UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	**)**	
	)	
PUERTO RICO AQUEDUCT	**)**	**Docket No. EPCRA-02-99-4003**
AND SEWER AUTHORITY,	**)**	
	)	
Respondent	**)**	

ORDER ON CROSS MOTIONS FOR ACCELERATED DECISION

I. Background

This proceeding was initiated on February 8, 1999 by the filing of a Complaint by the United States Environmental Protection Agency, Region II, pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11045, against Respondent, Puerto Rico Aqueduct and Sewer Authority (PRASA or Respondent). The Complaint alleges that Respondent failed to immediately notify the National Response Center, the Local Emergency Planning Committee (LEPC), and the State Emergency Response Commission (SERC) of a release, on or about September 21, 1998, of four 2,000-pound containers of chlorine from its facility, as soon as Respondent had knowledge of the release, in violation of Section 103(a) of CERCLA, 42 U.S.C. 9603(a), and Section 304(b) of EPCRA, 42 U.S.C. 11004. The Complaint alleges three counts of violation, one count for each of the three entities Respondent allegedly failed to notify. Complainant proposes a penalty of $27,500 for each of the three counts, for a total penalty of $82,500.

Respondent answered the Complaint, denying the alleged violations and requesting a hearing. In its Answer, Respondent asserts that Hurricane Georges and the resultant extensive flooding, caused chlorine cylinders to be buried under the debris of the concrete building in which they were located, that three (3) chlorine cylinders were recovered with their content of chlorine intact, and that no leak or release into the environment occurred. Respondent further asserts in its Answer that a search continues "for a possible and uncertain fourth cylinder."

On November 1, 1999, Complainant submitted a Motion for Accelerated Decision with an attached brief in support ("Complainant's Motion"). Complainant's Motion requests an accelerated decision as to Respondent's liability for Counts I through III of the Complaint, on the basis that there are no genuine issues of material fact with respect to Respondent's liability and that Complainant is entitled to judgment as a matter of law that Respondent is liable for failure to immediately notify the NRC, LEPC and SERC of the release of the release of chlorine from its

sewage treatment plant on or about September 21, 1998.

On November 12, 1999, Respondent submitted a Motion for Accelerated Decision, accompanied by a Memorandum of Law in Support of PRASA's Motion for Accelerated Decision and in Opposition to Complainant's Motion for Accelerated Decision ("Respondent's Motion"). Accepting Complainant's recitation of undisputed facts set forth in Complainant's Motion, Respondent asserts that Complainant has failed to establish all of the elements of liability under Section 109 of CERCLA and 325 of EPCRA and that Respondent therefore is entitled to judgment as a matter of law. In particular, Respondent asserts that the loss of chlorine cylinders without more does not constitute a "release" of hazardous substances within the meaning of the statutory definition of the term. Respondent asserts further that Complainant has not presented facts sufficient to establish that Respondent had knowledge of any release. Finally, Respondent urges denial of Complainant's Motion on grounds that a genuine dispute of material fact exists as to whether Respondent "immediately notified" the NRC, SERC and LEPC. Complainant did not file any response to Respondent's Motion.[1]

II. Discussion

A. *Standard for Accelerated Decision*

The Rules of Practice, 40 C.F.R. Part 22, as amended, 64 Fed. Reg. 40176 (July 23, 1999), provide as follows with respect to accelerated decision, at 40 C.F.R. § 22.20(a):

> The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, of no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

Summary judgment law under Federal Rule of Civil Procedure 56 is applicable to

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[1] Complainant's response was due fifteen days after service of Respondent's Motion, plus five days to account for service of the Motion by mail, so the due date for such response was December 2, 1999. 40 C.F.R. § 22.16(b), 22.7(c). By Complainant's failure to file a response to Respondent's Motion within that designated period, it "waives any objection to the granting of the motion," according to Section 22.16(b) of the Rules of Practice, at 40 C.F.R. Part 22. Nevertheless, by virtue of Complainant's position set forth in its Motion, which is clearly contrary to the position set forth in Respondent's Motion, Complainant is deemed to object to the granting of Respondent's Motion.

accelerated decision under the Rules of Practice. *Puerto Rico Aqueduct and Sewer Authority v. EPA*, 35 F.3d 600 (1st Cir. 1994), *cert. denied*, 513 U.S. 1148 (1995); *CWM Chemical Services, Inc.*, 6 E.A.D. 1, 1995 TSCA LEXIS 10 (EAB 1995). The party moving for summary judgment has an initial burden to show the absence of any genuine issues of material fact, "identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)(quoting Fed. R. Civ. Proc. 56(c) . Upon such showing, the opponent of the motion "may not rest upon the mere allegations or denials of [its] pleading, but [its] response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. Proc. 56(e). The party opposing the motion must demonstrate that the issue is "genuine" by referencing probative evidence in the record, or by producing such evidence. *Clarksburg Casket Company*, EPCRA Appeal No. 98-8, slip op. at 9 (EAB, July 16, 1999); *Green Thumb Nursery*, 6 E.A.D. 782, 793 (EAB 1997). An factual issue is "*material* where, under the governing law, it might affect the outcome of the proceeding," and is "*genuine* if the evidence is such that a reasonable finder of fact could return a verdict in either party's favor." *Clarksburg Casket*, slip op. at 9. The record must be viewed in a light most favorable to the party opposing the motion, indulging all reasonable inferences in that party's favor. *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990).

The fact that the parties both have requested accelerated decision does not require that an accelerated decision be granted. "When faced with cross-motions for summary judgment, the court is not required to grant judgment as a matter of law for one side or the other . . . . 'Rather, the court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration.'" *Heublein, Inc. v. United States*, 996 F.2d 1455, 1461 (2d Cir. 1993)(*quoting*, *Schwabenbauer v. Bd. of Educ. of City of Olean*, 667 F.2d 305, 314 (2d Cir. 1981)).

