

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



_____)
IN THE MATTER OF:)
)
TIMOTHY R. (TIM) WARD,)
)
RESPONDENT)
_____)

TSCA Docket Number VII-86-T-635

TOXIC SUBSTANCES CONTROL ACT (hereinafter "TSCA"):

1. Pursuant to the provisions of the Act and the Guidelines for Assessment of Civil Penalties, Respondent's ability to pay a civil penalty, otherwise appropriate, was considered and a total penalty reflecting Respondent's ability to pay was assessed instead of such more substantial penalty.

TSCA:

2. Consideration of Respondent's ability to pay should not suggest or imply that payment of the penalty assessed will be without pain or borne with complete facility; rather, it should insure future compliance by Respondent and other persons similarly situated in that compliance with pertinent regulations will be preferred over payment of an appropriate civil penalty.

TSCA:

3. Intent to violate is not a factor to be considered in determining whether a violation has been committed by Respondent; however, such intent or lack thereof may be considered in determining the gravity of a violation found to have been committed by Respondent.

APPEARANCES

For Complainant:

Kent Johnson, Esquire
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

For Respondent:
(Per se)

Mr. Timothy R. Ward
Route 1, Box 30
Ionia, Missouri 65355

INITIAL DECISION

Marvin E. Jones, Administrative Law Judge, U.S. EPA

By Complaint consisting of five counts, filed on June 17, 1987, Complainant, the United States Environmental Protection Agency (hereinafter "EPA" or "the Agency"), Region VII, charges that Respondent, Timothy R. (Tim) Ward (hereinafter "Respondent" or "Ward"), Route 2, Box 30, Windsor, Missouri 65360, violated federal regulations addressing the use, disposal, storage and marking of polychlorinated biphenyls (hereinafter "PCBs" or "PCB"), 40 C.F.R. Part 761, promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e) and has thereby violated §15 of TSCA, 15 U.S.C. §2614.

Count I alleges that an inspection of Respondent's property on July 30, 1986, revealed that Respondent purchased five truckloads of used transformers designated for disposal and brought them to his said property where he conducted a business of scrapping drained transformers; that one to two inches of oil were present in said transformers when received; that said oil was drained into a storage tank (an old transformer casing) and then pumped into a tanker trailer; that a sample of said oil taken from the rear compartment of said tanker trailer was analyzed and found to contain 1100 parts per million (hereinafter "ppm") PCBs; that said storage tank and tanker trailer are defined at §761.3 as "PCB Containers" and "PCB items"; that the use of said PCB containers violated §761.65(b) in that said containers did not comply with the structural requirements specified at §761.65(b)(1)(i) through (v). Count I further charges that Respondent violated §761.65(c)(8) in that the said PCB containers did not have records of the date each batch of PCB was added nor any date on which any batch of PCBs was removed from such containers. Said Count I proposes that a civil penalty of \$15,000 be assessed against Respondent for the violations therein alleged.

Count II charges that the subject PCB containers were not marked with a mark M_L, as described at §761.45(a), in violation of §761.40(a)(1), and that said PCB items were stored in an area not marked with said mark M_L, in violation of §761.40(a)(10) and that such failure renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1). Said Complaint proposes that a civil penalty in the amount of \$15,000 be assessed against Respondent for the violations alleged in Count II.

Count III alleges that said inspection revealed that subject oil was dripping from the said tanker trailer onto the ground; that such spill or leak constituted an improper disposal of PCBs; that soil from a visibly contaminated area of approximately 40 square feet was analyzed and found to contain 168 ppm PCBs in the oil phase and 29 ppm PCBs in the soil phase; that such disposal violated the requirements of §761.60(a)(1). For such violation, it is proposed that an additional civil penalty in the amount of \$5000 be assessed against Respondent.

Count IV alleges that Respondent improperly disposed of PCBs on public roads in Pettis and Benton Counties, Missouri, leaving a line of oil varying in width of from one to three feet and continuing for a distance of 1 1/2 miles, which disposal violated the requirements of §761.60(a)(1) and the Act, 15 U.S.C. 2614(1). For such violation alleged in said Count IV, it is proposed that a civil penalty of \$25,000 be assessed against Respondent.

