UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	Docket No: TSCA-4-2000-0130
GCA Chemical Corporation,	)	
Respondent	)	
	)	

Initial Decision

This is an action under the Toxic Substances Control Act ("TSCA"), Section 16(a), 15 U.S.C. § 2615(a), for violations of the Inventory Update Rule ("IUR") as promulgated under TSCA Section 8(a) and set forth at 40 CFR Part 710. The Respondent, GCA Chemical Corporation, is charged with two counts of failing to file Form U's for two chemicals[1] on or before January 31, 1999, for the Company's corporate year ending August 25, 1998.[2] EPA filed a Motion for Accelerated Decision on liability for the two counts on March 30, 2001. The Respondent did "not contest that the two violations did in fact occur." GCA Prehearing Exchange at ¶3. The Motion was granted on May 9, 2001. Therefore the only issue at hand is the appropriate penalty for the violations. EPA proposed a penalty of $37,400.

At the conclusion of the trial,[3] the Complainant was asked to brief the legislative history of the statutory penalty factors. Tr. 134. In its brief, Complainant states that there is little

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[1]The two chemicals involved are: 2,3-epoxy propyl isocyanurate (hereinafter "Tris") and 2 Hydroxy-1,2-diphenyl (hereinafter "Ethanone"). Even though the Form U may have space for numerous chemicals, each chemical constitutes a separate violation. *See* In the Matter of Atlas Refinery, Inc., Doc. No. TSCA-02-99-9142, 2000 EPA ALJ LEXIS 12, *27 (Feb. 16, 2000).

[2]In its Prehearing Exchange, the Respondent stated that it would not contest the assertion that the two violations had in fact occurred, but would limit its evidence at hearing to the appropriateness of the penalty. *See* GCA Prehearing Exchange at ¶3.

[3]EPA filed on June 28, 2001, an unopposed Motion to Conform Transcript to Proceedings, correcting various transcript errors. The Motion is GRANTED.

legislative history regarding the factors. EPA Brief at 3. The Senate Bill and House Amendment contain the same statutory factors which are currently in TSCA Section 16(a). These factors were characterized as "relevant factors." H.R. Conf. Rep. No. 94-1679, 94th Cong. 2nd Sess., "Joint Explanatory Statement of the Committee of Conference," (Sept. 23, 1976), at 92, reprinted in USCAN 4577.

According to the Senate Report:

> In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation as well as the violator's ability to pay, his ability to continue to do business, his history of prior violations and his degree of culpability.

S. Rep. No. 94-698, 94th Cong. 2nd Sess. 14,26, reprinted in 1976 USCAN 4504, 4516.

The Conference Substitute for Section 16 states in part,

> The Administrator shall assess the amount of civil penalties up to $25,000 per day per violation; however, the Administrator must take in to account such factors as the gravity and extent of the violation, the ability to pay of the person held in violation, and any prior history of violations under this Act.

H.R. Conf. Rep. No. 94-1679, at 93, reprinted in USCAN 4578.

The final version of the statute reads in part:

> 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.

15 U.S.C. § 2615 (2001).

The penalty assessment is also governed by the "Consolidated Rules" which places the burden on EPA to show that the relief is appropriate. 40 C.F.R. § 22.24. EPA must demonstrate that it "took into account'" certain criteria specified in the statute and that the penalty is appropriate in light of those criteria and the facts of the violation. *See* In Re Employers Insurance of Wausau and Group Eight Technology, Inc., 6 EAD 735, 760 (Feb. 11, 1997).

EPA's argument

EPA's proposed penalty is derived from its policy interpretation of the statutory criteria as reflected in the Penalty Policy. The violation in this case is the failure to report two chemicals as required under the TSCA Inventory Update Rule.[4] Tr. at 5. In 1977, EPA promulgated a rule pursuant to TSCA Section 8(a) which required manufacturers to report information on chemical substances imported or produced during that year. This enabled EPA to compile a database which was necessary for "establishing a profile of the chemical industry, monitoring chemical substances in the environment, and setting Agency priorities for implementing other provisions of TSCA." 42 Fed. Reg. 64571, 64572 (Dec. 23, 1977). This rule was updated in 1986 by the Inventory Update Rule which required the submission of data for certain chemical substances every four years to ensure that the database is current. Tr. 23; 40 CFR § 710.33.

