

9/21/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
TOTAL PETROLEUM, INC.,) DOCKET NOS. RCRA-V-W-003-94
) RCRA-V-96-002
)
)
RESPONDENT)

ORDER GRANTING COMPLAINANT'S MOTION
FOR PARTIAL ACCELERATED DECISION

This proceeding (Docket No. V-W-003-94) under Section 3008 of the Solid Waste Disposal Act, as amended (42 U.S.C. § 6928) (RCRA), was commenced on December 13, 1993, by the filing of a Complaint, Findings of Violation and Compliance Order (complaint) charging Respondent, Total Petroleum, Inc. (Total) with violations of RCRA, the Michigan Hazardous Waste Management Act and applicable regulations thereunder. Specifically, the complaint alleged that Total had violated RCRA, §§ 3002 and 3017, 40 CFR Part 262; the Michigan Hazardous Waste Management Act, 1979 PA 64, MCL 299.501 et seq. MSA 13.30(1) et seq.; and Michigan Hazardous Waste Management Rules, specifically Michigan Administrative Code ("MAC") R.299.301.

The complaint identified Total as the owner or operator of a facility in Alma, Michigan, which generated hazardous waste and points out that RCRA § 3017(a) prohibits the export of any hazardous waste unless: (a) such person has provided a notification to the Administrator; (b) the government of the receiving country

has consented to accept such waste; (c) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment; and (d) the shipment conforms with the terms of the consent of the government of the receiving country as reflected in the EPA acknowledgment of consent. These terms are mirrored in Michigan's hazardous waste program (MAC R 299.9309(1) and R 299.11003(1)).

The complaint alleges, inter alia, that during the period July 29, 1992 through March 8, 1993, Total made 13 shipments of hazardous waste by identified manifests to Laidlaw Environmental Services Limited, Corunna, Ontario, Canada, without the consent of the receiving country, the authorization therefor having expired on June 17, 1992, in violation of RCRA § 3017(a)(1)(B) and 40 CFR § 262.52, which regulation was adopted by reference at MAC R 299.9309(4) and R 299.1103(i); that 41 hazardous waste manifests utilized by Total in effecting exports of hazardous waste to Laidlaw Environmental Services, Limited during the calendar years 1990-1993, did not contain the following language at the end of the certification as required by MAC R 299.9309(2)(d) (40 CFR § 262.54(d)): "and conforms to the terms of the attached EPA acknowledgment of consent."; that five identified hazardous waste manifests prepared by Total during the calendar years 1990-1993 did not identify the point of departure from the United States in the portion of the manifest reserved for special handling instructions and additional information as required by MAC R 299.9309(2)(c) (40 CFR § 262.54(c)); that 43 hazardous waste manifests prepared by

Total were in violation of one or more of the following requirements of MAC R 299.9304(2)(d) (40 CFR § 262.20), which require manifests to contain: (1) a manifest document number; (2) the name address and EPA identification number of the designated facility; and (3) the description of the waste required by regulations of the Department of Transportation, which are adopted by reference in MAC R 299.11004; and that on seven identified manifests Total failed to provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point of exit as required by MAC R 299.9309(2)(i) (40 CFR § 262.54(i)), rather Total merely provided duplicate copies of identified manifests. For these alleged violations, it was proposed to assess Total a penalty of \$195,875.

Total answered, admitting the facts alleged in the complaint, but objecting to the penalty. Total emphasized its good faith efforts to comply and asserted that it had brought the alleged violations to EPA's attention. Total requested a hearing.

By a letter-order, dated June 29, 1994, the parties were directed, absent a settlement, to file prehearing exchanges on or before August 19, 1994. This date was extended to on or before October 19, 1994, based upon the parties' representation that settlement negotiations were in progress. By an order, dated October 6, 1994, Complainant was directed to file its contemplated motion for an accelerated decision on or before November 11, 1994. Complainant has done so and by various orders proceedings in this matter were suspended to allow more time for settlement. Total was

ultimately allowed until April 26, 1996, to respond to the motion, but has failed to do so.

The motion for an accelerated decision asserts that there is no dispute of material fact that Total committed the violations alleged in the complaint and that Complainant is entitled to judgment as a matter of law.

DISCUSSION

Total, having admitted the facts and the violations alleged in the complaint, Complainant's motion for a partial accelerated decision will be granted.

ORDER

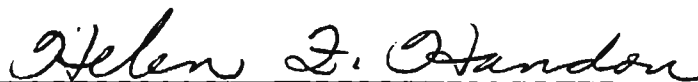
Total Petroleum, Inc. having violated the Act and regulations in the particulars alleged in the complaint, Complainant's motion for an accelerated decision as to liability is granted. The amount of the penalty remains at issue and will be determined after further proceedings, including a hearing, if necessary. Absent a settlement, the parties will file prehearing exchanges in accordance with the ALJ's letter, dated June 29, 1994, and Rule 22.19(b) (40 CFR Part 22) on or before October 31, 1996.

Dated this 4th day of September 1996.


Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER GRANTING COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION, dated September 4, 1996, in re: Total Petroleum, Inc., Dkt. Nos. RCRA-V-W-003-94 and RCRA-V-96-002, was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to Respondent and Complainant (see list of addressees).



Helen F. Handon
Legal Staff Assistant

Date: September 4, 1996

ADDRESSEES:

Melanie S. Kelley, Esq.
Vice President and Counsel
Department of Environmental
Safety and Public Affairs
Total Petroleum, Inc.
900 19th Street
P.O. Box 500
Denver, CO 80202-2523

John H. Tielsch, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

Ms. Jodi L. Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590