

**IN THE MATTER OF B&B WRECKING AND
EXCAVATING, INC.**

TSCA Appeal No. 92-2

FINAL ORDER

Decided April 23, 1992

Syllabus

U.S. EPA Region V filed a complaint alleging that Respondent B & B Wrecking and Excavating, Inc. violated TSCA Section 15, 15 U.S.C. §2614, and the PCB disposal and marking regulations at 40 CFR Part 761. On January 23, 1992, the Presiding Officer issued a Default Order against B & B because B & B had not complied with a prehearing discovery order. B & B appealed the Default Order to the Environmental Appeals Board. Under the Consolidated Rules of Practice, B & B's deadline for filing an appeal was February 25, 1992, but B & B did not file its appeal until March 12, 1992.

Held: The appeal is dismissed as untimely.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Timothy J. Dowling (Acting).

Per Curiam:

This action arises under Section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C §2615. U.S. EPA Region V filed a complaint alleging that Respondent B & B Wrecking and Excavating, Inc. (B & B) violated TSCA Section 15, 15 U.S.C. §2614, and the Polychlorinated Biphenyl (PCB) disposal and marking regulations at 40 CFR Part 761. The complaint proposed a total penalty of \$29,000. On January 23, 1992, Administrative Law Judge Thomas B. Yost (Presiding Officer) issued a Default Order against B & B because B & B had not complied with a prehearing discovery order. The Default Order imposed a penalty of \$29,000. B & B then filed a notice of appeal dated March 12, 1992. The Region filed a response brief, arguing in part that the appeal must be dismissed because it is untimely. We agree.

A default order is an "initial decision." 40 CFR §22.17(b). An appeal of an initial decision must be filed with the Agency within 20 days after the initial decision has been served upon the parties. 40 CFR §22.30(a). Region V's Regional Hearing Clerk received the Default Order from the Presiding Officer on January 30, 1992, and served it on the parties by certified mail the next day, January 31, 1992. Accordingly, B & B's deadline for filing an appeal was February 25, 1992 (adding five days to the appeal period because the Default Order was served upon the parties by mail, *see* 40 CFR §22.07(c)). B & B did not file its appeal until March 12, 1992, 16 days after the period for filing an appeal had expired.

The time requirements for appeals must be followed unless special circumstances warrant relaxation. *Cypress Aviation, Inc.*, RCRA (3008) Appeal 91-6, at 2 (CJO, January 8, 1992) (dismissing appeal that was filed 24 days after appeal period had expired). B & B has failed to identify any such special circumstances in this case, and has in fact given no explanation at all for missing the filing deadline. Its appeal is therefore dismissed as untimely.

B & B is hereby ordered to pay the full amount assessed in the Default Order (\$29,000) within sixty (60) days after receipt of this order unless otherwise agreed by the parties. Payment shall be made by forwarding a cashier's check or certified check, payable to the Treasurer, United States of America to:

U.S. EPA—Region V,
Regional Hearing Clerk,
P. O. Box 70753,
Chicago, IL 60673

So ordered.