The first criteria in determining the penalty is the nature of the violation. According to EPA's Verne George, the nature of the violation speaks to the hazard assessment.[5] He testified that a violation such as this hinders the Agency's ability to conduct "hazard analysis or risk analysis." Tr. 79. The TSCA Guidelines describe "hazard assessment" as being used " to develop and gather the information necessary to intelligently weigh and assess the risks and benefits presented by particular chemical substances." Ex. 12 at 5; 45 Fed. Reg. at 59771. This function is important because it provides information to various agencies which regulate chemicals so that exposure to a chemical and its impact on health and the environment can be monitored and evaluated. Ex. 11 at 19. As stated in the Penalty Policy, this impacts the Agency's ability to set priorities and initiate any necessary action. Ex. 11 at 18. The harm arises from the fact that, without the reporting, the Agency would not have the information to make the risk analysis. Tr. 75. Mr. George testified that while the failure of one small company to report a hundred thousand pounds may not seem significant, if ten small companies did the same there would be over a million pounds of chemicals unaccounted. Tr. 89. It is in this context that the risk assessment becomes important.

The next two criteria are the circumstances and extent of the violation. The Penalty Policy categorizes, by 'levels,' the circumstances and extent of each violation. According to the Penalty Policy, failure to report and keep records is considered a circumstance Level 1 violation. Ex. 11 at 9. Mr. George testified that he evaluated the circumstance according to the policy and

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[4] A stated purpose of TSCA is that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures." 15 U.S.C. § 2601(b)(1).

[5]Mr. George is a compliance officer with EPA Region 4, Air Pesticide and Toxic Substances Division. He conducted the inspection of the GCA facility, calculated the penalty and conducted conference calls with the Respondent in attempts to settle the matter. Tr. 57-61.

that this produced a Level 1 designation. Level 1 is the most serious circumstance level and takes into account the Agency's inability to perform its risk analysis. Tr. 75. EPA cites two cases in which ALJs have agreed with the penalties proposed by EPA for non-reporting under the IUR. In Re: DIC Americas, Inc. TSCA-II-8(a)-90-0109 (Dec. 30, 1993), TSCA Appeal No. 94-2 6 EAD 184, (Sept. 27, 1995)("DIC"); In Re: Hanlin Chemicals,- West Virginia, Inc. Docket Nos. IF&R-III-425-C; TSCA-III-651; EPCRA-III-091 (Nov. 9, 1995)("Hanlin"). In both cases the ALJs found that non-reporting constituted a Level 1 violation. DIC, 6 EAD at 187; Hanlin at *17. The court takes note of these cases but, as the facts and circumstances of the present case differs from them, they are not useful here. While both concerned the failure to file Form U's, the companies in Hanlin and DIC were aware of the Form U requirements. In Hanlin, the company was also dealing with insecticide and EPCRA violations in the complaint in addition to the TSCA violations. It had filed a Form U for some chemicals but had under-reported the quantities involved and, for others it completely failed to include the chemicals.[6] Hanlin at *30. In DIC, the company failed to include five chemicals on their IUR.[7] DIC at 186.

EPA argues that GCA failed to act with due diligence and therefore the penalty is appropriate. EPA Brief at 10. It notes that the Respondent failed to report any information on two chemical substances as required by the IUR. Tr. 125; Complaint ¶¶ 12, 25, 31. Rather, these violations were discovered during a random inspection of the Respondent's Brandenton, Florida facility. Ex. 7. The Respondent had been importing the same chemicals since it began doing business in 1976 and was unaware of the IUR and the reporting requirements under TSCA. Tr. 122-4; 127. EPA observes that the Respondent never hired an environmental consultant or attorney to audit for environmental compliance. Tr. 127.

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[6]The judge in Hanlin had problems with the Enforcement Policy, noting, among other concerns, that the Policy made "no distinction ... with respect to the relative toxicity or exposure risks of the specific chemicals involved, a concern shared by the Court. The judge also was perplexed that the Agency deemed inaccurate reporting to be more equally serious with non-reporting, and as a consequence he reduced the penalty the Agency sought for the inaccurate Form U's from the $17,000 sought to $3,000, while keeping the non-reporting violations as proposed. It cannot be presumed that the judge would have treated the two counts for non-reporting violations in the same manner had those been the only matters before him. For example, as contrasted with GCA's conduct, Hanlin took *six months* after the inspection to submit the Form U for the non-reported chemicals. Further, unlike the four person operation at GCA, Hanlin had over 200 employees at its chemical manufacturing facility.

[7]Although the judge in DIC adopted the Agency's penalty proposal, the Environmental Appeals Board determined that the judge did not abdicate the responsibility to make an independent judgment on the appropriate penalty. While noting that the judge has a responsibility to "consider" any penalty policy guidelines, the EAB also stated "... obviously that duty carries with it no obligation to adhere to the penalty policy in particular instances." Thus, the fact that a judge adopted the Agency's proposed penalty in a particular case has no bearing on the appropriateness of adopting the policy in this case.