B. *Statutory and Regulatory Provisions*

Section 103(a) of CERCLA provides, in pertinent part:

> Any person in charge of a . . . facility shall, as soon as he has knowledge of any release . . . of a hazardous substance from such . . . facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center . . . of such release.

Section 304 of EPCRA requires the owner or operator of a facility to immediately provide notice to the LEPC and SERC of a release which requires notification under Section 103(a) of CERCLA. The regulations promulgated under Section 102 of CERCLA establish that a release requires such notification as soon as a person in charge of a facility has knowledge of a release in a quantity equal to or exceeding the reportable quantity (RQ) within a 24-hour period. 40 C.F.R. § 302.6. Chlorine is a "hazardous substance" under Section 102 of CERCLA and an "extremely

hazardous substance" under EPCRA. 40 C.F.R. §§ 302.4, 355 Appendix A. The RQ for chlorine is 10 pounds. *Id.*

Prior to the Superfund Amendments and Reauthorization Act of 1986 (SARA), the term "release" was defined in CERCLA as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment," with certain exceptions not relevant to this proceeding. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) (1985). The Superfund Amendments and Reauthorization Act of 1986 added to the definition of "release" a parenthetical, so the definition since 1986 reads as follows:

> any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant)
> . . . .

CERCLA Section 101(22), 42 U.S.C. 9601(22) (exceptions omitted).

The definition of "release" in Section 329(8) of EPCRA, 42 U.S.C. 11049(8) is virtually identical: "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical." The definition of "release" in the regulations implementing the emergency notification requirements under EPCRA, at 40 C.F.R. Part 355, is identical to the statutory definition except that the term "CERCLA hazardous substance" replaces the term "toxic chemical." 40 C.F.R. § 355.20.

In contrast, the definition of "release" in the regulations implementing the emergency notification requirements under CERCLA, at 40 C.F.R. Part 302, does not include the parenthetical "including the abandonment or discarding of barrels, containers, or other closed receptacles." 40 C.F.R. § 302.3. This regulatory definition was not modified after SARA went into effect, but is identical to the original definition in Section 101(22) of CERCLA which pre-dates SARA.[2]

EPCRA provides an exemption from the emergency notification requirements for certain releases. The notification requirements of EPCRA Section 304 do not apply to "any release which results in exposure to persons solely within the site or sites on which a facility is located,"

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[2] In contrast, the regulations promulgated under Section 105 of CERCLA, governing the National Oil and Hazardous Substances Pollution Contingency Plan, were updated with SARA. The definition of "release" in 40 C.F.R. § 300.5 is identical to the current statutory definition in Section 101(22) of CERCLA, except that it states, "For purposes of the NCP [National Oil and Hazardous Substances Contingency Plan], release also means threat of release."

as stated in Section 304(a)(4) of EPCRA.

C. *Undisputed Facts*

The uncontested facts, as pertinent to the issues raised in the cross motions for accelerated decision on liability, are as follows: Respondent owns a sewage treatment plant located on Road No. 144, Km. 19.7, Jayuya, Puerto Rico (Stipulations, dated November 22, 1999 ("Stip.") ¶ 2. On September 21, 1998, Hurricane Georges struck the island of Puerto Rico, causing the flooding of the Rio Grande de Jayuya. (Stip. ¶ 8). On or about September 21, 1998, the flooding resulted in the collapse of portions of the sewage treatment plant, including the concrete building in which chlorine was stored (Stip. ¶ 9; Declaration of Jorge Torres ¶ 5, Respondent's Motion Exhibit 1). The hurricane caused the loss of cylinders of chlorine gas (Respondent's Motion at 1-2). Respondent had no control over the cylinders and there was a concern that the cylinders were leaking. (Respondent's Motion at 4; Complainant's Motion at 7). Each cylinder contained chlorine in excess of the reportable quantity (Stip. ¶¶ 5, 6, 10). A search involving various government officials was conducted for the cylinders, including a search by helicopter along the Jayuya River (Complainant's Motion at 11; Declaration of Angel Rodriguez ¶ 6, Complainant's Motion Exhibit 3; Complainant's Motion Exhibits 4, 5, 6; Declaration of Antonio Pardo, Respondent's Motion Exhibit 2). Within four months of the hurricane, three cylinders were recovered on the grounds of the facility. Respondent's Motion, n. 1; Complainant's Motion at 14; Complainant's Opposition to Motion to Dismiss at 8; Complainant's Prehearing Exchange Statement at 9; Respondent's Prehearing Exchange Statement at 6).

Respondent asserts that the three cylinders were recovered with their content of chlorine intact (Answer p. 4). Respondent also asserts that the three cylinders were found under the debris of the collapsed building (Respondent's Motion n. 3). Complainant does not contest those assertions, but believes that they are not relevant to the issue of Respondent's liability (Complainant's Motion at 14).

The parties dispute the number of chlorine cylinders which were lost. Complainant maintains that there were four, as evidenced by Respondent's report to the Puerto Rico Civil Defense (Complainant's Motion at 6, and Exhibit 4 p. 3 and Exhibit 5). Respondent claims there were three, based on information it has collected and on its unsuccessful efforts to find a fourth cylinder (Respondent's Motion n. 1).

D. *Arguments of the Parties*

Complainant requests accelerated decision in its favor as to liability on the basis of the undisputed facts stated above, together with documents submitted with its Motion as exhibits. Complainant interprets the definitions of the term "release" in Section 101(22) of CERCLA and Section 329(8) of EPCRA, to encompass the loss of the cylinders from Respondent's facility.

Complainant asserts that Respondent failed to notify the NRC, LEPC and SERC of such release, based upon Exhibits 7, 8 and 9 to Complainant's Motion, which appear to be letters from the NRC, LEPC and SERC, respectively. The letters purport to respond to a request from EPA for copies of discharge reports concerning any releases reported by Respondent, and state that no such reports or similar records were found.

