UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
OKLAHOMA METAL PROCESSING	)	
COMPANY, INC. d/b/a HOUSTON	)	**TSCA DKT. NO. VI-659C**
METAL PROCESSING COMPANY	)	
and	)	
NEWELL RECYCLING COMPANY, INC.,	)	
	)	
Respondents	)	

DECISION ON COMPLAINANT'S MOTION FOR ASSESSMENT OF CIVIL PENALTY

Under consideration is complainant's motion, filed July 29, 1997, for assessment of a civil penalty against respondent Newell Recycling Company ("Newell" or respondent). On April 28, 1997, in an accelerated decision, it was held that respondents Newell and Oklahoma Metal Processing Company Inc. d/b/a Houston Metal Processing Company ("HMPC") [(1)] were liable for the single count of the complaint alleging violation of the PCB disposal regulations at 40 C.F.R § 761.60(a)(4) which require that non-liquid PCBs at concentrations of 50 ppm or greater be disposed of in an EPA approved incinerator or chemical waste dump. Respondents' failure properly to dispose of their PCB waste was held to be a violation of Section 6 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2605, which, in turn, is an unlawful act under Section 15(1)(C) of TSCA, 15 U.S.C. § 1614(1)(C). Complainant requests that a penalty of $1,345,000 be assessed against Newell.

Assessment of Civil Penalties Under TSCA

Section 16 (a)(2)(B) of TSCA directs that in assessing a penalty under TSCA:

the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require. 15 U.S.C. § 1615(a)(2)(B).

In addition, section 22.14(c) of the Consolidated Rules of Practice provides that "[t]he dollar amount of the proposed civil penalty in an administrative complaint shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." 40 C.F.R. § 22.14(c).

Agency guidelines for determining penalties for violation of the PCB rules are set forth in the 1990 PCB Penalty Policy ("Penalty Policy"). [(2)] The Penalty Policy establishes a two-step procedure, derived from Section 16 of TSCA, for calculating penalties for PCB violations. The first step is the determination of the "gravity based penalty" ("GBP") which involves consideration of the nature, circumstances and extent of the violation. The second step is the determination of whether any upward or downward adjustments to the GBP are in order. This involves consideration of respondent's ability to pay, past history of violations, culpability, and "other matters as justice may require."

Background

In 1984 HMPC learned that areas of its facility at 5225 Fidelity Road in Houston were contaminated with lead. HMPC notified Newell, which had owned the property from 1974 to approximately September 1982 when it sold the facility to Houston Metal Processing, and Newell arranged for a contractor to prepare a plan for removal of the lead-contaminated soil. In 1985, while the lead-contaminated soil was being excavated pursuant to the plan, 41 capacitors containing oil subsequently determined to contain PCBs were found buried in the excavation area. The excavated soil was piled next to the excavation area but was not removed because Newell and HMPC disagreed about who was responsible for its removal. The contaminated soil remained in the pile until September 1995.

Respondents' responsibility for excavating and piling the soil was found to constitute a continuing improper disposal of PCBs under TSCA for the period from September 10, 1992, when an EPA inspector took three samples from the soil pile which

established that the PCB concentration of the soil pile exceeded 50 ppm, to February 21, 1994, a date on which respondents admitted, in response to an EPA subpoena, that the contaminated soil remained in the pile.

Nature, [(3)] Circumstances, Extent and Gravity of Violation

Complainant argues that respondent's excavation and piling of PCB-contaminated soil constitutes the "disposal of PCBs or PCB Items in a manner not authorized by the PCB regulations" and merits a "high range, level one" circumstances classification under the Penalty Policy. [(4)] As further support for its circumstances determination complainant urges the Presiding Officer to consider both the length of time the PCBs were allowed to remain in the pile and the fact that the pile was located outdoors and exposed to the elements. Complainant submits that these facts, as well as Newell's failure to take any measures to prevent people from coming into contact with the contaminated soil, substantially increased the probability of causing harm to humans and to the environment.

