

11/19/92  
EPA  
1992-1-1 3:52

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
ERINCRAFT, INC.,	)	Docket No. TSCA-V-C-92-90
	)	
Respondent	)	

Toxic Substances Control Act, 15 U.S.C. §§ 2614-2671. Respondent found in violation of section 15 of TSCA, 15 U.S.C. § 2614, and liable for civil penalties under section 16 of TSCA, 15 U.S.C. § 2615, regarding the following: (1) failure to develop and maintain polychlorinated biphenyl (PCB) records; (2) failure to develop and maintain complete annual records on the disposition of PCB items; (3) failure to conduct trimonthly inspections and develop maintenance histories; (4) failure to register PCB transformers with appropriate fire response personnel; and (4) failure to properly mark PCB enclosures.

APPEARANCES:

For Complainant: Nicholas Nedeau, Esquire  
Assistant Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region V  
77 West Jackson Boulevard  
Chicago, Illinois 60604

For Respondent: Mr. Sam Verma  
President  
Erincraft  
402 Truesdale Avenue  
LaPorte, Indiana 46350

ACCELERATED DECISION AND ORDER

Introduction

The Toxic Substances Control Act (TSCA) was enacted by Congress on October 11, 1976 to address, inter alia, the use and disposition of PCB items. Among other requirements, TSCA and pertinent regulations promulgated pursuant thereunder govern the use of PCB transformers, PCB disposal and marking requirements, annual recordkeeping and inspection requirements.

The instant proceeding was commenced under section 16(a) of TSCA by issuance of a Complaint and Notice of Opportunity for Hearing on September 26, 1990. The complaint was based on information obtained during a January 11, 1990 inspection by a representative of the U.S. Environmental Protection Agency (sometimes EPA or complainant) at respondent's LaPorte, Indiana, facility. The complaint charges respondent with failure to develop and maintain annual records (Counts I, II, and III); failure to conduct trimonthly inspections and develop maintenance histories (Counts IV, V, VI, and VII); failure to register PCB transformers with fire response personnel (Count VIII); and failure to properly mark the means of access to a PCB transformer (Count IX). The penalty sought in the complaint is \$98,000.

Respondent filed an answer on October 8, 1990 admitting the violations factually, asking that the penalties sought be canceled, and requesting an informal conference. Complainant filed a motion for accelerated decision on November 18, 1991, but respondent served no

response. By such inaction, respondent is deemed to have waived any objection to the motion. 40 C.F.R. § 22.16(b). Standing alone, this is sufficient to establish liability and assess the penalty sought.

On January 16, 1992, the motion for accelerated decision was granted with regard to both liability and penalty in the amount of \$1,000. The order directed complainant to submit a draft of the accelerated decision for review, possible revision and signature. Respondent did not move for reconsideration. In the interest of completeness and clarity, Findings and Conclusions in this proceeding are set out below.

#### FINDINGS OF FACT

Respondent is an Indiana corporation which owned and operated a facility at 402 Truesdale Avenue, LaPorte, Indiana. It was engaged in the manufacture of office furniture at the facility. Three PCB transformers, stored for reuse, were located on respondent's premises.

Prior to the January 11, 1990 inspection, respondent did not attempt to comply with the regulations governing PCB transformers stored for reuse. Specifically, respondent failed to develop and maintain PCB records for calendar years 1986, 1987, and 1988 in violation of 40 C.F.R. § 761.180(a). It also failed to conduct trimonthly inspections and develop a maintenance history for the four quarters of 1989 in violation of 40 C.F.R. §§ 761.30(a)(i)(ix) and (xii). Additionally, respondent failed to register its PCB transformers with the appropriate fire response personnel in violation of 40 C.F.R. § 761.30(a)(i)(vi) and failed to mark the vault door to

the enclosure for its three PCB transformers in violation of 40 C.F.R. § 761.40(j).

DISCUSSION AND CONCLUSIONS OF LAW

Whether or not the subject matter of the instant case lends itself to a motion for accelerated decision depends on the interpretation of the Consolidated Rules of Practice, 40 C.F.R. § 22.20 and applicable law. The rule provides, in pertinent part, as follows:

(a) General. The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or respondent, as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding . . . .

(b) Effect. (1) If an accelerated decision . . . is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

Motions for accelerated decisions are comparable to motions for summary judgment; minor factual issues do not necessarily bar a recovery. A disputed issue must involve a material fact to preclude the granting of an accelerated decision.<sup>1</sup> In the instant case, there exists no issue or dispute as to those "material" facts.

---

<sup>1</sup> In the Matter of SED Incorporated, Docket No. TSCA-V-C-417 at 3 and 4.

THE VIOLATIONS

Counts I, II, and III charge respondent with failure to maintain annual records for calendar years 1986, 1987, or 1988. In its answer, respondent does not deny that it failed to develop and maintain annual records. Instead, respondent argues that after EPA's inspection on January 11, 1990, it began to develop and maintain annual records.

Counts IV, V, VI, and VII allege that respondent failed to conduct the required visual inspections, and to keep the maintenance histories of the three PCB transformers during each of the four quarters of 1989. Respondent explains on page one of its answer that after EPA's inspection on January 11, 1990 it began to visually inspect and keep the required maintenance histories for its three PCB transformers. However, beginning May 11, 1981, a visual inspection of each PCB transformer in use or stored for reuse is to be performed at least once every three months. Commencing August 10, 1981, records of transformer inspections and maintenance histories shall be developed and maintained at least three years after disposing of the PCB transformers. 40 C.F.R. § 761.30.