As to Respondent's claim that the three cylinders were found closed and not leaking, Complainant asserts that the notification requirements of CERCLA and EPCRA were triggered as soon as Respondent realized that the cylinders were missing from its facility, and that information acquired after the fact cannot justify such failure to notify. Complainant asserts that a "release" under CERCLA and EPCRA can involve a container of hazardous substance entering into the environment, as the term "release" has been interpreted to include shipping containers and closed barrels that have been lost overboard a ship. *United States v. M/V Santa Clara I,* 887 F.Supp. 825 (D.S.C. 1995)(a "release" under CERCLA Section 101(22) occurred where closed barrels containing a hazardous substance were lost when shipping containers containing the barrels fell overboard a ship).

Respondent's request for accelerated decision in its favor is based on its interpretation of the statutory definitions of "release." Respondent's position is that there was no "release" from its facility. Respondent argues that the statutory definitions, *i.e.*, "any spilling, leaking . . . or disposing into the environment . . ." do not include, and cannot be construed as including, "loss of control." Respondent argues further that no hazardous substances actually enter "into the environment" with a mere loss of control of containers of hazardous substance. Respondent urges that a fundamental element of a "release" is that the hazardous substance must actually enter into the environment, citing, *Fertilizer Institute v. U.S. EPA.* 935 F.2d 1303, 1309 (D.C. Cir. 1991)("nothing less than an actual release of a hazardous material into the environment triggers the reporting requirement") and *Nostru, Inc. v. Township of Castleton,* 1998 U.S. Dist. LEXIS 7556 *18 (E.D. Mich. March 31, 1998). Respondent concedes, however, that there is a circumstance in which the statutes recognize a release without hazardous substances entering onto the environment: where a container of hazardous substance has been abandoned or discarded. Thus, Respondent reads the parenthetical ("*including the abandonment or discarding of barrels . . .*") as an addition to the list of terms, and an exception to a general rule that the hazardous substance *itself* must enter directly "into the environment." Respondent asserts that Complainant has produced no probative evidence that PRASA abandoned or discarded the cylinders.

Respondent emphasizes that the regulations and EPA-published guidance do not provide a definition that includes loss of control of containers of hazardous substances. Specifically, Respondent quotes the following passage from a published guidance document prepared by EPA, entitled "Questions and Answers on Release Notification Requirements and Reportable Quantity Adjustments" (Questions and Answers document) (Respondent's Motion Exhibit 3):

> if the CERCLA hazardous substance is in encapsulated form, or is otherwise in a closed receptacle, reporting is required when the closed receptacles are abandoned

> or discarded and the amount of a CERCLA hazardous substance contained within the released material equals or exceeds an RQ. The legislative history makes it clear that the definition applies even to receptacles that have not broken open and are not leaking hazardous substances.

Respondent asserts that it is clear from the Questions and Answers document that it is *only* when hazardous substances in a closed receptacle are *abandoned* or *discarded* that a release has occurred.

Respondent urges that the decision in *Santa Clara I* should be given no weight because it is contrary to the plain language of the statute, inconsistent with EPA regulations and guidance, and factually distinct from the present case. Respondent points out that it involved liability under Section 107 of CERCLA, which is triggered not only by a release but also by a threatened release. Respondent believes there is a flaw in the court's reasoning that the barrels in which the hazardous substance were contained were "facilities" under CERCLA, but that they were "released" where they merely came to rest on the ocean floor; Respondent argues that "facilities" cannot be "released." Respondent contrasts the lack of effort on the part of the owner of the barrels in *Santa Clara I* to recover the barrels with the "immediate action" of PRASA to recover the lost cylinders.

Respondent argues that a construction of the term "release" to include the concept of "loss of control" would create uncertainty and would lead to absurd results. As an example of such a construction, notification requirements would be triggered where a 15 pound cylinder of chlorine rolls off of a dolly and the facility owner is unable to catch up to it as it rolls down an incline, even if he catches up to it a few moments later. As another example, notification requirements would be triggered where, after moving a quantity of 15 pound cylinders on a dolly outside the facility, the owner determined that one was missing. Respondent queries whether a cylinder be deemed lost, requiring the owner to report a release, the minute the owner realized the cylinder was lost, or after he first looks around for it. Respondent further queries whether reporting is triggered by an immediate threat to health or the environment, such that an owner must report a release if a cylinder rolls onto a highway and is about to be hit by a truck, but not if it rolls onto a vacant parking lot.

Even if Complainant's interpretation of the definition of "release" is determined to be reasonable, Respondent asserts that it cannot be applied retroactively to PRASA's conduct for imposition of penalties because it would violate fundamental notions of due process and fairness, citing *General Electric Co. v. U.S. EPA.* 35 F.3d 1324, 1328 (D.C. Cir. 1995) and *CWM Chemical Services,* 6 E.A.D. 1, 1995 EPA App. LEXIS 20 (EAB 1995)(dismissal of complaint upheld where EPA's regulations did not provide fair notice of EPA's interpretation of them).

Respondent's second point in support of its request for judgment as a matter of law is that Complainant has failed to produce any probative evidence demonstrating that PRASA had knowledge of the release. Conceding that Complainant's pleadings may be read to allege that

PRASA had knowledge of the loss of cylinders, Respondent argues that there is no evidence that PRASA had knowledge that such loss constituted a release for which it was obligated to provide notification to the relevant authorities.

Opposing Complainant's Motion, Respondent asserts that there is a genuine dispute of material fact as to whether PRASA provided immediate notification. Respondent asserts that the letters from the NRC, SERC and LEPC are not sufficiently probative because Complainant has not established that each entity actually maintains records of all reports received by member agencies and field personnel and those made by telephone, in writing or in person. Respondent proffers written declarations of Jorge Torres and Antonio Pardo in support of its assertion that it provided immediate notice to the SERC and LEPC (Respondent's Motion, Exhibits 1 and 2). Citing to a document attached to Complainant's Motion, Respondent asserts that it "admits that notice was not provided to the NRC until October 13, 1998," but that the "NRC stated that no report was required for loss of cylinders because only releases of chlorine are reportable" (Complainant's Motion, Exhibit 4 p. 5).

