UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
CHEMISPHERE CORPORATION,	)	Docket No. II-TSCA-IMP-13-86-0107
	)	
Respondent	)	
	)	

Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (TSCA). Respondent found in violation of Sections 13 and 15 of the TSCA, 15 U.S.C. §§ 2612, 2614, for failure to file certification, pursuant to 19 C.F.R. §§ 12.118-12.127, regarding importation of chemical substance.

INITIAL DECISION

By: Frank W. Vanderheyden
Administrative Law Judge

Dated: May 8, 1987

APPEARANCES:

For Complainant:

Beverly Kolenberg, Esquire
Office of Regional Counsel
U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

For Respondent:

James Kosch, Esquire
McCarter & English
550 Broad Street
Newark, New Jersey 07102

INTRODUCTION

This civil administrative proceeding is the result of a complaint brought by the U. S. Environmental Protection Agency (sometimes EPA or complainant), pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), (TSCA). Complainant charges Chemisphere Corporation (respondent) with violating Sections 13 and 15(3)(B) of TSCA and certain implementing regulations, 19 C.F.R. §§ 12.118 - 12.127. It is alleged that respondent imported a chemical substance and failed to certify to the District Director, U. S. Customs Service (Customs), at the port of entry that the shipment was subject to TSCA and that it complied with the appropriate regulations. The penalty proposed in the complaint for the purported violation is $6,000.

To be determined here is whether the violation alleged is supported by the preponderance of the evidence,* and if so whether the proposed penalty is condign. "Preponderance of evidence" is that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. All issues have been considered

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*The applicable section of the Consolidated Rules of Practice, 40 C.F.R. § 22.24 provides, in pertinent part, that: ". . . Each matter in controversy shall be determined by the Presiding Officer upon a preponderance of evidence."

by the Administrative Law Judge (ALJ). Those questions not discussed specifically are either rejected or viewed as not being of sufficient import for the resolution of the principal issues presented.

FINDINGS OF FACT

Respondent is an importer of chemical substances, in bulk or as part of a mixture, operating from a facility located at 1137 Main Street, Boonton, New Jersey 07005, with annual sales approximating $2 million. Some of the chemicals imported by respondent are subject to TSCA certifications; others are covered by Food and Drug Administration (FDA) requirements. There are two types of TSCA certifications (sometimes certification). Stated broadly, a "positive certification" is where the importer certifies that all chemicals in the shipment comply with the rules and orders under TSCA and he is not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder. A "negative certification" is where the importer certifies that all the chemicals in the shipment are not subject to TSCA. (Tr. 26) The services of a Customs' House Broker (broker) are used to assist with importation. Prior to the violation in issue, on August 7, 1984, respondent imported 26,460 pounds of zinc stearate at the Port of New York, Entry Number 1001-84-386998-7, without the required certification under

TSCA. Regarding this violation, on September 28, 1984, complainant sent a notice of noncompliance letter to James E. Fox Company, Inc., the then broker of respondent. This communication advised the broker of the lack of certification involving the zinc stearate importation. The services of this broker were unsatisfactory as it lost documents pertaining to respondent's imports and in one instance it neglected to file several papers. Respondent took corrective action. On or about July 22, 1985, respondent imported a shipment of 10 drums of nonochloronaphthalene (chemical), 98 percent distilled, weighing approximately 2,300 kgs (5,072.5 pounds), at the Port of New York, Invoice Number 00930. Respondent, however, had a new broker. For this shipment it was Action Customs Expediters, Inc., 100 Church Street, Suite 1517, New York, New York. The value of the chemical imported was a rounded amount of $5,478. (Jt. Ex. 1; Exs. C 8, 9, 10, 16, 18; Tr. 114, 117, 119, 123, 130-131)

One of the functions of a broker is to prepare an entry package, or entry folder (folder), on behalf of the importer for submission to Customs. When a shipment is entering the country the folder contains the required documents stapled securely therein. The type of documents required to be submitted with the folder varies with the nature of goods imported. At a minimum, the documents would be a commercial invoice, a bill of lading, and an immediate delivery (ID) application, required for immediate release of the goods. (Tr. 15-16)