Mr. George confirmed that, in applying the 'extent level' under the Penalty Policy, these violations were classified as 'significant.' Tr. 76. The extent factor is intended to "reflect[] the extent of potential harm to EPA's hazard/risk assessment process." Ex. 11 at 22. The policy delineates three levels of extent: 'major,' 'significant' and 'minor.' All violations of the IUR are designated as 'significant' in extent. George explained this classification, stating that these violations are 'significant,' as opposed to 'major,' because although there is harm to the regulatory program there is no actual harm to humans or the environment. Tr. 76.

Under the Penalty Policy, the gravity of the violation is determined by the Penalty Matrix, which compares the circumstances and extent to arrive at a penalty. Tr. 77; Ex. 11 at 8. George testified that since he determined that the circumstance was 'Level 1' and the extent 'significant,' the chart indicated that a penalty of $18,700 was appropriate. Tr. 77. In its brief, EPA again cites to phrases in the Hanlin and DIC decisions in support of its argument that non-reporting is a "serious" and "significant" violation. *See* EPA Brief at 11. However, in both of these cases, the ALJ's merely reiterated the Enforcement Response Policy's ("ERP") finding that IUR non-reporting is a serious violation. DIC at *8; Hanlin at *37. The ALJs then followed the ERP in setting the penalty. Id.

According to Mr. George, the resulting gravity penalty has the potential to be either increased or decreased, based on the Respondent's culpability. Tr. 78. The willfulness of the violation and the control the company had over the violation are considered under this factor. In this case, there was no indication that the violations were willfully committed so the penalty was not increased. However, in EPA's view, there was evidence that the company had control over the violation. Accordingly the determination that GCA had "control" eliminated the need for the agency to reduce the penalty when it evaluated culpability. Tr. 78.

EPA also cites to K-I Chemicals in support of its claim that GCA, unlike the company in K-I, made no effort to comply with the IUR. In the Matter of K-I Chemical, USA, Inc., TSCA-09-92-0018 (June 7, 1995)("K-I"). However, EPA sought essentially the same penalty as here, proposing $17,000 for each Form U count. Both companies only employed four people. K-I was well aware of the Form U requirement but, in submitting the form U, it supplied figures reflecting the company's four year import average. As one example of the consequence of this, it reported a 220,000 lbs. import quantity, when 335,344 lbs. was actually imported. The ALJ noted that "*each case must be evaluated on its own in deciding the proper penalty*" *and that the* "*formalistic constraints of a penalty policy should be avoided where in the interests of justice the policy fails to adapt to the factual situation presented* ..." (emphasis added). Concluding that the policy's "automatic reflex" in assigning all circumstance level 2 IUR violations as "major extent" violations, the court noted that "unlike most 'major extent' violations, the IUR data does not primarily contain information on known risks to human health and the environment." Accordingly the court classified the violations as "circumstance level 2" and "significant." This reduced each count to $13,000. Then, proceeding to culpability, the court noted that a 15% adjustment can be made upon considering a respondent's good faith efforts to comply, the promptness of its corrective action, and the assistance given to the agency to minimize any harm to the environment caused by the violation. Applying this, the judge made a second reduction of

15 % off each count. Finally, the judge evaluated the "other factors that justice may require" criterion, finding that the company was the "antithesis of an egregious violator and, looking to the "totality of the evidence and adjustment factors," the ALJ further reduced the penalty, imposing a *total* of $15,000 for the violations. Here, GCA was not aware of the Form U requirements. Additionally, while the court stated that K-I, as a regulated business, "had a duty to comply as required," GCA did comply with all other aspects of TSCA except for the IUR requirement. K-I at *21. Thus, GCA was not ignoring TSCA. Rather, it attempted to comply with TSCA, but was unaware of this requirement.

A penalty can also be adjusted upon consideration of the prior history of violations and a violator's ability to pay a penalty. Mr. George testified that he considered GCA's prior history of violations in the penalty calculation in that a review of EPA's database and enforcement tracking system did not show any history of non-compliance with TSCA Section 8. Tr. 78. EPA contends that the Penalty Policy is designed for first time offenders; therefore this criterion moves only in an upward direction. Accordingly there is an increase in the penalty if there is a history of violations, but no reduction for a previously spotless record. Ex. 11 at 17; Tr. 79. Therefore, there was no increase for this factor.

While ability to pay is a factor that is considered under the penalty policy, Mr. George testified that he did not adjust the penalty for this factor.[8] EPA practice is to assume that the Respondent has the ability to pay unless the Respondent presents information to support an inability to pay claim.[9] At trial, EPA presented a Dunn & Bradstreet report for GCA Chemicals in support of this issue. GCA also agreed that ability to pay is not an issue. Ex. 10; Tr. 81.