D. *Analysis and Conclusions*

1. *Whether a "release" occurred*

The elements of liability under Section 103(a) of CERCLA and the implementing regulations are: (1) that the respondent is a "person in charge of . . . an onshore facility"; (2) that a hazardous substance was released within a 24 hour period from such facility in quantities equal to or greater than the reportable quantity; and (3) that the person failed to notify immediately the NRC of such release as soon as he had knowledge of any release in such quantities. *See,* 40 C.F.R. §§ 302.6, 302.7(a)(3). Respondent concedes the first element (Stip. ¶ 1), and does not raise any dispute as to any particular individual(s) being in charge of the facility.

As to the second element, the parties agree that there are no genuine issues of material *fact* as to the loss of the cylinders of chlorine. As noted above, it is undisputed that cylinders of chlorine were lost during Hurricane Georges, that the amount of chlorine in each cylinder exceeded the ten pound RQ for chlorine, and that Respondent later recovered three cylinders. The parties do not raise any issue as to whether the release occurred within a 24-hour period.

The Motions instead center around the question of whether these uncontested material facts lead to the legally significant conclusion that a "*release*," within the meaning of the definitions of "release" in Section 101(22) of CERCLA and Section 329(8) of EPCRA (and in the regulations at 40 C.F.R. §§ 302.3 and 355.20), occurred. In the recent Order on Cross Motions for Accelerated Decision in *Lilly del Caribe, Inc.,* EPA Docket No. EPCRA-02-99-4001 (December 14, 1999), this tribunal addressed a similar issue of whether there was a "release" within the statutory definitions, where 18 drums containing a hazardous substance were swept away from the facility by flooding from Hurricane Georges, and were later recovered with their

contents intact. The parties to that proceeding made similar arguments to those made by the parties herein. As the analysis in that Order is applicable to the present case, portions of that analysis (slip op. at 9-19) are repeated herein below.

The interpretation of a statute begins with an examination of the plain language of the statute. *United States v. Hanousek,* 176 F.3d 1116, 1120 (9th Cir. 1999); *Lewis v. United States,* 445 U.S. 55 (1980); *see, Hughey v. United States,* 495 U.S. 411, 415 (1990); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). In addition to the particular statutory language, the "design of the statute as a whole" must be considered. *Crandon v. United States,* 494 U.S. 152, 158 (1990). "Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme." *United States v. Lewis,* 67 F.3d 225, 228-229 (9th Cir. 1995)(quoted in *Hanousek,* 1176 F.3d at 1120). The Supreme Court has stated, "we must not be guided by a single sentence or member of a sentence, but look to the provision of the whole law, and to its object and policy." *U.S. National Bank of Oregon v. Independent Insurance Agents,* 508 U.S. 439, 455 (1993)(internal citations omitted).

The statutory provision at issue here, as set forth above, states in pertinent part:

> The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant) . . . .

CERCLA Section 101(22), 42 U.S.C. § 9601(22) (exceptions omitted).[3]

The long list of terms in the definition certainly suggests a broad construction of the definition of "release." The terms encompass not only intentional human conduct (*i.e.*, pouring), but also passive migration (*i.e.,* leaching) and accidents (*i.e.*,escaping), involving hazardous substances. *See, United States v. CDMG Realty Co.,* 96 F.3d 706, 714 -715 (3d. Cir. 1996); *United States v. Amro Realty Corp.,* 806 F.Supp. 349 (N.D. NY 1992). And, indeed, Federal courts have held repeatedly that the definition of "release" in CERCLA Section 101(22) should be construed broadly. *Amoco Oil Co. v. Borden, Inc.,* 889 F.2d 664, 669 (5th Cir. 1989), *Dedham Water Co. v. Cumberland Farms Dairy, Inc.,* 889 F.2d 1146, 1152 (1st Cir. 1989); *Nutrasweet Co. v. X-L Engineering Corp.,* 993 F. Supp. 1409, 1419 (N.D. Ill. 1996). S*ee also, State of Colorado v. United States Dep't of Interior,* 880 F.2d 481, 487 (D.C. Cir. 1989)("a broad definition of terms such as . . . 'release' was necessary to provide for diverse matters such as notification requirements"); *United States v. Union Gas Co.,* Civ. No. 83-2456, 1992 WL 277647

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[3] The definition of "release" in EPCRA Section 329(8) is also at issue, but the text of that definition which is relevant to the present analysis is identical to that of CERCLA Section 101(22), and therefore for purposes of simplicity, references hereinafter to CERCLA Section 101(22) refer also to Section 329(8) of EPCRA.

* 7 (E.D. Pa,. Sept. 30, 1992)(CERCLA definitions of "release" and "environment" are extremely broad) ; *Rhodes v. County of Darlington, S.C.*, 833 F. Supp. 1163, 1178 (D.S.C. 1992)("Clearly, this definition contemplates a broad, remedial view of how hazardous substances can find their way into the environment without their affirmative discharge by an owner or operator of a facility").

Furthermore, each of the terms listed in the statutory definition should be construed as having a meaning distinct in some way from the other terms, in accordance with the well-settled rule of statutory construction that courts should disfavor interpretations of statutes that render statutory language superfluous. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992); *Lopez-Soto v. Hawayek*, 175 F.3d 170, 173 (1st Cir. 1999); *United States v. Victoria Peguero*, 920 F.2d 77, 81 (1st Cir. 1990); *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 751-52 (1st Cir. 1985)("All words and provisions of statutes are intended to have meaning and are to be given effect, and no construction should be adopted which would render statutory words or phrases meaningless, redundant or superfluous.").

Among the twelve terms used to define "release" in the statute is the word "escaping." The word "escaping" is not defined in CERCLA or EPCRA, so it is appropriate to look to its common meaning. The dictionary definition of "escape" is "to get away, " "to issue from," or "to issue from confinement." *Webster's Ninth New Collegiate Dictionary* 423 (1990). The word "issue," in turn, is means "to go, come, or flow out" or "to come forth: emerge." *Id.* at 642. The term "escaping" is similar in meaning to the terms "leaking," "leaching" and "emitting," and all of these terms would cover situations of liquids or gases moving by accident into the air, water or soil. Thus, the term "escaping" would be redundant if it did not also include a meaning distinct from the other terms. The only distinction that comes to mind is a release to an *unknown or unsupervised location*, by the action of the thing itself or as assisted by, for example, a force of nature not under the control of the owner or operator.