The documents, which are stapled securely in the folder, are reviewed by a Customs Inspector (inspector) who, to the best of his knowledge and any expertise, determines the completeness of the submitted documents. If satisfied, the inspector signs the ID, at which point entry is officially made. The signing of the ID does not mean that the shipment is free of problems. It signifies merely that an initial review indicates the paperwork to be in order, and it authorizes the importer to remove the goods from the point of entry. (Tr. 16)

Some documents are removed by Customs either on the initial or final submission of the folder. Copies of documents are taken off the left-hand side of the folder. However, the ID application is removed at Customs from the right-hand side. This ID application is only about one fourth the size of the documents and is attached to the middle of the invoice. (Ex. C9; Tr. 86, 89, 92-98)

Customs does not provide for a receipt concerning certification. However, there is a way for an importer or broker to make certain that the certification is not lost. The certification does not have to appear on a separate piece of paper as here. The appropriate regulations, more of which will be said below under the Conclusions, provide that the certification may be typed or stamped on an appropriate entry document, for example, on the commercial invoice. The shipment cannot make entry without the invoice. (Tr. 15, 16, 49, 50, 54-56, 87)

At the point Customs stamps the folder received it begins to process it, which means that many shipments go through further review by an import specialist who works on a team which reviews particular types of commodities. With chemical shipments, as here, the folder goes to a chemical commodities team. Among its functions is to determine whether the goods are classified under the correct tariff schedule number, that the proper duty has been paid by the importer, and to determine that the folder is correct and complete. Not all the folders relating to chemical imports get this detailed review. Some folders go through a system called bypass, and after review by the inspector the folder is liquidated. (Tr. 15-17)

Notice was given the importing community, concerning certification by a Federal Register Notice, 48 Fed. Reg. 34734 (August 1, 1983), codified 19 C.F.R. § 12.118-12.127. Additionally, Customs provided guidance to importers by its "Pipeline" No. 842, and supplements of October 7, 1983 and January 26, 1984, respectively. Customs also issued an internal document on July 30, 1984, in further explanation of the certification regulation, in order that its personnel may be better able to provide information to the importing community concerning importations subject to TSCA. EPA published a policy statement concerning the Customs Regulation. 48 Fed. Reg. 55462 (Dec. 13, 1983).

The activities of the broker are important to the resolution of the factual questions in this proceeding. Robert Cuozzo (Cuozzo), President of respondent, provided the broker with Chemisphere's letterhead for preparation of the certifications. (Tr. 118) Testifying as respondent's witness was Dianne Cachia (sometimes Cachia or broker). She is a broker and Vice President of Action. What transpired essentially at the broker's concerning the shipment in question and the preparation of the folder was as follows: A certification letter was prepared, dated July 24, 1985, and signed by Cachia. It was stapled to the invoice which was one of the documents to be included in the folder. It was typed on respondent's letterhead "[b]ecause we were told by [respondent] and we know the regulation that the merchandise does require a letter to be attached." (Ex. C 17; Tr. 84-85)

Cachia does not personally staple all the documents in every folder for which she has responsibility. She stapled the invoice, the certification, a packing list and a bill of lading. These documents were passed to a clerk who sat two desks ahead. The clerk had the responsibility of stapling the documents, including the certification into the folder. Folders are sent to Customs by a courier or messenger service in unsealed envelopes. Once a folder leaves its office the broker does not know what happens to it. Something could happen to it on the way to the pier. (Tr. 97-99, 103-104)

The broker staples the documents in the folders and ". . . hope they come back intact. There is no other way to send them down there." The important documents are stapled on the right-hand side of the folder. At Customs, documents are pulled from the right-hand side. "Staples can be dislodged. You never know what can happen from the time it leaves our hands in the office until it gets down to the pier and then it comes back again by messenger, some of them are turned inside out with papers ripped." (Tr. 96-98) Cachia did not see the folder again after it was sent initially to Customs. The broker only had two customers who imported chemicals, the respondent and another importer. They always required the certification. (Tr. 109)