Count VIII alleges that respondent failed to register its PCB transformers with the appropriate fire response personnel. The pertinent regulations require that as of December 1, 1985, all PCB transformers must be registered with fire response personnel with primary jurisdiction. Respondent answered, claiming that the "Fire Department people routinely inspected our plant and they probably are

aware of these items. However, we are sending them a letter informing them of these items." Answer at 2. By not properly registering with the appropriate fire response personnel, respondent violated 40 C.F.R. § 761.30.

Count IX alleges that respondent failed to properly mark the means of access to its PCB transformers. The regulations require that as of December 1, 1985, the vault door or means of access to a PCB transformer must be marked with the M<sub>1</sub> mark illustrated in 40 C.F.R. § 761.45(a), Figure 1. Although the respondent notes on page two of its answer that it has now marked the PCB enclosure "WARNING-PCB," it does not claim this enclosure was ever properly marked. Respondent violated 40 C.F.R. § 761.40.

There exists no genuine issue of any material fact concerning the violations alleged in the complaint. Complainant is entitled to an accelerated decision pursuant to 40 C.F.R. § 22.20.

#### THE CIVIL PENALTY

Complainant proposes in the memorandum supporting its motion for accelerated decision that a civil penalty in the amount of \$98,000 be assessed against respondent if a violation of TSCA is found. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. The penalty demand was calculated based upon the nature, circumstances, extent and gravity of the violations alleged, as well as the history of violations and degree of culpability, and such other factors as justice may require.

In the instant case, the penalties were derived by applying the factors listed above to the allegations in the complaint. The reasoning for each assessment is explained in detail in the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act" 45 Fed. Reg. 59770, 59777 (September 10, 1980). The EPA Guidelines, however, permit the penalty sought to be adjusted downward depending upon the respondent's ability to continue in business. During the course of the proceeding, the complainant learned that the respondent had suffered financial losses which resulted in the cessation of its business. Furthermore, complainant was provided with loan agreements, tax returns, and foreclosure agreements, (confirmed by affidavit executed by respondent's President Sheonarayan Verma) which established the respondent's inability to pay. In light of these financial considerations, complainant now seeks to reduce the penalty sought from \$98,000 to that of \$1,000.

IT IS ORDERED<sup>2</sup> that:

1. A civil penalty in the amount of \$1,000 be assessed against respondent, Erincraft, Inc.
2. Payment of the full amount of the civil penalty assessed shall be made within sixty days of the service date of the final order by submitting a certified or cashier's check payable to Treasurer, United States of America, and mailed to:

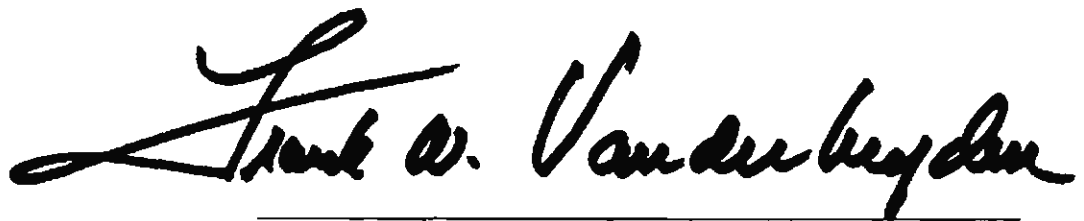
---

<sup>2</sup> Unless appealed in accordance with 40 C.F.R. § 22.30, or unless the Administrator elects to review same sua sponte as provided therein, this decision shall become the final order of the Administrator in accordance with 40 C.F.R. § 22.27(c).

EPA - Region 5  
(Regional Hearing Clerk)  
P.O. Box 70753  
Chicago, Illinois 60673

3. A transmittal letter identifying the subject case and the EPA docket number, plus respondent's name and address must accompany the check.

4. Failure upon part of respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 4 C.F.R. §§ 102.13(b)(c)(e).



---

Frank W. Vanderheyden  
Administrative Law Judge

Dated: \_\_\_\_\_

*April 5, 1992*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

RECEIVED  
EPA HEADQUARTERS  
HEARING CLERK

1992 APR 13 PM 3 21

IN THE MATTER OF:  
ERINCRAFT, INC.

RESPONDENT

) DOCKET NO. TSCA-V-C-92-90  
)  
)  
)  
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE ACCELERATED DECISION SIGNED BY THE ADMINISTRATIVE LAW JUDGE FRANK W. VANDERHEYDEN WAS SENT APRIL 6, 1992, CERTIFIED MAIL TO THE FOLLOWING PARTIES:

Sam Verma, President  
Erincraft  
402 Truesdale Avenue  
LaPorte, Indiana 46350

Nicholas Nedeau, Esquire  
Regional Counsel Office  
U.S. EPA, Region V  
77 West Jackson  
Chicago, Illinois  
(HAND DELIVERED)

Ms. Bessie Hammel  
U.S. Environmental Protection Agency  
Office of Administrative Law Judge (A-110)  
401 M Street S.W.  
Washington D.C. 20460  
(CERTIFICATE ONLY)

BEVERELY SHORTY

BEVERELY SHORTY  
LEGAL TECHNICIAN