



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

Decision Published At Website - <http://www.epa.gov/aljhomep/orders.htm>

IN THE MATTER OF )  
)  
LAWRENCE COUNTY AGRICULTURAL ) DOCKET NO. TSCA-5-98-90  
SOCIETY, )  
)  
)  
RESPONDENT )

**ORDER GRANTING COMPLAINANT'S MOTION FOR ASSESSMENT  
OF CIVIL PENALTY AGAINST RESPONDENT**

**DEFAULT ORDER AND INITIAL DECISION**

Toxic Substances Control Act ("TSCA"): Pursuant to 40 C.F.R. § 22.17(c) and in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), the \$7,000 civil administrative penalty proposed in the Complaint and Complainant's Motion for Assessment of Civil Penalty Against Respondent is assessed against Respondent, Lawrence County Agricultural Society, the defaulting party, for its four violations of the Polychlorinated Biphenyl regulations at 40 C.F.R. Part 761 and Section 15 of TSCA, 15 U.S.C. § 2614.

Issued: October 26, 2000

Barbara A. Gunning  
Administrative Law Judge

Appearances:

For Respondent: Randall L. Lambert, Esq.  
Lambert, McWorter & Bowler  
215 South Fourth Street  
P.O. Box 725  
Ironton, OH 45638

For Complainant: Jeffery, M. Trevino, Esq.  
Associate Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency

77 West Jackson Boulevard  
Chicago, IL 60604-3590

### PROCEDURAL HISTORY

This civil administrative penalty proceeding arises under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 21.1-22.32.<sup>1/</sup>

The United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing with the Regional Hearing Clerk a Complaint against Lawrence County Agricultural Society ("Respondent") on September 25, 1998. The Complaint charged Respondent with four violations of Section 15 of TSCA, 15 U.S.C. § 2614, and the Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions regulations ("PCB regulations") at 40 C.F.R. Part 761 promulgated thereunder for failing to comply with certain recordkeeping and use requirements of the PCB regulations. In the Complaint, the EPA proposed a civil administrative penalty of \$7,000 for these violations.

Specifically, Count I of the Complaint charged that Respondent violated 40 C.F.R. § 761.65(b)(1) and Section 15 of TSCA when Respondent's General Electric Spirakore transformer, a PCB Article and Item as defined at 40 C.F.R. § 761.3, was stored for disposal in a storage area without adequate roof, walls, continuous curbing of a minimum of six inches of curb height, and floor and curbing constructed from continuous smooth and impervious materials. Count II charged that Respondent violated 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA when Respondent failed to mark its General Electric Spirakore transformer with the date that it was placed in storage. Count III charged that Respondent violated 40 C.F.R. § 761.65(a) and Section 15 of TSCA when Respondent failed to dispose

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<sup>1/</sup> The Rules of Practice were revised effective August 23, 1999. Proceedings commenced before August 23, 1999, are subject to the revised Rules of Practice unless to do so would result in substantial injustice. The instant proceeding is subject to the revised Rules of Practice as there is no indication that doing so results in substantial injustice.

of the General Electric Spirakore transformer within one year from the date when the transformer was first placed in storage for disposal. Count IV charged that Respondent violated 40 C.F.R. § 761.205(a)(2) and Section 15 of TSCA when Respondent failed to notify the EPA of Respondent's PCB waste activities.

Pursuant to Complainant's Motion for Default Judgment Against Respondent ("Motion for Default"), a Default Judgment was issued against Respondent on September 14, 2000.<sup>2/</sup> Respondent was found to be in default pursuant to Section 22.17(a) of the Rules of Practice, 40 C.F.R. § 22.17(a), for its failure to comply with the Administrative Law Judge's Prehearing Order without good cause. Such default by Respondent constituted an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). The factual allegations contained in the Complaint, deemed to be admitted, established that Respondent violated the PCB regulations at 40 C.F.R. Part 761 and Section 15 of TSCA as charged in each Count of the Complaint. Accordingly, a Default Judgment was entered against Respondent. Also, Respondent's Motion for Extension of Time to File Prehearing Exchange was denied in the Default Judgment.