Regarding the broker's preparation of other documents, it routinely prepared the ID, Form 701 and the certification letter. Cuozzo did not provide forms to Cachia. Nor did he give her instructions; she would automatically proceed because of her stated experience with the FDA certification, or Form 701. (Ex. C 8; Tr. 32, 83, 130-131) Cachia routinely uses Form 701 because upon inquire to FDA concerning the Form's use, she was advised to use it where there was any doubt because "there's no harm in having too many documents, you're in trouble if you don't have enough. That is what they tell us." (Tr. 83, 110) Respondent did not tell the broker anything specific about the chemical in order for the latter to determine what kind of papers to submit.

The broker was just told on imports to make the certification and submit it on their shipments. (Tr. 112) Cachia never made out a negative certification regarding any shipments. (Tr.112) She did not know that submitting a Form 701 with a positive certification may be contradictory. If Cachia had any doubt about a particular shipment, she did not get in touch with respondent. She did not inquire regarding what use the chemical was to be put. (Tr. 89, 110-112)

Kimberly O'Connell (O'Connell) is a chemical engineer in the employ of complainant. Among her duties, she conducts compliance monitoring inspections for all sections of TSCA. She works closely with the Customs commodity teams that deal with chemicals. In the offices of the latter she reviews folders with the team. She never removes entry documents from a folder. After reviewing a folder, she makes copies of documents if needed. O'Connell's review is a two-step process. The first review is done by inspectors on the pier, or wherever the goods are. The documents are then resubmitted to Customs within 10 days of entry where the folders are reviewed by the import specialists, some which are referred to O'Connell. She reviews the import documents, of which she has familiarity, in these folders. In this process, she determines from the nature of the chemical if it would require a certification. If O'Connell finds certification in the folder, she then must verify that is is a true statement. If the certification is not

in the folder, she must determine whether certification was required. (Tr. 13, 22-23, 25-26, 29)

O'Connell normally reviews folders two to five weeks after entry. She reviewed respondent's folder on or about August 1985. The folder contains two sides. On the left-hand side of the folder was Form 701, beneath which was an xerox copy of the bill of lading. On the right-hand side of the folder was the entry summary, underneath this was the commercial invoice, beneath this was the ID application, and the last document was the original bill of lading. These documents were stapled to the folder with four staples. (Exs. C8, C9; Tr. 30-31) It is found that in removing the ID from the folder, the certification purportedly submitted by the broker was not lost, destroyed or otherwise removed from the folder.

Whether a chemical is subject to FDA regulations is determined by its use. If the use of the chemical is subject to the Federal Food, Drug and Cosmetic Act, a Form 701 would be required among the import documents. In such a situation, it would be exempt from TSCA and neither a positive or negative certification would be required. (Exs. C 5, C 6; TR. 29-32) The chemical here is a reagent and not an additive or ingredient in foods, drugs or cosmetics. Its import documents did not require a Form 701. (Jt. Ex. 1; Tr. 32) O'Connell confirmed that the chemical was not an FDA regulated chemical in a telephone conversation with

respondent. The inclusion of Form 701 as well as a certification in a folder could mislead an inspector concerning under which Federal statute the chemical is regulated. The inspector is not a chemist. If a Form 701 is present, he makes the assumption that it is a FDA regulated shipment. Thus the release of the goods by Customs did not establish that the folder contained the certification. (Tr. 33, 35-36, 38)

In about April 1986, Cachia submitted a statement to Cuozzo, the substance of which being that she included the certification with the folder. (Ex. R1; Tr. 87, 105) A copy of the purported positive certification, dated July 24, 1985, was signed by Cachia and is on respondent's letterhead. (Ex. C 17)

There is no solid piece of evidence which would show convincingly that the certification was delivered to Customs. The core of Cachia's testimony is that she typed the certification on respondent's letterhead, stapled it to other documents and passed it to a clerical employee who prepared the folder, and the folder was subsequently given to the messenger service. The clerical employee was not called as a witness. Respondent's former broker had problems in losing documents. Untaught by experience, respondent did not use greater to make certain the broker had procedures which would establish that the certification was filed with Customs.

