UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	**)**	
	)	
THE DOW CHEMICAL COMPANY,	**)**	**Docket No. EPCRA-09-99-0030**
	)	**FIFRA-09-99-025**
	)	
Respondent	**)**	

DEFAULT ORDER

This proceeding was commenced on September 27, 1999 with the filing of a Complaint by the Environmental Protection Agency, Region 9 (EPA), against The Dow Chemical Company (Respondent). The Complainant charged the Respondent with three violations of Section 12(a)(2)(L) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), for submitting reports under Section 7 of FIFRA without required information, and nine violations of Section 313 of the Emergency Community Right-To-Know Act of 1986 (EPCRA), for failure to accurately report amounts of toxic chemicals Respondent manufactured, processed or otherwise used in calendar years 1994 and 1995. Complainant proposed a total penalty of $115,500 for the alleged violations.

On October 29, 1999 Respondent filed an Answer to the Complaint, denying the alleged violations, requested a hearing, and setting forth affirmative defenses/mitigation factors. Subsequently, the parties agreed to participate in an Alternative Dispute Resolution (ADR) process to facilitate the settlement of this case. After four months in the ADR process, the parties had not reached a settlement, but the parties were continuing negotiations on two Supplemental Environmental Projects proposed to be performed by Respondent in mitigation of the penalty. The undersigned was designated to preside over this case, and on April 19, 2000, a Prehearing Order was issued, directing the parties to file prehearing exchange documents by certain dates in the event that a Consent Agreement and Final Order is not filed by June 13, 2000. Complainant timely filed its Prehearing Exchange on June 13, 2000 as directed in the Prehearing Order. Respondent's Prehearing Exchange was due on June 27, 2000.

Respondent did not file its Prehearing Exchange by that date, and on July 6, 2000, an Order to Show Cause was issued, requiring Respondent to show good cause, on or before July 17, 2000, why it failed to submit its prehearing exchange.

On July 17, 2000, Respondent submitted a letter to the undersigned, with no certificate of service, and no indication that the letter had been filed with the Regional Hearing Clerk or served

upon Complainant, in violation of Rule 22.5 of the Consolidated Rules of Practice, 40 C.F.R. part 22. The undersigned thus had to issue a Notice of Receipt of Ex Parte Correspondence, and file and serve the letter upon opposing counsel, under 40 C.F.R. § 22.8. Counsel for Respondent stated in the letter, as reason for failure to file the prehearing exchange, merely that he was "unaware of this deadline given some confusion in the office relating to [his] recent location to the headquarters of Dow in Midland, Michigan." He did not file and serve on the undersigned a change of address as required by 40 C.F.R. § 22.5(c)(4). He stated further in the letter that he received a draft Consent Decree and Final Order and that he "recently received internal authority to enter into this Consent Decree with substantially the same terms as offered by U.S. EPA."

In the letter, he also requested a two-week extension of time to file the Prehearing Exchange, as he was "confident that [he] would be able to reach a final resolution with EPA by such date." This request for extension was not in conformance with the requirements of 40 C.F.R. §§ 22.7(b) and 22.5(b) to *file* a *motion* for extension of time with the Regional Hearing Clerk and serve it on the opposing party. In addition, he did not comply with the direction in the Prehearing Order to state in any motion whether the opposing party objects to the relief requested by the motion.

However, considering that the parties were actively engaged in a settlement of this matter with Supplemental Environmental Projects, Respondent was not immediately held in default. Instead, the office of the undersigned attempted unsuccessfully on July 18, 20, 25, and 27, 2000 to contact Respondent's counsel by telephone. Finally, on August 1, 2000, Respondent was contacted, and he orally agreed to file Respondent's Prehearing Exchange and change of address on or before the morning of August 2, 2000. To date, Respondent has not filed such documents. This office has been informed by the Regional Hearing Clerk of Region 9 that to date, neither a Consent Agreement and Final Order nor any document from Respondent has been filed since the Notice of Receipt of Ex Parte Correspondence was filed.

Respondent's procedural errors and omissions are inexcusable. The certificate of service on the Complaint certified that Respondent was served with a copy of the Consolidated Rules of Practice, 40 C.F.R. part 22. The first paragraph of the Prehearing Order advised the parties to "familiarize themselves with the applicable statutes and Rules of Practice," providing the Federal Register citation of the Rules, as amended. The Prehearing Order stated further:

> If the Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, the Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. **The Respondent is hereby notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of the Complainant's Witnesses, can result in the entry of a default judgment against it.** . . . THE MERE PENDENCY OF SETTLEMENT NEGOTIATIONS DOES NOT CONSTITUTE A BASIS FOR FAILING TO STRICTLY COMPLY

WITH THE PREHEARING EXCHANGE REQUIREMENTS.

