

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Ocean State Asbestos Removal) Docket No. CAA-I-93-1054
Inc. / Ocean State Building)
Wrecking and Asbestos Removal)
Co., Inc.,)
)
Cranston, Rhode Island)
)
Respondents)

ORDER ON MOTION TO ESTABLISH FINANCIAL CONDITION

Ruling on Motion

The Complainant has filed a "Motion to Establish Financial Condition of Respondents for Noncompliance with Pre-Hearing Orders" dated February 13, 1996. Respondent filed an Objection to that motion dated February 21, and Complainant filed a Reply Memorandum on February 27, 1996.

This order does not establish the financial issues in Complainant's favor. It does, however, preclude Respondent from offering any additional evidence or testimony on this issue other than that included or indicated in its prehearing exchange.

Respondent was clearly placed on notice in the October 6, 1994 telephonic order of the former Presiding Judge in this case, Chief Administrative Law Judge Jon G. Lotis, that it would be limited at trial to producing evidence filed as part of its prehearing exchange (p. 11-12 of transcript). Respondent did in fact file an Amended Memorandum or prehearing exchange dated November 14, 1994 in response to that order. That exchange included several proposed exhibits, including a tax return. Respondent also indicated that two witnesses would address Respondent's financial condition and ability to pay the proposed penalty. Thus, Respondent did comply with the prehearing order.

In the instant motion, the Region is really complaining about what it perceives to be the minimalistic or flawed nature of Respondent's submissions. Respondent has not sought to supplement its prehearing exchange and is presumably prepared to go to trial with what it has filed. In that regard, as in any litigation, adverse inferences may be drawn against a party who fails to introduce evidence needed to carry its burden of proof or of going forward. In this case, Respondent may be vulnerable to such inferences on the issue of its ability to pay and the related issue concerning its two different names, as reflected in the above

caption. That remains to be seen at the hearing. But there is no basis upon which to deem this issue established or to completely preclude Respondent from addressing it. Respondent will however be precluded from introducing evidence other than that included or indicated in its prehearing exchange.

Hearing Location and Procedures

As of this time, a hearing facility has not yet been secured in Providence, although a backup facility has been reserved in Boston. I understand that the Regional Hearing Clerk is still trying to find a suitable facility in Rhode Island. The parties will be notified as soon as the arrangements are confirmed. The subpoena sought by Complainant will then also be sent.

The hearing exhibits will be numbered sequentially as they are introduced at the hearing. The party introducing exhibits should ensure that there is a clean copy for the official record, and enough copies for the opposing party and the judge, as well as one extra copy for the stenographic reporter. Since all exhibits should have been already sent to the opposing party and judge in the prehearing exchanges, it is not necessary to bring such additional sets of copies to the hearing.

Andrew S. Pearlstein

Andrew S. Pearlstein
Administrative Law Judge

Dated: February 28, 1996
Washington, D.C.

IN THE MATTER OF OCEAN STATE ASBESTOS REMOVAL, INC. / OCEAN STATE
BUILDING WRECKING AND ASBESTOS REMOVAL, INC., Respondent
Docket No. CAA-I-93-1054

CERTIFICATE OF SERVICE

I certify that the foregoing Order on Motion to Establish Financial Condition, dated February 28, 1996, was sent in the following manner to the addresses listed below:

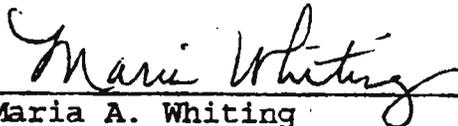
Original by Regular Mail to:

Mary Anne Gavin
Regional Hearing Clerk
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Copies by Fax and Regular Mail to:

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Dated: February 28, 1996
Washington, D.C.