

6/9/89

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	DOCKET NUMBERS TSCA-PCB-VIII-88-09,
)	TSCA-PCB-VIII-88-21
CAMAX ENGINEERING, INCORPORATED,)	
AND STEPHAN ZBIKOWSKI, SR.)	<u>CONSOLIDATED</u>
)	
AND)	
)	
CAMAX ENGINEERING, INCORPORATED,)	
STEPHAN ZBIKOWSKI, SR., AND)	
CORE MINERALS RECOVERIES,)	
INCORPORATED,)	
)	
RESPONDENTS)	

08 JUN 21 11:14

TOXIC SUBSTANCES CONTROL ACT - RULES OF PRACTICE - DEFAULT - DETERMINATION
OF CIVIL PENALTY

Absent exceptional circumstances, not shown here, the full amount of the penalty proposed in the Complaint will be assessed upon Respondent's default.

Appearance for Complainant: Alicia N. Hoegh, Esquire
 Assistant Regional Counsel
 U.S. Environmental Protection Agency
 Region VIII
 999 18th Street, Suite #500
 Denver, Colorado 80202-2405.

No Appearance for Respondent.

DEFAULT ORDER

The two cases, above styled, are proceedings under Section 16 of the Toxic Substances Control Act (hereinafter "TSCA" or "the Act"), 15 U.S.C. Section 2615, instituted by complaints filed by the Chief of the Toxic Substances Branch, United States Environmental Protection Agency (hereinafter

"EPA" or "the Agency"), Region VIII, dated March 7, 1988, and June 16, 1988, respectively, both of which were served on named Respondents by Certified Mail, Return Receipt Requested. Respondents Camax Engineering, Inc. and Sephen Zbikowski, Sr. filed their timely Answers to said Complaints by their attorney, Louis A. Morrone. The Answer of Respondent Core Minerals Recoveries, Inc. was filed on September 8, 1988, by the same attorney. The said matters were referred, respectively, to the undersigned by Orders dated May 2, 1988, and July 22, 1988. A prehearing letter in the first-styled case was issued on May 3, 1988, requiring the parties to submit specified information by June 24, 1988. In the second case, above-styled, a prehearing letter was issued on August 2, 1988, requiring the parties to submit specified information on or before October 11, 1988, which dates were subsequently extended for both cases to October 28, 1988. On August 8, 1988, Complainant's Motion to Consolidate subject cases was granted. Complainant timely filed its prehearing exchange on October 28, 1988, and also filed supplemental information on November 2, 1988. On October 28, 1988, Louis A. Morrone, attorney for the subject Respondents, filed his Notice of Withdrawal as Counsel for the Respondents. On or about November 21, 1988, Morrone filed his Re-Entry of Appearance and a Motion for Continuance of subject Consolidated proceedings then scheduled to be heard on December 7, 1988. Subsequently, said requested hearing was scheduled to be heard in Denver, Colorado, on May 18, 1989, and the parties were authorized and directed to amend or update their respective prehearing exchanges on or before April 24, 1989. On April 17, 1989, said Louis A. Morrone, as Counsel for named Respondents

in both cases, filed his SECOND NOTICE OF WITHDRAWAL, with certificate attached signifying that he had notified each of the Respondents, as follows:

TO: Camax Engineering, Inc. - Stephen Zbikowski, Sr. - Core Minerals Recoveries, Inc.:

1. The within matter is set for a hearing before the Administrative Law Judge on May 18, 1989, at 9:30 a.m. in Denver, Colorado. This is a hearing upon the merits of the case and is a hearing upon whether the alleged violations have occurred and imposition of a penalty. You or your representatives or both of you must be present at the hearing or you will be in default in the matter.
2. A pre-hearing exchange of documents should be accomplished as soon as possible.
3. You may pick up a full copy of your file at any time at my office.
4. Do not disregard this notice as failure to regard it and take prompt action in the matter could result in serious legal consequences.

(Signed)
Louis A. Morrone, #4554
Attorney at Law
7400 E. Arapahoe, Suite L 100
Englewood, CO 80112
303/796-9455.

Although Complainant timely complied with said prehearing Order, Respondents have at all times failed and refused to furnish the prehearing information required by my directives and prehearing Order, or make any response thereto. This failure constitutes a default within the meaning of 40 C.F.R. 22.17(a)(2) - Rules of Practice - and an admission of the facts alleged in subject Complaints.