Count V alleges that Respondent placed approximately two gallons of said PCB oil from said used transformers into his truck fuel tank when changing filters, in violation of §761.20(a) and the Act, as such action constituted use of PCBs in a manner not totally enclosed and which was not authorized under §761.30. For such alleged violation, it is proposed that an additional \$3000 civil penalty be assessed against Respondent.

Respondent's Answer, in letter form, dated July 1, 1987, and filed with the Region VII Hearing Clerk on July 6, 1987, generally denied the allegations contained in said Complaint and requested a hearing. Said Answer stated that Respondent purchased said transformers from Transformers Unlimited Company who represented that said transformers were drained and free of contamination; that Respondent did not dispose of oil; that Respondent's tests revealed less than 50 ppm PCBs; that he did not dump oil onto Funk Lane and Ionia Road, and that non-PCB oil was used, according to his tests, in changing fuel filters in Respondent's truck. At the hearing, Respondent stated he did not disagree with the facts stated in the report of the inspection of July 30, 1986, but questioned the analyses made (Transcript [hereinafter "TR"] 126).

On the basis of the testimony elicited at the hearing, the exhibits received in evidence and contained in the prehearing submissions and upon a consideration of Complainant's proposed findings of fact, conclusions of law, brief and argument, I make the following

Findings of Fact

1. Respondent Timothy R. (Tim) Ward, Funk Lane, Route 2, Box 30, Windsor, Missouri, is the operator of a transformer salvaging operation and the owner of the property upon which the salvage operation was being conducted (TR 28, 126).
2. The property upon which the transformer salvage operation was being conducted is located approximately one mile south of Missouri Highway 52 on Funk Lane in the northwest corner of the intersection of Funk Lane and Elm Branch Road, Route 2, Windsor, Missouri (TR 25).
3. On July 30, 1986, an inspection of the Ward property was conducted by U.S. Environmental Protection Agency (hereinafter "EPA" or "the Agency") Consumer Safety Officer David A. Ramsey, who then presented his credentials

to Ward and gave him written notice of said inspection (TR 26, 27; C Exhibit [hereinafter "Ex"] 10).

4. A total of 109 drained transformers was located on the property at the time of the inspection (TR 31, 127; C Ex 10).

5. Also located on said property at the time of the inspection was a silver-colored tanker trailer, number T66 5947, which contained approximately 12 inches of oil and a truck tractor belonging to Ward (TR 29, 128-9; C Exs 7 and 8).

6. At the inspection, Ramsey was informed by Ward that one to two inches of oil were present in the subject transformers at the time they were received by him; that this residual oil was drained into an old transformer casing, which was used as a storage tank and then into the tanker trailer referenced above (TR 30, 133; C Exs 9, 10).

7. An oil sample, collected from the rear compartment of the tanker trailer, Sample No. 073086-1781-0201, was analyzed and found to contain 1100 ppm of PCBs (TR 33, 42, 83; C Ex 2).

8. At the time of the July 30, 1986, inspection, no record existed to show, for each batch of PCBs added to the above-mentioned storage tanks, the quantity of each batch and the date the batch was added to the container (TR 136).

9. Subject transformer salvage operation did not then have prepared or implemented a Spill Prevention Control and Countermeasure (hereinafter "SPCC") plan (TR 39-40, 136).

10. None of the storage containers or storage areas were then marked with a mark M_L as described at 40 C.F.R. §761.45(a) (TR 38, 126).

11. Subject inspection showed that the transformer salvage operation had none of the structural requirements described at 40 C.F.R. §761.65(b)(1)(i) through (v) regarding requirements for PCB storage facilities (TR 136).

12. Ramsey further observed burned copper wire and laminations and piles of ash. Ward stated that he burned the cores of the above-mentioned transformers to clean them so he could sell them (TR 38-39).

13. Ramsey then observed oil dripping onto the ground from the tanker trailer referenced in paragraph 6 above. He collected an oily sample, Sample No. 073086-1781-0202, from a visibly contaminated area, measuring approximately 40 square feet beneath the tanker which was analyzed and found to contain 168 ppm PCBs in the oil phase and 29 ppm PCBs in the soil phase (TR 34, 37, 84; C Ex 2).

