

2/21/96

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of Linda Cottrill and Daniel Cottrill, d/b/a Cottrill Trucking and Wrecking Co., and Asberry-Chambers Asbestos, Inc., Respondents

Docket No. CAA-016-1994

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RECEIVED EPA HEADQUARTERS

DEFAULT ORDER and INITIAL DECISION

This proceeding commenced with the filing of a Complaint by Region 5 of the United States Environmental Protection Agency (the "Region" or "Complainant") against the Respondents Cottrill Trucking, Inc., Massillon, Ohio ("Cottrill"), and Asberry-Chambers Asbestos, Inc., Canton, Ohio ("Asberry-Chambers"), on April 22, 1994. This proceeding arises under Section 113(d)(2) of the Clean Air Act ("CAA"), 42 U.S.C. §7413(d)(2).

Pursuant to an Order by the former Presiding Officer, Chief Administrative Law Judge Jon G. Lotis, Complainant filed an Amended Complaint on December 14, 1994. The Amended Complaint corrected the name of the Respondent, Cottrill, as reflected in the caption above, and withdrew four of the original six counts in the Complaint. The Amended Complaint charges each Respondent with failing to conduct a thorough inspection for friable asbestos material prior to their demolition and asbestos containment activities at a school in Massillon, Ohio. This is alleged to constitute a violation of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 C.F.R. §61.145(a), a rule promulgated under the CAA. The Amended Complaint seeks assessment of a joint civil penalty of \$17,000 against the Respondents.

Asberry-Chambers filed an Answer on May 8, 1994, in which it denied the material allegations of the Complaint. Cottrill filed an Answer on February 7, 1995, in which it also denied the material allegations of the Amended Complaint.

Default of Asberry-Chambers

The former Presiding Officer in this proceeding, Chief Administrative Law Judge Jon G. Lotis, issued an Order dated June 12, 1995 requiring the parties to submit prehearing exchanges pursuant to the EPA Rules of Practice (the "Rules"), 40 C.F.R. §22.19(b). The prehearing exchanges were ordered to be filed by

address. Service of this Default Order will nevertheless be attempted on Asberry-Chambers at its last known address by certified mail in accordance with the Rules of Practice, §22.06. If the Region or this office learns of Asberry-Chambers' actual current address, service will be made there in the interest of obtaining satisfaction of the civil penalty against this Respondent.

By separate order a hearing will be scheduled with respect to the charges against the Respondent Cottrill in this proceeding. Nothing in this Default Order or the following Findings of Fact and Conclusions of Law will be construed to establish any fact or conclusion of law, or to adversely affect the rights of the Respondent Cottrill in any manner, in that forthcoming hearing.

The following Findings of Fact and Conclusions of Law are based on the Complaint, Complainant's Prehearing Exchange, and the procedural history of this case concerning Asberry-Chambers' default described above.

FINDINGS OF FACT

1. The Complainant is, by lawful delegation, the Director, Air and Radiation Division, Region 5 of the United States Environmental Protection Agency.

2. The Respondent that is the subject of this Order is Asberry-Chambers Asbestos, Inc., ("Asberry-Chambers") a corporation registered under the laws of the State of Ohio at all times relevant to the Amended Complaint in this matter. At the time of the violation, Asberry-Chambers had a business address at 1501 4th Street N.E., Canton, Ohio 44704.

3. As of December 1, 1995, Asberry-Chambers no longer occupied the above address in Canton. The Respondent failed to inform this tribunal or the United States Post Office of its new address. As of the date of this Order, Respondent's current address and whereabouts are unknown.

4. Asberry-Chambers contracted to perform asbestos abatement at one of the buildings comprising Washington High School, located at 207 Oak Avenue S.E., Massillon, Ohio, prior to its demolition. Respondent Asberry-Chambers, at least in part, operated, controlled or supervised the facility under demolition.

5. After the wrecking of the facility commenced in April 1993, suspect friable asbestos material was uncovered at two locations: on ductwork above a drop ceiling on the second floor, and on riser pipes concealed behind plaster walls of the facility.

6. Respondent Asberry-Chambers failed to conduct a thorough inspection of the facility prior to the commencement of a demolition activity.

CONCLUSIONS OF LAW

1. Respondent Asberry-Chambers is a "person" as defined in the CAA §302(e), 42 U.S.C. §7602.

2. Respondent Asberry-Chambers was an "operator of a demolition activity" as defined at 40 C.F.R. §61.141, with respect to the Washington High School facility in April 1993.

3. Respondent Asberry-Chambers' failure to conduct a thorough inspection of the facility prior to the commencement of the demolition activity constitutes a violation of 40 C.F.R. §61.145(a).

4. The proposed civil penalty for this violation of \$17,000 is authorized by and consistent with the statute providing for administrative assessment of civil penalties for violations of the CAA and its implementing regulations, CAA §113(d), 42 U.S.C. §7413(d)(1,2). The amount of the penalty was calculated in accord with the EPA's Clean Air Act Stationary Source Penalty Policy, Appendix III, Asbestos Demolition and Renovation Civil Penalty Policy (Revised: May 5, 1992).

5. The circumstances described above in the section of this Order entitled Default of Asberry-Chambers constitute a default pursuant to 40 C.F.R. §22.17(a). Respondent is thus subject to issuance of this Default Order pursuant to 40 C.F.R. §22.17.

ORDER

1. A civil penalty of \$17,000 is assessed against Respondent Asberry-Chambers Asbestos, Inc.

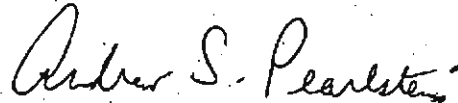
2. Payment of the full amount of the penalty shall be made within sixty (60) days of service of this Order by submitting a certified or cashier's check payable to the Treasurer, United States of America, mailed to:

EPA - Region 5
Regional Hearing Clerk
P.O. Box 70753
Chicago, IL 60673

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

4. If Respondent fails to pay the penalty within the prescribed statutory time period, after entry of the final order, then interest on the civil penalty may be assessed pursuant to 31 U.S.C. §3717 and 4 C.F.R. §102.13.

5. Pursuant to 40 C.F.R. §22.17(b) and §22.27(c) this Default Order constitutes an initial decision that shall become the final decision of the Agency, unless an appeal is taken pursuant to 40 C.F.R. §22.30 or the Environmental Appeals Board elects, sua sponte, to review this decision.



Andrew S. Pearlstein
Administrative Law Judge

Dated: February 21, 1996
Washington, D.C.