

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
VTC, Inc.,) Docket No. EPCRA-5-2001-073
)
Respondent)

ORDER

This enforcement proceeding involves the Emergency Planning and Community Right-To-Know Act (“EPCRA”). 42 U.S.C. § 11001 *et seq.* The United States Environmental Protection Agency (“EPA”) has charged VTC, Inc. (“VTC”), with three counts of violating the reporting requirements of EPCRA Section 312(a). 42 U.S.C. § 11022(a). EPA moves to strike VTC’s proposed Exhibits a, b, c, d, and e, as well as to exclude witness Daniel Bane. Insofar as EPA seeks to strike Exhibits a, b, c, d, and e, the motion is *granted in part*; it is *denied* to the extent that EPA seeks to exclude witness Daniel Bane.

A. The Exhibits

In respondent’s prehearing exchange, VTC describes the challenged exhibits as follows: Exhibit a (“Engstrom Letter dated February 12, 2001 having to [do] with reported penalties in EPCRA matters during Fiscal 1997 to the 2001 time period”); Exhibit b (“Comparative Report on Civil and Criminal Penalties Assessed by U.S. EPA Region 5/Fiscal Years 1992-1999”); Exhibit c (“Fiscal Year 1999 Administrative and Judicial Penalties Sorted by Statute”); Exhibit d (“FY 98 Administrative and Judicial Penalties Sorted by Statute”); and Exhibit e (“Enforcement Action Database Fiscal Year 2001 - Emergency Planning and Community Right to Know”). Respondent acknowledges that these exhibits are cited “for the purpose of arguing that the penalty proposed in this case is ‘excessive and inconsistent with penalties sought and obtained in similar matters.’” Resp. at 1.

To the extent that these exhibits involve respondents other than VTC, enforcement matters outside the scope of the EPCRA statute at issue here, or settlements, EPA is correct in asserting that the exhibits are not relevant to this proceeding. The issue in this case is whether VTC violated Section 312(a) as alleged, and, if so, the appropriate penalty to be assessed on the basis of the facts established in this case. *See* Sections 325(b)(1)(C) & 325(c)(1), 42 U.S.C. §§ 11045(b)(1)(C) & 11045(c)(1). What has happened under other environmental statutes, whether to VTC or to any other respondent, is not relevant to this EPCRA case. Accordingly, proposed Exhibits a, b, c, d, and e are stricken insofar as they involve non-EPCRA matters, respondents other than VTC, or settlements.

B. The Witness

In its prehearing exchange, VTC identified Daniel Bane, respondent's Director of Finance, as a witness. VTC explained, "Mr. Bane will testify as to the financial performance of the Company from 1997 to present and discuss the sale of a portion of the Company to Lucent Technologies that occurred on March 17, 2000." EPA wants to exclude Bane as witness for the reason that, in its view, Bane's testimony is relevant only to a defense which respondent has not raised, namely, an "inability to pay" the proposed penalty.

EPA's objection to Bane's testimony on the ground that it is not relevant to this case is premature. At a minimum, VTC will be allowed the opportunity at hearing to show that the testimony of Bane properly addresses any penalty issue.

Carl C. Charneski
Administrative Law Judge

Issued: August 15, 2001
Washington, D.C.