL DECISION

By: Frank W. Vanderheyden
Administrative Law Judge

Dated: November 21, 1991

Appearances:

For Complainant:
Beverly N. Muldrow, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

For Respondent:
Ira J. Smotherman, Esquire
Shapiro, Fussell, Wedge & Smotherman
2300 First Atlanta Tower
Atlanta, Georgia 30383-1301

INTRODUCTION

This is a proceeding involving an alleged violation of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2671. More specifically, the proceeding is brought by the U.S. Environmental Protection Agency (sometimes EPA) under section 15(1)of TSCA, 15 U.S.C. § 2614, involving the Asbestos Hazard Emergency Response Act of 1986 (AHERA), which was an amendment to TSCA, designated as Subchapter II, 15 U.S.C. § 2641, et seq.. The authority for issuance of the complaint is section 16 of TSCA, 15 U.S.C. § 2615. The complaint alleges that the pertinent regulation is 40 C.F.R. Part 763; that between January 11 and January 27, 1988, Hico, Incorporated (respondent) removed asbestos-containing ceiling material at the Wythe County School District's Rural Retreat, Virginia High School (RRHS); that the persons who removed asbestos-containing material must be "accredited" to engage in such work; that none of respondent's four employees who removed the asbestos-containing material at the high school had been accredited in accordance with section 206 of TSCA, 15 U.S.C. § 2646; and that respondent's activities were in violation of 40 C.F.R. § 763.90(g) and constituted four separate violations of section 15 of TSCA, 15 U.S.C. § 2614. Count V of the complaint alleged that the supervisor of the four employees was not accredited to supervise the asbestos-removing activities. Subsequent to the complaint, it was established that the supervisor was accredited and Count V of

the complaint was deleted at the hearing. Also, the complaint as issued sought $139,400 as a proposed penalty concerning the use of one nonaccredited supervisor and four nonaccredited workers. It was established at the inception of the hearing that respondent's supervisor was accredited. Also, the proposed penalty for the four nonaccredited workers was revised by complainant. The new proposed penalty sought by respondent was $40,000. (TR 8-14).

For the reasons stated in complainant's motion of November 20, 1990, complainant sought an admission of liability from respondent. In its response to the motion of November 27, 1990, respondent admitted to liability for the employment of four nonaccredited workers, but reserved its defenses to the proposed penalty of $40,000. The sole issue to be resolved here is whether or not $40,000 is an apposite penalty in light of the facts and law.

Before going further, it is appropriate to address a procedural matter. In respondent's post-hearing motion of May 6, 1991, it seeks to strike certain matter on page 7 of complainant's reply brief for the reason that it attempts to introduce new evidence not admitted at the hearing. In its response of May 8, 1991, complainant stated, in short, that it did not intend to introduce new evidence, and that it recognized that this forum would consider only evidence admitted at the hearing. **IT IS ORDERED** that respondent's motion be **GRANTED**.

FINDINGS OF FACT

These are the findings of fact.[1] Respondent is a contractor who specializes in the business of asbestos abatement. It was incorporated in 1986 as a continuation of the parent corporation, Air-Tite Insulation, Inc., incorporated in 1981, and is located in Christiansburg, Virginia. Dwight Neil Talbert (Talbert) has been the President of the respondent since its incorporation. Before that position, Talbert was general manager of Air-Tite Insulation, Inc. Respondent performs about 200-300 asbestos abatement projects per year. (TR 147-48, 227).

Around late December 1987 or early January 1988, Talbert received a phone call from the school superintendent of Wythe County Schools concerning a roof leaking asbestos material in RRHS. Talbert informed the school superintendent that he would need to contact an independent hygienist first to do the final air clearance samples in order to be in accord with AHERA. (TR 150-52).