Finally, the penalty also can be adjusted for "such matters as justice my require." While EPA did not adjust the penalty for this, it has made several contentions regarding this factor. Tr. 87 First, the Agency argues that the penalty was calculated in accordance with its nationally issued policy which produces consistent penalty assessments for similar violations. Tr. 118; Second, responding to GCA's contention that the penalty should reflect the company's small size, EPA argues that the size of the business does not excuse noncompliance. EPA Brief at 16;citing In the Matter of RIDCO Casting Co., Docket No. TSCA-82-1089, 1983 EPA ALJ LEXIS 1, * 20 (Dec. 28, 1983)(finding that size does not excuse ignorance of the law). It notes

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[8]Mr. George testified that some other factors did not apply to the facts in this case. For example, self-disclosure is usually considered, however, it is not an issue because the violations were not self-disclosed. Tr. 82. Also not applicable were risk reduction measures. Since GCA employees had no actual contact with the chemicals, there was no risk to be reduced. Tr. 82.

[9] For example, under the RCRA Penalty Policy, "the burden to demonstrate inability to pay rests on the Respondent. . . . If the Respondent fails to fully provide sufficient information [to meet this burden] then . . .enforcement personnel should disregard this factor in adjusting the penalty. *See* In re: Bil-Dry Corporation, Docket No. RCRA-III-264, Appeal No. 98-4, 2001 EPA App. LEXIS 1, *80, citing RCRA Civil Penalty Policy (Oct. 1990) at 36.

that the Respondent was aware of some TSCA importing requirements and yet made no effort to ensure that it was in compliance with all of its provisions. Tr. 123 - 4, 126, 88. Further, it asserts that GCA was not subject to any other environmental regulations and thus was not faced with a variety of EPA reporting requirements. Rather, from EPA's perspective, GCA had the information readily available, and simply failed to file the form. Tr. 125. EPA argues that the fact that GCA could have easily complied with TSCA but failed to do so weighs against any reduction in the penalty.

Respondent's argument

While GCA does not dispute the importance of the TSCA program, it asserts that Congress intended severe penalties only for those cases in which there is an intentional disregard for the TSCA program or in instances where negligence or carelessness has created a significant risk to human health and the environment. The company is "puzzled" that many of the other environmental statutes and penalty policies which address actual environmental harm do not contain mandatory penalties for violations. Yet it notes there is a mandatory penalty for a violation involving a database of over 14,000, chemicals which is only updated on a cyclical basis every four years. GCA Brief at 6. GCA views this as contrary to what would be expected since the statutes and penalty policies appear to be more lenient when there is actual environmental harm than instances when the focus is upon information gathering.[10] GCA Brief at 6. Since there was no actual environmental harm involved here, GCA believes the proposed penalty is higher than warranted.

GCA also argues that it is unreasonable that, except for an ability to decide not to file a complaint in the first place, the Agency lacks the discretion within the ERP to seek anything other than a significant penalty. While there is no language in TSCA directing EPA to create a rule for evaluating the penalty factors, the Agency follows the ERP as if it were a rule. George's testimony shows how he followed the ERP in formulating the penalty rather than looking at the statutory criteria. Tr.70. GCA argues that this is inconsistent with Congress' intent. The company does not argue against the need for guidelines but disagrees with the mandatory application of the policy which automatically classifies all potential violations of the IUR and

[10]While each TSCA violation must be taken on its own terms, and the Court does so here, the Respondent is correct that on occasion EPA has been more lenient in the face of actual environmental harm. For example, in Hodag Chemical Corporation, TSCA-V-C-025-88, November 16, 1988, 1988 WL 236332, the respondent was charged with failing to develop and maintain PCB records, failing to mark its heat transfer system with a PCB label, and failing to reduce the concentration of PCBs in that system. Despite the "recognized threat that PCBs pose to the environment and human health," and the fact that respondent's heat transfer system was used in manufacturing products for use in the production of cosmetics and food products, presenting the risk that, through leakage, a direct avenue for PCBs to enter the human body could be created, EPA sought a total penalty for the three counts of $15,500.

provides a penalty, regardless of the circumstances, virtually without any room for modification.

Rather than a "child's pegboard where each IUR violation has the same shape that can fit in only one hole," GCA argues that, as in Bell & Howell Company, Doc. No. TSCA-V-C-033, 034, 035, 1 E.A.D. 811 (Dec. 2, 1983), the penalty matrix should be seen as points along a continuum. In that decision, the EAB recognized that it is impossible to use mathematical precision in assessing penalties. Bell at *24. The EAB viewed the amounts in the matrix "as benchmarks along a continuum" which the Presiding Officer must use in taking into account some of factors of the case to determine the appropriate penalty. Id. GCA argues that the circumstances of the situation should therefore be evaluated in deciding whether a penalty is appropriate and the amount to be imposed.