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

> A party may be found to be in default: . . . 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. * * * *
> The relief proposed in the complaint . . . shall be ordered unless the requested relief is clearly inconsistent with record of the proceeding or the Act. * * * *
> Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c).
> * * * *

Thus, for failure to comply with the Prehearing Order requiring submission of prehearing exchange documents, the Respondent is hereby found to be in default. In accordance with Rule 22.17(a), this constitutes an admission of the facts alleged in the Complaint and results in the assessment of the penalty of $115,500 proposed within.

The following Findings of Fact and Conclusions of Law are based upon the Complaint, and Complainant's Prehearing Exchange.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to violations of FIFRA:

1. Respondent is a corporation and therefore, a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

2. Respondent owns and/or operates a facility located at Loveridge Road in Pittsburg, California (the "Facility").

3. The Facility is an "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

4. Respondent is a "producer" as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

5. As a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. 136e, and implementing regulations promulgated at 40 C.F.R. Part 167.

6. Respondent registered the facility as pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

7. Respondent produced LORSBAN 4E SVR, EPA Registration No. 62719-23, and LORSBAN 4E SVR, EPA Registration No. 62719-220.

8. LORSBAN 4E SVR, EPA Registration No. 62719-23, and LORSBAN 4E SVR, EPA Registration No. 62719-220, are "pesticidal products" as defined by 40 C.F.R. § 167.3.

9. Each producer operating a pesticide producing establishment must submit to EPA an annual pesticide report that must include the name and address of the establishment, the amount of each pesticidal product produced, sold or distributed during the past year and the amount of each pesticidal product estimated to be produced during the current year. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1); 40 C.F.R. § 167.85.

As to Count I:

10. For reporting year 1994, Respondent did not report the amount of its production of LORSBAN 4E SVR, EPA Registration No. 62719-220, and incorrectly reported the amount of its production of LORSBAN 4E SVR, EPA Registration No. 62719-23.

11. Respondent's submittal of a pesticide production report for reporting year 1994 that did not contain information required under section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of Section 12(a)(20(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

As to Count II:

12. For reporting year 1995, Respondent did not report the amount of its production of LORSBAN 4E SVR, EPA Registration No. 62719-220, and incorrectly reported the amount of its production of LORSBAN 4E SVR, EPA Registration No. 62719-23.

13. Respondent's submittal of a pesticide production report for reporting year 1995 that did not contain information required under section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of Section 12(a)(20(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

As to Count III:

14. DOWICIL 75, EPA Registration No. 464-403, is a "pesticidal product," as defined by 40 C.F.R. § 167.3.

15. For reporting year 1996, Respondent did not report the amount of its production of

LORSBAN 4E SVR, EPA Registration No. 62719-220, and incorrectly reported the amount of its production of LORSBAN 4E SVR, EPA Registration No. 62719-23, and DOWICIL 75.

16. Respondent's submittal of a pesticide production report for reporting year 1996 that did not contain information required under Section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

As to violations of EPCRA:

17. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. Respondent is an "owner and operator" of a "facility" at Loveridge Road in Pittsburg, California, as those terms are defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

19. The Facility has 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3.

20. The Facility has an SIC Code of 2879.

21. At the Facility during calendar years 1994 and 1995, Respondent "manufactured," "processed," and "otherwise used" toxic chemicals, as those terms are defined in 40 C.F.R. § 372.3, in quantities exceeding the thresholds established at Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

22. As an owner or operator of a facility that has 10 or more full-time employees, an SIC Code of 2879, and that manufactured, processed, or otherwise used one or more toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the thresholds under Section 313(f) and 40 C.F.R. § 372.25, Respondent was required to submit a Toxic Chemical Release Inventory Reporting Form ("Form R") for each such chemical for the calendar year 1994 and 1995, under Section 313(a) of EPCRA and 40 C.F.R. § 372.30.

As to Count IV:

23. For calendar year 1994, Respondent otherwise used ethylene glycol at the Facility in excess of 10,000 pounds , the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

24. Ethylene glycol is a toxic chemical listed under 40 C.F.R. § 372.65.

25. Respondent filed a Form R for ethylene glycol with EPA and the State of California

for calendar year 1994.

