

5/5/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Beltrami Enterprises, Inc.) Docket No. TSCA-III-302
(Eckley, PA Facility))
)
Respondent)

Accelerated Decision

Complainant has moved for an accelerated decision in this proceeding for civil penalties under the Toxic Substance Control Act ("TSCA"), Section 16(a), 15 U.S.C. 2615(a). The alleged violations are of the regulations applicable to polychlorinated biphenyls ("PCBs").¹ The EPA's complaint charges that Beltrami has not complied with the requirements for storing PCB-Contaminated Electrical Equipment, in this case electrical transformers, for disposal and for marking the storage area.² A penalty of \$20,000 is requested.

Beltrami opposed the motion, asserting as its only defense that it is currently in a bankruptcy proceeding under Chapter 11 of the Bankruptcy Code which is likely to be protracted leaving it with little or no assets to pay the penalty, and that the complaint, accordingly, should be dismissed. That defense was rejected in my order of February 11, 1992, for the reasons stated

¹ 40 C.F.R. 761.1-761.218.

² See 40 C.F.R. 761.40, 761.60, 761.65.

therein. In the same order, Beltrami was given three weeks from the date of the order (or until March 3, 1992) to present any other defense it may have either to the merits of the violations with which it was charged or to the appropriateness of the proposed penalty. The order stated that if there is no further response, the penalty proposed in the complaint will be assessed. That order of February 11, 1992, is incorporated in and made a part of this accelerated decision. No further response having been received, upon consideration of the entire record, the following accelerated decision is issued:

Findings of Fact

1. Beltrami is a corporation which at all times relevant to the violations charged in the complaint has been doing business in the Commonwealth of Pennsylvania. (Complaint and answer (hereafter "Pleadings."))
2. Beltrami primarily engages in anthracite coal strip mining operations in Pennsylvania. As part of these operations, Beltrami operates a strip mining facility in Eckley, Pennsylvania ("Eckley Facility"). (Pleadings.)
3. On April 8, 1987, an EPA inspector inspected Beltrami's Eckley Facility to determine compliance with the rules governing PCBs, 40 C.F.R. Part 761. (Pleadings.)
4. At the time of the inspection, the EPA inspector observed at the Eckley Facility that there were 21 oil-filled electrical transformers stored on the side of the road approximately 150 feet from the facility's coal preparation plant. These transformers had

been taken out of service and stored at this location for at least 13 years. Several of the transformers were lying on their sides and the soil around the transformers was visibly stained with what appeared to be oil. (Affidavit of Gerard W. Crutchley, Attachment 3 to Complainant's motion; Inspection Report, Exhibit 1 to Complainant's first prehearing exchange.)

5. The 21 transformers were being stored for disposal. (Finding No. 4.)

6. These 21 transformers did not have any PCB labels on them. Nameplate information showed that 12 of the transformers had contained "10-C oil". There was no information concerning the contents of the other 9 transformers. Beltrami's representatives did not know whether the transformers had ever been tested for PCBs. (Pleadings; Crutchley Affidavit; Inspection Report.)

7. Oil-filled electrical transformers are assumed to be PCB-Contaminated Electrical Equipment, containing concentrations of 50 parts per million PCBs ("ppm") or greater, if the concentration of PCBs in the transformer fluid is unknown. 40 C.F.R. 761.3. Beltrami has not proffered any evidence that these transformers did not contain PCBs at concentrations of 50 ppm greater. I find, accordingly, that the 21 transformers were PCB-Contaminated Electrical Equipment which were subject to the storage for disposal requirements of 40 CFR Sections 761.60, and 40 CFR 765.

8. The transformers were stored in an area that had no roof, wall, curbing, or volume containment. The 21 transformers had been stored prior to January 1, 1983, and they had not been disposed of within

one year from the date they were designated for disposal. None of the transformers had a date on it as to when it was placed in storage. (Inspection Report.)

9. Storage under the conditions described in Paragraph 7 above did not meet the requirements of 40 C.F.R. Sections 761.60(a)(6) and (b)(6), and 40 C.F.R 765.

10. The area where the 21 transformers were being stored for disposal at the time of the inspection was not marked with the PCB warning label required by 40 CFR Sections 761.40(b)(10) and 761.65(c)(3).