GCA also argues that the Agency's small business policy, which only confers a benefit or advantage to businesses that self-disclose a violation, is inconsistent with Congress's intent.[11] The 1996 Small Business Regulatory Enforcement Fairness Act ("SBREFA") requires executive agencies to develop a program or policy to reduce or waive civil penalties for small businesses. 5 U.S.C. §601. This includes, but is not limited to, violations self- reported or discovered by a program of compliance assistance or auditing by the Agency or a state. Id. However, EPA's policy is limited to small businesses which self-disclose violations or participate in the Agency's voluntary compliance assistance program. *See* EPA's April 11, 2000, Small Business Policy available at http://es.epa.gov/oeca/smbusi.html. GCA argues that the program should not be limited to self-reporting because many small businesses do not have the resources to subscribe to periodicals or hire attorneys to provide awareness of regulatory obligations. Unlike before the inspection, GCA is now aware of its IUR responsibilities. It also asserts that if a company does not learn of the compliance assistance programs until *after* an inspection then the EPA "assistance" comes too late. GCA contends that the SBREFA policy provides no additional assistance than was already available under the 1995 Self-Policing Policy. Thus, GCA argues that because EPA's SBREFA policy fails to comply with the statute, the failure provides a reasoned basis for the presiding officer to deviate from the ERP in this instance.[12]

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[11]The Respondent points out that while the Agency stated in its Notice of Violation that the company may have rights under SBREFA, the letter did not contain a citation to the Act nor did the Agency's counsel or the Agency's Small Business Offices's web page cite the Act. Ex. 4. Additionally, they argue that repeated attempts to contact the SBO for assistance went unanswered. GCA Brief at 7. When asked at trial, George stated that he never received a call from Karen Brown or anyone else from EPA's Office of Small Business Ombudsman. Tr. 112. He was also unaware if Ms. Brown contacted Ms. Kono or another EPA attorney regarding the case. Id.

[12]The Court notes that the1996 SBREFA, which amended the 1980 Regulatory Flexibility Act, was intended to reduce the impact of regulations on small businesses. Included among its objectives was the establishment of programs "which allow for the reduction or waiver of civil penalties for small entities under conditions where the violator demonstrates good faith efforts to

The Respondent also argues that the penalty in this case, because it is so large, acts as punishment rather than as a deterrence to future violations. GCA Brief at 10. GCA cites to cases in which both the EAB and various Administrative Law Judges have found that TSCA penalties are intended to serve as deterrents and be remedial rather than punitive. *See* In the

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correct violations and comply with the law." U.S. Small Business Regulatory Enforcement Fairness Act Fact Sheet (1997) (EPA No. 100-F-96-038). SBREFA anticipated a reduction in civil penalties under certain mitigating circumstances where no serious health, safety or environmental threats were presented and the small business has not been subject to multiple enforcement actions by the agency. 10 Cornell J.L. & Pub. Pol'y 63, *78. EPA has advised Congress that it is "aggressively marketing" its reduction program to smaller businesses. EPA Rep. to Congress: The Small Business Regulatory Enforcement Fairness Act Section 223 Penalty Reduction Program for Small Entities. (March 1998).

EPA has issued various policies in the wake of SBREFA. *See* Interim Policy on Compliance Incentives for Small Businesses, 61 F.R. 27984, June 3, 1996 ("Interim Policy") and Small Business Compliance Policy, 65 F.R. 19630, April 11, 2000 ("Final Policy"). The Final Policy states that it is intended to promote small business compliance by "providing incentives for voluntary discovery, prompt disclosure and prompt correction of violations." *Id.* A small business is one with a hundred or fewer employees. Among other aspects, this policy provides for "up to 100% reduction of the gravity component of the penalty for violations discovered .... during government sponsored on-site compliance assistance activities. To qualify, a business must generally "correct a violation within 180 days of its discovery ..." and have no prior noncompliance history. In addition the violation must not have caused any actual serious harm, present an imminent and substantial danger to public health or involve criminal conduct. *Id.* at 19630, 19633. Finally, as applicable here, the violation cannot have been discovered through an inspection. *Id*. at 19633. Thus, under EPA policy, GCA failed to qualify for the penalty reduction because the violations were detected during an inspection.