Respondent argues stoutly against construing "release" as encompassing "loss of control" with a valid point, that no hazardous substances actually enter "into the environment" with a mere loss of control of containers of hazardous substance. However, Respondent blurs the important distinction between a mere "loss of control" of a container (*i.e.*, where it is temporarily unsecured), and a "lost" container (*i.e.*, where there is an absence of knowledge as to its location). There may be instances which are somewhere in between those two situations, such as where a container drops off of a truck, and the truck driver has a vague idea of where along the road it may have dropped off. The uncertainty in such instances as to whether the terms "escaping" and "release" apply does not invalidate the application of the terms to a clear situation of a "lost" container, which is in an unknown or unsupervised location.

Such a clear situation occurred in *Santa Clara I*, where barrels containing a hazardous substance (arsenic trioxide) were swept overboard a ship due to a severe storm to an unknown or unsupervised location in the ocean. Specifically, the Court stated:

> the loss overboard of the arsenic trioxide . . . constituted a release of a hazardous substance into the environment. . . . . This court finds that release occurred when the shipping containers fell into the ocean . . . . Further, it is clear from the evidence that the shipping containers were damaged and the barrels containing the arsenic trioxide separated from the containers when they came to rest on the ocean floor.

887 F.2d at 841. The Court found that there was a "release" of a hazardous substance "into the environment" under Section 101(22) of CERCLA when shipping containers, containing barrels of a hazardous substance, fell into the ocean, although the barrels were not found to be leaking and the hazardous substance therein was not found to be in direct contact with the ocean water. A container of a hazardous substance, as well as the substance itself, may "escape," by extreme weather conditions from storage in a facility to an unknown location on land or water -- thus, "into the environment." Here, the chlorine cylinders escaped from Respondent's facility, the building in which the chlorine cylinders were stored, to an unknown location on land or water.[4]

Such a construction is consistent with the broad definition of the term "environment" in Section 329(2) of EPCRA as including "water, air, and land and the interrelationship which exists among and between water, air and land and all living things," and in Section 101(8) of CERCLA as "the navigable waters . . . and . . . any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States . . . ." *See also,* 40 C.F.R. §§ 302.3, 370.2. The plain meaning of the statutory text does not restrict the meaning of "escaping . . . into the environment" or "escaping . . . into the environment . . . of any hazardous chemical" to the mixing or direct contact *of the hazardous substance with soil, air, or water*. Thus, "escaping . . . into the environment" may be construed as encompassing unbroken containers getting away from a storage facility and coming to rest in a location on land or water which is unsupervised by or unknown to the persons in charge of the hazardous substance. *Cf., Nortru, Inc. v. Township of Castleton,* Nos. 93-CV-71480 DT, 93-CV-72343 DT, 1998 U.S. Dist. LEXIS 7556 (E.D. Mich 1998)(hazardous substance was not "released into the environment" by abandonment, having been contained, "stored safely and appropriately" and "closely supervised and monitored" at all times, despite being removed from drums, blended with other materials, transported by truck and rail to other facilities, and then returned); *A & W Smelters & Refiners, Inc. v. Clinton,* 146 F.3d 1107, 1111 (9th Cir. 1998)(no "release into the environment" where drums of a hazardous substance were left in the possession of Federal and

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[4] The relevant portion of the definition of "facility" in Section 101(9) of CERCLA is "any building, structure, [or] installation . . . ." The building in which the chlorine cylinders were stored was destroyed by the hurricane, and the chlorine cylinders that had been stored therein were lost, as they no longer were where they had been kept and were not seen in the area, and thus they "escaped" from the "facility" "into the environment." (*See,* Declaration of Jorge Torres ¶ 5, Respondent's Motion Exhibit 1).

It is not yet established whether there was a fourth cylinder, and if so, whether it came to rest on land or in water.

Mexican government authorities who had confiscated it).

Furthermore, I find that any doubt as to whether the definition of "release" can include the releases of hazardous substances in closed containers is resolved by reference to the parenthetical text, which was added to the definition by SARA: "including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance. . . ." Clearly, and as Respondent concedes, such releases do not connote the mixing of the hazardous substance with soil, air or water.

The D.C. Circuit's opinion in *Fertilizer Institute* is not inconsistent with this conclusion. The D.C. Circuit addressed the issue of placement of hazardous substances into an "unenclosed containment structure," *i.e*, a facility that is not sealed off from surrounding air, water or soil, and that is in a location owned or operated, or at least supervised, by the persons in charge of the hazardous substance. That is only a *threatened* release "into the environment," the court concluded. In that context, the D.C. Circuit made the statement, "nothing less than the actual release of a hazardous material into the environment triggers its reporting requirements." 935 F.2d at 1310. The Court did not address the issues of a hazardous substance in a container which is abandoned or discarded at, or swept away to, a location unknown to or unsupervised by the persons in charge of the hazardous substance.[5] Nevertheless, the D.C. Circuit's statement must apply to such "actual releases" of a hazardous material -- in a closed container -- "into the environment," *i.e*., a location on land or water which is unsupervised by or unknown to the persons in charge of the material. Otherwise, that statement would be inconsistent with the statutory language in the parenthetical phrase, "including the abandonment or discarding of barrels . . . ."

Respondent, however, strongly argues for a narrower definition of "release," in which the parenthetical phrase ("*including the abandonment or discarding of barrels* . . .") limits releases of closed containers to those which were either "abandoned" or "discarded." Respondent's position is that the parenthetical text is an additional type of release -- of closed containers which do not actually enter "into the environment." This position assumes that the parenthetical phrase expands, albeit only narrowly, the pre-SARA definition. However, I find that neither the statutory text of the definition nor its legislative history supports such a narrow definition.

