

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Anglo Iron & Metal Company

TSCA Docket No. VI-625C

Respondent

ORDER DENYING COMPLAINANT'S MOTION FOR STAY,
ESTABLISHING PROCEDURES, AND SETTING HEARING DATE

The U.S. Environmental Protection Agency (EPA) initiated this proceeding by filing a complaint, on February 11, 1994, under authority of section 16 of the Toxic Substances Control Act, as amended ("TSCA"), 15 U.S.C. § 2615. The complaint alleges one count of violating section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C) by improperly disposing of PCBs, as prohibited by 40 CFR §§ 761.60(b)(2)(iii)(A) and 761.60(a)(4)(i). The complaint asserts that, at the time of an EPA inspection, on or about January 12-13, 1993, Anglo Iron & Metal Company (Anglo) had at least 49 PCB large high voltage capacitors at its facility in Harlingen, Texas that were leaking PCBs at a concentration greater than 50 parts per million. For this violation, EPA proposes a civil penalty totaling \$253,300.

Anglo filed an answer, on March 15, 1994, denying the violation, challenging the penalty calculation, and requesting a hearing. Anglo filed a motion to amend its answer and an amended answer on October 25, 1994, which was granted by order dated August 30, 1994. The amended answer denied that Anglo improperly disposed of PCBs and denied that it had violated any provision of TSCA or the regulations promulgated thereunder. Anglo asserted that it is not liable for the alleged violation because the capacitors were disposed of in 1962, when Anglo was not in existence; the capacitors were not leaking at the time of the January, 1993 inspection; spills and leaks from PCB items placed in a landfill or disposal site prior to February 17, 1978 do not constitute a disposal covered by the regulations; and any leaks or spills of PCBs from the capacitors ceased many years ago, most likely prior to the February 17, 1978 effective date of the PCB Disposal Regulations. Respondent also asserted that the complaint is barred by the statute of limitations, challenged the penalty

calculation, requested a hearing, and requested attorney fees pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504.¹

The August 30, 1994 Order instructed the parties to conduct prehearing exchange, and ordered Complainant to submit status reports at regular intervals until a consent agreement is fully executed or a hearing date is set. During the next two years Complainant regularly reported that the parties were exchanging information and engaging in settlement negotiations.

Several delays contributed to the prolongation of these proceedings. First, the proceedings were stayed for three months, in 1995, without objection, because Complainant's counsel was absent on maternity leave. Next, Complainant stated in a January 9, 1996 status report that preparations for informal mediation had been stalled by the federal government furloughs in late 1995. Finally, the proceedings were again stayed for five months, in 1996, when the former presiding ALJ retired from federal service. The undersigned was redesignated to preside over this case on June 27, 1996.

In a September 5, 1996 status report, Complainant indicated that the parties had agreed to a settlement in principle, a draft Consent Agreement and Final Order (CAFO) had been mailed to Respondent on August 5, 1996, and Respondent was taking specific steps to implement it. Complainant stated in a November 26, 1996 status report that the parties were continuing informal discussions and it anticipated that a CAFO would be executed in the near future.

By order dated December 5, 1996, the undersigned directed the parties to file a ratified CAFO on or before January 30, 1997. On January 29, 1997, Complainant filed a joint motion for extension of time to file, which was granted, extending the deadline to file the CAFO until March 17, 1997.

On March 13, 1997, EPA filed a motion to stay these proceedings, pending final disposition of Respondent's case in bankruptcy court. Complainant stated that its counsel had recently become aware that Respondent had filed for bankruptcy in the Southern District Court of Texas, on November 27, 1996. Anglo did not file a response to the motion.

Although Anglo's bankruptcy, as well as its efforts to clean up the site, may effect Complainant's penalty calculation, Complainant has not presented good cause why these proceedings should be stayed and Complainant's motion will be denied.

DISCUSSION

Complainant has asserted that "Respondent's bankruptcy petition has a definite impact on the case at hand." To the contrary, however, Respondent's filing in bankruptcy court has no bearing on whether to continue these proceedings and whether liability can be determined. Although section 362(a) of the Bankruptcy Code generally stays the commencement or continuation of a proceeding against the debtor that could have been commenced prior to filing of the bankruptcy petition, section 362(b)(4) excepts from the stay "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." A proceeding seeking entry of judgment in an administrative penalty proceeding is within EPA's authority to enforce environmental laws and is not stayed by Respondent's filing of a bankruptcy petition. See, In re Keller Industries, RCRA-III-249 (ALJ order, April 9, 1997), In re Hanlin Chemicals-West Virginia Inc., IF&R-III-425-C; TSCA III-651; EPCRA-III-091 (Initial Decision, Nov. 9, 1995), In re James H. Crockett, 204 Bankr. 705, 1997 Bankr. Lexis 99 (Bankr. W.D. Tex., Jan. 27, 1997). It is the enforcement of any penalty assessment resulting from this proceeding which is a money judgment that is subject to the stay provisions of the bankruptcy code. Kovacs v. Ohio, 717 F.2d 984, 988 (6th Cir. 1983), aff'd 469 U.S. 274 (1985). Therefore, Complainant's motion for stay is **denied**.

As is clear from the procedural history of this case discussed above, the parties have had adequate time to negotiate a settlement. Although they appear to have had some success at reaching an agreement, they have been unable to execute a CAFO. This matter, therefore, will be set for hearing on **February 24, 1998** in **Corpus Christi, Texas**, commencing at 9:00 a.m. ²

The Regional Hearing Clerk is directed to make timely arrangements for a courtroom and reporting services and to inform the parties and the undersigned of these arrangements.

Since a significant amount of time has passed since the date the parties filed their prehearing exchanges, the parties will be afforded an opportunity to supplement their initial prehearing exchange submissions. These new submissions should reflect **all** of the materials each party intends to present at hearing.

Complainant's Prehearing Exchange - **August 4, 1997**

Respondent's Prehearing Exchange - **September 17, 1997**

Complainant's Rebuttal Prehearing

Exchange - **October 8, 1997**

There will be a telephone conference approximately two weeks before the hearing begins. Complainant shall file status reports with the undersigned on **August 1, 1997; October 1, 1997,**

December 1, 1997, and January 15, 1998.

Charles E. Bullock

Administrative Law Judge

Dated: June 11, 1997

Washington, D.C.

¹ Respondent's request for attorney's fees is premature. A prevailing party may be entitled to an award under EAJA if the government's action was not substantially justified. 40 CFR Part 17 sets forth procedures for submitting and adjudicating a claim under EAJA.

² Unless otherwise informed by the parties, it is anticipated that the hearing will require three days.

IN THE MATTER OF ANGLO IRON & METAL COMPANY, Respondent

TSCA Docket No. VI-625C

CERTIFICATE OF SERVICE

I certify that the foregoing Order, dated June 11, 1997, was sent in the following manner to the

addressees listed below:

Original by Regular Mail to: Ms. Monica Frazier

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region 6

1445 Ross Avenue

Dallas, TX 75202-2733

Copies by Regular Mail to:

Counsel for Complainant: Jan Gerro, Esquire

Assistant Enforcement Counsel

U.S. Environmental Protection

Agency, Region 6

1445 Ross Avenue

Dallas, TX 75202-2733

Counsel for Respondent: Jaime L. Capelo, Jr., Esquire

WHITTLE, GONZALES, HADA & CAPELO

403 N. Tanchua

Corpus Christi, TX 78401

Of Counsel: Vernon B. Hill, Jr., Esquire

4124 North 23rd Street, Suite 2

McAllen, Tx 78504

Marion Walzel

Legal Assistant

Dated: June 11, 1997