26. In the Form R that Respondent filed for calendar year 1994, respondent underreported its offsite transfers of ethylene glycol by approximately 255,600 pounds.

27. Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E require the owner or operator reporting under Section 313 to report the annual quantity of the toxic chemical entering each environmental medium based upon readily available data, or where such data is not readily available reasonable estimates of the amounts involved, and to certify to the accuracy and completeness of the report.

28. Respondent's failure to accurately report its offsite transfers of ethylene glycol in the Form R for calendar year 1994 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count V:

29. For calendar year 1994, Respondent otherwise used chlorodifluoromethane at the Facility in excess of 10,000 pounds , the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

30. Chlorodifluoromethane is a toxic chemical listed under 40 C.F.R. § 372.65.

31. Respondent filed a Form R for chlorodifluoromethane with EPA and the State of California for calendar year 1994.

32. In the Form R that Respondent filed for calendar year 1994, Respondent underreported its fugitive air releases of chlorodifluoromethane by approximately 8,600 pounds.

33. Respondent's failure to accurately report its fugitive air releases of chlorodifluoromethane in the Form R for calendar year 1994 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count VI:

34. For calendar year 1994, Respondent processed styrene at the Facility in excess of 25,000 pounds, the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

35. Styrene is a toxic chemical listed under 40 C.F.R. § 372.65.

36. Respondent filed a Form R for styrene with EPA and the State of California for

calendar year 1994.

37. In the Form R that Respondent filed for calendar year 1994, Respondent underreported its offsite transfers of styrene by approximately 45,916 pounds.

38. Respondent's failure to accurately report its offsite transfers of styrene in the Form R for calendar year 1994 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count VII:

39. For calendar year 1994, respondent manufactured and processed at the Facility in excess of 25,000 pounds and otherwise used carbon tetrachloride at the Facility in excess of 10,000 pounds, the thresholds established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

40. Carbon tetrachloride is a toxic chemical listed under 40 C.F.R. § 372.65.

41. Respondent filed a Form R for carbon tetrachloride with EPA and the State of California for calendar year 1994.

42. In the Form R that Respondent filed for calendar year 1994, Respondent underreported its fugitive air releases of carbon tetrachloride by approximately 3,600 pounds.

43. Respondent's failure to accurately report its fugitive air releases of carbon tetrachloride in the Form R for calendar year 1994 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count VIII:

44. For calendar year 1995, Respondent otherwise used chlorodifluoromethane at the Facility in excess of 10,000 pounds , the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

45. Chlorodifluoromethane is a toxic chemical listed under 40 C.F.R. § 372.65.

46. Respondent filed a Form R for chlorodifluoromethane with EPA and the State of California for calendar year 1995.

47. In the Form R that Respondent filed for calendar year 1995, Respondent underreported its fugitive air releases of chlorodifluoromethane by approximately 19,000 pounds.

48. Respondent's failure to accurately report its fugitive air releases of

chlorodifluoromethane in the Form R for calendar year 1995 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count IX:

49. For calendar year 1995, Respondent manufactured and processed trichloroethylene at the Facility in excess of 25,000 pounds, the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

50. Trichloroethylene is a toxic chemical listed under 40 C.F.R. § 372.65.

51. Respondent filed a Form R for trichloroethylene with EPA and the State of California for calendar year 1995.

52. In the Form R that Respondent filed for calendar year 1995, Respondent underreported its offsite transfers of trichloroethylene by approximately 10,350 pounds.

53. Respondent's failure to accurately report its offsite transfers of trichloroethylene in the Form R for calendar year 1995 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count X:

54. For calendar year 1995, Respondent otherwise used N-methyl-2-pyrrolidone at the Facility in excess of 10,000 pounds, the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

55. N-methyl-2-pyrrolidone is a toxic chemical listed under 40 C.F.R. § 372.65.

56. Respondent filed a Form R for N-methyl-2-pyrrolidone with EPA and the State of California for calendar year 1995.

57. In the Form R that Respondent filed for calendar year 1995, Respondent underreported its offsite transfers of N-methyl-2-pyrrolidone by approximately 154,400 pounds.

58. Respondent's failure to accurately report its offsite transfers of N-methyl-2-pyrrolidone in the Form R for calendar year 1995 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count XI:

59. For calendar year 1995, Respondent otherwise used ethylene glycol at the Facility in excess of 10,000 pounds , the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

60. Ethylene glycol is a toxic chemical listed under 40 C.F.R. § 372.65.

61. Respondent filed a Form R for ethylene glycol with EPA and the State of California for calendar year 1995.

62. In the Form R that Respondent filed for calendar year 1995, Respondent underreported its offsite transfers of ethylene glycol by approximately 43,000 pounds.