The word "includes" is generally synoymous with "comprehends" or "embraces," but may also be synonymous with "means." *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 124 (1934); *see, Webster's Ninth New Collegiate Dictionary* 609 (1990). Thus, the term "including" signifies that it clarifies or further defines the preceding terms. Furthermore, the use of parenthesis signifies that the parenthetical phrase clarifies or further defines the preceding list of terms. If Congress intended the definition to be interpreted as Respondent urges, Congress could have omitted the

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[5] The D.C. Circuit's quotation of the definition of "release" in Section 101(22) of CERCLA omits with an ellipsis the parenthetical text, "including the abandonment or discarding . . . ." 935 F.2d at 1309.

parenthesis and phrased it as "any spilling leaking, pumping . . . or disposing into the environment, **or** the abandonment or discarding of barrels . . . ." Thus, construing CERCLA Section 101(22) as a whole, its grammatical structure does not support Respondent's reading of the parenthetical phrase as an additional type of release that does not enter "into the environment."

Closer analysis of the term "including" reveals that it is usually a term of enlargement, indicating that other terms are includable. The Supreme Court stated decades ago, "the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941); *see also, Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 188 (1941). More recently, the Supreme Court opined that the word "including" made clear that the statutory language was not limited to the specified terms mentioned after the word "including." *West v. Gibson,* __ U.S. __, 119 S.Ct. 1906, 1909 (June 14, 1999). *See also, Jones v. American Postal Workers Union, National,* 192 F.3d 417, 426 (4th Cir. 1999); *P.C. Pfeiffer v. Ford,* 444 U.S. 69, 77 n. 7 (1979)(the term "including" means the enumerated items are part of a larger group); 2A Norman J. Singer, Sutherland Stat. Construction § 47.23 (5th ed. 1992)("When 'include' is utilized [in a statute], it is generally improper to conclude that entities not specifically enumerated are excluded."). Applying those authorities here, the phrase "including the abandonment or discarding of barrels . . ." does not limit "releases" of closed containers to those which are either abandoned or discarded.[6]

The statutory definitions of "release" also must be construed in light of CERCLA and EPCRA as a whole, and their object and policy. A construction of Section 101(22) to include cases where a closed container has escaped by force of nature to an unknown or unsupervised location is consistent with purpose and policy of the EPCRA and CERCLA notification requirements. The purpose of these statutes is to protect the public in the event of releases of hazardous substances. H. Conf. Rep. No. 962, 99th Cong., 2nd Sess. (1986), *reprinted in* 1986 U.S. Code Cong. & Admin. News 2835, 3276. Specifically, their purpose is "to minimize harm to public health and welfare and the environment by facilitating rapid response to accidents involving hazardous chemicals at or in excess of specified amounts." *B.F. Goodrich Co.,* EPA Docket No. CERCLA/EPCRA-002-95, slip op. at 4, 1998 ALJ LEXIS 28 (ALJ, Order Denying Complainant's Motion for Partial Summary Judgment, March 31, 1998). The notification must be immediate, *i.e.*, should not exceed 15 minutes after knowledge of the release. S. Rep. No. 99-

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[6] *See, Ruiz v. Estelle,* 161 F.3d 814, 820 (5th Cir. 1998)(construing the phrase "including a legislator" expansively, noting that it was added by amendment, the obvious purpose of which was to clarify what was previously doubtful); *Argosy, Ltd. v. Hennigan,* 404 F.2d 14, 20 (5th Cir. 1968)(The word "includes" "conveys the conclusion that there are other items includable, though not specifically enumerated," and this conclusion is "commensurate with the proposition that when Congress amends a law the amendment is made to effect some purpose.").

It is observed that Congress did not choose to insert the word "either" after the word "including," which could have suggested an intent to include only the two conditions for closed containers, "abandonment" and "discarding."

11, 99th Cong. 1st Sess. 8-9 (1985). "The fundamental concern underlying release reporting is the danger associated with the release of a listed hazardous waste." *United States v. MacDonald & Watson Waste Oil Co.*, 933 F.2d 35, 57 (1st Cir. 1991). Even in the context of criminal violations of environmental statutes, "[p]ublic welfare statutes . . . are not to be construed narrowly but rather to effectuate the regulatory purpose." *Id.* at 46 (citing, *United States v. Johnson & Towers, Inc.*, 741 F.2d 662, 666 (3d. Cir. 1984).

It is unreasonable to assume that a closed container which has escaped by a strong force of nature -- such as a hurricane or a storm at sea -- to an unknown location, presents less danger than a closed container which is abandoned or discarded. It is even more unreasonable to assume that it presents no danger to the public or to the environment. A container which was closed when it escaped is just as likely, or more likely (due to the severity of the action which allowed it to escape) to be damaged or opened, exposing the hazardous contents, as a closed container which is abandoned or discarded. It is undisputed that cylinders of chlorine from Respondent's chlorine storage facility were in an unknown location for several months, from September 1998 through January 1999, during which time there was a danger of the cylinders leaking. PRASA personnel acknowledged the "danger of chlorine gas" and warned the Ponce Civil Defense of a "possible threat to the community" (Respondent's Motion, Declaration of Antonio Pardo ¶¶ 6, 8).[7] To wait until the lost container is recovered in order to determine whether its contents have leaked - or worse, to provide no notification if the container is not found - obviously defeats the purpose of the notification requirements. To construe the definition of "release"as Respondent urges would not only involve ignoring both the structure of CERCLA Section 101(22) and the general meaning of the word "including," but would also weaken the protection against the danger that most concerned Congress in enacting the notification requirements of CERCLA and EPCRA.

