UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Coleman Trucking, Inc. Cleveland, Ohio	)	**Docket No., CAA-5-99-013**
	)	
	)	**Proceeding to Assess**
	)	**Administrative Penalty**
Respondent.	)	**under Section 113(d) of the**
	)	**Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**

ADMINISTRATIVE COMPLAINT

This is an action for the assessment of a civil administrative penalty brought pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and 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, against Respondent Coleman Trucking, Inc. for violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Asbestos.

STATUTORY AND REGULATORY BACKGROUND

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REGIONAL HEARING CLERK

1. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator of U.S. EPA listed asbestos as a hazardous air pollutant and prescribed a national emission standard ("NESHAP") for asbestos.

2. The asbestos NESHAP includes regulations governing the emission, handling, and disposal of asbestos. These regulations were codified at 40 C.F.R. Part 61, Subpart M, §§ 61.140 to 61.157 (1991).

3. The asbestos NESHAP applies to, among others, each owner or operator of a demolition or renovation activity, if the

combined amount of regulated asbestos-containing material ("RACM") to be stripped, removed, dislodged, cut, drilled or similarly disturbed is at least: 80 linear meters (260 linear feet) on pipes; or a least 15 square meters (160 square feet) on other facility components; or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously. 40 C.F.R. § 61.145(a).

4. "Owner or operator" of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. 40 C.F.R. § 61.141.

5. "Renovation" means altering a facility or one or more facility component(s) in any way, including the stripping or removal of RACM from a facility component. 40 C.F.R. § 61.141.

6. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. 40 C.F.R. § 61.141.

7. "Facility" means any institutional, commercial, public, industrial or residential structure, installation or building. 40 C.F.R. § 61.141.

8. "Facility component" means any part of a facility including equipment. 40 C.F.R. § 61.141.

9. "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control). 40 C.F.R. §61.141.

10. "Strip" means to take off RACM asbestos material from any part of a facility or facility component. 40 C.F.R. § 61.141.

11. "Remove" means to take out RACM or facility components that contain or are covered with RACM from any facility. 40 C.F.R. § 61.141.

12. "RACM" means, among others, friable asbestos material, and Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of renovation or demolition operations. 40 C.F.R. § 61.141.

13. "Friable asbestos" material means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. 40 C.F.R. § 61.141.

GENERAL ALLEGATIONS

14. Respondent Coleman Trucking, Inc. ("Coleman") is, and was at all time relevant to this Complaint, a corporation operating under the laws of the State of Ohio.

15. Coleman is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

16. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.

17. From April 7, 1997, to April 8, 1997, Coleman removed asbestos from four buildings in Canton Township, located at 1434 Trump Avenue, 1324 Marietta Avenue, 602 Marietta Avenue, and 625 Cole Avenue.

18. The four buildings located at 1434 Trump Avenue, 1324 Marietta Avenue, 602 Marietta Avenue, and 625 Cole Avenue were vacant residential units ("Units").

19. The Units were owned by the Ohio Department of Transportation ("ODOT").

20. The asbestos removal and demolition of the Units were part of the ODOT Northeast Region, Route 30 Extension Project in Stark County, Ohio.

21. The Units are an "installation", as defined in 40 C.F.R. § 61.141, and therefore do not fall under the asbestos NESHAP residential building exemption.

22. The Units are a "facility", as defined in 40 C.F.R. § 61.141.

23. The Units contain the threshold amount of asbestos-containing materials, as defined in 40 C.F.R. § 61.145, and are all subject to the applicable requirements of the asbestos renovation and demolition standard, as specified at 40 C.F.R. § 61.145.

24. Respondent Coleman is the contractor that performed the asbestos removal as part of the ODOT Northeast Region Route 30 Extension Project.

25. Respondent Coleman is an "operator of a demolition or renovation activity" of a facility being demolished or renovated, as defined in 40 C.F.R. § 61.141.

26. The ODOT project involved stripping, removing, dislodging, cutting, drilling or similar disturbances of RACM, as defined at 40 C.F.R. § 61.141.

27. On April 14, 1997, Mr. Rick Miller, a field inspector from the Canton City Health Department, Air Pollution Control Division, and Mr. Leon Bell, an ODOT asbestos specialist, inspected the four Units to determine compliance with the asbestos NESHAP.

28. During the inspection of the Unit located at 1434 Trump Avenue, Mr. Bell and Mr. Miller observed the following:

a) insulating material subject to removal by Coleman on

wood substrate in the kitchen area where Coleman had removed a heating duct, and

b) several square feet of intact and untouched insulating material subject to removal by Coleman on a heating duct in the basement.

29. During the inspection of the Unit located at 602 Marietta Avenue, Mr. Bell and Mr. Miller observed the following:

a) insulating material subject to removal by Coleman on a pile of wood and plaster debris,

b) insulating material subject to removal by Coleman on the floor in the northeast room of the house,

c) insulating material subject to removal by Coleman on the kitchen carpet,

d) insulating material subject to removal by Coleman attached to a wall substrate where Coleman had removed a heating duct, and

e) insulating material subject to removal by Coleman on top of a clothes dryer in the basement.

30. The insulating material observed by Mr. Bell and Mr. Miller, identified herein in paragraphs 26 and 27, is regulated asbestos-containing material ("RACM"), as defined in 40 C.F.R. § 61.141.

31. Pursuant to Sections 112(d) of the Act, 42 U.S.C. § 7412(d), U.S. EPA has delegated authority to the State of Ohio to implement and enforce the asbestos NESHAP.