In the beginning of 1988, respondent had about 75-100 employees who worked in asbestos abatement projects. Between January 11, 1988 through January 27, 1988, respondent conducted its

---

[1] The Findings necessarily embrace an evaluation of the credibility of witnesses testifying upon particular issues. This involves more than observing the demeanor of the witness. It also encompasses an evaluation of his testimony in light of its rationality or internal consistency and the manner in which it blends with other evidence. Wright & Miller, Federal Practice & Procedure, Section 2586 (1971).

abatement project at RRHS using a supervisor and four of its workers. The removal project covered 1,600 square feet of asbestos-containing building material. (TR 7). The four workers employed by respondent to do the removal did not have the legally required accreditation. They had one day of training by the National Asbestos Council (NAC). (RX 3). Under AHERA, three days of training are required for accreditation, although some two-day courses would provide interim accreditation for one year. Such accreditation would be allowed by EPA if the courses were approximately equivalent to the requirements of the Model Accreditation Plan (MAP). The MAP was a model on how people should be accredited to do asbestos work in schools under AHERA. (TR 128, 145).

States were required to institute a MAP, at least as stringent as the EPA Model Plan, within 180 days after the commencement of the first regular session of the state's legislature following the date EPA issued the Model Plan. 52 Fed. Reg. 15875, April 30, 1987, (TR 136). Those people who received interim accreditation would have same expire one year after the adoption of the model plan in the state where they are employed. However, only those workers who had taken training courses since January 1, 1985 would have been considered for interim accreditation. (CX 5, 6).

Talbert expressed his understanding, in part, of the training requirements in a letter to EPA of August 2, 1988. (RX 2). He believed that the one day NAC training course was sufficient for interim accreditation. (TR 163-65). Although Talbert was aware of

EPA approved courses for interim accreditation in the area of Virginia, he thought the four workers had interim accreditation. Further, there was some concern by him that if he sent workers to a three-day training class not approved by Virginia, it would be expensive to have the workers repeat a three-day approved course. (TR 165, 184). In states where the model plan was not yet adopted, workers could get EPA AHERA training which could be used for accreditation in any state. (TR 137). As of July 1987, NAC was offering a fully EPA approved three-day abatement training course. The four workers on the RRHS project had been hired between June and September 1987. (TR 191).

On April 18, 1988, an EPA inspector went to RRHS to inspect the asbestos abatement project done by respondent. During the inspection, it was learned that respondent employed four non-accredited workers to remove asbestos material from RRHS. (Complaint, Counts 1-4). The inspector first contacted respondent about the AHERA violation around the middle of July. (TR 171). When Virginia approved a three-day course in March 1988, respondent began sending all of its workers, including the four nonaccredited workers, to the training session. (TR 167-68). Thus, prior to the inspector's initial contact, respondent's workers were receiving full accreditation training.

Elizabeth Traina (Traina) is an EPA specialist involved in the penalty calculation, and she was aware respondent's workers had received the three-day training course before the complaint was issued. Such training, in her view, would merit a favorable

adjustment concerning the penalty proposal. (TR 110). Respondent also cooperated in providing information during the investigation and displayed a favorable attitude. Both factors, according to Traina, could warrant a penalty adjustment. (TR 112-13).

After the investigation was completed, but before the complaint was filed, complainant, in this case Region III, was required to send "at least three complaints under each category of violations to EPA headquarters for concurrence prior to sending them out" since AHERA was a new law. The complaint was mailed to EPA headquarters around or on December 22, 1988. (TR 34-35). At this time, the 1988 Enforcement Response Policy (ERP) set out in Complainant's Exhibit 3, issued January 29, 1988, was in effect. The 1988 ERP was titled an interim enforcement response policy and was so designated because it was designed to respond immediately to enforceable provisions of AHERA. The 1988 ERP was a temporary measure to be employed "until we could look at all the provisions of AHERA and then begin ranking all violations in order of probability of risk and concern to the human health, the environment." (CX 3 at 1; TR 42-43). Other provisions of AHERA, such as management plans by local educational agencies (LEAs) did not have to be submitted until October 1988. (TR 42). Under this ERP, the penalty for using four nonaccredited workers would be $5,200. (CX 3 at 7, 10-11).