14. Ramsey observed an oil-stained area, at the north end of the shop building, and collected an oily sample, Sample No. 073086-1781-0203, from the contaminated area, which measured approximately 60 square feet which, when analyzed, was found to contain 24 ppm PCBs in the soil phase (TR 35, 37, 85, C Ex 2).

15. During said inspection, Ward stated to Ramsey that he had placed approximately two gallons of oil from the used transformers into his truck fuel filter when he had changed filters (TR 39, 134; C Ex 9).

16. Ward had not tested the oil he used in his truck fuel filter at the time he used it in his truck (TR 134).

17. On July 30, 1986, an inspection was conducted by Ramsey and officials of the Pettis County Missouri Highway Department of a site in southern Pettis County and in northern Benton County. A trail of oil was then observed in Pettis County on the west shoulder of Funk Lane just south of the intersection of Elm Branch Road and it continued south on Funk Lane, crossed the intersection of Ionia Road, went east on Ionia Road, then south on an unnamed road into Benton County. The

line of oil varied from about one foot to about three feet wide and covered a distance of one and one-half mile (TR 53-57; C Exs 3, 4, 5, 6 and 11).

18. At the time of the July 30, 1986, inspection, two witnesses, Philip Gerke and Laurencine Gerke, stated that:

a. their residence is located on Funk Road (TR 9, 18);

b. on the evening of July 25, 1986, they noticed nothing unusual about the condition of Funk Road (TR 9, 18);

c. during the evening they saw a tanker truck, which they had formerly observed on the Tim Ward property, drive past their residence traveling south on Funk Road (TR 9, 18);

d. they observed no other truck traffic on the road the night of July 25, 1986 (TR 11, 21);

e. on the morning of July 26, 1986, they observed the trail of oil referenced hereinabove and called local authorities (TR 11, 21);

f. although their view was of the driver's side of the truck and trailer, they could not see or identify the driver of the truck (TR 19), and

g. they did not see any oil coming from the tank trailer as it passed (TR 15, 20).

19. At the time of the inspection, four soil samples were taken as follows:

a. Sample No. 073086-1781-0101, of soil from the west shoulder of Funk Road in front of the Philip Gerke residence (TR 58; C Ex 1);

b. Sample No. 073086-1781-0102, of soil at the junction of Fund Road and Ionia Road (TR 58-59; C Ex 1);

c. Sample No. 073086-1781-0103, of soil from the west shoulder of Funk Road at Elm Branch Road (TR 59; C Ex 1), and

d. Sample No. 073086-1781-0104, of soil from the west shoulder of an unnamed Benton County Road, north of the railroad tracks (TR 59; C Ex 1).

20. The above samples were analyzed and yielded the following results (TR 81-82; C Ex 1):

<u>Sample Number</u>	<u>Concentration of PCBs</u>
073086-1781-0101	92 ppm
073086-1781-0102	69 ppm
073086-1781-0103	200 ppm
073086-1781-0104	240 ppm

21. The discharge valve on the tanker trailer was located on the right or passenger side at approximately the middle of the trailer (TR 31).

22. The analysis of the oil found in the tank trailer located on the Ward property on July 30, 1986, and the oil found on the roads in Pettis County, Missouri, showed that all samples contained PCB Aroclor 1260 (TR 81-83).

23. Ward had not conducted any testing of the residual oil found in any of the transformers prior to the time of the inspection; he received no indication, written or verbal, from Transformers Unlimited Company, the seller of the transformers, that the transformers sold to him for salvage had been tested for PCBs by them (TR 120-21, 125).

24. Ward stated to Ramsey at the time of the inspection that only he had driven his truck within the past several weeks (TR 65).

25. Analysis of the oil samples was done using accepted standardized procedures for the analysis for PCBs. Procedures used were proper with regard to the chain of custody of each of the samples and quality control of the tests performed on each of the samples (TR 77-83, 90-92; C Ex 1, 2).

26. As of the date of the hearing on the above matter, September 22, 1986, the oil found during the July 30, 1986, inspection was still stored in the tank trailer found on Respondent's property (TR 131-32).