Next, complainant argues that Newell's violation is properly classified as a "major" extent violation because the amount of PCB material involved was in excess of the 300 cubic foot threshold for major extent violations in the PCB Penalty Policy. [(5)] Complainant bases its classification on the extent calculation contained in the affidavit of Mr. Jeffrey Robinson. [(6)] Mr. Robinson used the estimate of 20 cubic yards of soil made during the 1989 EPA inspection to calculate the extent at 540 cubic feet. [(7)] Moreover, complainant urges that this is a vast underestimate of the actual amount of PCB material involved. Complainant notes that EPA inspector Pamela Larrison estimated the soil pile at 20 feet high by 60 feet across, [(8)] dimensions that would yield a figure far in excess of the 300 cubic feet required for a major extent classification. Complainant also points to the disposal manifests for the 11 shipments of contaminated soil from the HMPC facility which show that 224,529 kilograms of soil were shipped, an amount in excess of the "major" threshold for weight under the Penalty Policy.

Respondent counters that complainant has mislabeled its violation as "high range, level one" because it did not calculate the quantity of PCBs involved as required by the Penalty Policy, and because complainant's sampling of the pile was inadequate to establish that the entire pile was contaminated. Therefore, respondent argues, complainant's calculations are arbitrary and should be disregarded.

Respondent contends that complainant's sampling of the contaminated soil provided insufficient grounds on which to base an "extent" calculation for two reasons. First, respondent argues that the "grab samples" taken by complainant are not sufficient to establish that the entire soil pile was contaminated with PCBs in excess of 50 ppm. In support of its argument, respondent relies on In re Electric Service Company, TSCA Appeal No. 82-2, 1 E.A.D. 947 (1985) where the CJO held, inter alia, that test results from grab samples are not "representative" of the composition of the larger body or mass from which they are taken. Second, respondent contends that complainant failed to follow proper procedures in taking the samples. Specifically, respondent asserts that complainant did not follow procedures described in either SW-846 or the EPA Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup, which respondent asserts direct that a certain minimum number of samples are to be taken in a particular manner in order to establish the extent of PCB contamination.

Respondent's argument that complainant must calculate the amount of PCBs involved in the violation is in error. In making this argument respondent relies on the superseded 1980 PCB Penalty Policy. Under the 1990 Policy, which was made effective for "all administrative actions concerning PCBs issued after the date of this policy, regardless of the date of the violation," the 300 cubic foot threshold is for "all materials." Penalty Policy at 1,7. Further, because cubic feet is an "alternative measure for solids" under the Policy, no concentration adjustment is required.[(9)]

Respondent's contentions concerning the adequacy of complainant's sampling procedures in establishing that the entire soil pile was contaminated, while perhaps better supported, are unpersuasive in light of respondent HMPC's admission on the soil disposal manifests that the soil being disposed of was PCB-contaminated. Even assuming, for the sake of argument, that the holding in Electric Service [(10)] is on point, and/or that complainant's failure to follow the procedures in the manuals cited by respondent call complainant's sampling into question, [(11)] respondent's arguments are unavailing. The grab samples are sufficient to establish a violation and, in combination with respondent HMPC's admission, there is sufficient evidence to conclude that the entire soil pile was contaminated with PCBs in a concentration of 50 ppm or greater. [(12)]

Calculation of Penalty for a Continuing Violation

Under Section 16 of TSCA any person who violates TSCA shall be liable for "each day such a violation continues" and each day of the continuing violation will be treated as a separate violation in determining the penalty amount. It was previously determined, in the accelerated decision on liability, that Newell's violation continued for a period of 529 days -- from September 10, 1992 until February 21, 1994. In calculating its proposed penalty, complainant, exercising its discretion, concluded that assessing a penalty of $25,000 for each of the 529 days the violation continued would result in an excessive penalty. Instead, complainant argues for an assessment of $25,000 for the first day and $2,500 for each of the following 528 days. Complainant argues that this is a conservative assessment based on the fact that it calculated the penalty for a period of less than two years when the violation covered a much longer period of time, and that it reduced the amount of the per day penalty by 90% for all but one of the days.

