

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ALLCHEM INDUSTRIES, INC.,) DOCKET NO. TSCA-04-2001-8006
)
)
RESPONDENT)

ORDER GRANTING COMPLAINANT'S MOTION FOR
ACCELERATED DECISION ON LIABILITY

This civil administrative penalty proceeding arises under the authority of 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 and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

The United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this administrative enforcement proceeding by filing a Complaint against Allchem Industries, Inc., Respondent ("Respondent"), on September 21, 2001. The Complaint charges Respondent with four violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), and the Inventory Reporting regulations promulgated pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), as set forth in 40 C.F.R. Part 710. More specifically, Complainant charges that Respondent, a Florida corporation, imported four chemicals that were subject to reporting under the Inventory Reporting regulations, and that Respondent failed to timely submit information to the EPA concerning these chemicals during the 1998 reporting period as required by the regulations. Complainant seeks a civil administrative penalty in the amount of \$74,800 for the alleged violations.

Respondent, in its Answer, does not dispute the factual allegations alleged in the Complaint or its liability as charged. Respondent does not contest Complainant's Motion for Accelerated Decision on Liability filed on September 3, 2002. Accordingly, Respondent is found liable on all four counts charged in the

Complaint, and Complainant's Motion for Accelerated Decision on Liability is **Granted**. See 40 C.F.R. §§ 22.15, 22.16(b), 22.20(a).

The file before me, however, is not as clear with regard to the issue of the penalty to be assessed in this matter. In Respondent's Answer, Respondent contested the proposed penalty, arguing that the penalty is excessive and unduly burdensome and that such penalty may be fatal to Respondent's ability to continue as a viable commercial enterprise. Thus, Respondent requested a hearing.

Later, in its prehearing exchange, Respondent claimed that it "is now virtually insolvent." As to its hearing request, Respondent stated:

Given its current financial condition, Respondent does not intend to contest the Complaint in this proceeding on its merits. Respondent thus now withdraws the requests for a hearing and for an informal conference that it made in its Answer in this proceeding dated October 23, 2001.

Respondent further stated that it is now attempting to reach a settlement with Complainant as to the penalty amount in this matter.

The pleadings filed by Respondent indicate that although Respondent continues to contest the amount of the proposed penalty, it does not have the resources to defend itself at hearing, or does not want to expend its limited resources. Nonetheless, Respondent has withdrawn its request for a hearing.

The Rules of Practice do not explicitly address this type of scenario. However, Section 22.15(c) of the Rules of Practice provides that if the respondent does not request a hearing, the Administrative Law Judge ("ALJ") may hold a hearing if issues appropriate for adjudication are raised in the answer. Alternatively, an ALJ may adjudicate issues in dispute upon a review of a documentary record assembled by the parties, without taking any evidence at oral hearing. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997). As such, an ALJ may still conduct an oral hearing without the respondent being present, or require the complainant to submit a documentary record to establish its prima facie case.

In this connection, I point out that Section 22.24(a) of the Rules of Practice places the burdens of presentation and persuasion on Complainant to prove that "the relief sought is appropriate." 40 C.F.R. § 22.24(a). Each matter of controversy is adjudicated under the preponderance of the evidence standard. 40 C.F.R. § 22.24(b).

In an attempt to resolve the penalty phase of this proceeding in a timely manner and to avoid having this matter languish

indefinitely, Complainant is directed to hold another settlement conference with Respondent and to file a Status Report concerning the parties' settlement negotiations on or before **November 8, 2002**.

Barbara A. Gunning
Administrative Law Judge

Dated: October 3, 2002
Washington, DC

In the Matter of Allchem Industries, Inc., Respondent
Docket No. TSCA-04-2001-8006

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Complainant's Motion for Accelerated Decision on Liability**, dated October 3, 2002 was sent this day in the following manner to the addressees listed below.

Mary Keemer
Legal Staff Assistant

Dated: October 3, 2002

Original and One Copy by Pouch Mail to:

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