

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
vs.)
)
SEARS, ROEBUCK & COMPANY, a)
New York corporation; DIESEL)
CONSTRUCTION COMPANY, a division)
of CARL A. MORSE, INC. of Illinois,)
an Illinois corporation; and MARIO)
& DIBONO CORPORATION, a New York)
corporation,)
)
Respondents.)

PCB 73-106

Mr. Lee A. Campbell, Special Asst. Attorney General, on behalf of the Environmental Protection Agency;
Mr. Edwin M. Katz and Mr. Howard Gopman, Attorneys, on behalf of Marie and DiBono Corporation;
Mr. Michael Hawkins, Attorney, on behalf of Sears, Roebuck and Company and Diesel Construction Company.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

On March 9, 1973, the Illinois Environmental Protection Agency filed Complaint against the three Respondents cited above. On June 8, 1973, the Agency filed an Amended Complaint alleging violations of Rules 632 and 634 of the Air Pollution Control Regulations (Non-asbestos spray insulation provisions) and Section 9(a) of the Environmental Protection Act.

Respondent Sears, Roebuck & Company (hereinafter "Sears") owns a piece of property and the improvements thereon (known as "Sears Tower") bordered by Jackson Boulevard, Wacker Drive, Adams Street and Franklin Street in Chicago, County of Cook, Illinois.

Respondent Diesel Construction Company (hereinafter "Diesel") acted as general contractor responsible for the construction of the aforementioned Sears Tower.

Respondent Mario & DiBono Corporation (hereinafter "Mario") was the sub-contractor charged with spraying fireproofing material on the aforementioned Sears Tower.

Respondent Mario, under the direction of Respondent Diesel, both being employed by Respondent Sears, sprayed non-asbestos, fibrous fireproofing material on the exposed surfaces of steel structural columns, beams and decks on the Sears Tower.

Said spraying operation utilized a mixing room where the fireproofing material was prepared by dumping 50-lb. bags of dry mineral wool into a hopper. The material was then pumped to the floor where the spraying was to take place. The material was then wetted and sprayed onto the surfaces through a hose.

Complainant alleges that during the period from January 6, 1972 until April 13, 1972, and particularly including, but not limited to, March 21, 1972, Respondents caused or allowed visible emissions of non-asbestos, fibrous fireproofing material to occur from within an area open to the atmosphere, in violation of Rule 304 of R 71-16, the Asbestos Regulations, adopted by the Pollution Control Board on January 6, 1972.

Complainant further alleges that during the period from April 14, 1972 until at least the filing of the Amended Complaint, and particularly including, but not limited to, April 21, 1972 and June 6, 1972, Respondents caused or allowed visible emissions to occur from within an area open to the atmosphere, in violation of Part VI, Section III, Rule 634 of the Air Pollution Control Regulations.

Complainant further alleges that on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere without enclosing the ~~entire~~ floor or area to be sprayed with plastic or plastic-coated tarpaulins in such a manner as to preclude the escape of fiber-containing material to the atmosphere and furthermore without enclosing all elevator shafts and stairwells so as to prevent the escape of fiber-containing material from the working area, in violation of Part VI, Section III, Rule 632(a) of the Air Regulations.

Finally, Complainant alleges that on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere and failed to thoroughly vacuum the entire sprayed area, and all ledges and surfaces including tarpaulins within the enclosure before the enclosure was dismantled, in violation of Part VI, Section III, Rule 632(b) of the Air Regulations.

Pursuant to Section 9(a) of the Act, violations of the Asbestos Regulations and the Air Regulations are also violations of Section 9(a) of the Act.

Public hearings were held in this matter on June 11 and June 29, 1973.

Complainant's witness, Czary Krztowski, an Agency environmental protection engineer, inspected the site of the alleged violations on August 16, 1972. (6-11-73 R. 12). He was informed that the fireproofing material being sprayed was Calico Blaze-Shield Type, Type CD/F with a UL Listing of AU-156, manufactured by the United States Mineral Products Company. (6-11-73 R. 19).