Respondent urges that complainant is not entitled to a continuing violation penalty because it has not shown that substantial amounts of PCBs were involved in the violation and because it has not conducted concentration calculations or determined the total PCBs released as required by the Penalty Policy. In arguing its position respondent again relies on the superseded 1980 Penalty Policy; no such requirements for the assessment of a continuing violation penalty exist under the current Penalty Policy. Under the current Penalty Policy, when a violation has not been corrected by the time of reinspection, complainant has the option of assessing a proportional penalty [(13)] or a per-day penalty. Penalty Policy at 14. As noted above, complainant confirmed that the respondents were still in violation in February of 1994. In such circumstances assessment of a per day penalty is appropriate.

Respondent has not made a showing that complainant's GBP calculation, including its assessment for a continuing violation, is inappropriate. Based on the Penalty Policy and the evidence in this case, Newell's violation is properly given a circumstances classification of "high range, level one" and an extent classification of "major." Applying the circumstance and extent criteria to the GBP Matrix yields a GBP of $25,000 for each violation. Accepting complainant's calculation of the penalty for a continuing violation of 529 days at $25,000 for the first day and $2,500 for each of the remaining 528 days, the total GBP amounts to $1,345,000. Having determined a GBP, the next step is to consider whether any adjustments to the GBP are in order.

Adjustment Factors

TSCA §16(a)(2)(B) directs that certain other factors, including ability to pay, effect on ability to continue in business, history of prior violations, degree of culpability and "such other matters as justice may require" be considered in determining a civil penalty. Under the Penalty Policy these factors are employed to adjust the GBP up or down. Complainant asserts that in calculating its proposed penalty, with no evidence to the contrary, it assumed that respondent had the ability to pay and no downward adjustment was made on the basis of respondent's financial status. (Newell did not contest complainant's conclusion that it had the ability to pay the penalty.) Complainant also argues that, based on correspondence between Newell and HMPC, "Newell was aware of the PCB contamination and that it posed potential serious environmental problems." Complainant's Mem. in Support at 12. This, complainant urges, places Newell in Culpability Level II which provides for no adjustment in the GBP. No adjustment was made for history of prior violations because respondent was not found to have such a history. Finally, complainant states that it made no adjustments for attitude, voluntary disclosure, or economic benefit, factors considered under the "as justice may require" rubric, because there were no facts warranting any such adjustment.

Respondent counters that complainant has failed to take into account several mitigating factors that, in respondent's opinion, require that the proposed penalty be lowered. First, respondent argues that complainant has failed to acknowledge that there has been no claim of environmental harm. Respondent offers no support for its contention that a lack of environmental harm is a "significant mitigating factor" in determining a civil penalty under TSCA. Harm is given consideration under the Penalty Policy only in instances where a violator has taken actions to minimize harm caused by its violation. Penalty Policy at 17. Respondent makes no claim, and the facts show no indication, that respondent took any measures to minimize any harm or risk of harm. The mere fact that no harm may have occurred is not a reason to lower the penalty where chance and not respondent's actions are responsible for such an outcome.

Second, respondent contends that complainant has refused to consider as a mitigating factor that the soil was removed years ago. This argument is without merit. Respondent ignores the fact that the period for which complainant is seeking a penalty ends

before the pile was removed; no penalty is sought for any time after the pile was removed and the period for which the penalty is sought in fact ends before the contaminated soil was removed.

Third, respondent asserts, again without support, that the $84,000 cost of removing the soil pile must be factored into the penalty calculation. The Penalty Policy, however, states that "generally the clean-up expense of a violator is to be borne by the violator as a necessary cost of violation in addition to any civil penalty assessed." Penalty Policy at 18. Respondent further alleges with regard to the cost of disposing of the soil pile that EPA has reneged on its agreement to factor the cost of the cleanup into its penalty calculation. Respondent argues that promissory estoppel precludes complainant from not making a reduction in the penalty amount for the cost of disposing of the contaminated soil. In support of its promissory estoppel argument respondent offers only the assertion that there was a deal and that complainant has reneged. Respondent's assertions are not sufficient to establish that it relied to its detriment on complainant's alleged representations where respondent was under an obligation to comply with the PCB disposal rule whether or not complainant pursued an action against it.

