

6/7/94

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| IN THE MATTER OF                | ) |                           |
|                                 | ) |                           |
| ASBESTOS CONSULTING GROUP, INC. | ) | DOCKET No. TSCA-V-C-39-92 |
|                                 | ) |                           |
| Respondent                      | ) |                           |

ORDER GRANTING MOTION FOR ACCELERATED DECISION

I. Background

On February 7, 1994, the United States Environmental Protection Agency ("Complainant" or "EPA") filed the instant motion for accelerated decision.

Asbestos Consulting Group, Inc. ("ACG") performed an on-site asbestos inspection of the Arcadia Elementary School and the Arcadia High School, and subsequently developed a management plan dated October 3, 1988. The complaint alleges that the management plans ACG submitted to the Arcadia Schools failed to identify all homogeneous areas of nonfriable suspected Asbestos-Containing Building Materials ("ACBM").

Count I of the complaint alleges that Respondent failed to identify the following nonfriable suspected ACBMs at the Arcadia Elementary School: (1) 18 square feet of vibration isolator material on the air handling equipment in the entry to the boiler room; (2) approximately 10 linear feet of gasket material on the burner mounting of the two steam boilers; and (3) two fire doors in the boiler room. Count II alleges that Respondent failed to identify the following nonfriable suspected ACBMs at the Arcadia High School: (1) approximately 14 square feet of canvas vibration isolator material in the stage area and in the welding area; and (2) three fire doors.

II. Discussion

A. Allegations of ACG's Liability

1. According to Respondent's own documentation, ACG conducted an inspection for ACBM at Arcadia Elementary School and at Arcadia High School.

2. ACG violated 40 C.F.R. § 763.85(a), by failing to identify all homogeneous areas of suspected AC materials in the

inspection report contained in the management plan it developed for Arcadia Elementary School and Arcadia High School. 40 C.F.R. § 763.85(a) states that:

For each area of a school building . . . each person performing an inspection shall: (iii) [i]dentify all homogeneous areas of friable suspected [asbestos-containing building material] ACBM and all homogeneous areas of nonfriable suspected ACBM.

40 C.F.R. § 763.85(a)(4)(iii)(1993).

3. Under the authority established in Section 203 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2643, the Administrator of the U.S. EPA promulgated the Asbestos-Containing Materials in Schools Rule, 40 C.F.R. Part 763, Subpart E.

By violating 40 C.F.R. § 763.85 (a), ACG is subject to liability under TSCA, 15 U.S.C. §§ 2601 et seq.

4. Any person who violates a requirement of the Asbestos Hazard Emergency Response Act of 1986 ("AHERA") is subject to an action for civil penalties. Section 16(a)(1) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq., states that "[a]ny person who violates a provision of section 2614 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation." 15 U.S.C. § 2615(a)(1). This language, particularly the absence of any scienter requirement, indicates that TSCA is a strict liability statute.

#### B. Rules for Granting the Motion for Accelerated Decision

According to 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 (1992) an accelerated decision may be used to expedite matters that are not in serious dispute. Section 22.20 (a) states, in part, that:

The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgement as a matter of law as to all or part of a proceeding.

40 C.F.R. § 22.20 (a) (1992).

## IV. Conclusion

Because ACG has not responded to the motion for accelerated decision, ACG is deemed to have waived any objection to the granting of the motion. 40 C.F.R. § 22.16(b). Under these circumstances, the presumption follows that no genuine issue of material fact exists. Accordingly, Complainant's Motion for Accelerated Decision shall be granted as a matter of law pursuant to 40 C.F.R. § 22.20 (a).

I find that Asbestos Consulting Group is liable for violations of the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., as amended by the Asbestos Hazard Emergency Response Act of 1986, Pub. L. No. 99-519, 100 Stat. 2970 and regulations lawfully promulgated thereunder. I also grant Complainant's motion and assess a civil penalty against ACG under Section 16 of TSCA, 15 U.S.C. § 2615, in the amount of \$6,000.



Jon G. Lotis  
Administrative Law Judge

Dated: June 7, 1994  
Washington, D. C.

IN THE MATTER OF ASBESTOS CONSULTING GROUP, INC., Respondent,  
V Docket No. TSCA-V-C-039-92

CERTIFICATE OF SERVICE

I certify that the foregoing Order Granting Motion For Accelerated Decision, dated June 7, 1994, was sent in the following manner to the addressees listed below:

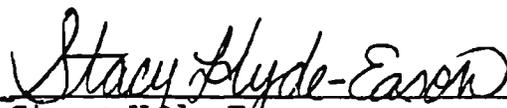
Original by Regular Mail to:

Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region V  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copies by Certified Mail, Return  
Receipt Requested to:

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Dated: June 7, 1994  
Washington, D.C.