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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
MARK FASTOW AND)	Docket No. EPCRA-09-97-
0013)	
FIBERGLASS SPECIALTIES, INC.,)	
)	
Respondents)	

ORDER GRANTING COMPLAINANT'S MOTION
FOR ACCELERATED DECISION ON LIABILITY

By Motion filed June 9, 1998, Complainant moved for accelerated decision on the issue of liability. For the reasons discussed below, it is determined that Complainant's Motion for accelerated decision will be **GRANTED**.

I. BACKGROUND

On September 26, 1997, this proceeding was initiated pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. 11001 *et seq.* The Complaint, in three (3) counts, charges Respondents Mark Fastow and Fiberglass Specialties, Inc. with failing to file a Toxic Chemical Release Inventory Reporting Form ("Form R") for the chemical styrene for each of the years 1993, 1994 and 1995 in violation of EPCRA § 313, 42 U.S.C. § 11023. Mr. Fastow, appearing pro se on behalf of himself and Fiberglass Specialties, Inc. (as to which he is the President), answered the Complaint, admitting the violations charged and offering several arguments in mitigation of the proposed penalty.

On June 9, 1998 Complainant moved for accelerated decision on liability, only, as to each of the violations charged in the Complaint. In response, Respondents again did not deny the truth of the allegations relating to liability, but argued that Complainant bore at least some of the responsibility for Respondents' failure to file the required Form Rs by virtue of its failure to provide notification as to the filing requirement directly to the Respondent.

II. DISCUSSION

Consolidated Rule of Practice 22.20(a) provides for entry of an accelerated

decision "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). A motion for accelerated decision is the administrative analog to a motion for summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure. In re: ICC Indus., TSCA Appeal No. 91-4, 1991 TSCA Lexis 61, at *16 (Dec. 2, 1991); In re: CWM Chemical Services, TSCA Appeal No. 93-1, 1995 TSCA Lexis 10 (May 10, 1995). Interpreting the standard of Federal Rule 56, the Supreme Court has stated that the proper inquiry is "whether the evidence presents a sufficient disagreement to require submission to a [fact finder] or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, 477 U.S. 242, 251 (1986). As set forth below, based on the uncontested facts, there is no genuine issue as to any material fact regarding Respondent's liability on the three counts of the Complaint and the Complainant is entitled to judgment as a matter of law.

EPCRA § 313(a), 42 U.S.C. § 11023(a), ⁽¹⁾ and 40 C.F.R. § 372.30⁽²⁾ provide that an owner or operator of a facility subject to the requirements of EPCRA § 313(b)⁽³⁾ must submit annually, no later than July 1 of each year,⁽⁴⁾ a Form R for each toxic chemical listed under 40 C.F.R. § 372.65⁽⁵⁾ that was manufactured, processed, imported or otherwise used during the preceding calendar year in quantities exceeding established chemical thresholds.⁽⁶⁾

It is undisputed that on June 11, 1997 EPA Inspector Gholson conducted an inspection of Respondents' facility at 1650 Foothill Drive in Boulder City, Nevada, where Respondents manufacture fiberglass automobile parts which are sold to automotive parts distributors and retailers. Based on his pre-inspection conversations with Mr. Fastow, and his observations during the inspection, Inspector Gholson told Mr. Fastow that it appeared that his facility should be reporting its use of styrene under EPCRA. Inspector Gholson left Mr. Fastow with a "Notice of Inspection" requesting the company's purchase records for all gel coat colors and polyester resins⁽⁷⁾ for calendar years 1993, 1994, 1995, and 1996. Complainant's Prehearing Exchange Exhibit (hereinafter cited as "C's PHE Ex.") 6 (Gholson Inspection Report). Using these purchase records, Inspector Gholson prepared an annual TRI-Listed Chemical Usage table for Fiberglass Specialties. This table shows that during the years 1993, 1994, and 1995 Respondents used 46,123, 50,543 and 51,599 pounds of styrene respectively. C's PHE Ex. 5. These amounts exceed the 25,000 pound threshold reporting limit for styrene for the years in question. See EPCRA § 313(f), 40 C.F.R. § 372.25. According to Complainant, an examination of an EPA database shows that Respondents have not submitted Form Rs as to styrene for the three years cited in the Complaint.

Respondents do not dispute any of the above factual allegations made by Complainant as they relate to liability. Rather, Respondents argue in response to Complainant's Motion that the U.S. Environmental Protection Agency (EPA) did not provide adequate notice to Respondents of the requirements of the EPCRA regulations, and that EPA therefore bears some responsibility for Respondents' violations. It has long been held, however, that publication of a rule in the Federal Register provides notice to the regulated community. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947) ("Just as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents").

