UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN RE	)	
	)	
CLAIBORNE COUNTY PUBLIC SCHOOLS	)	TSCA-IV-86-0014
	)	
Respondent	)	

FINAL ORDER UPON DEFAULT

Preliminary Statement

This is a proceeding under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, et seq., instituted by a complaint filed by the Director, Air, Pesticides and Toxics Management Division, Region IV, United States Environmental Protection Agency, which was served upon Respondent, on April 25, 1986. Respondent was granted an extension of time in which to file an Answer and, on June 19, 1986, Respondent's Answer was filed with the Regional Hearing Clerk. The matter was referred to the undersigned by an Order dated July 10, 1986, and a prehearing letter was issued on July 17, 1986, pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits (C.R.O.P.), 40 C.F.R. 22.19, which required the parties to submit certain information by August 28, 1986. In that Complainant indicated

that informal settlement of this matter was likely, the date to comply with the prehearing exchange requirements was extended and Complainant was required to file monthly status reports on this action until such matter was settled informally or negotiations had broken down, as stated in the Order of October 29, 1986. Complainant failed to file its monthly Status Report for January and this matter was dismissed on January 14, 1987. Complainant filed a Motion for Acceptance of Late Filing of Status Report and to Reconsider Order of Dismissal on January 21, 1987. The matter was reinstated on February 13, 1987. Complainant then filed monthly Status Reports through July 1, 1987. The monthly reports indicated that Respondent's counsel had been mailed a proposed settlement on February 3, 1987, and that he objected to certain wording in the proposed agreement, and that Respondent lost the proposed agreement and Complainant mailed another copy to him on April 30, 1987. Due to Respondent's failure to actively work toward an informal settlement and cooperate with Complainant's continued attempts to settle this matter informally, Complainant, in its July 1, 1987, Status Report, requested that a date be set in which to accomplish the prehearing exchange. Pursuant to the July 2, 1987 Order in this proceeding prehearing responses were due on July 23, 1987.

Complainant filed its Prehearing Disclosure of Witnesses and Documents on July 23, 1987. Respondent did not file a response.

By motion dated August 14, 1987, counsel for the Respondent seeks a ten (10) day enlargement of time in which to file a responsive pleading, which counsel alledges was due on August 14, 1987. The Court is unaware of any pleading due to be filed on August 14, 1987, and in any event, the reasons offered by counsel for the Respondent for his failure to timely file are not persuasive. The motion for enlargement of time is denied.

All of the above files are hereby incorporated into and made part of the record in this proceeding.

By reason of the foregoing, Respondent is hereby found to be in default pursuant to C.R.O.P. 22.17(a), 40 C.F.R. 22.17(a). Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent.

Findings of Fact

1. Respondent, Claiborne County Public Schools, whose address is Main Street, Port Gibson, Mississippi 39150, operates a school system in Port Gibson, Mississippi, and is a "local education agency" as defined in 40 C.F.R. 763.103(e).

2. On or about January 23, 1985, an authorized employee of EPA inspected Respondent's facility.

3. At the time of the inspection Port Gibson High School, a school in Claiborne County Public School system, had areas which had not been inspected for friable asbestos, as required by 40 C.F.R. 763.105; contained areas of friable materials which had not been identified and sampled as required by 763.107; had failed to have samples of all friable materials analyzed as required by 40 C.F.R. 763.109; and had failed to compile and maintain records as required by 40 C.F.R. 763.114(a).

4. At the time of the inspection it was revealed that Richardson Primary School, a school in the Claiborne County Public School system, had not been inspected for friable asbestos, as required by 40 C.F.R. 763.105; and had failed to compile and maintain records as required by 40 C.F.R. 763.114(a).

5. At the time of the inspection it was revealed that Addison Junior High School, a school in the Claiborne County Public School system, had areas which had not been inspected for friable asbestos, as required by 40 C.F.R.

763.105; contained areas of friable materials which had not been identified and sampled, as required by 40 C.F.R. 763.107; had failed to have samples of all friable materials analyzed as required by 40 C.F.R. 763.109; and had failed to compile and maintain records as required by 40 C.F.R. 763.114(a).

6. At the time of the inspection the Claiborne County School System had failed to compile and maintain records at its administrative offices which included a list of all school buildings associated with the school, with an indication of whether each building had been inspected for friable materials and which buildings contained friable materials, as required by 40 C.F.R. 763.114(b); and had not completed and retained in its administrative office a copy of EPS form 7730-1, "Inspection for Friable Asbestos-Containing Materials," as required by 40 C.F.R. 763.114(c).

Conclusions

By reason of the facts set forth in the Findings above, Respondent failed to comply with Section 6 of TSCA, 15 U.S.C. §2605, and the regulations promulgated thereunder known as the Asbestos-Containing Materials in Schools Rule, 40 C.F.R. 763.100, et seq., by failing to inspect, sample and analyze friable materials for asbestos and by failing to maintain adequate records.

Pursuant to Section 22.17(a) of C.R.O.P., 40 C.F.R. 22.17(a), the penalty proposed to be assessed in the Complaint, $24,000, shall become due and payable by Respondent Claiborne County Public Schools without further proceedings, upon the issuance by the Administrator of a Final Order issued upon default.

ORDER[1]

Pursuant to Section 16(a) of TSCA, 14 U.S.C. 2615, a civil penalty of $24,000 is hereby assessed against Respondent, Claiborne County Public Schools, for violations of TSCA and the regulations promulgated thereunder as found herein.

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the Final Order upon Respondent, Claiborne County Public Schools, by forwarding to the Regional Hearing Clerk, at the following address, a cashier's check or certified check payable to the Treasurer, United States of America, in such amount.

EPA-Region IV
(Regional Hearing Clerk)
P.O. Box 100142
Atlanta, Georgia 30384

DATED: August 28, 1987

Thomas B. Yost
Administrative Law Judge

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[1]See §§ 22.17(b) and 22.27(c) of C.R.O.P., 40 C.F.R. §§ 22.17(b) and 22.27(b) with respect to the effect and consequences of this Default Order.

Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this Decision on his own motion, the Decision shall become the Final Order of the Administrator. See 40 C.F.R. § 22.27(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

IN RE	)	TSCA-IV-86-0014
CLAIBORNE COUNTY PUBLIC SCHOOLS	)	
Respondents	)	

CERTIFICATION OF SERVICE

In accordance with § 22.27(a) of the Consolidated Rules of Practice (40 C.F.R. Part 22), I hereby certify that the original of the Default Order by Hon. Thomas B. Yost was served on the Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, D.C. 20460, along with the official Agency record and file of this proceeding (service by certified mail return receipt requested); and that true and correct copies of the foregoing Default Order were served on the parties as follows: Edwin Schwartz, Esquire, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365 (service by hand-delivery); and Everett T. Sanders, Esquire, Sanders, Blacmon & Dunmore, Post Office Box 565, Natchez, Mississippi 39120 (service by certified mail return receipt requested).

Dated in Atlanta, Georgia this 2nd day of September 1987.

Sandra A. Beck
Regional Hearing Clerk