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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Yerger Brothers, Inc.,) Docket No. EPCRA-III-123
)
Respondent)

ORDER GRANTING MOTION FOR PARTIAL
ACCELERATED DECISION

This matter arises under Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The United States Environmental Protection Agency ("EPA") has filed an administrative complaint charging Yerger Brothers, Inc. ("YBI"), with five counts of violating EPCRA for failing to timely submit toxic chemical release inventory forms ("Form Rs"). EPA now moves for accelerated decision on the issue of liability, requesting a finding that YBI violated EPCRA as to each count. EPA's motion for partial accelerated decision on the issue of liability is granted. The hearing scheduled in this case for January 17, 1996, will involve only the civil penalty to be assessed.

YBI owned and operated a furniture manufacturing operation in Pennsylvania when the events in this case occurred. This manufacturing operation constituted a "facility" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4). Answer at ¶¶ 4-5. An EPA inspection of YBI's facility on May 4, 1993, revealed that YBI "otherwise used" more than 10,000 pounds of Toulene in 1989, 1990, and 1991. Toulene is a "toxic chemical" as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65. Answer at ¶¶ 9, 11, & 35.

The EPA inspection of May 4, 1993, also revealed that YBI "otherwise used" more than 10,000 pounds of Methyl Ethyl Ketone ("MEK") in 1989 and 1990. Like Toulene, MEK is a "toxic chemical" as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65. Answer at ¶¶ 15, 17, & 29.

Following the EPA inspection, on May 28, 1993, YBI submitted Form Rs to the EPA EPCRA Reporting Center for both Toulene and MEK for the years 1989, 1990, and 1991, as referenced above. EPA Mem. in Supp. of Mot. (Attachment A). Notwithstanding this filing, EPA subsequently issued the present complaint citing YBI for five counts of violating Section 313 of EPCRA, 42 U.S.C. § 11023. In the complaint, EPA asserted that YBI's 1993 filing was untimely for the years 1989, 1990, and 1991.

EPCRA Section 313(a) requires the filing of a Form R for each toxic chemical listed under Section 313(c) that was manufactured, processed, "or otherwise used" in quantities exceeding the chemical's threshold quantity. 42 U.S.C. § 11023(a). Here, the threshold quantity for both the Toulene and MEK in each of the involved years was 10,000 pounds. Answer at ¶¶ 10, 16, 23, 29 & 35. As noted, YBI admits that the threshold quantity for both chemicals was exceeded as alleged by EPA in each of the five counts.

In addition, Section 313(b) of EPCRA states that these toxic chemical release form provisions apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39. 42 U.S.C. § 11023(b). Again, YBI admits that these prerequisites have been satisfied. Answer at ¶¶ 6 & 7.

Despite the admissions in its Answer, YBI opposes EPA's motion for accelerated decision, generally stating that material issues of fact exist. By way of argument, however, Respondent refers only to its Answer and to its Prehearing Exchange.¹ EPA on the other hand submits that YBI has admitted to all the facts necessary to establish a Section 313 EPCRA violation as alleged in each of the five counts. Mem. in Supp. of Mot. at 5-7. EPA is correct.

As relevant to this case, Section 313 provides that Form Rs are to be filed annually and "shall contain data reflecting releases during the preceding calendar year". Emphasis added. Section 313 further provides that the Form Rs are to be filed with the Administrator for EPA, as well as the designated state official. YBI's filing of the Form Rs on May 28, 1993, clearly is out of time for the years 1989, 1990, and 1991. Indeed, Respondent does not even contend that the Form Rs were filed within the time prescribed by statute.

YBI submits that it did not violate EPCRA because it did not believe that it was required to file the Toulene and MEK chemical release forms for the cited years. In that regard, Respondent states that it reached that understanding based upon "conversations with state environmental representatives, local county and municipal representatives and representatives from the Center for Hazardous Materials Research in Pittsburgh, Pennsylvania." YBI also bases its defense upon what it characterizes as an overall good faith compliance with

¹ YBI states that it "is not in a financial position to respond more fully" to EPA's motion. Response at 2. Along the same lines, YBI also briefly references its "poor financial condition" and the fact that it continues to raise an "ability to pay" defense.

environmental reporting regulations. Answer at 2, 4, 5, 7, 9, and Attachments A, B & C.

The defenses raised by YBI, however, are not relevant to the question of Section 313 liability. For example, as argued by EPA, Attachments A and B involve YBI's compliance with Section 312 of EPCRA, not Section 313. More importantly, Attachments A and B are filings submitted by YBI to the Pennsylvania Emergency Response Commission. Section 313 requires that Form Rs be filed with the Administrator of EPA in addition to the appropriate state official. In this case, no Form Rs were filed with the Administrator other than YBI's untimely filing of May 28, 1993. Accordingly, to the extent that Respondent is arguing that Attachments A and B constitute compliance with the Form R filing requirements at issue here, that argument is rejected.

In addition, to the extent that YBI is arguing that Attachments A and B establish its good faith compliance with environmental reporting requirements in general, that argument likewise has no bearing on the present Section 313 liability issue.

Finally, YBI's reliance upon advice received from the Center For Hazardous Materials Research and reliance upon conversations with unnamed state and local officials also has no bearing on the Section 313 liability question.² These matters, like the reliance upon Attachments A, B, and C, are more appropriately addressed in the civil penalty phase of this case.

In sum, the undisputed facts in this case establish the Section 313 violations alleged in EPA's complaint. Accordingly, the motion for accelerated decision filed by EPA on the issue of liability is granted as to each of the five counts. The hearing scheduled in this case, therefore, will involve only the civil penalty to be assessed for these five Section 313 EPCRA violations.

Carl C. Charneski

Carl C. Charneski
Administrative Law Judge

Issued: December 7, 1995
Washington, D.C.

² In its Answer, YBI provides no details regarding the company's communications with state and local officials. Respondent, however, references such communications in Proposed Exhibit 4 of its Prehearing Exchange.

In the Matter of Yeger Brothers, Inc., Respondent
Docket No. EPCRA-III-123

Certificate of Service

I certify that the foregoing **Order Granting Motion for Partial Accelerated Decision**, dated December 7, 1995, was mailed in the following manner to the addressees listed below.

Original by Regular Mail to:

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Regional Hearing Clerk
U.S. EPA
841 Chestnut Building
Philadelphia, PA 19107

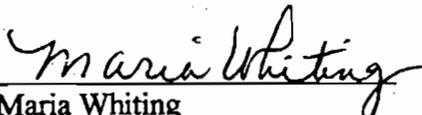
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Maria Whiting
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Dated: December 7, 1995