

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

John W. Darnell, Inc.,
d.b.a. All Seasons Roofing

Docket No. CAA-001-94

And

Purdue University

Respondents

ORDER DENYING COMPLAINANT'S MOTION
FOR ACCELERATED DECISION

On January 26, 1996, complainant, Environmental Protection Agency, filed before Administrative Law Judge Thomas W. Hoya, a Motion For Accelerated Decision in the above-captioned case. Thereafter, on March 8, 1996, respondent Purdue University filed a Memorandum in Opposition to complainant's motion, as did respondent All Seasons Roofing in a response dated March 11, 1996.

This case was reassigned to the undersigned on February 13, 1997. Subsequently, in preparation for hearing, set for June 10, 1997, the parties filed their respective pre-hearing exchange materials.

To prevail on it's motion, complainant is required to show, pursuant to 40 C.F.R. Section 22.20 (a), that "no genuine issue of material fact exists and a party is entitled to judgment as a matter of law". Complainant has failed to meet this burden.

As pertaining to at least Counts II-VI, complainant must demonstrate, pursuant to 40 C.F.R. Section 61.145(a)&(b), that respondents disturbed regulated, asbestos containing material (RACM) of more than 160 square feet. While respondent, Purdue University admits in their answer to "stripping and removal of at least 160 square feet of a roofing membrane slip sheet", they assert that only "some of which contained asbestos". Similarly, respondent All Seasons Roofing denies in their answer disturbing 160 square feet or more of RACM

stating that they did not know "how much of the slip sheet contained asbestos and how much of the slip sheet was merely paper".

There is thus a legitimate dispute as to the material fact of whether the respondents have met the regulatory threshold of disturbing 160 square feet or more of RACM.

In addition, respondents have questioned the affidavit testimony of Jon Scott Purcell, relied upon extensively by complainant in support of their motion. Respondent Purdue University describes Mr. Purcell as a "disgruntled former employee who All Seasons fired, and much of his affidavit is based on hearsay and lacks sufficient foundation" (Purdue's opposition to Motion, Footnote 7.). Respondents further state that there exists contradictory affidavit evidence from Brett Fletcher and Jim Creech. As such, there remains present issues of material fact, including the credibility of the affiants, which cannot be adjudged in the absence of a hearing on these matters.

For the above reasons, complainant's Motion For Accelerated Decision as to respondents' liability for the alleged violations is DENIED.

Stephen J. McGuire

Administrative Law Judge

Dated: March 27, 1997

Washington, D.C.

IN THE MATTER OF ALL SEASONS ROOFING & PURDUE UNIV., Respondent

Docket No. CAA-001-94

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Complainant's Motion for Accelerated Decision, dated March 27, 1997, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to: Sonya Brooks

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region V

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Chicago, IL 60604-3507

Copy by Certified Mail-Return

Receipt Requested to:

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Dated: March 27, 1997

Washington, DC