UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
TUBE METHODS, INC.	)	**Docket No. EPCRA-3-99-0011**
	)	
Respondent	)	

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION FOR ACCELERATED DECISION

AND

SETTING CASE FOR HEARING

On July 12, 2000, the Director of the Waste and Chemicals Management Division, EPA Region III, of the Environmental Protection Agency (Complainant) filed a motion for accelerated decision as to liability issues in this proceeding (Motion). On July 27, 2000, Tube Methods, Inc., Respondent, opposed the Motion.[1] For the reasons set forth below, Complainant's motion is granted in part and denied in part, and this case is set for hearing.

Background

On February 10, 1999, Donald W. Stanton, a duly authorized representative of the Environmental Protection Agency (the EPA inspector) conducted an inspection of a manufacturing plant owned by Respondent and located at 416 Depot Street in Bridgeport, Pennsylvania (the Facility). The purpose of the visit was to monitor Respondent for compliance with Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023. For the inspection, Respondent provided data as to its estimated usage at the Facility of chromium, nickel and trichloroethylene.

Complainant asserts that based upon information gathered during the February 10, 1999 inspection, as well as other materials, Respondent has met the jurisdictional requirements of Section 313 of EPCRA. Complainant asserts further that Respondent processed more than the threshold amount of 25,000 pounds of

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[1] On August 10, 2000, Complainant filed a "Reply Brief" in further support of its Motion.

chromium in 1995 and 1996, and of nickel in 1995, 1996, and 1997, and used more than the threshold amount of 10,000 pounds of trichloroethylene in 1995, 1996, and 1997. Therefore Complainant alleges that Respondent was obligated to report to EPA its environmental releases during the 1995 and 1996 calendar years of the three toxic chemicals, trichloroethylene, chromium, and nickel, and during the 1997 calendar year, of the two toxic chemicals, trichloroethylene and nickel. Specifically, for each of the respective chemicals and time periods set forth above, Complainant alleges that Respondent was obligated to file a Toxic Chemical Inventory Release Form (Form R) or alternative threshold report (Form A). Based upon these allegations, Complainant, on September 30, 1999, filed a Complaint containing eight counts of violations.

In its Answer to the Complaint, Respondent argued that it was not obligated to file Form R reports for chromium for calendar years 1995 and 1996, and that it was not obligated to file Form R reports for nickel for calendar years 1995, 1996 and 1997, on grounds that it processed significantly less than 25,000 pounds of each of those substances during the years at issue, and that its processing of those substances was subject to the article exemption. However, Respondent admitted that it used more than 10,000 pounds of trichloroethylene in 1995, 1996, and 1997, and that it failed to file timely Form R reports for trichloroethylene for those calendar years. (Answer ¶¶ 25, 26, 43, 44, 55, 56).

Discussion

Respondent claims that it did not knowingly fail to submit the Form Rs, that it did submit them as soon as it was made aware of the requirement, and that it reported its use of trichloroethylene to the Pennsylvania Department of Environmental Protection (DEP) during each of the years in question. Respondent explains that this report was part of the submittal of an annual air emission fee to the DEP. Without citing to any authority, Respondent argues that these factual issues bear upon the issue of whether Respondent is liable for a penalty.

Assuming *arguendo* that Respondent properly and timely notified the Pennsylvania DEP of its usage of trichloroethylene, such notification does not relieve Respondent of its responsibility to file a Form R under Section 313 of EPCRA, which requires that "[s]uch form shall be submitted to the Administrator [of EPA] and to an official . . . of the State . . . ." 42 U.S.C. § 11023(a) (emphasis added). The statute provides further, at Section 325(c), that "[a]ny person who

violates any requirement of section . . . 11023 of this title shall be liable to the United States for a civil penalty . . . ." 42 U.S.C. 11045(c)(emphasis added).

Lack of intent to violate the requirement is not a defense to liability, as EPCRA is a strict liability statute. *Steeltech, Ltd.* 8 E.A.D. ___, 1999 WL 673227, 673230 (EAB 1999). Filing a Form R after the due date also is not a defense to liability. See, *Pacific Refining, Inc.,* 5 E.A.D. 607, 94 WL 698476 (EAB 1994)(Respondent liable for penalties for filing Form Rs one year late although they were filed promptly after an EPA inspection).

As to nickel and chromium, Respondent argues in opposition to the Motion that Respondent's initial estimates of the amount processed at its Facility, which were provided for the inspection, were overstated, and that it has corrected its calculations. However, at this point in the proceeding, the factual bases and methods for calculating Respondent's initial estimates and for its corrected figures are not clear. Therefore, an accelerated decision as to Counts I, II, IV, V and VII is not warranted at this time.

Ruling and Order on Motion for Accelerated Decision

It is concluded that there are no genuine issues of material fact as to Respondent's liability for failure to file Form R reports for its use of trichloroethylene in 1995, 1996 and 1997. Accordingly, Complainant's Motion for accelerated decision as to Respondent's liability for Counts III, VI, and VIII is granted.

In light of the discussion above, however, the Motion for accelerated decision is denied without prejudice as to Counts I, II, IV, V, and VII.

If the parties are able to agree on the amounts of chromium and nickel processed for the periods in question, then the parties are directed to include those amounts in a stipulation of facts to be submitted as a joint exhibit no later than the first day of the hearing. Otherwise, those matters will be the subject of the hearing.

The amount of any penalties to assess, and any arguments raised by the parties in their pleadings and elsewhere as to Counts I, II, IV, V and VII, but not discussed in this order, shall also be the subject of the hearing.

Hearing

The hearing in this matter is scheduled for **January 24-25, 2001**, in Philadelphia, Pennsylvania, commencing at 9:00 a.m.

The Regional Hearing Clerk is directed to obtain a courtroom and court reporter and to inform the parties and the undersigned of these arrangements.

In the interim, Complainant, after consulting with Respondent, is directed to file status reports on the following dates:

September 22, 2000, October 20, 2000, November 17, 2000, and December 15, 2000.

Charles E. Bullock
Administrative Law Judge

Dated: August 24, 2000
Washington, D.C.

IN THE MATTER OF TUBE METHODS, INC., Respondent
Docket No. EPCRA-3-99-0011

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion for Accelerated Decision Without Prejudice and Setting Case for Hearing, dated August 24, 2000, was sent in the following manner to the addressees listed below:

Original and Copy by Regular Mail to:

Ms. Lydia A. Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Copies by Regular Mail to:

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_____
Marion Walzel
Legal Assistant

Dated: August 25, 2000