UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Jeffrey W. Pendergrass, d/b/a	)	Docket No. FIFRA-05-2005-0025
TRW Enterprises, and	)	
TRW Enterprises, Inc.	)	
	)	
RESPONDENTS	)	
	)	

DEFAULT ORDER AND INITIAL DECISION

This proceeding was commenced on April 12, 2005 with the filing of an Administrative Complaint by the Complainant, the United States Environmental Protection Agency, Region 5 (EPA), against Respondents Jeffrey W. Pendergrass, d/b/a TRW Enterprises, and TRW Enterprises, Inc. The Complaint charges the Respondents in two counts with violating of Section 7(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c)(1) and its implementing regulations codified as 40 C.F.R. § 167.85, by failing to *timely* submit to EPA their "Annual Pesticide Production Report" for the 2002 and 2003 reporting years. The Complaint proposes a total penalty of $6,600 for the violations alleged.

On or about May 6, 2005, the Respondents, *pro se*, filed an informal letter response to the Complaint (Response).[1] In their narrative Response, Respondents affirmatively asserted that

[1] Although the cover letter accompanying the Complaint indicated that Respondents were provided with a copy of the Consolidated Rules of Practice along with the Complaint, their Response did not meet the requirements of an Answer as provided by Rule 22.15 in that it did not clearly respond to each factual allegation of the Complaint. Nevertheless, it was accepted and acted upon as a courtesy to Respondents extended due to their *pro se* status. Furthermore, the informal letter response to the Complaint is on letterhead bearing solely the identification "Jeff Pendergrass," the individual named Respondent, and is signed solely by Mr. Pendergrass without any indication of any corporate position or authority. However, in the letter Mr. Pendergrass states that in October 2003, the corporate Respondent, TRW Enterprises, "ceased to be a legal entity" and further that "I would request that me and my former company TRW Enterprises be released from any further complaints filed by the US EPA." Thus, it is presumed that the Response was submitted on behalf of both Respondents.

they had fulfilled their duty to file their Annual Pesticide Production Reports, but did not specifically respond to the allegation that the reports had not been *timely* filed. Respondents attached to their narrative Response copies of what Respondents represented to be their Annual Pesticide Production Reports for reporting years 2002, 2003 and 2004. The reports are undated, except for the 2004 report, not at issue here, indicating it was signed by Mr. Pendergrass on December 22, 2004 and "Sent 1-6-05."

Although Respondents' Response to the Complaint did not specifically request a hearing on the matter, on or about May 12, 2005, the Regional Hearing Clerk referred the case to the Office of Administrative Law Judges (OALJ) for the purposes of assigning a presiding judge for hearing.

Thereafter, the parties were offered an opportunity to participate in OALJ's Alternative Dispute Resolution process. The Complainant timely accepted the offer, however Respondents failed to respond to the offer, and, as a result, the case was referred to the litigation docket of the undersigned for hearing.

On June 3, 2005, this Tribunal issued a Prehearing Order requiring the Complainant to file its Initial Prehearing Exchange on or before July 22, 2005; Respondents to file their Initial Prehearing Exchange on or before August 12, 2005; and permitting Complainant to file a rebuttal prehearing exchange on or before August 24, 2005.[2] The Prehearing Order further stated:

> **Respondents are hereby notified that their failure to either comply with the prehearing exchange requirements set forth herein or to state that they are electing only to conduct cross-examination of Complainant's witnesses can result in the entry of a default judgment against them.** (Emphasis in original).

In accordance with the Prehearing Order, on July 21, 2005, Complainant filed its Initial Prehearing Exchange, identifying three potential witnesses and 23 exhibits as well as providing other information responsive to the Prehearing Order. Respondents did not file their Prehearing Exchange or otherwise respond to the Prehearing Order by the August 12, 2005 deadline set.

On August 23, 2005, Complainant filed its "Rebuttal Prehearing Exchange," in which it noted that, to date, Respondents had not filed their Prehearing Exchange in accordance with the Prehearing Order.

[2] Prior to engaging in the Prehearing Exchange process, the Prehearing Order required the parties to engage in a settlement conference, and for Complainant to file a report regarding such conference with this Tribunal. On June 17, 2005, Complainant filed such Status Report in which it stated that it "believes that settlement of this matter is in the best interest of the parties" and that it had left three telephone messages for Respondents in an effort to arrange the requisite settlement conference, but that Respondents had not responded to those calls or otherwise communicated with it regarding such conference.