On September 29, 1989, the complaint against respondent was issued. However, on January 31, 1989, a new ERP superseded the 1988 ERP. It was titled as an interim final ERP because it was a

new program. The cover letter to the 1989 ERP stated that after reviewing the regions' comments on the 1989 ERP during the year, EPA would determine whether to revise the 1989 ERP. (CX 4). Under the 1989 ERP, the penalty amount for nonaccredited workers increased dramatically because the 1988 ERP penalty was too low, given the potential for environmental harm. (TR 46). The penalty for nonaccredited workers shifted from a "level 6" to a "level 3" violation and from a per worker, one day to a per worker, per day violation. (CX 2 at 17, 35). With the 1989 ERP as guidance, the penalty was calculated to be $680,000. EPA headquarters, however, adjusted the penalty from a "level 3" to a "level 6" violation. After reviewing complaints from the regions, it was determined that in some cases the penalty was too high. (TR 38). Thus, the penalty was reduced to $88,400.

On January 19, 1990, the 1989 ERP was revised with respect to nonaccredited workers conducting abatement responses. As a result of information gained from the regions and experience concerning asbestos abatement activities, the ERP was modified to calculate penalties for nonaccredited workers on a one-day basis only rather than per day. (CX 1 at 1-2). EPA determined that when there is an accredited supervisor, it is less probable that the abatement activity would be done incorrectly even if some workers are nonaccredited. However, the quantity of asbestos involved would be important in calculating the seriousness of potential harm. (CX 1, TR 51). After it was discovered that the supervisor was accredited, the penalty was reduced to $40,000. (TR 8).

DISCUSSION AND CONCLUSIONS OF LAW

The Asbestos-Containing Materials in Schools Rule, at 40 C.F.R., provides, in substance, for the appropriate response action to remove friable, surfacing asbestos-containing materials (ACM) from schools. Section 763.90(g) requires that:

> Response actions including removal, encapsulation, enclosure or repair, other than small-scale, short duration repairs, shall be designed and conducted by persons accredited to design and conduct response actions (emphasis added).

Accreditation, under AHERA section 206, 15 U.S.C. 2646, requires asbestos abatement contractors who employ persons to remove ACM from schools to conform with the requirements of the EPA MAP or by completing an EPA approved training course and passing an examination for such course. The MAP states that asbestos abatement workers seeking accreditation must complete a three-day training course. 52 Fed. Reg. 15875, 15880 (April 30, 1987). As found above, respondent admits that the four workers it employed to do asbestos abatement work did not have a three-day training course. Section 206 of AHERA allows EPA to permit accreditation on an interim basis for those persons who have completed EPA approved training courses and passed an examination since January 1, 1985. Respondent's workers completed a one-day NAC course. However, approved interim accreditation for abatement workers provided by

NAC must be two days. 52 Fed. Reg. 41826, 41902 (October 30, 1987). Respondent concedes that its workers did not receive two days of specialized training necessary for interim accreditation. It is concluded that respondent's use of four nonaccredited workers for the removal of approximately 1,600 square feet of ACM at RRHS is in violation of 40 C.F.R. § 763.90(g) and constitutes four separate violations of section 15 of TSCA, 15 U.S.C. § 2614(1)(D), which makes it unlawful for any person to fail or refuse to comply with any requirement of Subchapter II or any rule promulgated or order issued under such Subchapter.

APPROPRIATENESS OF PENALTY

EPA seeks a proposed penalty of $40,000. This case presents the unusual, if not unique situation where three different ERPs were in effect from the time of the violation, January 11 to January 27, 1988, until the evidentiary hearing on December 13, 1990. The application of any ERP would result in a different penalty. It is respondent's contention that $5,200 is the maximum penalty to be assessed. By applying the 1988 ERP, the one in effect at the time of the violation, $5,200, could be the maximum penalty for four nonaccredited abatement workers. (CX 3 at 7, 9-11). Complainant argues that the 1990 ERP, calculating a penalty of $40,000, is appropriate because this ERP reasonably reflects the potential harm. Moreover, the 1988 and 1989 ERPs were interim final enforcement policies until EPA could properly rank the probability of harm, and the corresponding penalty. (CX 1).