Any doubts as to whether Congress intended to limit the definition of "release," as applied to closed containers, to those that are either "abandoned" or "discarded," are put to rest by the legislative history of SARA, amending the definition:

> The House amendment proposes to amend section 101(22) of CERCLA, which is the definition of "release," to explicitly incorporate "the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant."
>
> Conference substitute - The conference substitute adopts the House proposal. This amendment to CERCLA **confirms and clarifies the President's present authority under existing law to take response action with regard to such receptacles, whether or not they have broken open and are currently leaking**

[7] The possibility that there was a fourth cylinder which was not found, and which could have leaked or may presently be leaking somewhere, demonstrates even more profoundly the importance of notifying the authorities of a "lost" container.

> **hazardous substances, pollutants or contaminants.** The phrase "containing any hazardous substance or pollutant or contaminant" includes residues of such hazardous substance or pollutant or contaminant.

Proceedings and Debates of 99th Cong., 2nd Sess., Conf Rep. on HR 2005 (SARA of 1986), 132 Cong. Rec. 28266 (Oct. 3, 1986)(emphasis added). This legislative history makes clear Congress' intent that the definition of "release,"even without the parenthetical phrase, encompasses releases of closed, intact containers of hazardous substances. Thus, resort to Agency guidance interpreting the statutory text is unnecessary.[8] Congress' intent being clear, from the language and structure of the statutory definition of "release" and its legislative history, fair notice and due process issues do not arise.

Accordingly, it is concluded as a matter of law that there was a "release," within the meaning of Section 101(22) of CERCLA, from Respondent's facility when the cylinders of chlorine were lost during the hurricane.

2. *"Knowledge" of the release*

Under Section 103(a) of CERCLA, Respondent was required to report the release of chlorine "as soon as [Respondent] ha[d] knowledge of any release . . . from such . . . facility in quantities equal to or greater than" the reportable quantity (RQ). Complainant's burden is to

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[8] Several observations are noteworthy here. First, the Question and Answer document apparently to the quoted legislative history, "[t]he legislative history makes it clear that the definition applies even to receptacles that have not broken open and are not leaking . . . ." (Respondent's Motion Exhibit 3). Second, the Question and Answer document simply does not address the issue of a lost or escaped container of hazardous substance, and therefore is neither persuasive in this proceeding nor worthy of reliance by the regulated community on that issue. Third, the Agency has addressed the issue in a preamble to the final rule, 40 C.F.R. Part 302, concerning releases of radio nuclides under Section 103(a) of CERCLA:

> Under the CERCLA definition [of release], radio nuclides are released when they are exposed to the environment or when they are enclosed in barrels, containers, or other closed receptacles that are discarded, **lost** or abandoned. Thus, if only the containers are exposed to the environment, but not the radionucludes that they contain, no report under CERCLA is necessary, unless those containers have been **lost**, discarded or abandoned.

54 Fed. Reg. 22524 (May 24, 1989)(emphasis added). Fourth, while the D.C. Circuit in *Fertilizer Institute, supra,* addressed that preamble and concluded that EPA's interpretation of "release" as including placement of a substance into an unenclosed containment structure was contrary to the plain meaning of the statutory definition, the D.C. Circuit did not address the issue of containers which are "lost," or which have escaped by force of nature.

establish that no genuine issues of material fact exist and Complainant is entitled to judgment as a matter of law that Respondent failed to notify the NRC as soon as Respondent had knowledge of the release.

Respondent asserts that Complainant has failed to present any probative evidence demonstrating that PRASA had knowledge of a release. Complainant does not specifically allege that Respondent had knowledge of a release of chlorine cylinders. However, PRASA asserts that it did provide notice of the missing cylinders to the NRC, SERC and LEPC, which implies that at some point Respondent had "knowledge" that the cylinders were lost. (Respondent's Motion at 15). Moreover, documents attached to Complainant's Motion indicate that on or about September 23 or 24, 1998, PRASA notified the Civil Defense of Puerto Rico about the missing chlorine cylinders (Complainant's Motion, Exhibits 4, 5). Consistent therewith, the Declaration of Jorge Torres, Operator of Respondent's facility, shows that on September 24, 1998, the third day after the hurricane struck, he was aware of a "potential loss" of chlorine cylinders, as he "did not see the chlorine cylinders in the location where they normally are kept, nor . . . in quickly surveying the area around the collapsed building or in looking through cracks of the collapsed structure" (Respondent's Motion, Declaration of Jorge Torres, ¶¶ 4, 5, 6).

While Respondent does not dispute that it had knowledge that the chlorine cylinders were lost, it argues that there is no evidence that PRASA had knowledge that such loss constituted a "release." Respondent assumes that "knowledge of any release" means knowledge that the facts meet the statutory definition of "release" as a matter of law.

However, even a criminal context under Section 103(b) of CERCLA,[9] "'knowledge' as used in such regulatory statutes [CERCLA] means knowledge that one is doing the statutorily prescribed acts, not knowledge that the statutes or potential health hazards exist." *United States v. Buckley*, 934 F.2d 84, 88-89 (6th Cir. 1991)(government needed to establish only knowledge of the presence of the hazardous substance, not knowledge of its legal status, in criminal action under Section 103(b) of CERCLA for failure to provide notification of a release); see also, *United States v. Freter*, 31 F.3d 783 (9th Cir. 1994)(conviction under Section 103(b) of CERCLA upheld where defendant knew that substance was hazardous but claimed that he did not report because he did not believe that the facts constituted a release).

Moreover, administrative case precedent holds that "knowledge" under Section 103(a) includes either actual knowledge or constructive knowledge. *Mobil Oil Co.*, 5 E.A.D. 490, EPCRA App. 94-2 (EAB, Sept. 29, 1994)("The duty to report under EPCRA arises as soon as the facility personnel have knowledge that a reportable release has occurred, or should know of such a release"); *citing Genicom Corp.*, EPA Docket No. EPCRA -III-057 (ALJ, July 16, 1992,

[9] CERCLA Section 103(b) provides, "Any person . . . in charge of a facility from which a hazardous substance is released . . . who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release . . . shall, upon conviction, be fined in accordance with the applicable provisions of Title 18 or imprisoned . . . ."

aff'd, EPCRA App. 92-2 (EAB, Dec. 15, 1992)("[a]t some point . . . the nature of the information can be such that the failure to give notice is indicative of the company not knowing the requirements or being hostile or indifferent to them, rather than an uncertainty that a release in reportable quantities has taken place"); *see also, Thoro Products Co.,* EPA Docket No. EPCRA VIII-90-04, 1992 EPCRA LEXIS 2 (ALJ, May 19, 1992)("under Section 304(a) of EPCRA, if the owner or operator of a facility personally possesses either actual knowledge or constructive knowledge of a release . . . the immediate reporting requirements of the section must be met")(quoting 52 Fed. Reg. 13378, 13393 (April 22, 1987)("if the facility owner/operator should have known of the release, then the fact that he or she was unaware of the release will not relieve the owner/operator from the duty to provide release notification" under EPCRA)).

