

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 discovery motion requesting that respondents Century Aluminum of West Virginia, Inc. ("Century"), and Ohio Valley Insulating Company, Inc. ("OVI"), be ordered to produce certain documents and demonstrative aids. OVI and Century have filed responses to EPA's request. As explained below, EPA's motion for discovery is *granted in part*, and *denied in part*.

Request No. 1

EPA requests a complete copy of the November 6, 1996, Construction Contract, including attachments, between Century and OVI. Century asserts that Exhibit S, a safety orientation checklist, is the only attachment to the contract. Century has included a copy of Exhibit S in its response to EPA's discovery motion. Inasmuch as EPA already has a copy of the Construction Contract, respondents have complied with the discovery request by providing complainant with Exhibit S.

Request No. 2

EPA requests copies of all additional contracts and bid proposals between Century and OVI described in the Revised Notification, or otherwise performed by OVI at the involved facility, from November 21, 1996, through December 31, 1996. Both Century and OVI state that no such additional contracts exist.

Request No. 3

EPA requests copies of OVI's Daily Job Reports covering the asbestos abatement project at the facility, *i.e.*, from November 21, 1996, through December 31, 1996. EPA's request also covers any asbestos abatement work performed at the facility before and after this time period. Century already has produced Daily Job Reports for the period of November 25, 1996, the date that it submits asbestos abatement work began, through December 5, 1996. OVI, in turn, has provided Daily Job Reports for the period of December 2, 1996, through

December 5, 1996. OVI moves to strike the Daily Job Reports provided by Century, other than for this limited time period, arguing that they are not relevant to the violation at issue.

EPA's request for the Daily Job Reports beyond that already provided is denied. Century represents that the asbestos abatement work did not begin until November 25. As noted, EPA has been provided with OVI's job reports from that date until December 5, when the asbestos abatement violation allegedly occurred. EPA has not shown that the Daily Job Reports subsequent to December 5, 1996, are in any way relevant to the present proceeding. The issue to be resolved here is whether respondents unlawfully removed regulated asbestos-containing material during the period of December 3 through December 5, 1996. EPA has failed to show how events subsequent to December 5 are probative of the issue to be resolved in this case.

In addition, OVI's motion to strike the Daily Job Reports submitted by Century, other than for the period of December 2 through December 5, 1996, is denied. These Daily Job Reports reflect upon asbestos abatement activities occurring immediately prior to the alleged violation in this case and thus are a relevant consideration for any penalty assessment purposes.

Request No. 4

EPA seeks a number of items which it claims relate to Century's "Asbestos Policy."¹ EPA claims that it needs this information to assess the assertions of Century that it "took great care to hire a qualified asbestos contractor," that it "made all reasonable attempts to monitor OVI's work," and that it "acted responsibly in every respect." EPA Mot. at 16.

EPA is correct in noting that Century, as its "Third Defense," argues in part that it sought to hire a reputable abatement contractor and that it took reasonable steps to monitor that contractor's performance. Cent. Ans., ¶ 34. Accordingly, given this defense and given the allegation that respondents failed to keep regulated asbestos-containing material adequately wet, EPA is entitled to the following requested items:

- a. OVI's contractor resume.

- e. A list of the persons who OVI and its subcontractors employed in the removal work, along with the workers' training records. (EPA is not entitled to any medical records.)

¹ Century already has provided EPA with the Asbestos Policy. Century, however, is to ensure that the copy it provided to EPA is complete. See EPA Mot. at 16.

- h. Copies of all entry/exit logs which identify the individuals working on the project. (The applicable dates, however, are from November 21, 1996, through December 5, 1996.)

See EPA Mot. at 22.

While some of the information relating to Century's Asbestos Policy is relevant to this proceeding, much of it either is not, or the request by EPA is too broadly framed. In that regard, EPA is not entitled to the following information:

- b. A notarized statement from OVI describing any citations and/or violations issued by any regulatory agency concerning performance on previous abatement contracts.
- c. The "Progress Schedule" for the asbestos abatement project performed by OVI.
- d. Copies of notices required by Federal, state, and local agencies, along with proof of timely transmittal to the agency requiring notice.
- f. Materials list of all items expected to be furnished and used under the contract.
- g. Copies of all visitor's logs from November 21, 1996, through December 31, 1996.
- i. Copies of all air monitoring records associated with the project and the results of all personnel and area monitoring activities performed during the project which are not currently in complainant's possession.
- j. Copies of all landfill receipts and Department of Transportation disposal manifests for all asbestos-containing waste removed during the project.

See EPA Mot. at 22.

Request For Analytical Data And Demonstrative Aids

EPA additionally requests from OVI certain analytical data and demonstrative aids. The analytical data involves the testing of split samples "collected from a dumpster at the Facility during the December 5, 1996 inspection." EPA Mot. at 23. In responding to EPA's discovery motion, OVI attached a Chain of Custody sheet acknowledging receipt of the samples by the RJ Lee Group, Inc., as well as the test results for the single test performed on one of the samples. It thus appears that OVI has essentially complied with EPA's test data and chain of custody request. If EPA believes that this is not the case, it may file a supplemental discovery motion specifically identifying the information sought, with an explanation as to how the requested information is probative of the issue presented in this case. EPA may submit this supplemental motion no later than July 26, 1999.

As for the demonstrative aids which OVI has identified in its Prehearing Exchange, the respondent states that it will make this material available for inspection by EPA.

Time For Compliance

To the extent that the respondents are required to furnish any documents to EPA as set forth above, they shall do so no later than July 28, 1999.

Carl C. Charneski

Carl C. Charneski
Administrative Law Judge

Issued: July 20, 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 July 20, 1999, was sent this day in the following manner to the below addressees.

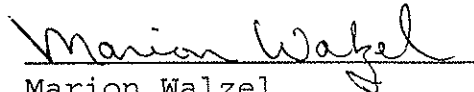
Original by Regular Mail to: Ms. Lydia A. Guy
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by Facsimile and Regular Mail to:

Attorney for Complainant: A. J. D'Angelo, Esquire
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region III (3RC11)
1650 Arch Street
Philadelphia, PA 19103-2029

Attorneys for Respondent: Phillip L. Conner, Esquire
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
The Ogletree Building
300 North Main Street
P.O. Box 2757
Greenville, SC 29602

Stephen M. Schwartz, Esquire
HENDRICKSON & LONG, P.L.L.C.
214 Capitol Street (25301)
P.O. Box 11070
Charleston, WV 25339


Marion Walzel
Legal Staff Assistant

Dated: July 20, 1999