The purpose of EPA's Guidelines for Assessment of Civil Penalties under section 16 of TSCA (Guidelines) is to provide internal procedural standards and direction to EPA personnel for assessing appropriate penalties. The purpose of the general civil penalty system is to assure that TSCA civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violations committed; that economic incentives for violating TSCA are eliminated; and that persons will be deterred from committing TSCA violations. 45 Fed. Reg. 59770 (September 10, 1980). However, the Guidelines do not rise to the level of regulations; they are not binding on the Administrative Law Judge (ALJ). He is required merely to "consider" the Guidelines. In his informed discretion, the ALJ may alter the penalty proposed. 40 C.F.R. § 22.27(b).

In that the Guidelines do not have the same authority as regulations, the issue of applying ERPs retroactively presents some difficulty. However, previous cases shed some light on this largely unblazed trail. In the Matter of National Coatings, Inc. (National), RCRA (3008) Appeal No. 86-5 (January 1988). There, the complaint was filed and the attendant penalty calculated on June 29, 1984, using the 1980 draft policy. The EPA official who calculated the penalty was unaware that the 1984 final penalty policy had been published on May 8, 1984. In the initial decision, the ALJ opined that the final penalty policy would be applied if the retroactive effect were to reduce the proposed penalty, but it would not be used if the retroactive effect were to raise the

penalty. Under this rationale, the penalty policy could be applied retroactively depending on the point of time chosen. If one selects the time the complaint were served, September 29, 1989, then the Guidelines could be applied retroactively, as the penalty would be reduced from $680,000 to $88,400 (1989 ERP) and to $40,000 (1990 ERP). If one selects the time of the violation, the penalty could not be applied retroactively, as it increased from $5,200 (1988 ERP) to $40,000 (1990 ERP). Yet, the final penalty policy stated specifically that it was intended to be applicable "to all RCRA administrative actions instituted after the date of the policy, regardless of the date of the violation." National at 15. The 1990 ERP (CX 1) appears mute on this issue, however.

In the Matter of Briggs and Stratton Corporation (Briggs), TSCA Appeal No. 81-1 (February 4, 1981), was a case involving polychlorinated biphenyls (PCB) under TSCA. There, several months after appellate briefs were submitted, respondent argued that the penalties should be reduced based upon application of Guidelines issued recently for assessment of penalties under section 16 of TSCA. The Guidelines were published in the Federal Register after the ALJ issued his initial decision and following respondent's appeal. Respondent's request for retroactive application of the Guidelines was disallowed because the preamble to them stated that it would only be applied to cases instituted after publication. The penalty policy for PCBs is a subdivision within the general penalty policy for section 16 violations under TSCA. The application of the PCB policy is effective immediately. However,

if the policy yields a lower penalty, then "an amendment to the complaint should be made to substitute the lower penalty." 45 Fed. Reg. at 59777 (Sept. 10, 1980). In Briggs, this was interpreted as authorizing retroactive application of the Guidelines to pending cases in situations where it is possible to amend the complaint, "which usually takes place before a hearing on the merits begins." (At 33 n.15).

AHERA is an amendment to TSCA. Although the 1990 ERP may not speak about retroactive application to past violations, the AHERA penalty policy is governed by the TSCA Civil Penalty Policy. (CX 2 at 17). Retroactive application of the 1990 ERP would be permissible where the complaint here was amended from $88,400 to $40,000 at the inception of the evidentiary hearing, and before the introduction of evidence. (TR 8).

