UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	
	)	
Luis Navarrete,	)	**Docket No. 5-TSCA-98-020**
	)	
Respondent.	)	
	)	

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Judgment, Complainant, Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency, Region 5 ("U.S. EPA"), moved for an Order assessing a civil penalty of One Thousand Dollars ($1,000) against Respondent, Luis Navarrete, for violation of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601, et. seq. and the regulations codified at 40 C.F.R. 40 C.F.R. Part 763, Subpart E, Appendix C. U.S. EPA alleges that the Respondent received an asbestos training certificate without completing the required training and then performed an asbestos removal action without proper certification.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules"), 40 C.F.R. Part 22, as revised,[1] based upon the record in this matter and the following Findings of Fact, Conclusions Regarding Material Issues of Law and Penalty Determination, Complainant's Motion for Default Judgment is hereby GRANTED.

1. Findings of Fact

1.1. The U.S. EPA initiated this civil administrative proceeding for the assessment of a penalty pursuant to Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615 and the

[1]Revisions to 40 C.F.R. Part 22 become effective on August 23, 1999 for proceedings commenced prior to that date, unless to do so would cause substantial injustice. 64 Fed. Reg. 40138 (July 23, 1999).

Consolidated Rules.

1.2. On August 4, 1998, the date on which this proceeding was initiated, Complainant was, by lawful delegation, the Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency, Region 5, Region 5, U.S. EPA.

1.3. Respondent is Luis Navarrete, 10621 South Albany, Chicago. Illinois 60655.

1.4. TSCA was amended pursuant to the Asbestos Hazard Emergency Response Act ("AHERA") or "Subchapter II of TSCA," Pub. L. No. 99-519, October 22, 1986, 100 Stat. 2970, 15 U.S.C. § 2642 et.seq. AHERA mandated a regulatory program to address asbestos hazards in schools, including training and accreditation requirements for persons performing asbestos-related work in schools.

1.5. Pursuant to Section 203 of TSCA and 42 U.S.C. § 2643, the U.S. EPA promulgated the Interim Final Asbestos Model Accreditation Plan ("MAP"), 40 C.F.R. Part 763, Subpart E, Appendix C, February 3, 1994, 59 Fed. Reg. 5236.

1.6. Pursuant to the MAP, a person must complete, at a minimum, specified training requirements, for that person to be accredited to design or conduct response actions involving friable asbestos-containing materials. Section 206(a) of TSCA, 15 U.S.C. § 2646(a).

1.7. Robert George Cooley, president and operator of IPC, a training course provider, was convicted of mail fraud in connection with his issuance of accreditation certificates to asbestos abatement workers and supervisors without providing them with the required asbestos abatement training.

1.08. Respondent purported to attend a worker refresher training course offered by IPC on February 3, 1995.

1.09. Respondent did not attend the training for the required eight hours.

1.10. Respondent purchased an asbestos worker refresher certificate from IPC.

1.11. Respondent used the certificate obtained from IPC as proof of accreditation in order to receive a license from the State of Illinois to conduct asbestos response actions.

1.12. Respondent conducted an asbestos removal action at Haven Middle School on or about June 12, 1995 and continuing through on or about July 13, 1995.

1.13. By conducting an asbestos removal action without being properly certified, Respondent was in violation of the TSCA and the regulations promulgated thereunder.

1.14. On August 4, 1998, Complainant filed a one count Complaint and Notice of Opportunity for Hearing charging that Respondent violated Section 206 of TSCA, 15 U.S.C. § 2646, and the regulations promulgated at 40 C.F.R. Part 763, Subpart E, Appendix C, by conducting a removal response action involving friable asbestos-containing materials without proper accreditation.

1.15. The complaint sought a penalty of One Thousand Dollars ($1,000) for the alleged violation.

1.16. The complaint specified that, in order for Respondent to avoid being found in default, Respondent must file a written answer within 20 days of service of the complaint.

1.17 . The complaint was mailed to Respondent and Respondent met with EPA. At the meeting, Respondent indicated his willingness to settle the matter for a reduced penalty.

1.18. By letter dated January 28, 1999, and received by the Respondent on or about February 4, 1999, and by letter dated June 11, 1999, and received by Respondent on June 14, 1999, EPA attempted to conclude this matter. Both letters warned that EPA would seek a default

order for the full penalty amount if Respondent did not respond.

1.19. As of the date of this Default Order, Respondent has not filed an answer to the complaint, nor responded to EPA's correspondence..

2. Conclusions Regarding Material Issues of Law

Pursuant to 40 C.F.R. § 22.17c and based upon the entire record in this matter, I conclude as follows:

2.1. Procedure for this case is governed by EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, as revised, 64 Fed. Reg. 40138 (July 23, 1999).