Based upon the allegations in the said Complaints and the exhibits submitted by Complainant in its prehearing exchange, including PCB Proposed Penalty Calculations, attached hereto as Attachments A & B, I make the following:

FINDINGS OF FACT

1. EPA has jurisdiction in subject proceedings pursuant to Section 16 of TSCA, 15 U.S.C. §2615.
2. Respondents Camax Engineering, Inc. (hereinafter "Camax"), a Colorado corporation, Stephen Zbikowski, Sr. (hereinafter "Zbikowski"), President of Camax and Core Minerals Recoveries, Inc. (hereinafter "Core"), a Colorado corporation, are "persons" as that term is defined in 40 C.F.R. §761.3 and thus subject to regulation.
3. Respondents Camax and Zbikowski were, at all relevant times, the owners and operators of a facility at 8356 Syracuse, Commerce City, Colorado, used for the storage of "PCBs and PCB items".
4. EPA Inspectors, on November 6, 1986, inspected Respondents' said facility, with the consent of Respondents, and then and there observed and determined that 34 capacitors stored in said facility were leaking fluid with a concentration of PCBs exceeding 50 parts per million (hereinafter "ppm") as a result of actions of Respondents Camax and Zbikowski in puncturing the terminal ends of said capacitors. The EPA Inspectors further observed that seven of said capacitors were without terminal ends, exposing PCB-saturated cardboard to the environment.
5. Said inspection on November 6, 1986, further revealed that Respondents' PCB storage for disposal facility was not constructed with continuous curbing at least six inches in height.
6. Said inspection on November 6, 1986, revealed that 34 PCB Large High Voltage Pyranol capacitors and the storage area at Respondents' storage for disposal facility were not marked according to the format described at

40 C.F.R. §761.45, as required by 40 C.F.R. §761.40, and that said stored capacitors were not dated as required by 40 C.F.R. §761.65.

7. Camax and Zbikowski were, at all times relevant hereto, the owners of 34 large capacitors stored at Core, a facility located at 9985 East 104th Avenue, Henderson, Colorado, and used for the storage for disposal of "PCBs" and "PCB items". Said Henderson facility was inspected on April 15, 1988, by EPA Inspector D.W. Bench after Notices of Inspection and Confidentiality were issued to Respondents' representatives. Said inspector observed that said 34 large PCB capacitors (Finding 4, supra) were stored in the yard behind Respondents' warehouse in a marked open tub made of 1/4" steel with outside dimensions of 48" x 121" x 22" (depth), which tub (and capacitors) were partially covered with black plastic. The tub contained nine inches of water and the capacitors were partially submerged. The capacitors were marked and dated November 6, 1986. Thirty-one capacitors were in the tub and three were in an adjacent unmarked 55-gallon drum without a lid.

8. PCB regulations require that PCBs be disposed of by incineration or burial methods specified in 40 C.F.R. §761.60.

9. PCB regulations at §761.65(a) require that "any PCB article or PCB container stored for disposal after January 1, 1983, shall be removed from storage and disposed of . . . within one year from the date when it was first placed in storage." 40 C.F.R. §761.65(b)(1)(i) requires that PCB storage for disposal facilities be constructed with an adequate roof and walls to prevent rain from reaching said stored PCBs.

10. Said inspection on April 15, 1988, revealed that said 34 PCB capacitors had been stored by Respondents for more than one year and that Respondents'

PCB storage facility was not equipped with roof and walls as described in Finding 9, supra.

CONCLUSIONS OF LAW

TSCA-PCB-VIII-88-09

1. Failure to properly dispose of leaking PCBs and cardboard saturated with PCBs as revealed by said inspection on November 6, 1986, and as described in Finding 4, supra, violated 40 C.F.R. §761.60 and Section 15 of TSCA, 15 U.S.C. §2614 (the Act), for which violation the assessment of a civil penalty in the sum of \$5,000 is appropriate (Count I).
2. Failure to equip its PCB storage facility with curbing as required by 40 C.F.R. §761.65 (Finding 5, supra) constitutes a violation of the Act, for which the assessment of a civil penalty in the sum of \$1,500 is appropriate (Count II).
3. Respondents' failure to properly mark capacitors and storage for disposal area (Finding 6, supra) is a violation of 40 C.F.R. §761.40 and the Act, for which the assessment of a civil penalty in the sum of \$1,500 is appropriate (Count III).
4. Respondents' failure to date the stored capacitors (Finding 6, supra) is a violation of 40 C.F.R. §761.65 and the Act, for which the assessment of a civil penalty in the sum of \$500 is appropriate (Count IV).

