

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
AWTEC, INC. and WYOMING S&P., INC. ) Docket No. CAA-III-059  
 )  
 Respondents )

**ORDER GRANTING MOTION IN LIMINE AND DENYING ALTERNATIVE RELIEF**

By pleading filed July 1, 1997, Complainant filed a "Motion in Limine or, in the Alternative, Motion to Compel and Motion for an Extension." No responses were received. Complainant requests that the undersigned exclude from this hearing "any and all documents, exhibits and testimony relating to the financial condition of the Respondents and any claim, or potential claim, on the part of Respondent AWTEC, INC. and/or Respondent WYOMING S & P, INC. of their inability to pay the proposed penalty or that the proposed penalty will have an adverse effect on their ability to continue in business." Complainant seeks alternative relief if this request is not granted. For the reasons set forth below, the request shall be granted.

Complainant notes that in the prior Administrative Law Judge's October 24, 1995 order, procedures for the filing of prehearing exchanges among the parties were prescribed. In addition to reciting the specific requirements of the regulation regarding prehearing exchanges, 40 C.F.R. § 22.19(b), the October 24, 1995 order required the following:

Respondent, to the extent not already done, advise complainant whether or not it is contesting the appropriateness of the civil penalty proposed in the complaint if it is found to have violated the Act as charged. If one of the reasons is respondent's alleged inability to pay the same, it shall furnish current financial data or other acceptable documentation in support of its position.

However, Complainant states that neither of the Respondents included in their respective prehearing exchanges (a) any statement advising Complainant whether or not they were contesting the appropriateness of Complainant's proposed civil penalty based upon an inability to pay the same; (b) any financial data or documentation relevant to this issue; or (c) the name of any witness who might testify on this issue. Therefore, Complainant requests that Respondents be precluded at the hearing from introducing any exhibits or testimony regarding any assertion that they are unable to pay the proposed penalty or that payment of the penalty will have an adverse impact on their respective abilities to continue to do business. Complainant asserts that to do otherwise would prejudice its ability to submit rebuttal testimony and exhibits on these issues.

Complainant's motion is **granted**. As Complainant correctly states, Respondents had an opportunity to reference testimony and/or exhibits in their respective prehearing exchanges regarding ability to pay and possible adverse effects on ability to continue in business, but did not do so.<sup>(1)</sup> It is reasonable and fair to preclude the introduction of such testimony and/or evidence at the hearing because of possible prejudice to Complainant. In view of the relief granted herein, Complainant's request for alternative relief is **denied**.

Charles E. Bullock

Administrative Law Judge

Dated: August 4, 1997  
Washington, D.C.

1. Harrisburg Hospital and First Capital Insulation, Inc.,  
Docket No. CAA-III-076 (June 20, 1997).

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**IN THE MATTER OF AWTEC, INC. and WYOMING S & P, INC.,**  
Respondents,

Docket No. CAA-III-059

**Certificate of Service**

I certify that the foregoing Order, dated August 4, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region III  
841 Chestnut Building  
Philadelphia, PA 19107

Copy by Facsimile and by Regular Mail to:

Attorney for Complainant: A. J. D'Angelo, Esquire  
Office of Regional Counsel  
U.S. Environmental Protection  
Agency, Region III (3RC11)  
841 Chestnut Building  
Philadelphia, PA 19107

Respondent, AWTEC, Inc.:

Mr. James L. Wilcoxson  
AWTEC, Inc.  
215 1/2 N. 17th Street  
Allentown, PA 18104

Attorney for Respondent:

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Wilkes Barre, PA 18711-0075

Marion Walzel  
Legal Staff Assistant

Dated: August 4, 1997