27. Ward stated (TR 126) that he does not dispute the findings of Ramsey, from the subject July 30, 1986, inspection, including the findings that there were

spills on the ground and that PCB items and the area where they were situated did not bear the markings required by subject regulations (TR 125).

28. Ward further stated that he bought subject transformers from Transformers Unlimited Company, Denver, Colorado; that he was given a receipt for five truck loads of transformers (approximately 100,000 pounds) by one Tom Marshall, who stated said transformers were PCB-free (TR 124; C Ex 10, photos 13 and 14). No documentation stating the transformers were free of PCBs was received by Ward (TR 125), and that at the time of the subject inspection he was not aware of the PCB regulations (TR 127); any testing for PCBs was done by Ward subsequent to said inspection (TR 132).

29. On July 30, 1986, Ward held legal title to subject eight acres where said transformers were being salvaged. At the time of the hearing, on September 22, 1987, a Deed of Trust on said land was being foreclosed by Central National Bank, Sedalia, Missouri, because Ward, whose note was given in 1981, to secure said Deed of Trust, had made no payments on the \$11,000 principal or interest accrued thereon (TR 136); that all transformers, copper and other materials have been removed and sold except for the oil in said tankers (TR 138).

30. Ward testified at the September, 1987, hearing that he was renting a house in Ionia, Missouri, and was two months behind on his rent; that his truck (C Ex 8) is mortgaged to the bank (TR 129) and, to make hauls for Rainbow Express, he is required to rent a trailer (TR 139).

Conclusions of Law

1. Consumer Safety Officer David A. Ramsey was a duly authorized representative of the U.S. EPA Administrator and had authority to inspect Respondent's facility pursuant to §11 of TSCA, 15 U.S.C. §2610.

2. The inspection made on July 30, 1986, was made upon the presentation by Ramsey to Respondent of appropriate credentials (TR 27; C Ex 10).

3. On July 30, 1986, Respondent was the owner and operator of a facility where there was disposal of PCBs, as defined in 40 C.F.R. §761.3 and, under 40 C.F.R. §761.1(b), was a person subject to the regulations found in 40 C.F.R. Part 761.
4. The oil contained in the tanker trailer located on Respondent's property is PCB, within the definition of "PCBs" at 40 C.F.R. §761.3.
5. The tanker trailer is a PCB container and therefore is a PCB item within the definition of "PCB Containers" and "PCB Items" at 40 C.F.R. §761.3.
6. The Respondent's facility failed to comply with the structural requirements for facilities used for the storage of PCBs and PCB Items designated for disposal as specified at 40 C.F.R. §761.65(b)(1)(i) through (v).
7. The Respondent failed to comply with 40 C.F.R. §761.65(c)(8) requiring that storage containers have a record that includes, for each batch of PCBs added to the container, the quantity of the batch and date it was added.
8. The Respondent failed to comply with the regulation at 40 C.F.R. §761.65(c)(7)(ii) requiring the preparation and implementation of a SPCC Plan for facilities using storage containers described at 40 C.F.R. §761.65(c)(7)(i).
9. The respondent failed to comply with the regulation at 40 C.F.R. §761.40(a)(1) requiring that PCB containers be marked with a mark M_L as described at 40 C.F.R. §761.45(a).
10. The Respondent failed to comply with the regulation at 40 C.F.R. §761.40(a)(10) requiring that each storage area used to store PCBs and PCB Items shall be marked with the mark M_L as described at 40 C.F.R. §761.45(a).
11. The regulation at 40 C.F.R. §761.60(d)(1) states that spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs. The regulation at 40 C.F.R. §761.60(a)(1) requires that PCBs of 50 ppm or greater must be disposed of in an incinerator which complies with 40 C.F.R. §761.70.

