

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Harrisburg Hospital,

Docket No. CAA-111-076

and

First Capital Insulation, Inc.,

Respondents

ORDER

This matter arises under the Clean Air Act. 42 U. S - C - § 7401 *et seq.* Pursuant to order, the parties have filed their preheating exchange. 40 C.F.R. 22.19(b). This preheating exchange has resulted in cross-motions being filed by the U.S. Environmental Protection Agency ("EPA") and First Capital Insulation Inc. ("First Capital"). EPA has styled its submission as a Motion in Limine or, in the Alternative a Motion to Compel, and a Motion for an Extension of Time.¹ First Capital has filed a Motion for a Confidentiality Order.

Essentially, EPA's objection to First Capital's preheating exchange is two-fold. First, it challenges respondent's proposed Exhibit 6 on the ground that First Capital submitted copies of the photographs as opposed to actual photographs. Second, EPA challenges respondent's proposed Exhibit 8, the company's 1995-96 Federal Tax Return, on the ground that while the respondent listed this document as an exhibit it did not provide the complainant with a copy. First Capital's motion for a confidentiality order addresses its proposed Exhibit 8. First Capital is willing to turn over to EPA its 1995-96 Federal Tax Return, but only under special restrictive conditions.

As to the issue of the photographs, EPA is correct in arguing that this court's preheating exchange order required the exchange of actual photographs and not duplicates. It is significant, however, that EPA does not argue that it is prejudiced because the photographic copies supplied are unclear or are not

substantially of the same quality as actual photographs. On that score, a preliminary review of photographs comprising EPA's proposed Exhibit 6 with the copies of the photographs comprising First Capital's proposed Exhibit 6 indicates that the two are fairly comparable in quality. Accordingly, in the absence of a showing of prejudice, EPA's challenge to First Capital's proposed Exhibit 6 is *denied*.²

Concerning First Capital's federal tax return and the related ability to pay the proposed civil penalty issue, respondent will not be required to submit that financial information as a proposed exhibit. Respondent is advised, however, that on the ability to pay issue it will not be allowed to introduce into evidence at the hearing any exhibits which it does not timely provide to EPA prior to hearing. In that regard, if First Capital intends to rely upon its 1995-96 Federal Tax Return, it must exchange that information with EPA. A confidentiality order will *not* be issued as requested by respondent. Rather, as EPA suggests, the Confidential Business Information provisions of 40 C.F.R. Part 2 adequately safeguard First Capital's privacy interests.

Carl C. Charneski

Administrative Law Judge

Issued: June 20, 1997

Washington, D.C.

¹ EPA objects to portions of the prehearing exchanges of both respondents. However, inasmuch as EPA and Harrisburg Hospital are in the final stages of executing a Consent Agreement and Consent Order, this order will address only EPA's objection to the prehearing exchange submitted by First Capital.

² EPA is not precluded from a further, but timely, challenge to this exhibit on the grounds of prejudice.

IN THE MATTER OF HARRISBURG HOSPITAL and FIRST CAPITAL INSULATION, INC.

Respondents

Docket No. CWA-III-076

Certificate of Service

I certify that the foregoing order, dated June 20, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Lydia A. Guy

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region 3

841 Chestnut Building

Philadelphia, PA 19107

Copy by Regular Mail to:

Attorney for Complainant: Donna L. Mastro, Esquire

Assistant Regional Counsel

U.S. Environmental Protection

Agency, Region 3 (3RC13)

841 Chestnut Building

Philadelphia, PA 19107-4431

Attorney for Respondent: John W. Carroll, Esquire

(Harrisburg Hospital) PEPPER, HAMILTON & SCHEETZ

200 One Keystone Plaza

North Front and Market Streets

P.O. Box 1181

Harrisburg, PA 17108-1181

Attorney for Respondent: Harry F. Klodowski, Esquire

(First Capital Insulation) Grant Building, Suite 3321

330 Grant Street

Pittsburgh, PA 15219-2202

Marion Walzel

Legal Staff Assistant

Dated: June 23, 1997