

11/1/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF :
Asbestos Control, Inc., and : Docket No. CAA-III-028
Pennsylvania Department of :
General Services :
Respondents :

Clean Air Act: Where Respondent Asbestos Control, Inc. failed to comply with order of Administrative Law Judge requiring the exchange of pretrial information, and failed to comply with order to show cause why it should not be held in default, Respondent was found to be in default pursuant to 40 C.F.R. § 22.17, and to have admitted violations charged in the complaint. Respondent was assessed a penalty in the amount of \$45,000.

Appearances:

For Complainant:

Dean Jerrehian, Esquire
Office of Regional Counsel
Region III -- EPA
841 Chestnut Building
Philadelphia, Pennsylvania 19107

For Respondent:

Daniel F. Zeigler, Esquire
79 Broadway -- P.O. Box 167
Jim Thorpe, PA 18229-1067

Before: J. F. Greene
Administrative Law Judge

Decided: November 1, 1994

ORDER ON DEFAULT

This administrative civil penalty proceeding was initiated by the United States Environmental Protection Agency (EPA or Complainant) pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The action was initiated by issuance of a complaint on September 28, 1993 charging Asbestos Control Inc. with violations of the Act, and the National Emission Standard for Asbestos (the Asbestos NESHAP), 40 C.F.R. Part 61, Subpart M. The complaint proposed an administrative civil penalty in the amount of forty-five thousand dollars (\$45,000).

FINDINGS OF FACT

Respondent Asbestos Control, Inc. is an asbestos removal contractor located in Jim Thorpe, Pennsylvania. On May 17, 1993, Respondent commenced an operation to renovate Anderson Hall at West Chester University, in West Chester, Pennsylvania. This renovation involved the stripping, disturbing, and/or removal of over 1,360 linear feet of regulated asbestos-containing material.

On May 20, 1993, the EPA conducted an inspection of Anderson Hall to verify Respondent's compliance with the Asbestos NESHAP. On September 28, 1993, based on information obtained during the inspection, EPA issued a complaint charging Respondent with violations of the Act, and the Asbestos NESHAP. The complaint

sets forth the basis for Complainant's civil administrative penalty calculation against Respondent. Complainant proposes a penalty in the amount of \$45,000. Respondent submitted its answer on or about November 12, 1993.

By Order dated July 19, 1994, the parties were directed to exchange pretrial information consisting of witness lists, and copies of documents to be offered in evidence, no later than September 2, 1994. Complainant made a timely submission of its pretrial exchange on September 1, 1994. Respondent did not submit its pretrial exchange by the September 2, 1994 deadline. By Order dated September 27, 1994, Respondent was directed to show cause why it should not be held in default for failure to comply with this Court's Order for Pretrial Exchange. The deadline for compliance with this Order was October 7, 1994. To date, Respondent has failed to comply with either of this Court's pretrial orders. [Copy of Orders attached hereto and made a part hereof].

CONCLUSIONS OF LAW

Pursuant to Sections 113(a)(3) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d), Complainant has authority to institute administrative civil penalty proceedings against Respondent for failure to comply with Section 112 of the Act, 42 U.S.C. § 7412.

Respondent's answer to the complaint does not raise any questions which could support a decision that Complainant has failed to establish a prima facie case, or justify the dismissal of the complaint. Complainant's pretrial exchange submission

supports the allegations in the complaint. Specifically, Complainant has established a prima facie case to support the allegations that Respondent failed to comply with 40 C.F.R. Sections 61.145(c)(3), 61.145(c)(6)(i), and 61.150(c).

The Consolidated Rules provide that a party may be found to be in default "after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer." 40 C.F.R. § 22.17(a)(2). Respondent has failed to comply with this Court's pretrial orders, and is, therefore, in default pursuant to 40 C.F.R. § 22.17(a)(2). This default constitutes an admission by Respondent of all facts alleged in the complaint and a waiver of its right to a hearing regarding the factual allegations therein.

Section 22.27(b) of the Consolidated Rules requires that the Presiding Officer "determine the dollar amount of the recommended civil penalty . . . in accordance with any criteria set forth in the Act. . . ." ¹ In addition, the Presiding Officer must consider any civil penalty guidelines issued under the relevant statute.² In the instant case, the penalty proposed in the complaint comports with Section 113(e) of the Act, 42 U.S.C. § 7413(e),³ and EPA's Clean Air Act Stationary Source Civil Penalty

¹ 40 C.F.R. § 22.27(b).

² Id.

³ Section 113(e) of the Act provides in pertinent part that: the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the

Policy, Appendix III, dated May 11, 1992.⁴ Payment of the penalty shall become due and payable by Respondent without further proceedings sixty (60) days after a final order is issued. 40 C.F.R. § 22.17(a).

