

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
STEELTECH, LIMITED, ) Docket No. EPCRA-037-94  
 )  
Respondent )  
 )  
MICHAEL F. FARMER )  
 )  
Intervenor )

ORDER DISMISSING COUNTS I and II  
OF THE AMENDED COMPLAINT

The Intervenor, Michael Farmer, filed a Motion for Partial Accelerated Decision in this proceeding on May 31, 1995. The Motion sought dismissal of Counts I and II of the Amended Complaint on the basis that those Counts were time-barred by the five-year statute of limitations, 28 U.S.C. § 2462. The Respondent, Steeltech, Limited, joined in that Motion. Complainant opposed the Motion on the basis that Counts I and II were continuing violations which were not barred by the statute of limitations. A decision on the Motion was stayed pending the decision by the Environmental Appeals Board (EAB) in the case styled In re Lazarus, Inc., TSCA Appeal No. 95-2.

The decision in Lazarus case was issued on September 30, 1997. The EAB held that the requirement of 40 C.F.R. § 761.180(a), under the Toxic Substances Control Act, to prepare and maintain PCB annual documents was not continuing in nature and that EPA could not collect penalties for failure to prepare such documents in the years preceding the five-year statute of limitations period.

On November 14, 1997, Complainant filed a Post-Hearing Brief in this proceeding, in which Complainant stated, "In light of the recent decision In re Lazarus . . . the Complainant is no longer

pursuing Counts I and II against the Respondent." Complainant's Post-Hearing Brief at 4. Complainant stated further that the total penalty sought in this proceeding is reduced to reflect a deduction of \$5,000 for each of Counts I and II, and that it will seek penalties of \$74,390 for Counts III through IX. Id. The statements appear to concede that the EAB's decision in Lazarus controls the issues raised as to Counts I and II of the present case.

Thus, there is no longer any issue or controversy as to Counts I and II. Accordingly, Counts I and II of the Amended Complaint are hereby **DISMISSED**.

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Susan L. Biro

Chief Administrative Law Judge

Dated: December 3, 1997

Washington, D.C.