It is iterated that penalty policies do not rise to the level of regulations. However, the law regarding retroactive application of regulations is instructive. In the Matter of Martin Electronics, Inc. (Martin), RCRA (3008) Appeal No. 86-1, (June 22, 1987). As distinguished from a penalty policy, this case involved an interpretative rule that had the effect of eliminating retroactively the legal basis on which EPA had brought changes against a respondent for violating groundwater monitoring regulations under the Resources Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k. It was stated there that a test of reasonableness would be used to determine whether a rule can be applied retroactively. (At 5-6). In Martin, and in support of this

thesis, EPA's Chief Judicial Officer cites Pennzoil Co. v. U.S. Dept. of Energy, 680 F.2d 156 (Temp. Emerg. Ct. App. 1982), and U.S. v. Exxon, 561 F. Supp. 816 (D.D.C. 1983). As stated in the latter case at 836:

> The fundamental criterion for determining whether a statute, regulation or interpretation may be applied retroactively is one of reasonableness. [Citing Pennzoil]. Generally speaking, "'retroactive rules are valid if they are reasonable, but are invalid if their retro-activity is unreasonable in the circumstances.'" Id., quoting 2 K. Davis, Administrative Law Treatise § 7.23, at 109 (2d ed. 1979). The court must weigh the mischief which might follow if the rule is denied retroactive effect, thereby producing a result contrary to statutory design or legal and equitable principles, against the ill effect of retroactive application of the new rule. [Citing Pennzoil]. Among the factors weighing in the balance are the extent to which a party has relied on previously settled law and the burden which the retroactive rule would impose on a party. Id.

Respondent argues that it is "fundamentally unfair" to apply either the 1989 or 1990 ERPs, since it took EPA a year and a half from the time of violation to issue the complaint. (TR 230). While it may appear unreasonable to delay a complaint for over a year, AHERA was a new policy and complaints were required to be reviewed for conformation by EPA Headquarters before their issuance. It was unforeseen that the penalty policy would change dramatically in this time. Moreover, the 1988 and 1989 ERPs were only temporary, interim measures to enforce immediately certain provisions of AHERA. The penalties of these ERPs reflected EPA's concern with the potential harm and risk to the environment. In contrast, the 1990 ERP provides a fairer and more reasonable

penalty as EPA became more knowledgeable of the probability of harm with respect to the use of an accredited supervisor using nonaccredited workers. (CX 1). It is concluded that the 1990 ERP passes the test of reasonableness for retroactive application of a penalty policy, rule or regulation. By imposing the 1990 ERP, respondent is assessed a penalty more appropriate for the violation committed. Furthermore, the imposition of the 1990 ERP will benefit respondent by substantially reducing the penalty calculated under the 1989 ERP.

Respondent also contends that the penalty is unreasonable because multiple violations involving one school building should not be greater than $25,000. (RX 1 at 3-4, CX 2 at 18; Resp. Op. Br. at 15). The ALJ is not persuaded by this argument. The policy states that penalties will generally be reduced to $25,000 for violations in a single school building. (CX 2 at 16). Each region, however, has the discretion and flexibility to reduce penalties given specific circumstances. (TR 62-64). However, it is not mandatory. Also, when an ALJ was confronted with the same argument, he stated, "respondent's suggestion that EPA's practice in like cases must control the amount of penalty, at best begs the question and is an effort at oversimplification carried to its extreme." (Quoted in Briggs at 20). Further, the "$25,000 per day" language, CX 2 at 18, in this ALJ's view may be interpreted to apply only to those situations concerning a per day violation. Since the violation involved here is a one day violation, then the reduction to $25,000 language is not applicable.

In regard to the appropriate penalty amount, TSCA section 16(b), 15 U.S.C. § 2615(B) provides:

> (B) In determining the amount of civil penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability and such other matters as justice may require.

The 1990 ERP makes clear that using nonaccredited workers on a response action is a "level 3" violation on a one day per worker basis. (CX at 2). In addition, the amount of area involved (1,600 sq. ft.) makes the violation "significant" and of sufficient gravity to warrant a proposed penalty of $40,000. (CX 2 at 13 and 17). Once the gravity of the violation has been determined and a proposed penalty arrived at, the Guidelines provide that the penalty may be adjusted upwards or downwards, taking into account the following factors: culpability, history of such violations, ability to pay and continue in business, and such other matters as justice may require. 45 Fed. Reg. 59770 (Sept. 10, 1980).

