

- calendar years 1991 and 1992 to the EPA and the State of Wisconsin (Counts I-IV).
2. The Administrator of the EPA has delegated to the Regional Administrator, Region 5, EPA, the authority to commence and pursue civil administrative actions under Section 325 of EPCRA and the Regional Administrator has delegated this authority to the Director, Waste Pesticides and Toxics Division, Region 5, EPA. The Director, Waste Pesticides and Toxics Division, Region 5, EPA, has delegated to the Chief, Pesticides and Toxics Branch, Region 5, EPA, this authority.
 3. The Respondent is Berntsen Brass & Aluminum Foundry, Inc., 2334 Pennsylvania Avenue, Madison, Wisconsin, which is and was at all times relevant to this matter a corporation incorporated under the laws of the State of Wisconsin.
 4. Owners or operators of a facility with 10 or more full-time employees and a Standard Industrial Classification (SIC) Code between 20 and 39, that manufactures, processes, or otherwise uses a toxic chemical identified by Section 313(c) of EPCRA, and listed at 40 C.F.R. § 372.65 in amounts that exceed the threshold for reporting set forth in Section 313(f) of EPCRA, must complete and submit to the Administrator of EPA and the State no later than July 1 of the following year a Form R published pursuant to Section 313(g) of EPCRA and 40 C.F.R. Part 372 for each such chemical.
 5. The EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule, 40 C.F.R. Part 372, pursuant to Section 313(g) of EPCRA and Section 328 of EPCRA, 42 U.S.C. § 11048.
 6. The EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) ("Form R") at 40 C.F.R. § 372.85 and in the Federal Register at 53 F.R. 4500 (February 16, 1988), pursuant to section 313(g) of EPCRA.
 7. Copper, CAS No. 7440-50-8, and lead, CAS No. 7439-92-1, were toxic chemicals identified at Section 313(c) of EPCRA, and listed at 40 C.F.R. § 372.65 for the calendar years 1991 and 1992.
 8. For the calendar years 1991 and 1992, the established reporting threshold for toxic chemicals under EPCRA, such as lead and copper, processed as defined by 40 C.F.R. § 372.3, was 25,000 pounds pursuant to Section 313(f) of EPCRA and 40 C.F.R. § 372.25(a).
 9. The Respondent owned and operated a building, equipment, structures, and other stationary items which were located at 2334 Pennsylvania Avenue, Madison, Wisconsin, at all times relevant to this matter.
 10. The Respondent employed at least 10 employees with total paid hours greater than or equal to 20,000 hours per calendar year at the Pennsylvania Avenue site at all times relevant to this matter.
 11. The Respondent was covered by Standard Industrial Classification Code 3365 at all times relevant to this matter.
 12. The Respondent was covered by Standard Industrial Classification Codes 20 through 39 at all times relevant to this matter.
 13. During calendar year 1991, the Respondent processed 46,097 pounds of lead, CAS No. 7439-92-1, after its manufacture, for distribution in commerce, as part of articles containing the lead.
 14. During calendar year 1991, the Respondent processed 673,050 pounds of copper, CAS No. 7440-50-8, after its manufacture, for distribution in commerce, as part of articles containing the copper.
 15. During calendar year 1992, the Respondent processed 83,400 pounds of lead, CAS No. 7439-92-1, after its manufacture, for distribution in commerce, as part of articles containing the lead.

16. During calendar year 1992, the Respondent processed 1,115,473 pounds of copper, CAS No. 7440-50-8, after its manufacture, for distribution in commerce, as part of articles containing the copper.
17. The Respondent failed to submit to the Administrator of the EPA and the State of Wisconsin, on or before July 1, 1992, a Form R for lead for calendar year 1991.
18. The Respondent failed to submit to the Administrator of the EPA and the State of Wisconsin, on or before July 1, 1992, a Form R for copper for calendar year 1991.
19. The Respondent failed to submit to the Administrator of the EPA and the State of Wisconsin, on or before July 1, 1993, a Form R for lead for calendar year 1992.
20. The Respondent failed to submit to the Administrator of the EPA and the State of Wisconsin, on or before July 1, 1993, a Form R for copper for calendar year 1992.

Conclusions of Law

1. The Respondent was the owner and operator of a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, at all times relevant to this matter.
2. The Respondent operated a facility with 10 or more "full-time employees" as defined by 40 C.F.R. § 372.3 at all times relevant to this matter.
3. During calendar years 1991 and 1992, the Respondent "processed," as defined by Section 313(b)(1)(C) of EPCRA and 40 C.F.R. § 372.3, lead, in quantities exceeding the thresholds for reporting pursuant to Section 313(f) of EPCRA, and 40 C.F.R. § 372.25.
4. During calendar years 1991 and 1992, the Respondent "processed," as defined by Section 313(b)(1)(C) of EPCRA and 40 C.F.R. § 372.3, copper, in quantities exceeding the thresholds for reporting pursuant to Section 313(f) of EPCRA and 40 C.F.R. § 372.25.
5. The Respondent's failure to submit a Form R for lead for calendar year 1991 in a timely manner to the Administrator of the EPA and the State of Wisconsin constitutes a violation of Section 313 of EPCRA.
6. The Respondent's failure to submit a Form R for copper for calendar year 1991 in a timely manner to the Administrator of the EPA and the State of Wisconsin constitutes a violation of Section 313 of EPCRA.
7. The Respondent's failure to submit a Form R for lead for calendar year 1992 in a timely manner to the Administrator of the EPA and the State of Wisconsin constitutes a violation of Section 313 of EPCRA.
8. The Respondent's failure to submit a Form R for copper for calendar year 1992 in a timely manner to the Administrator of the EPA and the State of Wisconsin constitutes a violation of Section 313 of EPCRA.

Discussion

The EPA has filed a motion for partial accelerated decision as to liability in this matter. As noted above, the procedures governing these proceedings are set forth in the Rules of Practice. The regulation governing accelerated decisions provides in pertinent part:

The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding.

40 C.F.R. § 22.20(a).

In the Respondent's Answer, the Respondent admitted to all essential allegations in the EPA's Complaint. Specifically, the Respondent admitted to processing both copper and lead, in calendar years 1991 and 1992, in reportable quantities under EPCRA, without submitting the required Form Rs for these chemicals to the EPA and the State of Wisconsin within the required time period. Therefore, based on the file before me, no genuine issue of material facts exists and the EPA has demonstrated that it is entitled to judgment as a matter of law.

Further, the Respondent has not responded to the EPA's motion for a partial accelerated decision as to liability. The regulations, at 40 C.F.R. § 22.16(b), provide that if no response to a motion is filed within the designated period (10 days), the nonmoving party may be deemed to have waived any objection to the granting of the motion. Thus, in the instant matter, the Respondent is deemed to have waived any objection to the motion for partial accelerated decision as to liability.

There being no genuine issues of material fact surviving in this matter, and the EPA being entitled to judgment as a matter of law, the EPA's motion for partial accelerated decision as to liability is, therefore, granted.

ORDER

The EPA's motion for partial accelerated decision as to liability on all four Counts in the Complaint is Granted.

Inasmuch as the appropriate penalty remains in issue, a hearing for the determination of the appropriate penalty will be held beginning at 9:30 a.m. on Wednesday, May 6, 1998, in Madison, Wisconsin, continuing if necessary on May 7, 1998. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete.

IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

original signed by undersigned

Barbara A. Gunning

Administrative Law Judge

Dated: 1-6-98

Washington, DC

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