The Default Judgment entered on September 14, 2000, is incorporated herein by reference.

Complainant filed a Motion for Assessment of Civil Penalty Against Respondent ("Motion for Penalty") with the Regional Hearing Clerk on September 29, 2000. In support of this motion, the EPA submitted an affidavit from Anthony Silvasi, an environmental scientist for the Pesticides and Toxics Enforcement Section of the Pesticides and Toxics Branch of the Waste Pesticides and Toxics Division for Region 5 of the EPA. Complainant's motion requests the assessment of a civil administrative penalty in the amount of \$7,000 against Respondent.

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<sup>2/</sup> Complainant's Motion for Default filed on August 7, 2000, moved for a finding of default but did not request the assessment of a penalty against Respondent. Noting that such limited pleading is not viewed favorably in this administrative forum without prompt action to resolve all parts of the proceeding, the undersigned Administrative Law Judge directed Complainant, in the event that the instant matter had not been resolved through the filing of a fully executed Consent Agreement and Final Order, to file a motion for the assessment of a penalty by October 20, 2000, to avoid the dismissal of this matter with prejudice.

Although Respondent in its untimely Motion for Extension of Time to File Prehearing Exchange and Memorandum Contra to Complainant's Motion for Default Against Respondent dated September 7, 2000, raises the issue of its ability to pay the proposed penalty, Respondent has not responded to Complainant's subsequent Motion for Penalty. Respondent's Motion for Extension of Time to File its Prehearing Exchange was denied in the September 14, 2000, Default Judgment. Nevertheless, Respondent filed a prehearing report dated September 21, 2000, which addresses its argument concerning its ability to pay the proposed penalty.

For the reasons discussed below, Complainant's Motion for Penalty will be granted and the proposed penalty of \$7,000 will be assessed against Respondent.

#### **FINDINGS OF FACT**

1. The Findings of Fact set forth in the Default Judgment issued on September 14, 2000, are incorporated herein by reference.

2. Respondent's Motion for Extension of Time to File Prehearing Exchange and Memorandum Contra to Complainant's Motion for Default Against Respondent and its Prehearing Report were untimely filed.

3. A penalty can be assessed against Respondent under Section 16 of TSCA for Respondent's violations of Section 15 of TSCA and the PCB regulations. The Polychlorinated Biphenyls (PCB) Penalty Policy ("PCB Penalty Policy") (April 9, 1990) is applicable to Respondent's violations of Section 15 of TSCA and the PCB rules.

4. Complainant proposes that a civil administrative penalty in the amount of \$7,000 be assessed against Respondent. This proposed penalty amount was determined on the basis of the penalty assessment factors set forth in Section 16(a)(2)(B) of TSCA and the PCB Penalty Policy.

5. Respondent's General Electric Spirakore transformer contained PCBs in a concentration of 88 parts per million ("ppm"). The EPA states that there were 30 gallons of PCB oil in the transformer.

6. Respondent's violations are "non-disposal" violations under the PCB Penalty Policy.

7. Under the PCB Penalty Policy, Respondent's violation as charged in Count I of the Complaint is of minor extent and its circumstances are high range, level 2 (major storage violation). This violation is assigned a \$3,000 penalty under the Gravity Based Penalty Matrix ("Matrix") in the PCB Penalty Policy. PCB Penalty Policy at 9.

8. Respondent's violation as charged in Count II of the Complaint is of minor extent and its circumstances are medium range, level 4 (minor storage violation). This violation is assigned a \$1,000 penalty under the Matrix. PCB Penalty Policy at 9.

9. Respondent's violation as charged in Count III of the Complaint is of minor extent and its circumstances are medium range, level 4 (minor storage violation). This violation is assigned a \$1,000 penalty under the Matrix. PCB Penalty Policy at 9.

10. Respondent's violation as charged in Count IV of the Complaint is of minor extent and its circumstances are high range, level 1 (major manifesting violation). This violation is assigned a \$5,000 penalty under the Matrix. PCB Penalty Policy at 9.

