

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:)
)
)
TRA Industries, Inc.)
a/k/a/ Huntwood Industries, Inc.) EPCRA Appeal No. 96-2
)
Docket No. EPCRA 1093-11-05-325)
)

ORDER DISMISSING APPEAL

Respondent, TRA Industries, a/k/a Huntwood Industries, Inc. ("Huntwood"), appeals from an Initial Decision issued by Administrative Law Judge Carl C. Charneski ("Presiding Officer"). The Initial Decision dated October 11, 1996, assesses an administrative penalty of \$19,797 for violation of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 *et seq.*, also known as the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA").

The complaint in this matter was filed on November 29, 1993, by the chief of the Pesticides and Toxic Substances Branch, U.S. EPA Region X. The complaint charged Huntwood with violating EPCRA § 313(a), 42 U.S.C. § 11023(a), by failing to submit Toxic Chemical Release Inventory Forms ("Form Rs") on six occasions between 1990 and 1992, and sought civil penalties totaling \$26,745. On February 5, 1996, the Presiding Officer found Huntwood liable for all but one of the alleged violations in an

accelerated decision dated February 5, 1996. See Order Granting Motion for Accelerated Decision in Part. On October 11, 1996, the Presiding Officer issued an Initial Decision assessing penalties for all six counts alleged in the complaint, although in reduced amounts than sought by the Region.¹ The Initial Decision was served on counsel for Huntwood by certified mail, return receipt requested, on October 15, 1996. The decision stated that if Huntwood wished to file an appeal it must do so in accordance with the procedures set forth at 40 C.F.R. § 22.30. Initial Decision at 9 n.5.

Section 22.30 states, in part, that any party may appeal an adverse ruling "by filing a notice of appeal and an accompanying appellate brief *with the Environmental Appeals Board * * ** within twenty (20) days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a)(1) (emphasis added). In addition "[w]here a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." 40 C.F.R. § 22.07(c). As noted above, the Initial Decision in this case was served on the parties by certified mail on October 15, 1996. Therefore, the

¹At the hearing, Huntwood admitted liability to the sixth count in the Region's complaint.

deadline for filing an appeal with the Board was November 12, 1996.²

Despite the explicit filing instructions in 40 C.F.R. § 22.30 (referenced in the Initial Decision), Huntwood filed its notice of appeal with the Regional Hearing Clerk rather than the Environmental Appeals Board on or about November 8, 1996. On Tuesday November 12, 1996, upon returning to work after the Veteran's Day holiday, the Regional Hearing Clerk discussed the matter with counsel for Huntwood and informed him that under the applicable regulations the appeal must be filed with the Environmental Appeals Board. Declaration of Mary Shillcut, Regional Hearing Clerk, U.S. EPA Region X at 2 (November 21, 1996). The clerk agreed to forward Huntwood's appeal to the Board, but also informed Huntwood's counsel that in order to perfect the appeal Huntwood itself would have to file the appropriate documents with the Board.³ *Id.* The Board did not receive the forwarded appeal documents until November 14, 1996.

The facts set forth above establish that Huntwood's appeal is untimely. Despite the Presiding Officer's explicit reference

²Because the twenty-fifth day fell on a Saturday (November 9th) and the following Monday (November 11th) was Veteran's Day, the deadline for filing the appeal was extended to the following Tuesday. See 40 C.F.R. § 22.07(a) ("When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.").

³As of this date, Huntwood has not filed an appeal with the Board.

in his Initial Decision to the filing requirements set forth in 40 C.F.R. § 22.30, which clearly state that appeals must be filed with the Environmental Appeals Board, counsel for Huntwood erroneously mailed its notice of appeal to the Regional Hearing Clerk. Although the Regional Hearing Clerk forwarded the appeal to the Board, the appeal was not received by the Clerk of the Board until two days after the filing deadline. As this Board has previously stated:

[W]e do not think that it is asking too much of a potential appellant to consult the rules * * * to ensure an adequate and full understanding of the process for perfecting an appeal. There, in Section 22.30, under the bold-face heading, "Appeal from or review of initial decision," the appellant will find the [filing and the] 20-day requirement in the clearest of terms.

In re Production Plated Plastics, Inc., 5 E.A.D. 101, 103-04 (EAB 1994) (footnote omitted). Thus, as there are no special circumstances, warranting a relaxation of the deadline for filing an appeal,⁴ the appeal is hereby dismissed as untimely. See *In re Apex Microtechnology, Inc.*, EPCRA Appeal No. 93-2 (EAB, July 8, 1994) (Order Dismissing Appeal) (dismissing appeal as untimely where the appeal was erroneously filed with the Regional Hearing

⁴See *In re B&B Wrecking and Excavating, Inc.*, 4 E.A.D. 16, 17 (EAB 1992) ("The time requirements for appeals must be followed unless special circumstances warrant relaxation."). Huntwood has failed to identify any such special circumstances in this case, and has in fact given no explanation as to why it filed its appeal with the Regional Hearing Clerk rather than the Board.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Dismissing Appeal in the matter of TRA Industries, Inc., a/k/a/ Huntwood Industries, Inc., EPCRA Appeal No. 96-2, were sent to the following persons in the manner indicated:

By Certified Mail
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Dated: 7/25/97

/s/
Mildred T. Johnson
Secretary