Fourth, respondent contends that any penalty assessed must be reduced to take into account that complainant allowed penalties to accrue instead of taking action after it became aware of the PCB contaminated soil pile. Respondent argues, relying on United States v. American Greetings Corp., 168 F.Supp. 45 (N.D. Ohio 1958), aff'd, 272 F.2d 945 (6th Cir. 1959), that complainant's failure to act promptly estops it from seeking a substantial penalty in this case and that complainant is instead entitled to only a nominal penalty. American Greetings involved a Federal Trade Commission ("FTC") cease and desist order for unfair trade practices. While the order was effective, American Greetings informed the FTC that it would resume the practice prohibited under the cease and desist order. When the FTC took action against American Greetings four years later, the court held that because the FTC failed to act sooner it was entitled to only a nominal penalty for three of the counts in its complaint.

American Greetings, as complainant argues, is distinguishable from the case at bar. Respondent's continuing violation did not take place in the face of an order to the contrary for which an estoppel argument can be made. Furthermore, complainant is not seeking a penalty for the period beginning in 1989 as respondent implies; rather, as noted above, complainant's penalty is

calculated only for the 529 day period for which the Presiding Officer held respondent to be in violation.

Fifth, respondent argues that the proposed penalty should be reduced because it is out of step with Environmental Appeals Board ("EAB") decisions assessing penalties. This argument is unavailing. As complainant correctly notes, penalties assessed in other cases have no bearing on the penalty assessment in this case. As the EAB has stated, quoting the Supreme Court, "The employment of a sanction within the authority of an administrative agency is thus not rendered invalid in a particular case because it is more severe than sanctions in other cases." In re Chautauqua Hardware, EPCRA Appeal No. 91-1, 3 E.A.D. 616, 627, Order on Interlocutory Review (June 24, 1991) (quoting Butz v. Glover Livestock Comm. Co., Inc., 411 U.S. 182, 187, reh'g denied, 412 U.S. 933 (1973)).

Sixth, respondent urges that a substantially lower penalty assessment is appropriate because use of EPA's BEN model shows that Newell's economic benefit would have amounted to only $4,480 and therefore Newell's penalty should be substantially reduced. This argument is flawed in two respects. First, under the Penalty Policy economic benefit is only one element to be considered in calculating a civil penalty. Second, and more significantly, the economic benefit component of the penalty calculation is employed to ensure that a penalty assessment will provide adequate deterrence, and is therefore used only to adjust a penalty upward, not downward.

Finally, respondent argues that respondent HMPC's settlement has relevance to the determination of its penalty and complains that the amount has, inappropriately, not been revealed to the Presiding Officer. To the extent that respondent Newell seeks anything more than that the amount of respondent HMPC's settlement be deducted from the penalty assessed against it, respondent Newell's argument is rejected.

Consolidated Rule 22.22(a) states that "evidence relating to settlement which would be excluded in the federal courts under Rule 408 [(14)] of the Federal Rules of Evidence is not admissible." 40 C.F.R. 22.22(a). Settlement offers or terms are not indicative of, and should not be used as evidence of, the amount of the appropriate penalty in a proceeding to determine a penalty. See In the Matter of Labarge, Inc., Dkt. No. CWA-VII-91-W-0078 7, 1997 CWA Lexis 5, at 9 n.11 (Mar. 27, 1997). Several federal circuit courts of appeal have held, following the text of the rule, that Rule 408 bars admission of

settlements between plaintiffs and third party joint tortfeasors or former co-defendants for purposes of establishing the validity or value of a claim. See Quad/Graphics Inc. v. Myron Fass et al., 724 F.2d 1230, 1235 (7th Cir. 1983) (trial court properly refused to admit evidence of settlement between plaintiff and one co-defendant where purpose was to establish validity and value of plaintiff's claim); McHann v. Firestone Tire & Rubber Co., 713 F.2d 161, 165-66 (5th Cir. 1983) (reversible error to admit against plaintiff covenant not to sue and amount paid by co-defendant); United States v. Contra Costa Water District, 678 F.2d 90, 92 (9th Cir. 1982) (evidence of settlement between United States and landowner not admissible to decrease water district's liability); McInnis v. A.M.F., Inc., et al., 765 F.2d 240, 247-48 (1st Cir. 1985) (reversible error to admit evidence of settlement against motorist in plaintiff's products liability action against motorcycle manufacturer).