12. The discharge of PCB oil onto the ground at the Respondent's facility constitutes improper disposal of PCBs.
13. The discharge of PCB oil onto the road in Pettis and Benton Counties, Missouri, constitutes improper disposal of PCBs.
14. Respondent failed to comply with the regulation at 40 C.F.R. §761.20(a) prohibiting the use of any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States, unless authorized under 40 C.F.R. §761.30, by placing approximately two gallons of oil from the transformers referenced above into the fuel filter of his truck when he changed filters. Such use is not totally enclosed and is not authorized under 40 C.F.R. §761.30.
15. Respondent violated 40 C.F.R. §761.65(b) by failing to comply with the structural requirements for facilities used for the storage of PCBs and PCB Items designated for disposal, and an appropriate penalty should be assessed for said violation.
16. Respondent violated 40 C.F.R. §761.65(c)(8) by failing to create and maintain records stating the date and quantity of each batch of PCB oil added to the tank trailer located on Respondent's property, and an appropriate civil penalty should be assessed for said violation.
17. Respondent violated 40 C.F.R. §761.65(c)(7)(ii) by failing to prepare and implement a SPCC Plan for his facility, and an appropriate civil penalty should be assessed for said violation.
18. Respondent violated 40 C.F.R. §761.40(a)(1) and (10) by failing to mark PCB containers and storage areas used to store PCBs and PCB Items with the mark M_L, and an appropriate civil penalty should be assessed for said violations.

19. Respondent violated 40 C.F.R. §761.60(a)(1) by improperly disposing of PCBs by discharging them onto the ground at Respondent's facility, and an appropriate civil penalty should be assessed for said violation.

20. Respondent violated 40 C.F.R. §761.20(a) by using PCB oil in a manner other than a totally enclosed manner in the United States by using transformer oil in the fuel filter of his truck, and an appropriate civil penalty should be assessed for said violation.

21. Respondent violated 40 C.F.R. §761.65(a) by failing to dispose of PCB oil stored in the tank trailer within one year from the date it was first placed into storage, and an appropriate civil penalty should be assessed for said violation.

22. Improperly disposing of PCBs by discharging them onto the ground on roads in Pettis and Benton Counties, Missouri, was a violation of 40 C.F.R. §761.60(a)(1); however, Complainant failed to sustain its burden of proof that Respondent Tim Ward was the person responsible for said violation.

23. Intent to violate is not a factor to be considered in determining whether a violation occurred as charged under Section 16(a) of the Act, 15 U.S.C. §26.15; however intent or absence thereof should and will be considered in evaluating the gravity of a violation found.

Civil Penalty

The statutory criteria for assessing penalties under TSCA, Section 16(a), are listed in Section 16(a)(2)(B), 15 U.S.C. 2615(a)(2)(B), which provides as follows:

In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

To provide guidance to the assessment of penalties under Section 16, the EPA enforcement staff issued guidelines for assessing penalties for violations relating to PCBs and other toxic substances. 1/ The procedural rules for these proceedings require that I consider the guidelines and PCB penalty policy in determining the appropriate penalty, and that if I assess a penalty different in amount from that proposed in the Complaint, I must give my reasons therefore. 2/

The PCB penalty policy uses a matrix to establish an initial penalty based upon the nature, extent, circumstances and gravity of the violation. The initial penalty can then be adjusted upwards or downwards depending upon consideration of the other statutory factors, i.e., culpability, history of such violations, ability to pay, ability to continue in business and such other matters as justice may require. 3/

The matrix consists of a horizontal axis signifying "Extent of Potential Damage", whether Major, Significant or Minor; and a vertical axis labeled "Circumstances (probability of damages)" providing six levels of probability of damage representing two levels for each range: high range, medium range and low range.

Charles E. Shumate, U.S. EPA, Region VII Case Review Officer, used said "Guidelines for Assessment of Civil Penalties" - PCB Penalty Policy - in support of the penalties proposed, in said Complaint, to be assessed for the violations found herein (TR 94, 97).

1/ See 45 Federal Register 59770-59783 (September 10, 1980), referred to herein as the PCB penalty policy.

2/ 40 C.F.R. 22.27(b).

3/ 45 Federal Register 59777 (September 10, 1980), Table 1.

I agree that the amounts of the civil penalties, proposed for the violations found in Counts I, II, III and V, totaling \$38,000 are appropriate gravity-based penalties.

Intent to violate is not a factor to be considered in determining whether Respondent committed the violations charged. 15 U.S.C. 2615(a) does not contain such element as does §2615(b) which provides for penalties applicable to [intentional] criminal violations. Such intent, or lack thereof, should and will be considered in determining the gravity of a violation committed by Respondent.