63. Respondent's failure to accurately report its offsite transfers of ethylene glycol in the Form R for calendar year 1995 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

As to Count XII:

64. For calendar year 1995, Respondent manufactured and processed nitrapyrin at the Facility in excess of 25,000 pounds, the threshold established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

65. Nitrapyrin is a toxic chemical listed under 40 C.F.R. § 372.65.

66. Respondent filed a Form R for nitrapyrin with EPA and the State of California for calendar year 1995.

67. In the Form R that Respondent filed for calendar year 1995, Respondent over reported its offsite transfers of nitrapyrin by approximately 35,520 pounds.

68. Respondent's failure to accurately report its offsite transfers of nitrapyrin in the Form R for calendar year 1995 constitutes a violation of Section 313(g) of EPCRA and 40 C.F.R. Part 372, Subpart E.

DETERMINATION OF CIVIL PENALTY AMOUNT

69. Section 14 of FIFRA, 7 U.S.C. § 136*l*, authorizes EPA to assess a civil penalty of up to $5,000 for each violation of FIFRA by a registrant, commercial applicator, wholesaler, dealer, retailer or other distributor. For violations occurring after January 30, 1997, the maximum amount of penalty has been adjusted to $5,500 pursuant to the Civil Monetary Penalty Inflation

Adjustment Rule, 40 C.F.R. Part 19.

70. Section 14(a)(4) of FIFRA provides that "In 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."

71. Complainant proposed the assessment of a penalty in the amount of $5,000 for the violation alleged in Count I, $5,000 for the violation alleged in Count II, and $5,500 for the violation alleged in Count III, considering the factors set forth in FIFRA Section 14(a) and pursuant to the Enforcement Response Policy for FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule.

72. Having found that Respondent violated Section 12(a)(2)(L) of FIFRA in three instances, I have determined that $15,500, the penalty proposed in the Complaint, is the appropriate civil penalty to be assessed against Respondent for the three violations of FIFRA.

73. In making this determination, I have taken into account 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, the penalty considerations described in the ERP, and the Complainant's penalty calculation worksheet for its proposed penalty determination under FIFRA, in its Prehearing Exchange (Exhibit 7). As to the gravity of the violation , the Enforcement Response Policy for FIFRA (at A-6) provides that violations of FIFRA 12(a)(2)(L) for submitting an incomplete or false Section 7 report with major omissions or errors is a Gravity Level 2. As to ability to continue in business and size of Respondent's business, Complainant submitted in its Prehearing Exchange an "Info USA Report" for the Dow Chemical Company, which indicates that it makes over $1 billion in sales (Exhibit 10). The FIFRA Enforcement Response Policy (at 20) provides that gross revenues of over $1,000,000 are Size of Business Level I. The penalty matrix in the Enforcement Response Policy for FIFRA (at 19) provides that a penalty of $5,000 is warranted for a Gravity Level 2 and Level I Size of Business. For Count III, the appropriate penalty is $5,500 under the Civil Monetary Penalty Inflation Adjustment Rule, as the Section 7 report for 1996 was due after January 1, 1997.

74. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil administrative penalty not to exceed $25,000 for each violation of section 313 of EPCRA.

75. There are no criteria in EPCRA for determining the amount of civil penalty for violations of section 313 of EPCRA.

76. For determining penalties to be proposed in administrative complaints, Complainant has issued the Enforcement Response Policy for Section 313 of EPCRA (ERP), dated August 10, 1992 (Complainant's Prehearing Exchange Exhibit 9).

77. Having found that Respondent violated 40 C.F.R. Part 372 and section 313 of

EPCRA in nine instances, I have determined that $100,000, the penalty proposed in the Complaint for the violations of EPCRA Section 313, is the appropriate civil penalty to be assessed against Respondent.

78. In making this determination, I have taken into account the nature, circumstances, extent and gravity of the violations, the penalty considerations described in the ERP, the Complainant's penalty calculation worksheet submitted in its Prehearing Exchange (Exhibit 6), and other documents in Complainant's Prehearing Exchange.

79. As to the circumstances of the violations, Complainant assessed Level 3 of the ERP's penalty matrix as the circumstance level for all nine EPCRA 313 violations. The ERP (at 12) provides that Level 3 is the appropriate level where there are data quality errors in a Form R. I find that the assessment of Circumstance Level 3 is appropriate under the ERP.