Where, as here, evidence of the settlement is precluded from admission by Rule 408, the appropriate procedure is to deduct the amount received by complainant from the settling respondent from the penalty assessed against the non-settling respondent. See McInnis, 765 F.2d at 251; McHann, 713 F.2d at 166. Therefore, in keeping with Consolidated Rule 22.22(a) and Rule 408, complainant should notify respondent Newell immediately of the amount of respondent HMPC's settlement and that amount shall be deducted from the penalty assessed against respondent Newell.

Newell argues that it is entitled to an oral hearing in addition to the opportunity it had to address the issues in writing with affidavits and documents. [(15)] That argument rings hollow because Newell has not identified any genuine issue of material fact about which it has evidence, let alone evidence that would require an oral hearing. Newell maintains that, if it could examine complainant's witnesses about the improper disposal of PCB's, it could establish that complainant knew about the violation long before it issued the complaint. Assuming that is true, it does not establish that respondent notified the complainant. Newell points to no evidence that it ever notified complainant about its illegal disposal of PCBs. Newell's only claim has been that Texas state authorities may have done so. The penalty analysis looks to respondent's behavior, not to that of local officials.

Newell identified two witnesses who would present testimony at an oral hearing. Newell represents that Buck Nichols, an employee of the respondent, would testify that Newell did not "create" the improperly disposed of PCBs and that R. Glenn

Stillman would testify that the PCBs at the facility did not present a hazard and therefore had no environmental impact. Neither Nichols nor Stillman would present material evidence on the penalty issue. Newell was obligated to properly dispose of the PCBs and it failed to do so. For ten years Newell argued with HMPC about which of them would remove the PCB pile. During that time the PCBs remained exposed to the elements and persons who might inadvertently come into contact with them.

According to Newell's witness list, Nichols would argue that the PCBs were stored. Newell has not asserted facts that would lend credence to that assertion; it does not contest that the PCBs stood in an open soil pile at the facility for ten years. Stillman purportedly would testify under oath about "the inapplicability of a PCB disposal claim in an area where PCBs are already disposed." Newell did not provide affidavits from Nichols and Stillman which substantiated their claims. [(16)] Assuming that Newell has accurately represented what Nichols and Stillman would state in their testimony, it is apparent that they would present only arguments that were rejected in the accelerated decision on liability. There is no indication that these witnesses would describe measures that were taken by Newell to minimize harm or risk of harm to the environment.

The complainant has demonstrated, pursuant to 15 U.S.C. § 1615(a)(2)(B), that Newell should pay a penalty of $1,345,000. Respondent may deduct from that amount the penalty paid by HMPC. Complainant has demonstrated that no genuine issue of material fact remains in this proceeding.

ACCORDINGLY, IT IS ORDERED that complainant's motion for assessment of a civil penalty IS GRANTED.

IT IS FURTHER ORDERED that a civil penalty of $1,345,000 (exclusive of any amount paid by HMPC pursuant to its settlement in this case) IS ASSESSED against Newell Recycling Company, Inc. for improperly disposing of PCB-contaminated soil in excess of 50 ppm from September 10, 1992, to February 21, 1994 at the facility in violation of 40 C.F.R. § 761.60 (a) (4), 15 U.S.C. § 2605, and 15 U.S.C. § 1614(1)(C).

IT IS FURTHER ORDERED that Newell's request for interlocutory appeal of ruling on expedited decision, filed June 6, 1997, IS DISMISSED AS MOOT.

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service date of the final

order by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

U. S. EPA, Region VI

(Regional Hearing Clerk)

Mellon Bank

P.O. Box 360859M

Pittsburgh, PA 15251

A transmittal letter identifying the subject case and the EPA docket number, plus respondent's name and address must accompany the check.