That Customs did not detain the shipment does not establish that certification was in the folder. The evidence would lead one ineluctably to conclude that the Form 701 was present in the folder, not the certification; that the inspector upon seeing the Form 701 concluded that a certification was not required; and that the goods were released. Based upon the preponderance of the evidence, it is found that the certification was either not included in the folder by the clerk in the broker's office, or somewhere between the broker's office and Customs the certification was in some manner lost, and not filed with Customs.

DISCUSSION AND CONCLUSIONS OF LAW

Section 13 of the Act, 15 U.S.C. § 2612, provides, in pertinent part, that the Secretary of Treasury shall refuse entry of any chemical substance if such entry "fails to comply with any rule in effect under this chapter." Section 13 is designed and intended to embrace the enforcement of all TSCA import regulations. The pertinent Customs' regulation, 19 C.F.R. §§ 12.118-12.127, Exhibit C 4A (sometimes regulation), is a tool to enforce the aforementioned section of TSCA. The regulation was developed by Customs after consultation with EPA. 48 Fed. Reg. 34734, August 1, 1983. (Ex. C 4) EPA has joint enforcement power with Customs. 40 C.F.R. § 707.20(c)(2). The latter can detain the

goods at the point of entry when it has reasonable grounds to believe that the shipment is not in compliance with TSCA, or whenever the importer fails to certify compliance with 19 C.F.R. § 12.121(a), more of which will be said below. 19 C.F.R. § 12.122(b). When EPA determines that a shipment should be detained, it shall give the reasons for same, and the necessary action for an importer to bring the shipment into compliance with TSCA. If EPA has given this information to Customs it will become part of the detention notice. 40 C.F.R. § 707.20(c)(2)(ii).

The regulation requires the importer of a chemical substance, in bulk or as part of a mixture, to certify to Customs at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer or his authorized agent is directed to sign one of the following statements:

> I certify that all chemicals substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.
>
> or
>
> I certify that all chemicals in this shipment are not subject to TSCA.

The certification "shall be filed" with Customs before release of the shipment.* Among others, it may be typed or stamped on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice. 19 C.F.R. § 12.121(a)(1).

The pertinent Rules of Practice of EPA provide that the complainant has the burden of going forward with and proving that the violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent has the burden of presenting and going forward with any defense to the allegations. 40 C.F.R. § 22.24. Complainant established its prima facie case that the certification was not filed with Customs and the burden then shifted to respondent to show it had filed the document. The heart of respondent's case is that the certification was sent by messenger and the document went astray somewhere in Customs. Even if the certification were in the folder and left the broker's office this is not the same as "filing" it with Customs. Exhibit C 9 contained copies of the entry documents stapled on the right-hand side of the folder, except the certification was missing. The evidence is persuasive that the certification was not filed, notwithstanding Cachia's allegations that at times Customs folders may be in a state of disarray when returned to the broker. Though generally a credible

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* "Filing" means the delivery to Customs. 19 C.F.R. § 141.0(d).

witness, Cachia is not completely disinterested in that she is the agent of the respondent, and her portrayal of the facts as she remembers them is understandable.

It would set a questionable precedent to indulge in the presumption that government officials lose documents. In this and like future cases, a respondent would be free of liability by merely asserting that a certification was prepared and inserted into a folder. There is a strong presumption that public officials, with particular reference to the Customs employees here, act properly and do not mishandle folders so as to lose documents. U. S. v. Chemical Foundation, 272 U.S. 1, 13-14 (1926); United States v. Ahrens, 530 F. 2d 781, 785 (8th Cir. 1976). Respondent's evidence failed to rebut that presumption.

Respondent delegated to its broker the task of filing the certification. The respondent-principal is responsible for the acts of its broker-agent in not filing the certificate for the reason that a principal is bound by the acts of its agent while the latter is operating within the scope of its authority. 3 Am Jur 2d, Agency § 270.