ULTIMATE CONCLUSION

It is concluded that Respondent is in violation of 40 C.F.R. Sections 61.145(c)(3), 61.145(c)(6)(i), and 61.150(c),⁵ and is liable for the civil penalty proposed in the complaint.

ORDER

IT IS ORDERED, pursuant to Sections 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and (d), that:

1. Respondent, Asbestos Control, Inc. be assessed an administrative civil penalty of \$45,000;
2. Payment shall become due and payable sixty (60) days after a final order is issued, and shall be made by forwarding a cashier's or certified check, payable to the Treasurer 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 as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

42 U.S.C. § 7413(e).

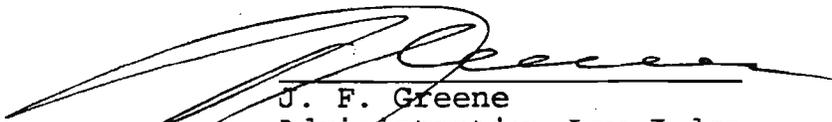
⁴ See Appendix III, pp. 16-17.

⁵ Regulations promulgated pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412, 7414.

United States of America, to:

Mellon Bank
EPA -- Region III
Regional Hearing Clerk
P.O. Box 360515M
Pittsburgh, PA 15251-6515

3. Failure by Respondent to pay the penalty within the prescribed time frame after entry of the final order shall result in the assessment of interest and penalty charges on the debt pursuant to 4 C.F.R. § 102.13.



J. F. Greene
Administrative Law Judge

Dated: November 1, 1994

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on July 19, 1994.

Shirley Smith

Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Asbestos Control, Inc.
DOCKET NUMBER: CAA-III-028

Ms. Lydia Guy
Regional Hearing Clerk
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Philadelphia, PA 19107

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Amy Putnam, Esq.
Office of General Counsel
17th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Asbestos Control, Inc. shall assure that a copy of its exchange is furnished to this office at the time exchange is filed.

A handwritten signature in black ink, appearing to read 'J. F. Greene', is written over a solid horizontal line.

J. F. Greene
Administrative Law Judge

Washington, D. C.
July 19, 1994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of
ASBESTOS CONTROL, INC.

Respondent

:
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: Docket No. CAA-III-028
:
: Judge Greene
:
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ORDER FOR PRETRIAL EXCHANGE

It is hereby ORDERED that complainant and respondent Asbestos Control, Inc. shall make pretrial exchange according to the following schedule:

1. No later than September 2, 1994, complainant and respondent Asbestos Control, Inc. shall exchange (a) a list of witnesses intended to be called to testify, together with a short summary of the expected testimony of each proposed witness; and (b) a copy of each document to be offered in evidence, with a brief statement of the purpose for which the document will be offered.

The list of proposed witnesses shall include, for each person listed: name, business address, and business position or title.

2. No later than September 16, 1994, complainant and respondent Asbestos Control, Inc. shall have notified each other, and this office, of any change in the proposed list of witnesses or changes or additions regarding the documents to be offered, in light of the September 2, 1994, exchange.

Complainant shall assure that a copy of its exchange is sent to this office at the time the exchange is filed. Respondent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

ASBESTOS CONTROL, INC.
and
WEST CHESTER UNIVERISTY

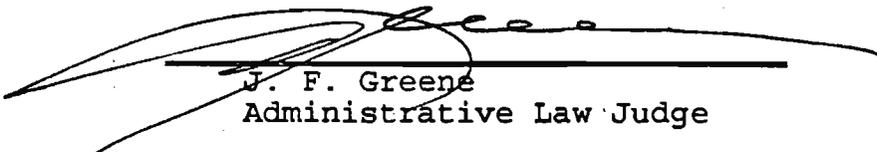
Respondent

Docket No. CAA-III-028

Judge Greene

ORDER TO SHOW CAUSE

Respondent Asbestos Control, Inc. having been ordered to file pretrial exchange no later than September 2, 1994 (see copy of Order for Pretrial Exchange, attached), and no such exchange having been filed according to the Regional Hearing Clerk, it is hereby ORDERED that, no later than October 7, 1994, respondent Asbestos Control, Inc. shall show cause why it should not be held in default for failure to comply with the Order For Pretrial Exchange of September 2, 1994.

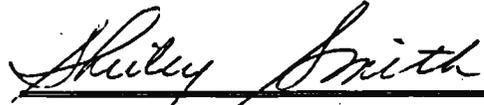


J. F. Greene
Administrative Law Judge

September 27, 1994
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on September 28, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Asbestos Control, Inc. and West Chester University
DOCKET NUMBER: CAA-III-028

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