Thus, Complainant need not prove that Respondent had knowledge that the lost chlorine cylinders constituted a "release" under CERCLA. The pleadings and parties' motions for accelerated decision establish that at some point in time Respondent had knowledge that an amount of chlorine exceeding the reportable quantity was lost during the hurricane. Such knowledge constitutes "knowledge of any release . . . of a hazardous substance from such . . . facility in quantities equal to or greater than [the RQ]" within the meaning of Section 103(a) of CERCLA, and thus triggered the notification requirements of CERCLA and EPCRA.

The questions remaining as to Respondent's liability are whether Respondent provided notification to the NRC, SERC and LEPC as required by Section 103(a) of CERCLA and Section 304 of EPCRA, and if so, at which point in time Respondent had "knowledge" of the release, and whether notice was provided to the NRC "as soon as" Respondent had such knowledge, and whether it was provided to the SERC and LEPC "immediately."

Complainant asserts that Respondent did not provide such notice, as evidenced by letters from the NRC, SERC and LEPC (Complainant's Motion. Exhibits 7, 8, 9). Respondent asserts that it provided notice to the NRC on October 13, 1998, as evidenced by Complainant's documentation (Respondent's Motion at 15, Complainant's Motion Exhibit 4 p. 5). Respondent asserts that it provided immediate notice to the SERC, as evidenced by Declarations of Jorge Torres, operator of Respondent's Jayuya wastewater treatment plant, and Antonio Pardo, PRASA's Alternate Emergency Coordinator for State Civil Defense matters. Mr. Torres states that when he reached the facility on September 24, 1998, saw that the chlorine storage building had collapsed and did not see the chlorine cylinders, he "went immediately to the Jayuya Police Department to report the potential loss of chlorine cylinders," as there was no phone or radio service available, and that the Jayuya Police Department reported the incident to the Utuado Police Department which in turn reported it to PRASA's emergency control center (Declaration of Jorge Torres ¶¶ 5, 6). Mr. Pardo states that on September 24, 1998, when he was on duty at the Emergency Operations Center for the State Civil Defense, he received a call from PRASA's Emergency Operations Center reporting a suspected loss of four cylinders of chlorine gas from the Jayuya wastewater treatment plant, that he immediately reported the incident to all other members of the State Emergency Committee present at the Operations Center at the time, and to the Ponce Civil Defense, which is the relevant local emergency coordinator (Declaration of

Antonio Pardo ¶¶ 5-8). Mr. Pardo also states that on the evening of September 24, 1998, he requested assistance from the Puerto Rico National Guard for a helicopter (*Id.* ¶ 10). Respondent urges that as operator of the NRC, notice provided to the Coast Guard should be imputed to the NRC.

Respondent has raised genuine issues of material fact as to whether it provided notification to the SERC and LEPC as required by Section 304 of EPCRA. There are also issues of fact as to whether Respondent provided notice to the NRC. Assuming Respondent's admission as true that it provided notice to the NRC on October 13, 1998, it would appear that such notice was not given "as soon as" Respondent had knowledge of the "potential loss" of chlorine cylinders on September 24, 1998. However, the facts surrounding Respondent's "knowledge" of the release and notice to the NRC are not yet clear and may be relevant to assessment of any penalty against Respondent. Accordingly, accelerated decision will not be granted as to Respondent's liability for Counts I, II or III of the Complaint.

Therefore, Complainant's Motion is denied as to the issues of whether Respondent failed to notify the NRC as soon as it had knowledge of the release as required by Section 103(a) of CERCLA, and whether Respondent failed to "immediately provide notice" to the SERC and LEPC as required under Section 304 of EPCRA.

3. *Summary*

In summary, Complainant has established, on undisputed facts and as a matter of law, that a release of a reportable quantity of chlorine, a hazardous substance, occurred from Respondent's facility within a 24-hour period on or about September 21, 1998. Accordingly, it is concluded that Respondent was required to provide notice of the release in accordance with Section 103(a) of CERCLA and Section 304 of EPCRA. Complainant has not, however, established the absence of genuine issues of material fact as to whether Respondent failed to provide such notice. The issue of Respondent's liability for the three counts of violation alleged in the Complaint, and if liability is found, the issue of any penalty to impose against Respondent, remain in controversy and are reserved for hearing.

ORDER

1. Respondent's Motion for Accelerated Decision is **DENIED.**

2. Complainant's Motion for Accelerated Decision is **GRANTED in part,** on issues as to whether a "release," within the meaning of CERCLA Section 101(22), of a reportable quantity of chlorine, a hazardous substance, occurred from Respondent's facility on or

about September 21, 1998, and **DENIED in part**, on issues as to whether Respondent provided notice of the release to the NRC, SERC and LEPC as required by Section 103(a) of CERCLA and 304 of EPCRA.

3. The hearing as currently scheduled in this matter will proceed as planned.

4. Within 10 days of this Order, the parties shall reconvene a settlement conference wherein they shall, in good faith, attempt to negotiate as settlement of this case taking into account the decision here. Complainant shall report the occurrence of such conference and the status of settlement to the undersigned within 15 days of this Order.

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Susan L. Biro
Chief Administrative Law Judge

Dated: January 4, 2000
Washington, D.C.