In response to the Respondents' failure to file their prehearing exchange, or otherwise respond to the Prehearing Order, on August 25, 2005, the undersigned issued an Order to Show Cause, requiring that on or before September 5, 2005, Respondents show good cause why they failed to submit their Prehearing Exchange in a timely manner and "why a Default should not be entered against them."[3]

To date, Respondents have not responded to the Show Cause Order nor the Prehearing Exchange Order issued by this Tribunal.

Section 22.17(a) of the Consolidated Rules of Practice (Rules) provides that:

> A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; [or] upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer . . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of respondent's right to contest such factual allegations. . . .

Section 22.17(c) of the Rules provides that:

> 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 motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. . . .

The Prehearing Order required Respondents to respond to it on or before August 12, 2005 or suffer default. The Order to Show Cause required a response to it by September 5, 2005 if Respondents wished to avoid default. To date, Respondents have not responded to either of those Orders. Rule 22.17 allows the Presiding Officer to issue a default order *sua sponte*, assessing a

[3] On August 23, 2005, two days prior to issuing the Show Cause Order, the undersigned's Office contacted Respondents regarding the status of their Prehearing Exchange as an additional courtesy extended in light of Respondents' *pro se* status. During that conversation, Respondent Jeffrey Pendergrass acknowledged that the Respondents had not filed their Prehearing Exchange and suggested a lack of interest in doing so. Nevertheless, he was advised of the importance of filing such an exchange, the significance of failing to do so in an expedited manner, and the procedures for filing out of time.

penalty, for a respondent's failure to file a prehearing exchange. Thus, the Respondents are hereby found to be in default. In accordance with Rule 22.17, this constitutes an admission of the facts alleged in the Complaint and grounds for assessment of the penalty of $6,600 proposed therein.

The following Findings of Fact and Conclusions of Law are based upon the Complaint, Respondent's Response thereto, Complainant's Prehearing Exchange, and other documents of record in the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Complainant is, by lawful delegation, the Branch Chief, Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5.

2. Respondents are Jeffrey W. Pendergrass, d/b/a TRW Enterprises, and TRW Enterprises, Inc. Beginning April 16, 1997 until June 5, 2003, Respondent Jeffrey W. Pendergrass owned and operated a business under the registered trade name of "TRW Enterprises." On June 5, 2003, Jeffrey W. Pendergrass incorporated his business in the State of Ohio as "TRW Enterprises, Inc."

3. On or about September 3, 1997, Jeffrey Pendergrass, as "owner" of TRW Enterprises, filed with EPA an Application for Registration of Pesticide - Producing Establishment. In response, on or about September 16, 1997, EPA issued establishment number 71119-OH-001 to TRW Enterprises. TRW Enterprises held this active establishment number until its cancellation was requested by Respondents in September 2004.

4. Under Section 7 of FIFRA, 7 U.S.C. § 136e(c)(1), and its implementing regulation, 40 C.F.R. § 167.85, pesticide producing establishments holding active establishment numbers are required to submit an annual "Pesticides Report for Pesticide-Producing and Device Producing Establishments" (EPA Form 3540-16) (hereinafter Pesticide Production Report) to EPA for the preceding calendar year by March 1 even if the producer has produced no pesticidal product for that reporting year.

5. During calendar years 2002 and 2003, Respondents' establishment was registered as an active pesticide producing establishment. As a result, Respondents were required to submit their annual Pesticide Production Report for calendar year 2002 by March 1, 2003 and their report for calendar year 2003 by March 1, 2004.

6. Respondents did not file their Pesticide Production Reports for calendar years 2002 and 2003 by the applicable March deadlines.

7. Subsequent to the latter filing deadline, on August 23, 2004, EPA sent TRW Enterprises a "Notice of Intent to File Civil Administrative Complaint" based upon the failure to file the annual Pesticide Production Reports. Thereafter, on September 8, 2004, Respondents submitted their annual Pesticide Production Reports along with a request to EPA to cancel their active establishment number.

8. Respondents' failure to timely file their Report for calendar year 2002 by March 1, 2003 constitutes a violation of Section 7 of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. §167.85 as alleged in Count 1 of the Administrative Complaint.

9. Respondents' failure to timely file their Report for calendar year 2003 by March 1, 2004 constitutes a violation of Section 7 of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. §167.85 as alleged in Count 2 of the Administrative Complaint.

DETERMINATION OF CIVIL PENALTY AMOUNT

10. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default "[t]he relief proposed in the complaint . . . shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c). Section 22.28(b) of the Consolidated Rules provides that civil penalty guidelines issued under the Act shall be considered in determining the penalty. 40 C.F.R. § 22.28(b).