11. In accordance with the PCB Penalty Policy, the gravity based penalty for the violations charged in each of the four Counts in the Complaint is reduced thirty (30) percent based on the 88 ppm concentration of PCBs in the oil in Respondent's transformer. The total proposed gravity based penalty for the four violations is \$7,000.

12. The proposed penalty of \$7,000 is less than four (4) percent of Respondent's gross income for each of the fiscal years 1998 and 1999.

13. Respondent has not shown that payment of the proposed penalty of \$7,000 will cause it severe financial distress or that payment of the penalty will preclude Respondent from continuing to do business.

14. No adjustments of the gravity based penalty are warranted on the basis of culpability, history of such violations, ability to pay, or ability to continue in business, or other matters as justice may require.

#### **DISCUSSION**

In the Default Judgment entered on September 14, 2000, Respondent was found to be in default and liable for each of the four violations of Section 15 of TSCA and the PCB regulations charged in the Complaint. The issue before me now is whether Respondent, the defaulting party, should be assessed a civil administrative penalty in the amount of \$7,000 for these four violations as requested by Complainant in the Complaint and its Motion for Penalty. Although the Administrative Law Judge is accorded some discretion in determining the appropriate penalty in the context of default under Section 22.17(c) of the Rules of Practice, such discretion is limited to instances where the proposed relief is clearly inconsistent with the record of proceeding or the Act.

Section 22.17(c) of the Rules of Practice, 40 C.F.R. § 22.17(a), concerning the proposed relief upon a finding of default states, in pertinent part:

When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

40 C.F.R. § 22.17(c).

In order to determine whether the proposed penalty is clearly inconsistent with the "Act," the governing provisions of TSCA, which is the Act providing authority for this proceeding, must be considered. The assessment of a civil administrative penalty for a violation of the PCB regulations at 40 C.F.R. Part 761 and Section 15 of TSCA is governed by Section 16(a)(2) of TSCA. Section 16(a)(2)(B) of TSCA provides that in determining the amount of a civil penalty for a violation of Section 15 of TSCA:

[T]he Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the

degree of culpability, and such other matters as justice may require.

15 U.S.C. § 2615.

In addition, the Rules of Practice at Section 22.27(b), 40 C.F.R. § 22.27(b), require the Administrative Law Judge to "consider any civil penalty guidelines issued under the Act" in determining the amount of the penalty to be assessed. The EPA issued the Polychlorinated Biphenyls (PCB) Penalty Policy ("PCB Penalty Policy") on April 9, 1990, to provide guidance for the determination of penalties for violations of the PCB regulations. Thus, the PCB Penalty Policy must also be considered in determining the civil administrative penalty in the instant matter.

The PCB Penalty Policy establishes a two-step procedure, derived from Section 16(a)(2)(B) of TSCA, for calculating penalties for violations of the PCB regulations. PCB Penalty Policy at 1. The first step of the penalty determination process is the calculation of the gravity based penalty. *Id.* The second step of this process is the adjustment of the gravity based penalty on the basis of any applicable penalty factors. *Id.*

The determination of the gravity based penalty is based on the nature of the violation, the extent of potential or actual harm from a given violation, and the circumstances of the violation. *Id.* The PCB Penalty Policy sets forth a "Gravity Based Penalty Matrix" ("Matrix"). The Matrix assigns dollar values to various combinations of circumstances and extent categories.

In order to assess the various gradations of the extent and circumstances of the violation of the PCB regulations under the Matrix, a determination first must be made as to whether the violation falls into the category of a non-disposal violation or a disposal violation. *Id.* at 3. Non-disposal violations include unauthorized use, failure to mark the access to PCB transformers, failure to keep records, failure to provide adequate curbing at PCB storage areas, manufacturing PCBs without an exemption, and similar actions where the violator possesses PCBs that have not escaped into the environment. *Id.* Disposal violations are violations in which PCBs are disposed of in a manner not permitted by the PCB regulations. *Id.* In the instant matter, Respondent's four violations of the PCB regulations are non-disposal violations.