The final rule implementing EPCRA § 313's reporting requirements was published in the Federal Register on February 16, 1988, beginning on page 4500. See 53 Fed. Reg. 4500. Consequently, Respondents' argument that the Agency bears a part of the responsibility for Respondents' violations must be rejected. Accordingly, it is concluded that there is no dispute as to any material fact as to liability on any of the three counts of the Complaint and, thus, Complainant is entitled to judgment as a matter of law as to liability only.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents Fiberglass Specialties, Inc. and Mark Fastow are each a "person" as

that term is defined in EPCRA § 329(7), 42 U.S.C. § 11049(7).

2. Respondents are the owner or operator of a "facility" located at 1650 Foothill Drive, Boulder City, Nevada, as that term is defined in EPCRA § 329(4), 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.

3. Respondents' facility has ten or more "full-time employees," as that phrase is defined at 40 C.F.R. § 372.3.

4. Respondents' facility's Standard Industrial Classification Code is within the 20 to 39 range.

5. The chemical styrene, CAS Number 100-42-5, is referenced in EPCRA § 313 and listed at 40 C.F.R. § 372.65 as subject to the reporting requirements of 40 C.F.R. Part 372.

6. During calendar year 1993, Respondents' facility "processed," (as that term is defined in EPCRA § 313(b)(1)(C)(ii) and 40 C.F.R. § 372.3), styrene, in excess of the 25,000 pound reporting threshold for styrene specified at 40 C.F.R. § 372.25.

7. Respondents failed to submit a Toxic Form R to EPA reporting the styrene processed during the 1993 calendar year on or before July 1, 1994, the filing deadline.

8. Respondents' failure to submit a Form R for styrene to EPA for calendar year 1993 by the filing deadline constitutes a violation of EPCRA § 313, 42 U.S.C. § 11023.

9. During calendar year 1994, Respondents' facility "processed," as that term is defined in EPCRA § 313(b)(1)(C)(ii) and 40 C.F.R. § 372.3, styrene, in excess of the 25,000 pound reporting threshold for styrene specified at 40 C.F.R. § 372.25.

10. Respondents failed to submit a Form R to EPA for styrene for the 1994 calendar year on or before July 1, 1995, the filing deadline.

11. Respondents' failure to submit a Form R for styrene to EPA for calendar year 1994 by the filing deadline constitutes a violation of EPCRA § 313, 42 U.S.C. § 11023.

12. During calendar year 1994, Respondents' facility "processed," as that term is defined in EPCRA § 313(b)(1)(C)(ii) and 40 C.F.R. § 372.3, styrene, in excess of the 25,000 pound reporting threshold for styrene specified at 40 C.F.R. § 372.25.

13. Respondents failed to submit a Form R to EPA for styrene for the 1995 calendar year on or before August 1, 1996, the filing deadline.

14. Respondents' failure to submit a Form R for styrene to EPA for calendar year 1995 by the filing deadline constitutes a violation of EPCRA § 313, 42 U.S.C. § 11023.

THEREFORE, it is this day,

ORDERED, that the Complainant's Motion for Accelerated Decision is hereby GRANTED, and it is further,

ORDERED, that JUDGMENT on the issue of liability, only, be hereby entered in favor of the Complainant in this action as to all three counts of the Complaint.

In that there continues to be pending in this case the issue of the appropriate penalty to be imposed for the violations found, the Order, previously issued, scheduling the hearing in this case to begin on July 28, 1998, remains in effect.

Susan L. Biro

Administrative Law Judge

Dated: _____
Washington, D.C.

1. EPCRA § 313(a) states in pertinent part that:

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. . . .

2. Section 372.30(a), 40 C.F.R. states in pertinent part that:

For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R

3. EPCRA § 313(b) states:

The requirement of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

4. For the year 1995, EPA extended the reporting deadline from July 1 to August 1, 1996. See, 61 Fed. Reg. 2722 (Jan. 29, 1996) (Time Extension for Submission of Reports).

5. Styrene, CAS No. 100-42-5, is a listed chemical under 40 C.F.R. § 372.65.

6. The threshold reporting quantity for styrene processed in each of the calendar years 1993, 1994, and 1995 was 25,000 pounds. EPCRA § 313(f)(1)(B), 40 C.F.R. § 372.25(a).

7. Respondent Fiberglass Specialties, Inc. uses gel-coat and polyester resins in manufacturing fiberglass auto parts. Styrene is a chemical component of gel-coat and polyester resin.

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