

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

4/18/94
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ADVANCE COATING CO.

Docket No. EPCRA-I-93-1015

Respondent

Judge Greene

ORDER
UPON MOTION FOR "ACCELERATED DECISION"

This matter arises under sections 313 and 325(c) of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter EPCRA or the Act), 42 U.S.C. §§ 11023, 11045(c), and regulations promulgated pursuant to authority contained therein, 42 U.S.C. § 11048, EPCRA § 328, 53 Fed. Reg. 4500 et seq., (1988).¹ Section 325(c) of the Act provides that any person who violates any requirement of section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 per day for each such violation.

The complaint charges Respondent with twelve reporting violations in that Respondent allegedly manufactured, processed, or "otherwise used" the chemicals acetone (Counts I, V, and IX of the complaint), maleic anhydride (Counts II, VI, and X of the

¹ See 40 C.F.R. Part 372.

complaint), phthalic anhydride (Counts III, VII, and XI), and styrene monomer (Counts IV, VIII, and XII) in excess of the reportable quantities during the years 1987-1989 but failed to file reports with the Administrator of the U. S. Environmental Protection Agency (EPA) and the Commonwealth of Massachusetts as required by section 313(a) of the Act [42 U.S.C § 11023(a)] and 40 C.F.R. § 372.22. The Act and regulations require that the quantity of each toxic chemical manufactured, "processed," or "otherwise used" during each calendar year be so reported by means of a toxic chemical release form (EPA "Form R"²) no later than July 1 of the following year. Acetone, maleic anhydride, phthalic anhydride, and styrene monomer are toxic chemicals, and are listed at 40 C.F.R. Subpart D, Specific Toxic Chemical Listings, effective January 1, 1987.³ The forms for calendar year 1987 were to have been filed by July 1, 1988; the forms for calendar year 1988 were to have been filed by July 1, 1989; and the forms for calendar year 1989 were to have been filed by July 1, 1990.⁴ As of the date of the filing of the complaint (March 20, 1993), the forms had not yet been filed.

The charges in the complaint are based upon an inspection of Respondent's facility conducted on February 22, 1990, by EPA.

The parties have been unable to settle, and pretrial exchange

² Form R was promulgated pursuant to 42 U.S.C. § 10023(g); see 40 C.F.R. § 372.85.

³ See 40 C.F.R. § 372.65.

⁴ EPCRA § 313(f), 42 U.S.C. § 11023(f); 40 C.F.R. § 372.25.

was made according to schedule. Thereafter, Complainant moved for "accelerated decision" as to liability for the alleged violations,⁵ on the ground that no material facts are in dispute, and that Complainant is entitled to judgment as to liability as a matter of law.⁶

A review of the pleadings and the record herein, including pretrial exchange filed by the parties, discloses that no material facts alleged in the complaint remain at issue. Respondent does not deny that it manufactured, "processed," or "otherwise used" the four chemicals during calendar years 1987, 1988, and 1989 in quantities such that Form R's were required to be filed for each of them by July 1 of each following year, with EPA and with the Commonwealth. Respondent also does not deny that the forms were not filed. Further, there is no dispute as to facts which bring Respondent's business within the Act. The Act and regulations apply to "persons,"⁷ owners or operators of a "facility"⁸ having ten or more "full time employees,"⁹ and applies to facilities

⁵ Respondent did not respond to the motion. Although additional time was requested and provided (Order Granting Motion for Extension, January 28, 1994), no response has been filed.

⁶ Complainant's Motion for an Accelerated Decision on Liability and Memorandum of Law in Support of its Motion for an Accelerated Decision on Liability, January 12, 1994.

⁷ EPCRA § 329(7), 42 U.S.C. 11049(7).

⁸ See EPCRA § 329(4), 42 U.S.C. § 11049(4); 40 C.F.R. § 372.3.

⁹ The term "full time employees" is defined at 40 C.F.R. § 372.3.

classified in Standard Industrial Classification Codes 20-39. Respondent does not deny that it is a "person," that it owns a "facility," that it has ten or more "full time employees" as defined in the regulations, or that its facility falls within Standard Industrial Classification Codes 20-39.

Accordingly, there being no material facts in dispute, and since Complainant is entitled to judgment as a matter of law based upon facts not disputed here, Complainant's motion for "accelerated decision" as to liability for the charges must be granted.

Although Complainant has included in its memorandum material related to the calculation of the proposed penalty,¹⁰ the motion does not seek judgment as to the penalty. Accordingly, the question of whether it would be appropriate to grant judgment as to the penalty in the circumstances here is not reached.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts.

2. Respondent owns and operates a facility that manufactures polyester resins and organic chemicals at Depot Road in Westminister, Massachusetts.

3. Respondent is a "person" as that term is defined by

¹⁰ Complainant's Memorandum of Law in Support of its Motion for an Accelerated Decision on Liability, at 13-14.

section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

4. Respondent is an owner or operator of a "facility" as that term is defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

5. The facility has, and at all times relevant to this complaint had, ten or more "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

6. The facility is classified in Standard Industrial Classification Codes 20 through 39.

7. Respondent is subject to the Act and regulations issued pursuant to authority. The requirements of Section 313 of the Act, 42 U.S.C. § 11023, apply to Respondent's facility.

8. During the calendar years 1987, 1988, and 1989, Respondent manufactured, processed or otherwise used acetone, maleic anhydride, phthalic anhydride, and styrene monomer, toxic chemicals listed under 40 C.F.R. § 372.65, in quantities which exceed the reporting thresholds established by law and regulation.

9. Subsection 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22, require that owners or operators of facilities which have ten or more full time employees, are in Standard Industrial Classification Codes 20 through 39, and which manufactured, processed, or "otherwise used" a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year, submit a Form R for each such substance for that year no later than July 1 of the

following year.

10. Respondent failed to file Form R's for toxic chemicals acetone, maleic anhydride, phthalic anhydride, and styrene monomer for the years 1987-1989, as charged in the complaint.

11. Respondent violated section 313 of the Act, and 40 C.F.R. Part 372. Accordingly, Respondent is liable for a penalty, as provided at section 325(c) of the Act, 42 U.S.C. § 11045(c).

12. Remaining to be resolved is the issue of appropriate penalty for the violations found herein.

ORDER

It is ordered that Complainant's motion for "accelerated decision" as to liability shall be, and it is hereby, granted.

It is further ordered that, no later than **May 11, 1994**, the parties shall confer for the purpose of exploring settlement of the penalty issue. They shall report to this office on the status of their effort no later than **May 13, 1994**.

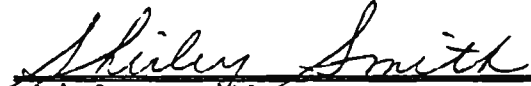


J. F. Greene
Administrative Law Judge

April 12, 1994
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on April 13, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Advance Coating Co.
DOCKET NUMBER: EPCRA-I-93-1015

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