The determination of the gravity based penalty for a non-disposal violation then proceeds to an assessment of the "extent" factor. The "extent" of any particular violation is dependent upon the quantity of PCB containing material involved, adjusted for

concentration, as the quantity of PCBs indicates the degree and likelihood of harm from the activity violating the PCB regulations. Under the Matrix, the extent factor is divided into three categories: minor, significant, and major.

The second variable for determining the gravity based penalty under the Matrix is the circumstance of the violation. The "circumstance" of the violation reflects its probability of causing harm to human health or the environment. Using the Matrix categorization, the "circumstances" of the violation are ranked as high, medium, or low range. *Id.* at 9. Each of these ranges of circumstances has two different levels: level 1 and level 2. *Id.*

Once the gravity based penalty amount is determined, adjustments can be made on the basis of the remaining statutory penalty factors. Adjustments can be made to the gravity based penalty on the basis of the violator's culpability, history of such violations, ability to pay, ability to continue in business, and other factors as justice may require.

In the instant matter, Anthony Silvasi, an environmental scientist for the Pesticides and Toxics Enforcement Section of the Pesticides and Toxics Branch of the Waste Pesticides and Toxics Division for Region 5 of the EPA, calculated Complainant's proposed penalty. Mr. Silvasi describes the basis for the proposed penalty amount in an affidavit that was submitted in support of Complainant's Motion for Penalty.

Complainant proposes that Respondent be assessed \$2,100 for its violation of failing to store its General Electric transformer in a proper storage facility (Count I). For purposes of the Matrix, Complainant categorizes this violation as minor in extent and its circumstances as high range, level 2 (major storage violation). According to the Matrix, such a violation warrants a gravity based penalty of \$3,000. Complainant then adjusted this penalty amount in accordance with the PCB Penalty Policy which provides for a thirty (30) percent reduction in the penalty for violations involving PCB material in concentrations ranging from 50 to 499 parts per million.

Complainant proposes that Respondent be assessed \$700 for its violation of failing to mark its transformer with the date it was first placed in storage for disposal (Count II). Complainant categorizes this violation as minor in extent and its circumstances as medium range, level 4 (minor storage violation). According to the Matrix, this category of violation warrants a gravity based penalty of \$1,000. Complainant reduced this penalty amount thirty



(30) percent as it did for the violation described in Count 1 because of the amount of PCB material involved in the violation.

Complainant proposes that Respondent be assessed \$700 for its violation of failing to dispose of its transformer within one year from the date when the transformer was placed in storage for disposal (Count III). Complainant categorizes this violation as minor in extent and its circumstances as medium range, level 4 (minor storage violation). According to the Matrix, this category of violation warrants a gravity based penalty of \$1,000. Complainant reduced the penalty amount by 30 percent because of the amount of PCB material involved in the violation.

Complainant proposes that Respondent be assessed \$3,500 for its violation of failing to notify the EPA of its PCB waste activities (Count IV). Complainant categorizes this violation as minor in extent and its circumstances as high range, level 1 (major manifesting violation). The Matrix assigns such violation a penalty amount of \$5,000. Again, Complainant reduced the penalty amount by thirty (30) percent based on the PCB concentration level.

Complainant has thus proposed a total gravity based penalty in the amount of \$7,000. Complainant has concluded that there is no basis for adjusting this penalty after considering Respondent's culpability, history of prior violations, ability to pay, ability to continue in business, or any other matter as justice may require, including Respondent's attitude or voluntary disclosure, cost to the Government, or the economic benefit of noncompliance to Respondent.

Complainant's proposed penalty of \$7,000, as described by Mr. Silvasi, was calculated in accordance with the penalty criteria set forth in Section 16 (a)(2)(B) of TSCA and the guidelines in the PCB Penalty Policy. I find that the proposed penalty is consistent with the statutory penalty factors set forth in Section 16(a)(2)(B) of TSCA, the PCB Penalty Policy, and the record of proceeding. Respondent challenges the appropriateness of the penalty only with respect to the issue of its ability to pay.