While the Court cannot apply the Small Business Compliance Final Policy because the violations were discovered during an inspection, it does not preclude consideration of the circumstances under the "other factors as justice may require" factor. Indeed, the EPA Penalty Policy for TSCA Section 16 violations effectively concedes this by noting that "[o]ther case-by-case adjustments may also be warranted under the 'as justice may require' language. ("TSCA Penalty Policy") 45 FR 59770, *59771. GCA is among the smallest of the small companies addressed under SBREFA, having only four employees under a policy that considers up to one hundred employees as a "small" business. EPA has also conceded that the violation, relating solely to data gathering, did not cause any actual serious harm nor present any public health danger. Obviously, no criminal conduct was involved. Further, it is admitted that GCA had no prior noncompliance history. Last, not only was GCA well within the 180 days the policy deems a rapid correction, but it's correction was relatively instant, occurring only six days after it was informed of the violation.

Matter of Ray Birnbaum Scrap Yard, Docket No. TSCA-PCB-VIII-01–01, 5 E.A.D. 120 (EAB March 7, 1994); Briggs & Stratton Corp., TSCA Appeal No. 81-1 (Feb. 4, 1981); In the matter of Bell & Howell Co., Docket No. TSCA-V-C-033, 034, 035 (Dec. 2, 1983). [13] GCA argues that they are now aware of the TSCA requirements and do not need such a heavy penalty to deter future violations.[14] They have made changes to their recordkeeping practices to help ensure that there will be no future violations. Tr. 124.

Additionally, GCA questions how EPA fairly can determine that the penalty is sufficient to deter a violation when it does not consider the size of the business in determining the penalty. GCA Reply Brief at 3. They observe that the ability of a $37,400 penalty to deter a small business from committing a violation is far greater than the same penalty on a larger corporation. Tr. 16. Thus, GCA argues that the penalty is disproportionate in light of their size. While acknowledging that the size of the business is not a criterion that must be addressed, it contends that the size of the business should be factor even if the violator has not asserted an inability to pay where the penalty is so substantial compared to its other costs. The company points out that the proposed penalty is more than they pay in rent for an entire year and almost as much as the company pays each year for medical coverage for its owner and three employees.[15] GCA Reply Brief at 3.

Finally, GCA cites to the statute which states that the Agency has the authority to "compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed." 15 U.S.C.§ 2615(a)(2)(c). However, the proposed penalty is only a proposal and need not be followed by the Presiding Officer.[16]

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[13]While these decisions do hold that the TSCA penalty is not intended to punish, they are PCB cases and therefore are not directly on point. In Birmbaum the ALJ found that adherence to the guidelines regarding an inability to pay would lead to an unjust result. While in Briggs, the Presiding Officer decided not to reduce the penalty.

[14]In their brief, the Respondent suggests that given the circumstances and the penalty factors, a $2000 for each of the two chemicals that were not reported on the form would be an appropriate penalty.

[15]The court must note, however, that this statement, while asserted in GCA's Brief, is unsupported by the record evidence.

[16] "[T]he Presiding Officer is not bound by any Penalty Policy, but rather by the statutory penalty criteria, a Presiding Officer may reject a proposed penalty, even if that penalty is calculated in accordance with the Penalty Policy." In re Employers Ins. of Wausau, 6 E.A.D. 735, 756 (EAB 1997). "A presiding officer has the discretion either to adopt the rationale of an applicable Penalty Policy where appropriate or to deviate from it where the circumstances warrant. DIC, 6 E.A.D. at 189.

Discussion

A departure from the Penalty Policy is appropriate in this instance.

While it is clear that EPA has adhered to the Penalty Policy, following the dictates of its inflexible framework, the Court has determined that application of the policy to the facts of this case would not result in an appropriate penalty. The Court takes note that the Environmental Appeals Board ("EAB") has placed the adherence to penalty policies in perspective. The Board's decision In re Steeltech, Ltd., 1999 WL 673227 (EAB, Aug. 26, 1999) ("Steeltech"), upholding a penalty of $ 61,736 for nine violations, occurring over a four year period, of the EPCRA Section 313 reporting requirements, provides one example among many. In that case, after noting the judge's obligation to consider the ERP's guidance, the Board emphasized that the ERP "does not have the force of law." The Board has also advised that judges "must refrain from treating the [Penalty Policy] as a rule, and must be prepared 'to re-examine the basic propositions' on which the policy is based . . .": In re Employers Ins. of Wausau, 6 E.A.D. 735, 761 (EAB, Feb. 11, 1997). Pointedly, the Board has "repeatedly stated" that as long the applicable Penalty Policy has been considered, the judge is "free to not apply [it] to the case at hand" where circumstances warrant. Additionally, this authority to depart from the ERP, because it is not a rule, means that a finding of "extraordinary circumstances" is not required to deviate from the policy's guidance. Gilbert Martin Woodworking Co. d/b/a Martin Furniture, Docket No. EPCRA 09-99-0016 (June 18, 2001). For the reasons that follow, the Court, having considered the Penalty Policy, departs from its application in this instance. The Court believes that the Policy, under the particular facts and circumstances, did not yield a penalty that is appropriate for the violations committed and therefore a departure from the Penalty Policy is warranted.