It is the legal responsibility of respondent to file the certification with Customs. This it did not do. This failure is a violation on the part of respondent as it is unlawful for any person, to among others, to "fail . . . to . . . submit reports, notices, or other information . . . ." Section 15(3)(B),

15 U.S.C. § 2614(3)(B). It is concluded that respondent violated Sections 13 and 15(3)(B) of TSCA, 15 U.S.C. §§ 2612, 2614(3)(B) for failure to comply with 19 C.F.R. §§ 12.118-12.127.

As observed under the Findings, a respondent has the option of typing or stamping the certification on an entry document such as an invoice. In the practicable world of business, however, this or other respondents similarly situated, may ask what can be done to assure that a certification - when written on a separate piece of paper - is delivered to Customs. In that Customs does not give receipts for certifications, one possible solution would be for a respondent, through its broker, to obtain and be able to produce, if needed, a statement from the messenger service that it picked up a designated folder from the broker on a particular date; that the folder contained the certification; and that folder was delivered to Customs on a certain date.

Appropriateness of Proposed Penalty

The complaint seeks a proposed penalty of $6,000, an amount in excess of the value of the imported goods. The pertinent provision of TSCA, Section 16(B), 15 U.S.C. § 2615(B), provides that:

> (B) 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.

The elements mentioned in the statute are restated and amplified in EPA's Guidelines for the Assessment of Civil Penalties (general guidelines), 45 Fed. Reg. 59770, September 10, 1980. (Ex. C 12) The purpose of the general guidelines is to assure that TSCA civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that the economic incentives for violating TSCA are eliminated; and that persons will be deterred from committing TSCA violations. The general guidelines also provide that it will be supplemented by regulation-specific penalty assessment guidances. With regard to Section 13 of TSCA and regulations provided thereunder, EPA developed an Enforcement Response Policy for Recordkeeping and Reporting Rules regarding Sections 8, 12 and 13 of TSCA. (Exhibit C 13) The document explains how to use the general guidelines to arrive at an administrative penalty. With particular reference to the instant matter, EPA also uses Interim Final Amendments to the Enforcement Response Policy for Section 13 of TSCA. (Exhibit C 15) If the ALJ determines that a violation has occurred, he shall determine the dollar amount of the civil penalty to be assessed in accordance with any criteria set forth in TSCA, and he must consider any civil penalty guidelines issued under TSCA. If the ALJ assesses a penalty different from that proposed in the complaint, he shall set forth the specific reasons for any increase or decrease. 40 C.F.R. § 22.27(b).

Section 16 of TSCA mandates that eight enumerated factors shall be taken into account without prescribing any particular weight to a given element. The first four factors, nature, circumstances, extent and gravity relate to the violation itself. These four factors are charted on a matrix which yields a Gravity Based Penalty (GBP). The matrix is constant and the format is as follows: The extent of potential damage, on the horizontal plane, takes into consideration the degree, range or scope of the violation. There are three levels for measuring extent. Level A, is classified as major, and is a potential for serious harm to human health or major damage to the environment. Level B, designated as significant, is the potential for significant amount of damage to the human health on the environment. Level C, known as minor, is the potential for lesser amount of damage to human health or the environment. "Circumstances," on the vertical plane of the matrix, are the probabilities of the assigned level of "extent" of harm actually occurring. Within the matrix, "circumstances" are in three categories. If the violation is likely to cause damage it falls within levels 1 and 2 of the high range. Should there be a significant chance that damage will result from the violation, it falls within 3 and 4 of the medium range. Where there is a small likelihood that the violation will result in damage then 5 and 6 of the low range apply. The probability of harm, as assessed in evaluating circumstances, is based on the risk

inherent in the violation as it was committed. There is a variation in evaluating circumstances of data-gathering violations. Levels 3 and 4 of the medium range are assigned to violations which impair EPA's ability to monitor or evaluate chemicals in a less than critical way. Once a GBP is reached adjustment factors may be applied to increase or decrease the penalty. Those would be the other penalty considerations mentioned in Section 16 of TSCA. Previously, the failure to report would be in the high range of the significant extent on the matrix, for a penalty of $17,000. Subsequently, the penalty policy was modified. For the first failure to file a certification, a notice of noncompliance is used, as here, with respondent's earlier violation. For failure to file a certification a second time, the extent of potential damage remained significant, with the circumstances reduced to a penalty assessment of $6,000, which corresponds to level 4 in the general guidelines. (Exs. C 12, at 2-7, C 13 at 6-8, C 14 at 4, C 15 at 3; Tr 60-74)

