

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 20332

GREGORY P LATHAN, PRESIDENT)
AND REGISTERED AGENT,)
THE EI GROUP INC,)
Petitioner,)
vs.)
N. C. DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
Respondent.)

FINAL DECISION

THIS MATTER is before the undersigned Augustus B. Elkins II, Administrative Law Judge, on the Respondent's Motion for Summary Judgment. The Petitioner is *pro se*. The Respondent is represented by Associate Attorney Regina T. Cucurullo. The Undersigned having considered the entire record finds that this matter is ripe for disposition.

ISSUES

Whether Respondent is authorized to impose an administrative penalty of \$500.00 on Petitioner for two violations of the rules adopted pursuant to Article 19 of the North Carolina General Statutes, specifically arising from the violations of 10A N.C.A.C. 41C .0603.

UPON CONSIDERATION of the pleadings, the Respondent's motion with a supporting affidavit, and such other materials, authorities, and arguments presented by or on behalf of the Parties, the Undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Petitioner taught an Asbestos Roofing Supervisor Refresher course on January 2, 2013.
2. Petitioner did not provide Respondent with written notification of an Asbestos Roofing Supervisor Refresher course prior to teaching the course on January 2, 2013.
3. Petitioner had not obtained a course renewal from Respondent prior to the time it taught its Asbestos Roofing Supervisor Refresher course on January 2, 2013. Petitioner has stated that EI taught the Asbestos Roofing Supervisor on January 2, 2013 prior to obtaining course renewal

and properly notifying for the course. Petitioner did state that a single omission on a course renewal was committed and there was no intent to circumvent the requirements.

4. On April 1, 2013, Respondent issued a Notice of Violation to Petitioner for teaching the January 2, 2013 Asbestos Roofing Supervisor Refresher course prior to providing Respondent with written notification of the course and prior to renewing the course with Respondent.

5. On November 20, 2013, Respondent issued a Notice of Assessment of Administrative Penalties to Petitioner, assessing Petitioner with a \$500.00 penalty, \$250.00 for each violation of the North Carolina Asbestos Hazard Management Program.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSION OF LAW

1. The NC Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. §150B-23 *et seq.*, and there is no question as to misjoinder or nonjoinder. The parties received proper notice of the hearing in this matter.

2. There is no genuine issue as to any material fact. A court should grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C.G.S. § 1A-1, Rule 56.

3. North Carolina General Statute 130A-447 provides in part that, “No person shall commence or continue to provide asbestos related training courses unless the course has been approved by the [North Carolina Department of Health and Human Services].”

4. Title 10A N.C.A.C 41C .0603(g)(2) requires training course providers to provide the Health Hazards Control Branch within the Division of Public Health with “written notice of intention to conduct a training course for North Carolina asbestos accreditation purposes if the course is to be taught in North Carolina or if requested by the Program. Notices for training courses, except asbestos worker, shall be postmarked or received 10 working days before the training course begins. Notices for asbestos worker training courses shall be postmarked or received five working days before the training course begins. If the training course is canceled, the training course provider shall notify the Program at least one working day prior to the scheduled start date. Notification of intent to conduct a training course shall be made using a form provided by the [the Health Hazards Control Branch] and shall include the following:

- (A) Training provider name, address, phone number and contact person;
- (B) Training course title;
- (C) Inclusive dates of course and applicable exam;
- (D) Start and completion times;

- (E) Identify whether the course is public offering, contract training, or for the training provider's employees;
- (F) Location and directions to course facility;
- (G) Language in which the course is taught; and
- (H) Principal instructor.”

10A N.C.A.C. 41C .0603(g)(2).

5. Title 10A N.C.A.C. 41C .0603(g)(8) provides that “For each course approved or deemed approved by the Program under Paragraph (a) of this Rule and taught in North Carolina, the training provider shall submit a completed renewal application on a form provided by the Program. Effective January 1, 1995, a renewal application shall be submitted prior to the next course offering and annually thereafter. If an annual training course renewal lapses, the provider shall submit a renewal application prior to offering the course again in North Carolina. Training courses approved by the Program under Paragraph (f) of this Rule shall be taught at least once every three years in North Carolina.” 10A N.C.A.C. 41C .0603(g)(8).

6. Petitioner violated the requirements set forth in 10A N.C.A.C. 41C .0603(g) when it failed to provide Respondent with written notification of its intent to teach an Asbestos Roofing Supervisor Refresher course on January 2, 2013.

7. Petitioner violated the requirements set forth in 10A N.C.A.C. 41C .0603(g) when it taught an Asbestos Roofing Supervisor Refresher course on January 2, 2013, prior to obtaining a renewal from Respondent for the course.

8. Respondent was authorized by law and rule to issue the Notice of Violation for Petitioner’s failure to renew and provide notification of an Asbestos Roofing Supervisor Refresher prior to teaching the course on January 2, 2013.

9. Per North Carolina General Statute 130A-22, Respondent’s November 20, 2013 Notice of Assessment of Administrative Penalties which Respondent imposed a \$500.00 penalty upon Petitioner, \$250.00 for each violation of 10A N.C.A.C. 41C .0603, is authorized by law and rule.

BASED UPON the foregoing Findings of Fact and Conclusion of Law, the Undersigned makes the following:

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Undersigned Administrative Law Judge finds proper authoritative support of the Conclusions of Law noted above. Based upon the foregoing facts in this matter and the Conclusions of Law, it is hereby found and so held that Respondent’s Motion for Summary Judgment is **GRANTED**.

NOTICE

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.

In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

The Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This is the 20th day of August, 2014.

Augustus B. Elkins II
Administrative Law Judge