

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Century Aluminum of West Virginia, Inc.,)
& Ohio Valley Insulating Company, Inc.,) Docket No. CAA-III-116
)
Respondents)

ORDER

The U.S. Environmental Protection Agency ("EPA") has filed a Motion to Amend Complaint seeking, in addition to certain minor amendments, to add another count to the complaint and to increase the amount of the proposed penalty. Specifically, EPA proposes to add Count II in which it alleges a violation of 40 C.F.R. 61.145(b) for an alleged failure to timely submit a complete and accurate notification regarding a demolition or renovation activity. The Agency also requests that the proposed penalty be increased from \$41,020 to \$43,020 to reflect the added violation. Both Century Aluminum of West Virginia, Inc. ("Century"), and Ohio Valley Insulating Company, Inc. ("OVI"), oppose EPA's motion. A hearing has been set in this case for August 24-25, 1999. The granting of EPA's motion to amend will result in a postponement of this hearing.

On balance, the sequence of events in this case does not support a granting of EPA's motion to amend. In that regard, the EPA inspection which led to the present complaint being filed occurred on December 5, 1996. The Agency filed the complaint on September 28, 1998. Thereafter, the parties submitted exhibit and witness lists, as well as a variety of pretrial motions. Initially, a hearing date of June 23-24, 1999, was set but this was changed to August 24-25.

The fact that EPA's motion to amend the complaint was filed so close in time to the scheduled hearing weighs heavily in the decision to not allow the complaint to be amended and thereby delay the respondents' day in court. Also, EPA is not left empty-handed as a result of this order. The Agency may file a new complaint charging the violation in proposed Count II.

Accordingly, EPA's motion to amend the complaint is *denied*.

Carl C. Charneski

Carl C. Charneski
Administrative Law Judge

Issued: August 16, 1999
Washington, D.C.

IN THE MATTER OF CENTURY ALUMINUM OF WEST VIRGINIA, INC. &
OHIO VALLEY INSULATING CO., INC., Respondents
Docket No. CAA-III-116

Certificate of Service

I certify that the foregoing Order, dated August 16, 1999, was sent this day in the following manner to the below addressees.

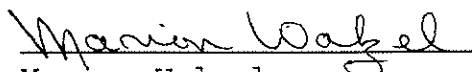
Original by Regular Mail to: Ms. Lydia A. Guy
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U.S. Environmental Protection
Agency, Region III
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Philadelphia, PA 19103-2029

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Dated: August 16, 1999