Failure by respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

Pursuant to 40 C.F.R. § 22.27 (c), this initial decision shall become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties and without further proceeding unless (1) an appeal to the Environmental Appeals Board is taken from it by a party to this proceeding or (2) the Environmental Appeals Board elects, sua sponte, to review this initial decision. If an appeal is taken, it must comply with § 22.30. A notice of appeal and an accompanying brief must be filed with the Environmental Appeals Board and all other parties within twenty (20) days after this decision is served upon the parties.

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Edward J. Kuhlmann

Administrative Law Judge

October 7, 1997

Washington, D. C.

1. Respondent HMPC, on June 14, 1997, resolved its liability in this action pursuant to a Consent Agreement and Consent Order.

Complainant's Mem. In Support of Proposed Civil Penalty at 1 n.1.

2. Polychlorinated Biphenyl (PCB) Penalty Policy, U.S. EPA, April 9, 1990. See 55 Fed. Reg. 13955 (Apr. 13, 1990) (announcing availability of new penalty policy and describing changes).

3. All PCB violations are considered to be of a "chemical control nature." Because the circumstances and extent categories are intended to incorporate this nature, the nature of the violations will not be discussed separately. See Penalty Policy at 2.

4. The circumstances criterion is intended to reflect the probability of a violation causing harm to human health or the environment. High range, level one is defined in the penalty policy as "any significant uncontrolled discharge of PCBs, such as any leakage or spills from a storage container or PCB Item, failure to contain contaminated water from a fire-related incident, or any other disposal of PCBs or PCB Items in a manner that is not authorized by the PCB regulations, including unauthorized export." Penalty Policy at 10.

5. The extent criterion of the Penalty Policy is intended to reflect that the degree and likelihood of harm increases as the amount of PCB material involved increases. Penalty Policy at 3.

6. Robinson Declaration, Complainant's Memorandum in Support of Proposed Penalty, Attachment 1.

7. Id. at ¶ 7.

8. Government Exhibit B in Support of Complainant's Motion for Partial Accelerated Decision at ¶ 6.

9. The Penalty Policy states that no concentration adjustment is made for disposal violations involving alternative measures of solids because "the cost of disposal of such materials is not dependent on their concentration of PCBs" and "to allow adjustments for lower concentration might remove economic incentives to dispose of these materials properly." Penalty Policy at 9.

10. Complainant argues that Electric Service is distinguishable from the present case because Electric Service involved only one grab sample whereas the present case involves three samples

taken and tested by complainant, and one taken and tested by respondent HMPC, all of which showed presence of PCBs in excess of the regulatory limit.

11. Complainant argues in response that the manuals cited by respondent are not used for the purpose respondent asserts. Specifically, complainant contends that SW-846 is not applicable to TSCA, and that the Field Guide is not used for the purpose of determining whether a violation has occurred but, as the title itself indicates, for monitoring cleanup efforts.

12. Respondent's contention that it was not afforded an adequate opportunity to test the contaminated soil or to challenge complainant's tests are disingenuous in light of respondent's ongoing knowledge of PCB contamination at the site.

13. Under the "proportional penalty calculation," the penalty is proportional to the amount of material involved multiplied by the duration of the violation. Penalty Policy at 14. Complainant states that use of the proportional penalty method in this case yields a penalty in excess of the statutory maximum.

14. Rule 408 provides in pertinent part that:

"Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount." Federal Rule of Evidence 408 (emphasis added).

15. Newell also states that there was a ban on discovery in this proceeding and because of the purported ban it was handicapped in presenting its defense. Newell knows that there was no ban on discovery in this proceeding; Newell made a request for discovery which was denied for the reasons stated in the order ruling on its request. Arguments such as this cast doubt on whether Newell is acting in good faith.

16. Stillman stated in a February 27, 1997 affidavit that he believed that the finding sought in this case applied a "new rule that each time even a teaspoon of soil is moved, displaced or stockpiled, a new disposal occurs." He offered that in his "professional opinion, no reputable company would ever perform any work on any Superfund site or any other site that may be contaminated, due to the potential ... liability due to these 'illegal disposals'." Stillman's polemic is not grounded in fact

or law. The PCBs in this case stood outdoors in an open pile for ten years. There is no evidence that during that time the PCBs were properly stored or that they met the disposal requirements of the rules.