Turning to the adjustment factors, the first to be considered in the order set out in the general guidelines, Exhibit 12 at 5, is culpability. Respondent, with regard to an FDA product, or Form 701, would leave it to Cachia's experience on how to proceed. Better communications were in order, as something went awry. The broker did not grasp that the Form 701 and a positive certification

were inconsistent and proceeded to prepare both forms for the shipment. The general guidelines provide, in the area of culpability, that the penalty may be adjusted when considering a respondent's degree of control over a violation. "There may be situations where the violator may be less than fully responsible for the violation's occurrence. For example, another company may have had some role in creating the violative conditions . . . . Such situations would probably warrant some reduction in the penalties." (Ex. C 12 at 5) Here, the broker was partially responsible for the violation.

With regard to the adjustment factor concerning history of prior such violations, respondent can reap no benefit as the general guidelines provide only for an upward adjustment in the penalty. Nor does the adjustment factor of ability to pay the penalty and its effect on capacity to continue in business assist respondent. Its inability to pay the penalty was not an issue in the proceeding, and if it were the burden of establishing such inability would rest with respondent. In light of respondent's $2 million in annual sales, its failure to raise the issue is understandable.

The last adjustment factor to be considered here is that addressing such other matters as justice may require. That the value of the shipment is less than the proposed penalty is not a mitigating factor. The value of the shipment has no bearing on

the potential for harm for the reason that Section 13 penalties are risk assessment in nature and with such violations the harm is that EPA does not know if the chemical is in compliance. However, this adjustment factor is broad enough to embrace an evaluation of the total circumstances involving the violation. This is not a situation where a certification was never prepared. The evidence shows that respondent, through its broker, complied, in part, with the regulation in that Cachia prepared the certification, but it was not filed with Customs. The respondent, or broker's efforts, to comply should be considered, and a downward adjustment in the penalty made. The downward adjustments to the proposed penalty in this matter should be as follows: Concerning culpability the penalty should be reduced by $1,000. Under the adjustment factor concerning other matters that justice may require, the penalty should be reduced another $1,500, for a total reduction in penalty of $2,500. The total appropriate penalty in this matter is $3,500.

ORDER*

Pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), the following order is entered against Chemisphere Corporation:

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* Unless an appeal is taken pursuant to the Rules of Practice, 40 C.F.R. § 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. 40 C.F.R. § 22.27(c).

a. A civil penalty of $3,500 is assessed against the respondent for violations of the Toxic Substances Control Act.

b. Payment of the civil penalty shall be made by submitting a cashier's or certified check payable to the Treasurer, United States of America, and mailed to:

EPA - Region II
(Regional Hearing Clerk)
P. O. Box 360188M
Pittsburgh, PA 15251

c. Payment shall be made within sixty (60) days after receipt of the final order unless prior thereto, upon application from respondent, the Regional Administrator approves a delayed payment schedule or an installment plan, with interest, in which case payment shall be made according to said schedule or installment plan.

Frank W. Vanderheyden
Administrative Law Judge

Dated: May 8, 1987
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that on May 15, 1987, I mailed the Respondent, James Kosch, Esquire, McCarter & English, 550 Broad Street, Newark, New Jersey 07102 in the matter of Chemisphere Corporation (Docket No. II-TSCA-IMP-13-86-0107) a copy of the Initial Decision by Honorable Frank W. Vanderheyden, Administrative Law Judge by Certified Mail. Beverly Kolenberg, Esquire, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 was delivered a hand-carried copy.

NEREIDA SOTOMAYOR
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region II