TSCA-PCB-VIII-88-21

5. Pertinent PCB regulations (40 C.F.R. §761.3) define "disposal" of PCBs to include "spills, leaks and other controlled discharges of PCBs."
6. 40 C.F.R. §761.60 requires that PCBs, as defined at 40 C.F.R. §761.3, be disposed of by incineration or by burial methods specified in the regulations, and Respondents Camax, Zbikowski and Core, by failing to properly

dispose of said leaking PCB items and cardboard saturated with PCBs (see Finding 4, supra) but, instead, placing them on the Core facility (Finding 7, supra), violated 40 C.F.R. §761.60 and the Act, for which the assessment of a civil penalty in the sum of \$5,000 is appropriate (Count I).

7. Storage by said Respondents of said 34 PCB capacitors (during the period of November 6, 1986, to April 15, 1988) in an open tub and in a 55-gallon drum without a lid, as observed by Inspector Bench on April 15, 1988, in an area exposed to the elements and without an adequate roof, walls or curbing of at least six inches in height (see Finding 9, supra) violated 40 C.F.R. §761.65 and the Act, for which violation the assessment of a civil penalty in the sum of \$1,500 is appropriate (Count II).

8. Failure of Respondents to mark said 34 capacitors, as illustrated in 40 C.F.R. §761.45, violates 40 C.F.R. §761.40 and the Act, for which assessment of a civil penalty, in the sum of \$1,500 is appropriate (Count III).

DISCUSSION

The Rules of Practice, 40 C.F.R. §22.17(a)(2), provide that (Respondents) may be found to be in default after motion or sua sponte, upon failure to comply with a prehearing or hearing order and that the defaults of Respondent are admissions of all facts alleged in the Complaint and, where a Complaint is for the assessment of a civil penalty, as here, the penalty proposed in the Complaint shall become due and payable by Respondent(s) without further proceedings sixty (60) days after a final order issued upon default.

The willful failure of Respondents to comply with the orders issued in this proceeding is aptly demonstrated by the record as set forth, supra, pages 1 and 2. The record further indicates that Respondents also failed

to cooperate with their attorney, who twice withdrew as counsel, and who, on the eve of the hearing scheduled for May 18, 1989, rendered an affidavit that he was certain Respondents would not appear at said hearing, although he had warned them by notice (set out, supra, page 3), that failure to so appear "could result in serious legal consequences."

The PCB Proposed Penalty Calculations, Attachments A and B to this decision, certify that each penalty amount proposed was calculated in accordance with the PCB Penalty Policy, 45 F.R. 59770-59783, September 10, 1980, and the provision in the Act for the Assessment of Civil Penalties, 15 U.S.C. §2615.

The full amount of the penalties proposed in the cases hereinabove styled is determined to be appropriate and will be assessed against the Respondents.

ORDER 1/

1. Pursuant to and in accordance with 40 C.F.R. §22.17(a) and Section 16(a) of the Act, 15 U.S.C. §2615(a), a penalty in the total sum of \$8,500 is hereby assessed against Camax Engineering, Inc., a Colorado corporation, and Stephen Zbikowski, Sr. (also referred to as Stephan Zbikowski, Sr.), to be borne by them jointly and severally, for violation of the Toxic Substances Control Act (TSCA), as charged in Complaint No. TSCA-PCB-VIII-88-09.

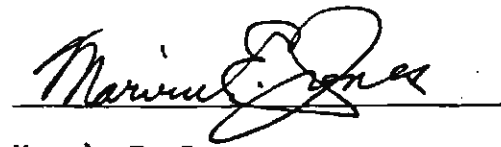
1/ In accordance with Rule 22.17(b) (40 C.F.R. Part 22), this Default Order constitutes an Initial Decision which, unless appealed in accordance with Rule 22.30 or unless the Administrator elects sua sponte to review the same as therein provided, will become the Final Order of the Administrator in accordance with Rule 22.27(c).