Further, I find that Complainant did not sustain its burden of proving that Respondent was a participant or a person in any way responsible for the discharge of oil onto the roads in Pettis and Benton Counties, Missouri, and therefore no penalty should or will be assessed against Respondent for the violation charged in Count IV of the Complaint.

I have further considered the other factors "with respect to the violator" set forth in the Act and considered in said Guidelines. It is essential that the provisions of the Act and the regulations promulgated pursuant thereto be fully vindicated, i.e., we must recognize that the purpose of civil penalty assessments is "to insure Compliance".

Consideration of Respondent's "ability to pay" should not suggest or imply that payment of the penalty assessed will be without pain or borne with complete facility; rather, it should be in such amount that Respondent, and others similarly situated, will choose to comply with pertinent regulations, promulgated for the protection of the public, rather than pay an appropriate penalty. On this record, Respondent Ward no longer operates said salvage operation. The land on which the operation was conducted was taken from Ward by foreclosure. His earnings from his work as a truck driver are apparently his sole source of income. He owns the truck tractor but states he rented the trailer used in

his last haul for Rainbow Express (TR 140); he is two months behind in his house rent (TR 138).

On this record, Ward does not have the ability to pay the penalty which normally would be assessed for the violations found. The penalties assessed for said violations totaling \$1200 are as follows:

Count I	\$450.00
Count II	\$250.00
Count III	\$300.00
Count IV	- Nil-
Count V	\$200.00
TOTAL	<u>\$1200.00</u>

Should Respondent wish to pay said amount in installments, he shall contact Complainant's Counsel, who shall consider any proposal for payment, including the current interest rate, and submit same to the Regional Administrator for his consideration. Alternatively, Respondent shall comply with the Order entered herein below.

On the basis of the record herein, I propose entry of the following

FINAL ORDER 4/

Pursuant to Section 16 of the Toxic Substances Control Act, 15 U.S.C. §2615, a civil penalty in the total sum of \$1,200.00 is hereby assessed against Respondent, Timothy R. (Tim) Ward, Route 1, Box 30, Ionia, Missouri 65355.

4/ 40 C.F.R. §22.27(c) provides that this Initial Decision shall become the Final Order of the Administrator within 45 days after its Service upon the parties, unless an appeal is taken by one of the parties or the Administrator elects to review the Initial Decision. Section 22.30(a) provides for an appeal from this Initial Decision within 20 days.

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 40 CFR 22.27(a), I have this date forwarded to Ms. Linda McKenzie, Regional Hearing Clerk, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, the Original of the foregoing INITIAL DECISION of Marvin E. Jones, Administrative Law Judge, and have referred said Regional Hearing Clerk to said Section which further provides that, after preparing and forwarding a copy of said Initial Decision to all parties, she shall forward the Original, along with the record of the proceeding, to the Hearing Clerk (A-110), EPA Headquarters, Washington, D.C., who shall forward a copy of said Initial Decision to the Administrator.

DATE: November 24, 1987

Mary Lou Clifton

Mary Lou Clifton
Secretary to Marvin E. Jones, ALJ

IN THE MATTER OF

TIM WARD

Respondent

Docket No. VII-86-T-635
CERTIFICATION OF SERVICE

07 NOV 1987

P 3: 33

FILED
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

In accordance with Section 22.27(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ... (45 Fed. Reg., 24360-24373, April 9, 1980), I hereby certify that the original of the foregoing Initial Decision issued by Honorable Marvin E. Jones along with the entire record of this proceeding was served on the Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 by certified mail, return receipt requested; that a copy was hand-delivered to Counsel for Complainant, Kent Johnson, Office of Regional Counsel, Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101; that a copy was served by certified mail, return receipt requested on Mr. Timothy R. Ward, Route 1, Box 30, Ionia, Missouri 65355.

If no appeals are made (within 20 days after service of this Decision), and the Administrator does not elect to review it, then 45 days after receipt this will become the Final Decision of the Agency (45 F.R. Section 22.27(c), and Section 22.30).

Dated in Kansas City, Kansas this 24th day of November, 1987.

Linda K. McKenzie
Linda K. McKenzie
Regional Hearing Clerk
Region VII

cc: Honorable Marvin E. Jones
Administrative Law Judge
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101