Respondent first raises the issue of its ability to pay the proposed penalty in its untimely Motion for Extension of Time to File Prehearing Exchange, which was filed along with its Memorandum Contra to Complainant's Motion for Default. The argument of inability to pay was not included in Respondent's Answer to the Complaint. The Motion for Extension of Time to File Prehearing Exchange was denied in the Default Judgment issued on September 14, 2000. Nevertheless, Respondent proffered a "prehearing report" after the Default Judgment was entered against Respondent.

In this prehearing report, Respondent asserts that the proposed penalty should not be assessed because "[a]ny amount of fine that is paid by the Agricultural Society will, in affect [sic], come out of the operating budget of the Agricultural Society and thus cause there to be a reduction in services to either the youth or the community as a whole regarding the variety of services provided by the Agricultural Society." <sup>3/</sup> Respondent's Prehearing Report at 3. In support of its assertion of inability to pay, Respondent has submitted the annual financial reports of the Agricultural Society for the fiscal years 1998 and 1999 and a listing of expenses with receipts for the monies expended by Respondent "in correction of the problem that did arise." *Id.*

As previously discussed, Respondent has been found to be in default in this matter. A penalty was not assessed at the time of the entry of the Default Judgment because Complainant, in its Motion for Default, did not request the assessment of a penalty against Respondent, nor did it state the legal and factual grounds for the penalty as required under Section 22.17(b) of the Rules of Practice, 40 C.F.R. § 22.17(b). Although Complainant did not indicate any reason for not requesting the assessment of a penalty as part of its Motion for Default, it was found that this limited form of pleading was permitted under Sections 22.17(b) and (c) of the Rules of Practice. However, I pointed out this administrative forum's unfavorable view of such limited pleading without prompt resolution of the issue of penalty. In response, Complainant has timely filed the instant Motion for Penalty.

Respondent's belated argument that there should be no penalty or a reduction of the proposed penalty on account of its inability to pay is rejected on three grounds. First, Respondent's argument of its inability to pay and the filing of documents in support of this argument are untimely. See 40 C.F.R. § 22.5(c)(5). As discussed above, Respondent did not raise the issue until its untimely response to Complainant's Motion for Default and it did not proffer documentation in support of its argument until after the Default Judgment was entered and its Motion for Extension of Time to File Prehearing Exchange was denied.

Second, Respondent has not responded to Complainant's Motion for Penalty. A party's failure to respond to a motion within the designated period waives any objection to the granting of the

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<sup>3/</sup> In its Prehearing Report dated September 21, 2000, Respondent requests a hearing in this matter. Respondent's Request for Hearing is Denied because Respondent has been found to be in default.

motion under Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b).

Third, even if the arguments and financial statements now proffered by Respondent were considered, it is not shown that there should be no penalty or that the penalty should be reduced on the basis of Respondent's alleged inability to pay or to continue to do business. Respondent has not shown that its organization is in severe financial distress. See *In re Ray Birnbaum Scrap Yard*, TSCA Appeal No. 92-5, 5 E.A.D. 120 (EAB, March 7, 1994); see also *In the Matter of Kay Dee Veterinary, Division of Kay Dee Feed Company*, FIFRA Appeal No. 86-1, 2 E.A.D. 646 (CJO, Oct. 27, 1988). The financial statements proffered by Respondent reflect that it operated at a loss of \$16,378.84 for fiscal year 1999.<sup>4/</sup> I note, however, that this loss included a \$23,000 capital outlay for buildings which was a four-fold increase over 1998 and that its ending cash balance for fiscal year 1999 was \$29,732.80. Such reduction in Respondent's operating budget cannot reasonably be characterized as constituting severe financial distress. The financial statements proffered by Respondent do not support its conclusory allegation that any penalty paid will reduce services to either the youth or community as a whole.

