

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SYMMCO, INC.) Docket No. EPCRA-III-171
)
Respondent)

**ORDER GRANTING MOTION FOR ACCELERATED DECISION
AS TO LIABILITY, REQUIRING FILING OF STATUS REPORT,
AND REQUIRING PARTIES TO MEET INFORMALLY**

By pleading received on April 23, 1997, Complainant filed a motion for accelerated decision as to liability, with the issue of penalty reserved for hearing. No response was received from Respondent. By order issued June 11, 1997, the undersigned directed Respondent to show cause, on or before July 7, 1997, why it should not be deemed "to have waived any objection to the granting of the motion." 40 C.F.R. § 22.16(b). By response dated July 7, 1997, Respondent states that it agrees: (1) that the undersigned has the authority to grant an accelerated decision in appropriate circumstances; (2) that accelerated decision in Complainant's favor is appropriate as to liability; and (3) that no accelerated decision "is appropriate as to penalty or civil issues and material fact [sic] exists with regard to mitigating factors." Since Complainant's motion for accelerated decision as to liability is unopposed, and is appropriately supported, it shall be granted.

DISCUSSION

This proceeding began by a complaint filed February 28, 1996 by Complainant under Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, against Respondent Symmco, Inc., located in Sykesville, Pennsylvania. Complainant states that this case is based primarily upon evidence obtained during a June 7, 1995 EPA inspection of Respondent's facility to determine compliance with Section 313 of EPCRA, 42 U.S.C. § 11023. Following the Chief Administrative

Law Judge's September 24, 1996 order designating the undersigned as the Presiding Administrative Law Judge in this proceeding, the undersigned issued an order on October 4, 1996 setting dates for the submission of the prehearing exchanges. Following receipt of those items, a hearing was set for November 5, 1997 by order issued March 25, 1997. The motion for accelerated decision as to liability followed.

During the June 7, 1995 inspection by EPA Inspector Donald W. Stanton, Mr. Stanton confirmed that the facility was subject to the reporting requirements of EPCRA during the reporting years 1991, 1992, and 1993. Complainant continued as follows:

Among other things, Stanton ascertained the Facility's Standard Industrial Classification ("SIC") Code of 3399, its number of employees -- 96 in 1991, 97 in 1992 and 100 in 1993 -- and that the Facility processed or used approximately 19,600 pounds of methanol, 59,000 pounds of ammonia, and 1,015,850 pounds of copper in 1991; about 18,700 pounds of methanol, 60,200 pounds of ammonia and 1,221,900 pounds of copper in 1992; and approximately 18,300 pounds of methanol, 61,900 pounds of ammonia and 1,343,720 pounds of copper in 1993.

Although subject to the obligations of EPCRA, Respondent failed to submit the required toxic chemical release forms for methanol, ammonia and copper for each of the 1991, 1992 and 1993 reporting years by the reporting deadlines of September 2, 1992, July 1, 1993 and July 1, 1994, respectively. Respondent is therefore in violation of EPCRA § 313.

Complainant's Memorandum of Law in Support of Motion for Accelerated Decision (Memorandum) at 2.

Section 313 of EPCRA sets forth certain requirements on owners and operators of facilities which (1) have a primary SIC code between 20 and 39; (2) have 10 or more employees; and (3) manufacture, process or otherwise use a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f); 42 U.S.C § 11023(b); 40 C.F.R. § 372.22. During the calendar year for which the form is required, the owner or operator must submit a toxic release form (Form R) for each toxic chemical to EPA and the state in which the facility is located, by July 1 of the next calendar year (except the 1991 form, for which the deadline was administratively extended to September 2, 1992). 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30.

Respondent has admitted that its facility had a primary SIC code of 33 and that it had 10 or more full-time employees in the years 1991, 1992 and 1993. Respondent's Answer to Complaint (Answer) ¶¶ 7, 6. The third jurisdictional factor has also been satisfied. Respondent admits that it used more than 10,000 pounds of methanol in 1991, 1992 and 1993 (Answer ¶¶ 11, 29, 47) and more than 10,000 pounds of ammonia in 1991, 1992, and 1993 (Answer ¶¶ 17, 35, 53). Respondent, in its Answer, also admits use of 10,000 pounds of copper during 1991, 1992, and 1993 (Answer ¶¶ 23, 41, 59). The Complaint alleged that Respondent processed amounts of copper in excess of the statutory threshold of 25,000 pounds per year for the years 1991, 1992, and 1993. Complaint, ¶¶ 23, 41, and 59. Because Respondent's July 7 response admits that the Complainant's accelerated decision is appropriate as to all liability issues, this portion of Complainant's motion for accelerated decision is also granted.

CONCLUSION

Based upon the foregoing, it is hereby determined that Respondent violated Section 313 of EPCRA by:

(1) failing to file the required Form R for the 1991

reporting year for methanol, ammonia, and copper by September 2, 1992;

(2) failing to submit the required Form R for the 1992 reporting year for methanol, ammonia, and copper by

July 1, 1993; and

(3) failing to submit the required Form R for the 1993

reporting year for methanol, ammonia, and copper by

July 1, 1994.

The remaining penalty issue shall be decided in the hearing ordered in this proceeding. The parties are directed to meet informally prior to October 1, 1997 to attempt to resolve this matter informally. Complainant, after consultation with Respondent, shall file a status report with the undersigned on or before October 20, 1997. Should this matter not be resolved by a

consent agreement and consent order, the parties can expect a prehearing telephone conference to be held approximately two weeks before the hearing begins.

Charles E. Bullock

Administrative Law Judge

Issued: July 17, 1997

Washington, D.C.

IN THE MATTER OF SYMMCO, INC., Respondent,

Docket No. EPCRA-III-171

Certificate of Service

I certify that the foregoing Order, dated July 17, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Ms. Lydia A. Guy

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region III

841 Chestnut Building

Philadelphia, PA 19107

Copy by Regular Mail to:

Attorney for Complainant: Janet Sharke, Esquire

Sr. Assistant Regional Counsel

U.S. Environmental Protection

Agency, Region III

841 Chestnut Building Philadelphia, PA 19107

Attorney for Respondent: Robin A. Read, Esquire

McNERNEY, PAGE, VANDERLIN & HALL 433 Market Street

P.O. Box 7

Williamsport, PA 17703

Marion Walzel

Legal Staff Assistant

Dated: July 17, 1997