11. Section § 14(a)(1) of FIFRA (7 U.S.C. § 136*l*(a)(1)), authorizes the assessment of a civil penalty by the Administrator of "not more than $5,000 for each offense"[4] and provides, at section 14(a)(4), that "[i]n determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty." 7 U.S.C. § 136*l*(a)(4).

12. On February 10, 1986, EPA issued civil penalty guidelines for determining proposed penalties for FIFRA violations entitled "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(c) Pesticide Producing

[4] The Civil Monetary Penalty Inflation Adjustment Rule increased the maximum penalty allowed under 7 U.S.C. 136*l*(a)(1) to $5,500 for violations occurring between January 30, 1997 and March 15, 2004. *See*, Civil Monetary Penalty Inflation Adjustment Rule, 62 Fed. Reg. 35,038 (Jun. 27, 1997) (codified at 40 C.F.R. Part 19 (1998)).

Establishment Reporting Requirement" commonly referred to as the 1986 FIFRA § 7(c) ERP. The 1986 FIFRA § 7(c) ERP was amended, in part, by an Enforcement Response Policy issued by EPA on July 2, 1990 (1990 ERP). [5]

13. Relying upon the FIFRA ERPs, Complainant has proposed a civil penalty of $3,300 for each of the two violations of FIFRA committed by Respondents. In reaching its proposed penalty, Complainant noted that the 1986 FIFRA § 7(c) ERP characterizes annual Pesticide Production Reports filed more than 30 days after the March 1 deadline as "Notably Late Reporting" where a civil penalty rather than a warning is the appropriate enforcement response. Further, under the 1990 ERP, Appendix A (at A-5), a Notably Late Reporting violation under FIFRA Section 7 is considered a "Level 2" violation. Moreover, under the 1990 ERP Respondents were deemed to be "category III" violators, having a size of business ranging from $0-300,000 in gross revenues. Taken together and applying these two factors to the matrix for penalty calculations with regard to FIFRA section 14(a)(1) violations as provided for in the 1990 ERP (along with the inflation adjustment factor) suggested an appropriate penalty of $3,300 per violation, for a total of $6,600. EPA noted that it calculated no "gravity adjustment" (*i.e*. taking into account the gravity of harm or misconduct) for the proposed penalty under Appendix B of the 1990 ERP.[6]

14. The EPA has the burdens of presentation and persuasion that the relief sought is appropriate. 40 C.F.R. § 22.24(a). Upon default by the respondent, the EPA must make a prima facie showing of the appropriateness of the penalty. 63 Fed. Reg. 9464, 9470 (Proposed Rule, February 25, 1998)("supporting the relief in a default case should be less burdensome on the Agency than it would be if the respondent chose to contest the case . . . . The Agency would still be required to make a prima facie case in regard to the appropriateness of the proposed relief . . . ."). In a default situation, this showing is generally made with the information submitted in EPA's Prehearing Exchange, which

[5] The 1990 ERP states at page 1 that "Except for the civil penalty assessment matrix, the February 10, 1986 FIFRA Section 7(c) Enforcement Response Policy remains in effect, and is to be used to determine the appropriate enforcement response for section 7(c) violations. The matrix setting forth the penalties in this policy should be used instead of the matrix in the February 10, 1986 policy." The 1990 ERP, however, contains *two* matrices, one for FIFRA section 14(a)(1) violations and one for FIFRA section 14(a)(2) violations, and the ERP does not specifically state which is to be used for FIFRA section 7(c) violations. Complainant apparently used the matrix for the section 14(a)(1) violations in this case which is appropriate in that section 14(a)(1) applies to registrants and distributors and section 14(a)(2) applies to private pesticide applicators and others not listed.

[6] Appendix B of the 1990 ERP lists "Gravity Adjustment Criteria" in consideration of which the penalty provided for a violation in a matrix can be either decreased up to 50% (or EPA may instead take no action or issue a Notice of Warning) or increased up to 30% (with a ceiling of the statutory maximum). However, page 22 and a footnote in Appendix B indicate that gravity adjustments are inapplicable to reporting violations.

includes the exhibits it proposes to present at any hearing,

15. Having found that Respondents violated FIFRA in two instances, I have determined that $6,600 penalty proposed in the Complaint is the *not* the appropriate civil penalty to be assessed against Respondents in that such penalty seems to me to be clearly inconsistent with the record of the proceeding and clearly inconsistent with the Act. In reaching this determination, I have taken into account size of the business, effect on Respondents' ability to continue in business, and gravity of the violation, which are all of the factors identified by FIFRA section 14(a)(4). I have also considered the above referenced guidelines, namely the 1986 FIFRA § 7(c) ERP and 1990 ERP.[7]

