

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:                     )  
  )  
Energy Gases, Inc.,                 ) Docket No. EPCRA-02-2000-4002  
  )  
Respondent                             )

ORDER ON MOTION FOR PARTIAL ACCELERATED DECISION AS TO LIABILITY

On September 27, 2000, the Environmental Protection Agency (“EPA”) filed a complaint against Energy Gases, Inc. (“Energy Gases”), alleging five violations of Sections 311 and 312 of the Emergency Planning and Community Right to Know Act (“EPCRA”) and the regulations promulgated thereunder. 42 U.S.C. §§ 11021 & 11022. The EPA alleges that Energy Gases failed to submit a Material Safety Data Sheet (“MSDS”) for propane to the three points of compliance: the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission for the State of New York (“SERC”) and the local fire department, in violation of EPCRA Section 311. The EPA also alleges that Energy Gases failed to submit Tier I or Tier II forms with the points of compliance for the calendar years 1996 through 1999, in violation of EPCRA Section 312. The EPA seeks a penalty of \$83,315.

On February 14, 2002, EPA filed a Motion for Partial Accelerated Decision arguing that the stipulations entered into the record on February 8, 2002, contain agreements as to all the factual predicates to liability for the violations alleged in the complaint. In that regard, the parties have stipulated to jurisdiction of the EPA. They have also stipulated to facts which constitute the basis of the violations. As to Count I, Respondent admits to not filing a MSDS for propane by March 31, 1997, with the LEPC, SERC or local fire department. As to Counts II through V, it admits to the presence of propane on the property in amounts greater than 200,000 lbs. for at least one day during the years 1996 through 1999, and further, to not filing Tier II forms with the LEPC, SERC and local fire department until July 1999.<sup>1</sup>

According to the Consolidated Rules of Procedure, the Presiding Officer “may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding ... if no genuine issue of material fact exists and the party is entitled to judgment as a matter of

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<sup>1</sup> Energy Gases also does not argue that it otherwise satisfied EPCRA Section 312 by filing a Tier I form. Indeed, respondent states, “in order to accommodate the EPA, Energy Gases’ counsel signed a Stipulation attached as Exhibit ‘A’ to the Declaration of the EPA’s counsel, which stipulated as to the various facts necessary to establish liability in this Complaint.” Mem. in Opp. at 2.

law.” 40 C.F.R. 22.20(a). EPA has satisfied this standard.

Despite admitting facts which establish liability, the Respondent nonetheless continues to raise equitable defenses which it suggests prevent the awarding of accelerated decision in this case. These equitable defenses are lack of notice and laches. Respondent, however, does not elaborate on how these defenses relate to the violations at issue, or whether they may be properly considered as to liability in the first place. *See Steeltech, Limited*, EPCRA Appeal No. 98-6 (Aug. 26, 1999), 1999 EPA App. Lexis 25, 24 (EPCRA is a strict liability statute).

In addition, the Respondent states that the purpose of the hearing has always been based on its contention that the proposed fine is excessive and disproportional to the facts and circumstances of the alleged violations. R’s Mem. in Opp. at 1. Therefore, while the Respondent has not shown that accelerated decision as to liability is improper in this instance, it is not foreclosed from raising at the hearing these equitable considerations in seeking a reduced penalty.

For the reasons mentioned above, EPA’s Motion for Accelerated Decision is granted as to liability only. Accordingly, Respondent is held to have violated Section 311 and Section 312 of EPCRA, as alleged in the complaint. A hearing will be held to determine the civil penalty to be assessed for the five violations found.

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Carl C. Charneski  
Administrative Law Judge

Date: April 12, 2002  
Washington, DC