The reasons for this conclusion are as follows. The Policy in issue addresses reporting and recordkeeping violations under TSCA Sections 8, 12, and 13. In *every* instance an IUR violation is designated as a Level 1 (i.e. most serious) circumstance and as "significant" for the extent level. When placed on the penalty matrix, these considerations produce the same penalty for every IUR violation, regardless of the circumstances surrounding the violation. As George testified, for all the TSCA Section 8 penalty calculations that he has done, he has *always* arrived at $18,700. Tr. 95-97. The fact that EPA assesses this amount for *every* violation indicates that it has not considered the statutory criteria as applied to this case but instead has robotically filled in the blanks on the penalty calculation worksheet. Thus, the Court re-examines this basic proposition of the policy. Although the Court accepts that a goal of the Penalty Policy is to provide consistent enforcement, the uniform application of a single penalty assessment methodology, regardless of the facts and circumstances of each case, can produce results contrary to the statutory criteria in a given instance and the Court has determined that has occurred here. While uniformity and consistency have their place in penalty computations, those objectives must not interfere with a fair evaluation of each of the statutory factors in each case. Here, as all such violations inevitably result in the same penalty assessment, the individual criteria were not fairly evaluated. No analysis was made for each violation. Rather, the Policy,

at least for IUR violations, operates as an edict, with no genuine case specific calculation made. Instead, the Policy levies the same $18,700 penalty for all evaluations of the circumstances and extent.

This unvarying approach is further exemplified by the Policy's disregard for the facts surrounding the violation in any context other than under "as justice may require." As applied under the policy, the "nature & circumstances" of the violation deal only with the particular chemical that was involved and the section of the statute violated, rather than the totality of the events or circumstances surrounding the violation. Moreover, under the policy, the "as justice may require" factor does not fully allow for the inclusion of the circumstances of the case.[17] Thus, it only considers whether there was a voluntary disclosure, checks to make sure that the penalty is not less than the economic benefit, and evaluates whether there has been an exposure reduction. None of these EPA-recognized "other justice factors" pertain here. Ex. 11 at 15-16.

Although, EPA emphasizes in its brief the importance the IUR has on the Agency's ability to assess hazards, as mentioned, the Policy does not differentiate among the different hazardous chemicals present, in determining the penalty. Rather, under the Policy, the failure to report *any* chemical receives the same assessment. Tr. 93; Ex. 11 at 9. The two chemicals involved in this matter were Tris and Ethanone and it is true that EPA did present evidence concerning these chemicals.[18] However, the point of this evidence was unclear. Further, and

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[17]The EAB has held that TSCA requires taking into account equitable concerns and allows the ALJ to be concerned with fairness when calculating the penalty. TSCA § 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(b); In re: Spitzer Great Lakes Ltd., Docket No. TSCA-V-C-082-92, TSCA Appeal No. 99-3, 2000 EPA App. LEXIS 20, *34 (June 30, 2000); In re: Johnson Pacific, Inc., Docket No. FIFRA-09-0691-C-89-56, FIFRA Appeal No. 93-4, 1995 EPA App. LEXIS 4; *18, 5 E.A.D. 696 (Feb. 2, 1995)

[18]According to John Walker, Ethanone, which is the same an Benzoin, has been known to cause dermatitis and is rapidly absorbed through the skin. Tr. 27. Ex. 9. Walker is the Director of EPA's TSCA Interagency Testing Committee, which is an independent advisory committee that makes recommendations to the EPA Administrator about chemicals that need to be tested under TSCA. Walker related that there have been studies concerning Ethanone reported under the TSCA section 8(d). Tr. 27. It is also regulated under the Clean Air Act. Tris was reported in the Chemical Update System in 1990. Tr. 29. The MSDS form in the record does not distinguish between the powder and pellet forms of Tris. Tr. 38. TSCA Section 8(e) studies submitted from other companies show that it causes gene mutations and allergic eczema in humans. Tr. 29. Mr. Walker discussed the studies and stated that, in certain circumstances, the industry is required to submit studies under TSCA 8(e) and 8(d). Under 8(d) the studies for certain chemicals are required; however they are only mandatory under 8(e) if the industry decides the studies or the information present a substantial risk. Tr. 47. While the record included this information, it amounted to a hodgepodge of information without any explanation of its significance or relevance to the penalty.

more significantly, it is clear from the Complaint that there was no consideration given to the particular chemicals involved with the failure to file the Form U when the penalty was proposed. The only conclusion that can be drawn is that Tris & Ethanone, indeed *all* chemicals, are given the same weight under the policy.