2. Pursuant to and in accordance with 40 C.F.R. §22.17(a) and Section 16(a) of the Act, 15 U.S.C. §2615(a), a penalty in the total sum of \$8,000 is hereby assessed against Camax Engineering, Inc., a Colorado corporation, Stephen Zbikowski, Sr. (also referred to as Stephan Zbikowski, Sr.), and Core Minerals Recoveries, Inc., a Colorado corporation, to be borne by them jointly and severally, for violation of the Toxic Substances Control Act (TSCA), as charged in Complaint No. TSCA-PCB-VIII-88-21.

3. Payment of said penalties, in the amounts hereinabove assessed, shall be made by submitting a Cashier's or Certified Check payable to the Treasurer of the United States, within 60 days of receipt of this Order, to the following address:

U.S. EPA, Region VIII
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251.

DATED: June 19, 1989



Marvin E. Jones
Administrative Law Judge

PCB PROPOSED PENALTY CALCULATION

RESPONDENT: CAMAX ENGINEERING INC., et seq.

DOCKET NO. TSCA-PCB-VIII-88-09

INSPECTION DATE: November 6, 1986

The undersigned hereby certifies that each proposed penalty described below is calculated in accordance with the GUIDANCE FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER SECTION 16 OF THE TOXIC SUBSTANCES CONTROL ACT; PCB PENALTY POLICY, 45 Fed. Reg. 59770 - 59783 (September 10, 1980), or subsequent modifying guidance issued by EPA.

Under the policy, to determine the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in the business and the gravity of the violation.

The proposed penalty for the violation alleged in this case is as follows:

Count I - Improper Disposal (Leaking capacitors)

Extent: Minor
Circumstance: Level 1

Total: \$5,000.00

Count II - Improper storage (no curb for storage for disposal area)

Extent: Minor
Circumstances: Level 3

Total: \$1,500.00

Count III- Failure to Mark Capacitors and Storage Area

Extent: Minor
Circumstances: Level 3

Total: \$1,500.00

Count IV - Failure to Date Stored Capacitor

Extent: Minor
Circumstances: Level 5

Total: \$500.00

ATTACHMENT "A" - p.1

Total proposed penalty: \$8,500.00.

11-1-88

Date

Robert W. Harding

Robert W. Harding, Chief
Field Operations Section
Toxic Substances Branch
U.S.E.P.A. Region VIII

PCB PROPOSED PENALTY CALCULATION

RESPONDENT: CAMAX ENGINEERING INC., et seq.

DOCKET NO. TSCA-PCB-VIII-88-21

INSPECTION DATE: April 15, 1988

The undersigned hereby certifies that each proposed penalty described below is calculated in accordance with the GUIDANCE FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER SECTION 16 OF THE TOXIC SUBSTANCES CONTROL ACT; PCB PENALTY POLICY, 45 Fed. Reg. 59770 - 59783 (September 10, 1980), or subsequent modifying guidance issued by EPA.

Under the policy, to determine the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in the business and the gravity of the violation.

The proposed penalty for the violation alleged in this case is as follows:

Count I - Improper Disposal (Leaking capacitors)

Extent: Minor
Circumstance: Level 1

Total: \$5,000.00

Count II - Improper storage (inadequate roof & walls in disposal area)

Extent: Minor
Circumstances: Level 3

Total: \$1,500.00

Count III - Failure to Mark Capacitors

Extent: Minor
Circumstances: Level 3

Total: \$1,500.00

Proposed penalty: \$8,000.00.

ATTACHMENT 'B'

11-1-88

Date

Robert W. Harding

Robert W. Harding, Chief
Field Operations Section
Toxic Substances Branch
U.S.E.P.A. Region VIII

ATTACHMENT "B", p. 2

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 40 CFR 22.27(a), I have this date forwarded the Original of the foregoing DEFAULT ORDER of Marvin E. Jones, Administrative Law Judge, to Mrs. Joanne McKinstry, Regional Hearing Clerk, Office of Regional Counsel, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, and have referred said Regional Hearing Clerk to said Section which further provides that, after preparing and forwarding a copy of said DEFAULT ORDER to all parties, she shall forward the Original, along with the record of the proceeding, to:

Hearing Clerk (A-110)
EPA Headquarters
Washington, D.C.,

who shall forward a copy of said DEFAULT ORDER to the Administrator.

DATE: June 19, 1989



Mary Lou Clifton
Secretary to Marvin E. Jones, ALJ