2.2 Section 22.17(a) of the Consolidated Rules of Practice, applying to motions for default, states in pertinent part:

> (a) Default. A party may be found to be in default... after motion, upon failure to file a timely answer to the complaint.... Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

2.3. The Complaint in this action was served upon Respondent. Respondent participated in a settlement conference concerning the Complaint.

2.4. Pursuant to 40 C.F.R.§ 22.15(a), Respondent was required to file an answer to the complaint.

2.5. Respondent has failed to file a timely answer to the August 4, 1998 Administrative Complaint, or to make a timely response to the Complainant's Motion for Default Order.

2.6. Respondent is therefore in default pursuant to Section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a).

2.7. In accordance with 40 C.F.R. § 22.17(a), Respondent's default constitutes an admission by Respondent of all the facts alleged in the complaint, which facts are incorporated herein by reference, and a waiver of Respondent's right to a hearing regarding these factual allegations.

2.8. Respondent is thus held to have committed the violations alleged in the complaint. Respondent's default is grounds for the entry of a Default Order against Respondent assessing a civil penalty for the violations described in the complaint.

3. PENALTY DETERMINATION

3.1 The statutory penalty factors for TSCA are found at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). They include the "nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability and other measures as justice may require. EPA has also published the *Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP)* on March 8, 1998. This policy is an addendum to the *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (as amended)(*"AHERA ERP" or "ERP").

3.2 Pursuant to the AHERA ERP, EPA calculated the extent and circumstances of the violation as minor because it could not determine how much asbestos Respondent had individually removed. EPA determined that the circumstances component of the violation was major because removal of asbestos containing materials without a proper certificate is considered a complete failure of the statutory requirements. Using these two criteria, Table A of the ERP proposes a penalty of $1,100 for violations which occur after January 30, 1997. Since this

violation occurred prior to that date, the penalty was reduced by ten percent. See the Civil Monetary Penalty Inflation Adjustment Rule. In further calculation of the penalty, no adjustment was made for economic benefit received by Respondent. No adjustments were made concerning ability to pay or adverse effect on Respondent's ability to continue in business because EPA is unaware of and has received no information concerning these factors. There was no history of prior violations. Although Respondent's culpability was high, no upward adjustment was made to the proposed penalty because EPA relied on the fact that classifying the violation as circumstances and gravity Level 1 appropriately reflected this factor. EPA was unaware of any other factors as justice may require which would justify a change in the penalty calculation.

Based upon the above explanation, I find that EPA has calculated the penalty in compliance with the statutory factors and the AHERA ERP. A penalty of One Thousand Dollars ($1,000) is appropriate and is hereby assessed against Respondent.

4. ORDER

Based on the foregoing, and pursuant to Section 207(g) of TSCA, 15 U.S.C. § 2647(g),and the Consolidated Rules of Practice, 40 C.F.R. §22.17, it is hereby ordered that:

4.1. Default be entered against Respondent.

4.2. Respondent shall pay the United States of America a civil penalty in the sum of One Thousand Dollars ($1,000). Payment shall be made by certified or cashier's check payable to "Treasurer of the United States of America" within thirty (30) days after a final order issues upon default. (See ¶4.3). A transmittal letter identifying the name and docket number should accompany the check. Such payment shall be remitted directly to:

U.S. Environmental Protection Agency

Region 5
P.O. Box 70753
Chicago, Illinois 60673

Copies of the transmittal letter and check shall also be sent to:

Section Secretary (DT-8J)
Pesticides and Toxics Enforcement Section
U.S. Environmental Protection Agency-Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

4.3. Pursuant to 40 C.F.R. § 22.27(c), this Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the U.S. EPA Environmental Appeals Board or the Environmental Appeals Board elects, sua sponte, to review it.[2]

4.4. In the event of failure by Respondent to make payment within sixty (60) days after this Order becomes final, interest shall accrue on the debt at the rate established by the Secretary of the Department of Treasury, pursuant to 31 U.S.C. § 3717, and published in the Federal Register quarterly. Furthermore, a late payment handling charge of fifteen dollars ($15.00) will be assessed after thirty (30) days, with an additional charge of fifteen dollars ($15.00) for each subsequent 30-day period over which an unpaid balance remains. Finally, a penalty charge of six percent (6%) per annum will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due.

4.5. Respondent's failure to comply with the provisions of this Order may result in the referral of this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the penalty is not subject to review in a collection proceeding, as stated at

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[2] Under 40 C.F.R. § 22.30, any party may appeal this Order by filing a notice of appeal and an accompanying appellate brief within twenty days after this Initial Decision and Order is served upon the parties.

7 U.S.C. § 136l(a)(5).

SO ORDERED.

Dated: Sept.21, 1999

/s/
Francis X. Lyons
Regional Administrator

Prepared by Regina Kossek, Regional Judicial Officer