Mr. Krztowski testified that he inspected floors 48 and 49, where spraying had been completed, and observed that said floors were unenclosed and that a one-quarter inch layer of the subject fireproofing material loosely covered virtually the entire floor area. (6-11-73 R. 21,22). Mr. Krztowski further testified that he observed that at least two stairwells and one elevator shaft were unenclosed. (6-11-73 R. 23). Finally, Mr. Krztowski testified that he observed that the tarpaulin which enclosed the 50th floor was dismantled before spraying of that floor was completed (6-11-73 R. 26), and that, on the 47th floor where the fireproofing material was being mixed, the material was "flying about," totally unenclosed. (6-11-73 R. 58).

Complainant's witness, Richard G. Groll, is employed at a location one block south of the Sears Tower. (6-29-73 R. 18). Mr. Groll testified that on April 21, 1972, he observed large chunks of insulation material (1/4 to 1/2 inches in diameter) falling from approximately the tenth floor of the Sears Tower and accumulating on the street and the side of a building. (6-29-73 R. 19, 20). Later in the day, the falling material became much more fine and the witness compared the situation to a snow storm. (6-29-73 R. 24). Mr. Groll observed similar conditions on April 28, 1972 and another date which the witness could not recall specifically. (6-29-73 R. 25-28).

Complainant's witness, David Kee, Chief of Air Enforcement for Region Five of the United States Environmental Protection Agency, testified that on March 21, 1972, as he walked past the Sears Tower, he "noticed a large amount of white material falling to the ground from the Tower and covering the streets and sidewalk areas along Franklin and in the intersection of Franklin and Adams it looked almost like snow to a certain extent, blowing up against the curbs and clinging to the cars and along the edges of the buildings in that general vicinity there."

Mr. Kee obtained a sample of the falling material and took several photographs of the street. The witness stated that he had observed the material falling from the Sears Tower on other occasions, but could not recall specific dates. (6-29-73 R. 55).

Respondent's witness, Angelo Calandrella, superintendent in charge of the fireproofing operation for Respondent Mario, stated that during the spraying operation all open areas were covered and that there was no possibility of material escaping. (6-29-73 R. 79). Respondent's witness, Russell A. Raica, an employee of Respondent Diesel in charge of enclosing each floor as the spraying operation proceeded, stated that floors being sprayed were always completely enclosed. (6-29-73 R. 123).

We are satisfied from the evidence that Respondents Sears and Diesel violated Rule 634 of the Air Pollution Control Regulations on April 21 and April 28, 1972; that Respondents Sears and Diesel violated Rule 632(a) of the Air Pollution Control Regulations on August 16, 1972; that Respondents Sears and Diesel violated Rule 632(a) and (b) of the Air Pollution Control Regulations on August 16, 1972; and that Respondents Sears and Diesel violated Rule 304 of R 71-16 on March 21, 1972.

We further find that Respondent Mario violated Rule 632(a) of the Air Pollution Control Regulations on August 16, 1972. Although it is manifest that the subject fireproofing material did fall from the Sears Tower on the enumerated dates, the evidence was not sufficient to show that said emissions resulted from Respondent Mario's spraying operation rather than Respondent Diesel's failure to thoroughly vacuum upon the completion of spraying each floor. It was the contractual duty of Respondent Diesel to enclose the floors of the Sears Tower before Respondent Mario conducted spraying operations and to vacuum the sprayed area upon completion of the spraying. Thus, while Respondent Mario is liable for spraying when the proper enclosure was not in place, it cannot be liable for emissions which occurred subsequent to the completion of said spraying operation.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that for the violations found herein:

1. Respondents Sears and Diesel shall each pay to the State of Illinois the sum of \$500.00 within 35 days from the date of this Order.
2. Respondent Mario shall pay to the State of Illinois the sum of \$250.00 within 35 days from the date of this Order.

Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 6th day of June, 1974 by a vote of 4-0.

Christan L. Moffett