Respondent's violation apparently stems from a misinterpretation of the interim accreditation requirements. Yet, ignorance of the law is no excuse, especially when respondent did not contact EPA to clarify any alleged confusion with accreditation guidelines. However, in respondent's favor is that as soon as Virginia approved a three-day training course in March 1988, it began to send all of its workers for full accreditation before EPA's initial investigation. Moreover, no mention of respondent's

culpability was even discussed by Traina and her supervisor. (TR 101).

The record shows that respondent has a history of two previous violations, though not under TSCA. First, respondent received a National Emissions Standard of Hazardous Air Pollution violation for "inadvertently" starting a project two days earlier than the written notification date. (TR 172-74). EPA had no record of this violation until disclosed by respondent at a settlement conference. Second, respondent received an Occupational Safety and Health Administration (OSHA) citation for not calibrating an air pump. (TR 176). These violations are not of any serious nature and in both instances no fine was levied. The Guidelines speak of an upward adjustment in the event of prior violations. 45 Fed. Reg. at 59773, 59774. The language makes it clear that TSCA violations are those of concern. In that respondent's prior transgressions are not TSCA violations similar to the one at bar, an upward adjustment is not appropriate.

Turning to the issue of ability to pay and the effect of the proposed penalty on the ability to continue in business, respondent acknowledged that it performed 200-300 abatement projects annually for several years. Thus, it does not dispute that it has the ability to pay the penalty in the complaint and continue in business. Yet, respondent argues that this fine would smirch its reputation and its ability to attract new business. This, understandably, is of no little concern to respondent. (Resp. Op. Br. at 27-28). Although the fine may affect respondent's ability

to attract new business, EPA cannot be responsible for respondent's mistakes. This factor is confined solely to ability to pay and remain in business which respondent can do.

The last element to be considered is such other matters as justice may require. While respondent would have the ability to continue in business with payment of the penalty, respondent was cooperative during the investigation in providing information to EPA. Respondent sought to have all workers fully accredited in March 1988 when Virginia approved its three-day course; it also began to correct its action before it was aware of its violation. Furthermore, due to circumstances beyond respondent's and complainant's control, the ERPs changed twice, thereby affecting the penalty. Weighed against these mitigating factors is the consideration that civil penalties also have a deterrent factor regarding further violations and should send a strong message to the regulated community. The penalty assessed below will accomplish that end. On the facts of this case, however, justice dictates that AHERA should not be enforced with all the compassion of Torquemada. A condign civil penalty in this matter is $25,000.

ORDER[2]

Pursuant to section 16(a)(2)(B) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)(2)(B), **IT IS ORDERED** that:

1. A civil penalty in the amount of $25,000 be assessed against respondent, Hico, Incorporated.

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

EPA - Region 3
(Regional Hearing Clerk)
P.O. Box 36051M
Pittsburgh, Pennsylvania 15251

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

4. Failure upon part of 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(b)(c)(e).

Frank W. Vanderheyden
Administrative Law Judge

Dated November 21, 1991

[2] Unless appealed in accordance with 40 C.F.R. § 22.30, or unless the Administrator elects to review same sua sponte as provided therein, this decision shall become the final order of the Administrator in accordance with 40 C.F.R. § 22.27(c).

91 DEC 4 A10: 53

Certificate of Service

This is to certify that this 2nd day of December, 1991, copies of the Initial Decision, in the matter of Hico, Incorporated, Docket No. TSCA-III-389 were distributed as follows:

Hand Delivered:

Beverly N. Muldrow, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
Telephone No. (215) 597-1705

Certified Mail, Return Receipt Requested:

Ira J. Smotherman, Esquire
Shapiro, Fussell, Wedge & Smotherman
2300 First Atlanta Tower
Atlanta, Georgia 30383-1301
Telephone: (404) 658-9050

Date: DEC 2 1991

Lydia A. Guy
Regional Hearing Clerk