16. In particular, I find the following factors warrant reduction, but not elimination, of the proposed penalty to be assessed:

    a. The record indicates that for both calendar years at issue (2002 and 2003), Respondents reported "zero" production, repacking, relabeling, sale, or distribution of pesticides and anticipated no such activity in the following years (2003 and 2004).

    b. Similarly, the record shows that for two prior years (2000 and 2001), Respondents similarly reported no pesticide distribution or production activity.

    c. Respondents filed a Notice of Supplemental Distribution of a Registered Pesticide Product, dated April 18, 2002, indicating Respondents' intent to market Micro-Gone WD as a distributor product.

    d. Certain limited tax records (IRS Schedule Cs) submitted by Respondents reflected that, during 2002 and 2003, Respondents' TRW Enterprises business (presumably from other nonpesticidal production/sales activities), generated only modest gross receipts and resulted in comparatively significant annual net *losses* in excess of $12,000 and $15,000, respectively. There is no evidence in the record as to the individual Respondent's overall economic status or ability to pay.

    e. Respondents reported that TRW Enterprises had ceased being a "legal entity" in October 2003.

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[7] I make such reduction based upon the record of this case as it currently exists, relying primarily on the documents submitted by the Complainant as part of its Prehearing Exchange. It is noted that the Prehearing Order issued in this case gave Respondent the opportunity to submit a statement explaining why the proposed penalty should be reduced or eliminated. *See,* Prehearing Order dated April 16, 2004. As indicated above, to date Respondent has chosen not to respond to that Order. Perhaps had Respondents been responsive to the Orders submitted by this Tribunal a further reduction in the penalty might have been supported .

f. The 1986 FIFRA § 7(c) ERP provides (at 10) that Notably Late Reporting and nonreporting receive "the same penalty assessment."

g. The 1986 FIFRA § 7(c) ERP notes (at 1) that "EPA considers failure to comply with [the annual Pesticide Production Report] reporting requirement [to be] a serious violation. Violations of the section 7 reporting requirement impacts the Agency's risk assessment capability as well as its ability to effectively target inspections. It is also important to note that this is the major mechanism by which EPA can determine what pesticides an establishment is producing."

h. The completion of the one-page annual Pesticide Production Report form as provided by EPA, for a pesticide producer with no production or other activity would consume an insignificant amount of time.[8] Moreover, the 1986 FIFRA §7(c) ERP provides (at 3) that extensions of time may be requested and granted.

i. The Pesticide Production Report form instructions explicitly remind establishments that the form is required to be submitted even if zero production has occurred and is anticipated to occur the following year and further advises establishments that they may inactivate their establishment registration (and thereby eliminate further reporting requirements) by merely clearly requesting cancellation on the annual Pesticide Production Report.

j. Respondents have a history of late compliance. On April 17, 1998, EPA issued a Notice of Warning to TRW Enterprises regarding its failure to timely submit its Pesticide Production Report for calendar year 1997 by the March 1, 1998 deadline. Similarly, on April 5, 2002, EPA issued a Notice of Warning to TRW Enterprises regarding its failure to submit its annual Pesticides Production Report for calendar year 2001. (The record indicates that Respondents promptly responded to such Notice and submitted the missing 2001 report on April 8, 2002.) The record does not indicate that Respondents incurred any monetary penalty as a result of these prior violations.

k. The 1986 FIFRA Section 7(c) ERP provides (at 11) that "The FIFRA Civil Penalty Policy specifies that the penalty is to be adjusted by applying appropriate adjustment factors. Several adjustment factors are particularly relevant to

[8] The instructions for the Pesticide Production Report states that the average time to complete the form is "one hour and 26 minutes . . . including reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing review and collection of information." This estimate obviously takes into account the completion of forms where production has occurred and in the cases of nonproduction, such as this, the time to complete the form would likely be significantly less.