Conclusions and the Appropriate Penalty

The evidence establishes that Beltrami, acting without any knowledge of their PCB content, stored 21 oil-filled transformers for disposal by simply dumping them in an open area at the Eckley Facility which had neither the safeguards against environmental harm nor the marking required by the PCB regulations.

The EPA has proposed a penalty of \$10,000 for the storage violation and \$10,000 for the marking violation based upon the EPA's PCB penalty policy.³

Under the guidelines set forth in the penalty policy, the storage violation is classified as a major violation because it presents a situation where a significant portion of spill material would not be contained. The violation is further classified as having a significant potential for harm because it involves 21 transformers. The marking violation is classified as major also

³ 45 F.R. 59770 (Sept. 10, 1980).

because it fails to alert people that PCBs are present in the area. Again, the violation is described as one with a significant potential for harm because of the number of transformers involved.

I find that the violations are properly classified and that the proposed penalty of \$20,000 is fully in accord with the policy. No adjustment to the penalty is warranted. Aside from the present financial condition of Beltrami, no other grounds for adjusting the penalty have been shown in the papers before me. The fact that Beltrami is now in a Chapter 11 bankruptcy proceeding, however, is rejected as a defense against assessing the full amount of the penalty for the reasons stated in my order of February 11, 1992.

Accordingly, a penalty of \$20,000 is hereby assessed against Beltrami for the violations found herein.

ORDER⁴

Pursuant to TSCA, Section 16(a), 15 U.S.C. 2615(a), a civil penalty of \$20,000 is assessed against Beltrami Enterprises, Inc. The full amount of the penalty shall be paid within thirty (30) days of the effective date of the final order. Payment shall be made by forwarding a cashier's check or certified check in the full

⁴ This accelerated decision constitutes an initial decision under the Rules of practice, 40 C.F.R. 22.20(b). Unless an appeal is taken pursuant to the Rules of Practice, 40 C.F.R. 22.30, or the Administrator on his own motion elects to review this decision, this decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

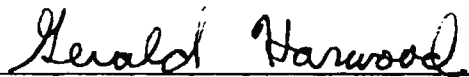
amount payable to the Treasurer, United States of America, at the following address:

EPA Region III

Regional Hearing Clerk

P.O. Box 360515M

Pittsburgh, Pennsylvania 15251

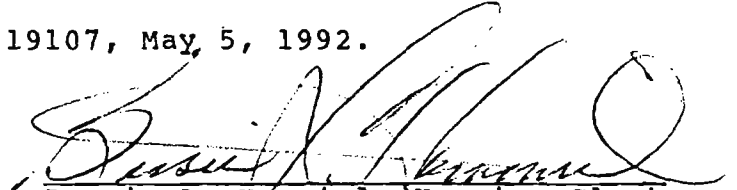


Gerald Harwood
Senior Administrative Law judge

Dated: May , 1992

CERTIFICATE OF SERVICE

I do hereby certify that four copies of the foregoing Accelerated Decision were sent to the Regional Hearing Clerk U.S. Environmental Protection Agency, Reg. III, 841 Chestnut Building, Philadelphia, PA 19107, May 5, 1992.

A handwritten signature in cursive script, appearing to read "Bessie L. Hammel", written over a horizontal line.

Bessie L. Hammel, Hearing Clerk
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: May 5, 1992

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Certificate of Service

This is to certify that on this 14th day of May, 1992, copies of the foregoing Accelerated Decision, in the matter of Beltrami Enterprises, Inc., Docket No. TSCA-III-302 were distributed as follows:

Certified Mail:

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First-Class Mail:

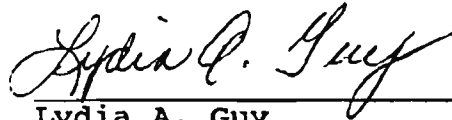
Bessie L. Hammiel, Hearing Clerk
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Hand Delivered:

Daniel E. Boehmcke, Esq. (3RC11)
Assistant Regional Counsel
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

MAY 14 1992

Date: _____



Lydia A. Guy
Regional Hearing Clerk