Finally, I note that the penalty of \$7,000 is less than four (4) percent of Respondent's gross income for each of the fiscal years 1998 and 1999. The PCB Penalty Policy, as one of its three methods for determining a business violator's ability to pay, utilizes a formula capping the penalty at four (4) percent of the business' average gross annual sales for the penalty year and prior three years. Guidance for Proposed Penalties and Settlements Under the PCB Penalty Policy at 1-2. Although Respondent is a non-profit organization, it operates in a manner similar to a business with gross income, and the four percent formula is considered appropriate for application. The proffered financial statements cover only two years but the solicitation of additional financial information from Respondent concerning its gross sales for the years 1997 and 1996 after it has been found to be in default is unnecessary and would be inappropriate. Further, a respondent has the burden of coming forward with "specific evidence to show that despite its sales volume or apparent solvency it cannot pay any penalty" to successfully establish an allegation of "inability to pay." *New Waterbury, Ltd.*, TSCA Appeal No. 93-2, 5 E.A.D. 529, 543 (EAB, Oct. 20, 1994). Respondent has failed to do so in the instant matter.

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<sup>4/</sup> According to Respondent's annual financial reports, its fiscal year ends November 30.

Respondent also requests consideration of its expenditures for "correction of the problem that did arise." I point out that there is insufficient information in the file before me to make any determination concerning a penalty adjustment based on Respondent's expenditures for remediation of its PCB disposal "problem" and that development of the record in an attempt to support this allegation would be inappropriate in view of the Default Judgment. Generally, a reduction of the penalty is given only when the penalty and cleanup cost are excessive, and such facts are not shown to exist in this matter.

In conclusion, I find that the proposed penalty in the amount of \$7,000 for Respondent's four violations of the PCB regulations and Section 15 of TSCA is authorized and that the penalty is both reasonable and appropriate under Section 16(a) of TSCA and the PCB Penalty Policy Policy. Moreover, the proposed penalty is not clearly inconsistent with the record of proceeding or TSCA. See 40 C.F.R. § 22.17(c). Accordingly, the proposed penalty of \$7,000 is assessed against Respondent.

#### CONCLUSIONS OF LAW

1. The Conclusions of Law set forth in the Default Judgment issued on September 14, 2000, are incorporated herein by reference. See 40 C.F.R. § 21.17(b), (c).

2. Respondent has not shown its inability to pay the proposed penalty of \$7,000. See 15 U.S.C. § 2615(a)(2)(B).

3. The \$7,000 civil administrative penalty is authorized and the penalty is both appropriate and reasonable under Section 16(a) of TSCA and the PCB Penalty Policy. The proposed penalty is not clearly inconsistent with the record of proceeding or TSCA. 15 U.S.C. § 2615(a); 40 C.F. R. § 22.17(c).

#### ORDER

1. Respondent, Lawrence County Agricultural Society, is assessed a civil administrative penalty of \$7,000.

2. Payment of the full amount of this civil penalty shall be made within thirty (30) days of the service date of the final order by submitting a cashier's check or certified check in the amount of \$7,000, payable to the "Treasurer, United States of America," and mailed to:



Attn: Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, IL 60673

3. A transmittal letter identifying the subject case and EPA docket number (TSCA-5-98-90), as well as Respondent's name and address, must accompany the check.

4. If Respondent fails to pay the penalty within the prescribed statutory period after the entry of the Order, interest on the civil penalty may be assessed. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

This Default Order constitutes an Initial Decision as provided in Section 22.17(c) of the Rules of Practice, 40 C.F.R. § 22.17(c). Pursuant to Sections 22.27(c) and 22.30 of the Rules of Practice, 40 C.F.R. §§ 22.27(c) and 22.30, this Initial Decision shall become the Final Order of the Agency, unless an appeal is filed with the Environmental Appeals Board within thirty (30) days after the service of this Order, or the Environmental Appeals Board elects, *sua sponte*, to review this decision.

Original signed by undersigned

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Barbara A. Gunning  
Administrative Law Judge

Dated: 10-26-00  
Washington, DC