violations of this reporting requirement. Adjustment factors are outlined in the General FIFRA Civil Penalty Policy . . . ." The 1990 ERP includes (at Appendix B) several categories of gravity adjustments, including toxicity of the pesticide, harm to human health, environmental harm, compliance history and culpability. The 1990 ERP (at 22 and Appendix B footnotes) instructs that "the gravity of recordkeeping and reporting violations are already considered in the dollar amounts presented in the FIFRA civil penalty matrices," that such penalties "should be assessed at the matrix value," and that the gravity adjustment criteria "should not be used for recordkeeping and reporting violations." Adhering to this instruction in effect equates the gravity of *any* reporting violation with a violation which causes actual serious or widespread harm to human health or to the environment, and which was committed knowingly and willingly. *See*, 1990 ERP at 21-22, Table 3 and Appendix B. The gravity of such an egregious violation does not equate with the reporting violations in the circumstances of this case, particularly where there is no showing that Respondent produced the pesticides in the relevant years. *See, Lerro Products, Inc.*, Docket No. FIFRA-03-2002-0241, 2003 EPA ALJ LEXIS 189 (ALJ, Oct. 8, 2003)(order on default assessing $1000 penalty for filing annual pesticide report notably late, where respondent had a prior reporting violation, and report showed no production of the pesticide); *Katzon Brothers v. EPA*, 839 F.2d 1396 (10th Cir. 1988)(default order assessing EPA's proposed penalty of $4200 for failure to file annual pesticide production report remanded where record indicated, *inter alia*, there was no production of pesticide and therefore no harm to human health or the environment); *compare, Tremont Supply, Inc.*, EPA Docket No. FIFRA-09-99-0011, 2000 EPA ALJ LEXIS 46 (ALJ, June 30, 2000)(assessing $4400 penalty for filing annual pesticide report notably late where respondent did produce pesticides); *Ridgeway Industries, Inc*, EPA Docket No. FIFRA-3-99-0011, 2000 EPA ALJ LEXIS 50 (ALJ, June 8, 2000)(assessing penalty of $5500); *Four Star Feed and Chemical*, EPA Docket No. FIFRA-06-2003-0318, 2004 EPA ALJ LEXIS 130 (ALJ, July 21, 2004)(assessing $2000 penalty). If the gravity adjustment factors in the 1990 ERP were applied to the penalty in this case, the "Gravity of Harm" value analogized as harm to the regulatory program (*e.g.*, risk assessment and inspection targeting) from late reporting of a nonproducing establishment would be 1, and as to the "Gravity of Misconduct," the compliance history would be zero,9 and culpability would likely be 2, resulting in probably a 50% reduction in the matrix value penalty for the two counts, or a total penalty of $3300.

l. The 1986 FIFRA § 7(c) ERP provides (at 11) that: "When a nonproducing establishment fails to report, EPA will issue a civil complaint in accordance with GBP Matrix C. If the producer requests termination of his establishment

9 The compliance history is increased for "prior violations" which include actions resulting in final order, consent agreement and final order, penalty or criminal conviction, and which does not include a notice of warning. 1990 ERP Appendix B note 4.

registration within 20 calendar days after the civil complaint has been issued, the civil penalty may be reduced to zero [at the discretion of EPA]."

m. Prior to the filing of the Complaint, on or about September 8, 2004, in response to a EPA Notice of Intent to File Civil Administrative Complaint dated August 24, 2004, Respondents submitted to EPA their annual Pesticide Production Reports for 2002 and 2003 (as well as 2004) along with certain financial information, and specifically requested cancellation of its "EPA number" *i.e*, its active establishment registration as a pesticide producer.

n. The 1986 FIFRA § 7(c) ERP provides (at 6) that in cases such as Notably Late Reporting, *i.e.* filing an annual Pesticide Production Report more than 30 days after the due date, "[t]he civil complaint should be issued within 75 days [there]after. . ." In this case, the Agency filed the Complaint on April 12, 2005, more than two years after the filing deadline of March 1, 2003 for 2002 report and a year after the March 1, 2004 deadline for the 2003 report.

17. In consideration of all of the foregoing and the complete record in this case, taking into account the statutory factors to be considered in assessing penalties under FIFRA Section 14(a)(4), 7 U.S.C. § 136*l* and the 1986 FIFRA § 7(c) ERP and 1990 ERP, I find the appropriate civil penalty to be assessed against Respondents, jointly and severally, for the two violations found herein, to be **$1,000.00**.

ORDER

1. For failing to comply with this Tribunal's Prehearing Order and Order to Show Cause, as enumerated above, Respondents are hereby found in **DEFAULT.**

2. Respondents Jeffrey W. Pendergrass, d/b/a TRW Enterprises, and TRW Enterprises, Inc., are hereby jointly and severally assessed a civil administrative penalty in the amount of $ **1,000.00**

3. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a certified or cashier's check in the amount of $1,000, payable to "Treasurer, United States of America," and mailed to:

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

4. A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.5. If Respondents fail to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. *See*, 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

5. Pursuant to 40 C.F.R. §22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

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Susan L. Biro
Chief Administrative Law Judge

Dated: September 19, 2005
Washington, D.C.