80. As to the extent of the violations, Complainant assessed Extent Level A for Counts IV and X, and Extent Level B for all other counts. The ERP (at 9) provides that Level A is the appropriate level for facilities that manufacture, process or otherwise use ten times or more of the threshold of the toxic chemical involved in the violation, and have $50 million or more in total corporate entity sales, and 50 employees or more. The ERP (at 9) provides that Level B is the appropriate level for facilities that manufacture, process or otherwise use less than ten times or more of the threshold of the toxic chemical involved in the violation, and have $50 million or more in total corporate entity sales and 50 employees or more. Complainant submitted in its Prehearing Exchange an "Info USA Report" for the Dow Chemical Company, which indicates that it makes over $1 billion in sales (Exhibit 10). I find that the assessment of Extent Level A for Counts IV and X, and Extent Level B for Counts V though IX, XI and XII, is appropriate under the ERP.

81. The ERP's Penalty Matrix (at 11) indicates that a violation with Circumstance Level 3 and Extent Level A is to be assessed a penalty of $15,000, and that a violation with Circumstance Level 3 and Extent Level B is to be assessed a penalty of $10,000. I find that Complainant appropriately assessed a "gravity-based" penalty of $15,000 for each of Counts IV and X, and a penalty of $10,000 for each of Counts V through IX, XI and XII, for a total penalty of $100,000 for the violations of EPCRA.

82. According to its penalty calculation worksheet (Prehearing Exchange Exhibit 6), Complainant did make any adjustments to the gravity-based penalty based on the adjustment factors stated in the ERP, namely, voluntary disclosure, history of prior violations, delisted chemicals, attitude, ability to pay and other factors as justice may require.[1]

83. In its Answer, Respondent did not raise any defenses or issues as to disclosing a

[1] An additional factor listed in the ERP, Supplemental Environmental Projects, applies only in the context of settlement, as a "settlement with conditions." ERP at 19.

violation before notice of an inspection or contact by EPA to determine compliance, delisted chemicals, ability to pay the proposed penalty, or other factors as justice may require, as described in the ERP. Moreover, without evidence or documentation in the record to support the Respondent's assertions in its Answer of mitigating factors, the penalty cannot be reduced.

84. The ERP (at 14-15) provides that reductions to the penalty for voluntary disclosure are not warranted if the facility has been contacted by EPA for the purpose of determining compliance with EPCRA § 313. The ERP (at 16) provides only for an increase in the gravity-based penalty for a history of violations. The ERP further provides that reduction of a penalty for "other factors as justice may require" is "expected to be rare and the circumstances justifying its use must be thoroughly documented in the case file." (ERP at 18).

85. The Consolidated Rules of Practice provide, with respect to penalty assessment where a Respondent is found in default, that the 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). I find that the penalties proposed by Complainant are not clearly inconsistent with the record of the proceeding or with FIFRA or EPCRA.

ORDER[2]

Pursuant to 40 C.F.R. § 22.17, and based on the record in this matter and the preceding Findings of Fact, I hereby find that Respondent is in default and liable for a total penalty of $115,500.

IT IS THEREFORE ORDERED that The Dow Chemical shall, within thirty (30) days after this order becomes final under 40 C.F.R. § 22.27(c), submit by cashier's or certified check, payable to the United States Treasurer, payment in the amount of $115,500. Such payment shall be sent to:

U.S. Environmental Protection Agency
Region 9 Hearing Clerk
P.O. Box 360863M
Pittsburgh, PA 15251

A transmittal letter, identifying the subject case and EPA docket number plus Respondent's name, and complete address, shall accompany such payment. A copy of the check and transmittal letter shall be delivered or mailed to the Regional Hearing Clerk at the following address:

U.S. Environmental Protection Agency, Region 9
Regional Hearing Clerk
75 Hawthorne Street ORC-1
San Francisco, CA 94105

Susan L. Biro
Chief Administrative Law Judge

Dated: August 7, 2000
Washington, D.C.

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[1] Pursuant to 40 C.F.R. § 22.17(c), Respondent may move to set aside the default order for good cause. This Order on Default constitutes an initial decision, and an initial decision becomes a final order forty-five (45) days after its service upon the parties unless it is appealed to or reviewed sua sponte by the EAB, or a party moves to set aside the Default Order. 40 C.F.R. §§ 22.17(c) and 22.27(c). An appeal of an initial decision must be filed within **thirty (30) days** of service of the initial decision, as provided in 40 C.F.R. § 22.30.