UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
ROGERS CORPORATION,	)	DOCKET NO. TSCA-I-94-1079
	)	
	)	
RESPONDENT	)	

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OR FOR A STAY

On December 4, 1997, the Respondent filed a Motion for Reconsideration seeking reconsideration of my Order entered on November 13, 1997, or a stay of that Order. The Order of November 13, 1997, denied the Respondent's Motion for Accelerated Decision and granted the Complainant's Motion For Partial Accelerated Decision as to Liability, finding the Respondent liable for violation of the Polychlorinated Biphenyl (PCB) disposal regulations alleged in the Complaint in this matter. In the Motion for Reconsideration, the Respondent also seeks dismissal of the action brought against it by the United States Environmental Protection Agency ("EPA" or Complainant"). Alternatively, the Respondent requests that the November 13, 1997, Order be stayed pending the issuance by the EPA of a final rule with respect to the meaning of the "disposal site" exemption under the PCB disposal regulations and a determination whether that rule applies retroactively. The Motion for Reconsideration or for a Stay is opposed by the EPA. The Motion for Reconsideration or for a Stay is denied as follows.

On Motion for Reconsideration, the Respondent submits that the undersigned, in denying the Respondent's Motion for Accelerated Decision and in granting the EPA's Motion for Partial Accelerated Decision as to Liability, failed to address certain facts, found other facts not in the record, and erroneously reversed the burdens of proof. Specifically, the Respondent argues that the undersigned ignored the plain evidence in the record regarding the absence of PCBs in machine oil at any time after 1972, the undersigned relied on evidence that was not stipulated to regarding increased production levels, and the undersigned erroneously reversed the burden of proof by placing the ultimate burden on

the Respondent rather than on the EPA to explain the presence of PCBs in some berm oil samples in 1993. The Respondent also maintains that as the proposed PCB rule may have a retroactive effective date for purposes of penalty assessments, the November 13, 1997, Order should be stayed pending the issuance of a final rule by the EPA.

The EPA submits that the Order entered by the undersigned on November 13, 1997, is correct and that there is no basis for granting a stay in this matter as requested. Specifically, the EPA maintains that the Presiding Officer correctly applied controlling law and correctly found, on undisputed evidence, that the Respondent was liable for the improper disposal of PCBs as alleged in the Complaint. The EPA contends that the Presiding Officer was entitled to consider all relevant evidence in the record, including the contemporaneous admissions of the Respondent's corporate officer as to the likely source of the PCBs, which was made in May 1994 before this litigation began. The EPA asserts that the Respondent has not satisfied the test for reconsideration as the Respondent has offered no new facts, cited no change in controlling law, and demonstrated no error of fact or law. With regard to the Respondent's request for a stay of the November 13, 1997, Order, the EPA argues that to delay the proceedings will not serve the public interest or the interests of justice.

As a preliminary matter, I note that the governing Rules of Practice do not provide for motions for reconsideration of any order issued by an Administrative Law Judge, including a partial accelerated decision. I further observe that a partial accelerated decision as to liability is an interlocutory order. The Rules of Practice do provide for motions to reopen a hearing to take further evidence after the issuance of an initial decision. 40 C.F.R. § 22.28. Also, the Rules of Practice do provide for reconsideration of final orders issued by the Environmental Appeals Board ("EAB"). 40 C.F.R. § 22.32.

In adjudicating motions for reconsideration before the Administrator, generally consideration has been limited to intervening changes in the controlling law, new evidence, or the need to correct a clear error or to prevent manifest injustice. See Southern Timber Products, Inc., 3 EAD 880, 888-890 (JO, 1992). As noted by the Chief Judicial Officer,

A motion for reconsideration should not be regarded as an opportunity to reargue the case in a more convincing fashion. It should only be used to bring to the attention of this office clearly erroneous factual or legal conclusions. Reconsideration is normally appropriate only when this office has obviously overlooked or misapprehended the law or facts or the position of one of the parties.

Southern Timber Products, supra, at 889 (quoting In re City of Detroit, TSCA Appeal No. 89-5, at 2 (CJO, Feb. 20, 1991) (Order)).

Therefore, assuming that a motion for reconsideration from a partial accelerated decision may be brought properly before an Administrative Law Judge, such motion would be subject to the same standard of review as that of the EAB. In the matter before me, I am not persuaded that the Respondent's Motion for Reconsideration meets that standard. First, there is no newly discovered evidence and there has been no intervening change in the law.

With regard to the Respondent's assertion that I relied on evidence pertaining to increased production levels at the Respondent's Facility which was not stipulated to by the parties, I point out that this evidentiary material in question was directly referenced in Stipulated Attachment 6, which is a copy of a letter from William J. Whiteley, Manager Environmental Engineering, Rogers Corporation, to Janet Kwiatkowski, Environmental Analyst 1, of the Connecticut Department of Environmental Protection, dated May 26, 1994. On Motion for Reconsideration, the Respondent does not dispute this factual finding, nor has it proffered any evidence supporting a contradictory position. The Respondent fails to point to evidentiary material in the file that contradicts this factual finding. Moreover, my finding of the Respondent's liability for the violation cited in the Complaint is not dependent on this evidentiary material or its related finding of fact. Thus, I find no clear error in my discussion of this evidentiary material and its incorporation in Finding of Fact 8 in the Order of November 13, 1997.

The remaining issues raised by the Respondent as the grounds for its motion for reconsideration regarding my interpretation of the facts and the applicable law are based on differences of opinion or reiterations of its previous arguments. These arguments were sufficiently addressed in the somewhat lengthy Order of November 13, 1997, and will not be revisited in this Order. The Respondent has not carried its burden of showing error of fact or law, nor has the Respondent met the standard of review by demonstrating manifest injustice.

Finally, I address the Respondent's request for a stay of the November 13, 1997, Order pending the issuance of a final rule with respect to the meaning of the "disposal site" exemption under the PCB disposal regulations and a determination whether that final rule applies retroactively. I agree with the EPA's position on this issue that a stay would be contrary to the public interest or the interest of justice. In this regard, I note that the Complaint in this matter was filed more than three years ago and the violation for which I have found the Respondent liable occurred more than four years ago. As asserted by the EPA, the Respondent's arguments are speculative at best and there is no reason to believe that these speculative arguments will be resolved in its favor within a reasonable period of time.

Accordingly, the Respondent's Motion for Reconsideration or for a Stay is Denied.

Original signed by undersigned

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Barbara A. Gunning

Administrative Law Judge

Dated: 12-18-97

Washington, DC