32. The notifications of demolition and renovation activity required to be submitted pursuant to 40 C.F.R. § 61.145 must be submitted to the Administrator and the appropriate State of Ohio agency, as specified at 40 C.F.R. § 61.04(b).

33. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), prohibits any person from operating a source in violation of an emission standard, including the asbestos NESHAP.

34. Violations of the asbestos NESHAP are violations of Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), and subject the violator to the imposition of civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

35. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General have jointly determined that this matter is appropriate for an administrative penalty action, and have authorized U.S. EPA to include in this administrative penalty action for violations which allegedly began more than 12 months prior to filing of this administrative action.

COUNT I - Work Practice Violations

36. Paragraphs 1 through 35 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

37. 40 C.F.R. § 61.145(c)(1) requires that each owner or operator of a demolition or renovation remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

38. RACM was identified by Mr. Leon Bell and Mr. Rick Miller during the April 14, 1997, inspection in the Units located at 1434 Trump Avenue and 602 Marietta Avenue, as set forth in paragraphs 26 and 27, subsequent to the removal operation by Coleman.

39. Coleman failed to remove all RACM from a facility being demolished in violation of 40 C.F.R. § 61.145(c)(1) and Section 112(i)(3)(A), 42 U.S.C. § 7412(i)(3)(A).

COUNT II - Work Practice Violation

40. Paragraphs 1 through 39 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

41. The asbestos NESHAP at 40 C.F.R. § 61.145(c)(6)(i) requires each owner or operator of a demolition or renovation activity involving RACM, including material that has been removed or stripped, to adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

42. RACM was identified by Mr. Leon Bell and Mr. Rick Miller during the April 14, 1997, inspection in the Units located at 1434 Trump Avenue and 602 Marietta Avenue, as set forth in paragraphs 26 and 27, subsequent to the removal operation by Coleman.

43. The RACM identified by Mr. Bell and Mr. Miller during the April 14, 1997, inspection was dry and friable.

44. Coleman failed to adequately wet all RACM that had been removed and stripped, and failed to ensure it remain wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150, in violation of 40 C.F.R. § 61.145(c)(6)(i) and Section 112(i)(3)(A), 42 U.S.C. § 7412 (i)(3)(A).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

45. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty not to exceed $25,000 per day up to a total of $200,000 for, *inter alia*, violations of Section 112

of the Act, 42 U.S.C. § 7412 that occurred prior to January 31, 1997, and not to exceed $27,500 per day up to a total of $220,000 for each such violation which occurred on or after January 31, 1997.

46. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by any credible evidence; payment by Respondent of penalties previously assessed for the same violations; the economic benefit of noncompliance; the seriousness of the violations; and such other factors as justice may require.

47. Based upon the facts alleged in this Complaint and after consideration of the factors discussed above as they relate to the Respondent and to the facts and circumstances of Respondent's violations, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Civil Penalties in the amount of $55,000.00. This proposed penalty has been calculated in accordance with Section 113(e)(1) of the CAA. In developing the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy and the Asbestos Demolition and Renovation Civil Penalty Policy (Appendix III), revised May 5, 1992, ("Penalty Policy"), copies of which are enclosed with this Complaint.

48. The CAA requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator

derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have insured compliance with the CAA, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the CAA. Accordingly, the penalty proposed in this Administrative Complaint includes the economic benefit which Respondent received through improper removal of asbestos containing material prior to demolition.

49. Under the Penalty Policies, U.S. EPA considers the seriousness of the alleged violations. Since asbestos is a hazardous air pollutant that is known to cause death and serious irreversible illness, the penalty policy generates an appropriately high factor associated with work practice violations. The proposed penalty assessed for actual or possible harm is determined by the particular regulatory requirements violated, the duration of the violation, and the amount of asbestos involved in the operation.

50. In accordance with the CAA, U.S. EPA has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced on April 14, 1997. Thus, the penalty has been based on one day of violation.

51. In accordance with the CAA, U.S. EPA has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined from a report prepared by the Dun & Bradstreet financial information service on March 23, 1998, is approximately $569,535. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.

52. In determining an appropriate civil penalty in

accordance with the CAA, U.S. EPA has considered Respondent Coleman's compliance history and its good faith efforts to comply. The penalty reflects an appropriate enhancement which is based on prior citations for violation of environmental statutes by Respondent Coleman.

53. In accordance with the CAA, U.S. EPA has considered the economic impact of the penalty on Respondent's business. Based on the best information available to U.S. EPA at this time, including the March 23, 1998, Dun & Bradstreet report, the proposed penalty of $55,000 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

54. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other issues relevant to the appropriateness of the penalty.

55. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall include on the check the name of the case and the docket number. Respondent shall simultaneously send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch

Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

63. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Ms. Rae Trine, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Trine at (312) 353-9228.

64. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may simultaneously pursue the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order issued pursuant to 40 C.F.R. § 22.27 shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

CONTINUING OBLIGATION TO COMPLY

Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

5-21-99
Date

Richard C Karl

Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Coleman Trucking, Inc.
Docket No. CAA-5-99-013

CERTIFICATE OF SERVICE

I, Loretta Shaffer, do hereby certify that the original of the foregoing Administrative Complaint was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Compliant) was mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

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on the 21 day of May, 1999.

Loretta Shaffer, Secretary
AECAS (MN-OH)

CERTIFIED MAIL RECEIPT NUMBER: P 564 485 826