As with the policy's undifferentiating approach towards the seriousness of the chemical, the amount of chemical is also irrelevant to the penalty calculation, once the threshold for reporting is reached. Thus the quantity of the chemical only triggers the reporting requirement. Tr. 51. As revealed by the inspection report, GCA imported the Tris and Ethanone in excess of 100,000 pounds. Ex. 7. According to the Federal Regulations, anyone who imports a chemical which is on the master inventory and reaches the reportable amount, must file the Form U.[19] 40 C.F.R. §§ 710.25 & 710.28. As George testified, once that threshold is met, the amount does not matter in the penalty calculation. Accordingly, under the policy, the penalty would be the same regardless of the amount involved. Tr. 114. This is because under the Policy, once the threshold amount is reached, all failures to report are deemed the most serious ("Level 1") as to circumstance and extent. George testified that for every chemical that requires a Form U, the failure to submit the form would be considered significant under the extent. Tr. 95. For this reason, as George admitted, everyone who fails to file a Form U gets an $18,700 penalty per chemical. Tr. 105. This means that the policy makes no differentiation if one imported 506,920 lbs.[20] of Tris or 3,506,920 lbs, a penalty result that seems at odds with the underlying objective of tracking the quantities of chemicals entering commerce.

Assessment of a Civil Penalty upon consideration of the factors listed in TSCA Section 16.

The EAB has pointed out that the TSCA section 16 factors need not be compartmentalized so long as it is clear that the statutory factors are considered. *See* In re: Catalina Yachts, Inc, EPCRA Appeal Nos. 98-2 & 98-5, 1999 EPA App. LEXIS 7, * 23 (March 24, 1999). A number of these factors may be addressed summarily. The "nature" of the violation, the failure to file Form U's for the reporting period from August 1998 through January 1999, is not in dispute. It is also undisputed that this is the first time GCA has been charged with a violation of TSCA or any other environmental statute. Tr. 78. Similarly, the ability to pay, and the penalty's effect on the Respondent's ability to continue to do business are not issues in this

[19]A small business is not required to report. 40 CFR § 710.29. The Regulations define a small business as a company whose sales do not exceed $4 million regardless of the quantity they produce or a company whose sales are less than $40 but do not produce more than 100,000 pounds of a substance. 40 C.F.R. § 710.3.

[20] Mr. George testified that GCA imported 506,920 pounds of Tris. Tr. 114.

instance.[21] Tr. 81. Remaining for the Court to consider are the circumstances, extent and gravity of the violation, the Respondent's degree of culpability and such other matters as justice may require.

The Penalty Policy declares that it looks at the circumstances of the violation in light of "the probability that harm will result from a *particular* violation." EPA Ex. 11 at 9. In this case, the violation affects the Agency's ability to assess harms and risks to humans and the environment. The Agency and other entities rely on the information obtained through the IUR for hazard assessment and in establishing testing and regulatory priorities. Ex. 11 at 19. The Agency considers the information in the IUR as the only reliable source of production/importation volume information for organic chemicals. Ex 11 at 19. Thus, it is clear that this is a not an insignificant violation of TSCA. However, once the violation was discovered, it only took GCA six days to submit the information.[22] Tr.116. While the Agency was deprived of this information, the problem was quickly corrected.

GCA has been in compliance with all the other applicable sections of TSCA. It was aware that TSCA applied to them because it subscribed to the Chemical Abstract Service, ("CAS") which informed them of *some* of the regulatory requirements for importing these chemicals. Tr. 123. However, the CAS did not alert them to the Section 8 reporting requirements. Tr. 124. It is determined that GCA was attempting to comply with TSCA but did not realize that the Section 8 reporting requirements applied to them. Nevertheless, GCA had the information available at hand and was able to submit it promptly. As discussed earlier, George testified that the response was the most rapid he had ever encountered. Tr. 117. Based on the evidence presented at trial, it is clear that the company had maintained accurate records but was not aware of this one aspect of their environmental reporting responsibilities. The Court does not agree with EPA's perspective that because GCA was aware of some TSCA obligations, this fact should be turned against them by concluding that it demonstrates GCA should have been aware of all of its TSCA obligations. It is appropriate to distinguish GCA from a Respondent who had set out to violate the statute or utterly failed to investigate their regulatory obligations. The fact that GCA is a small company which did not have someone designated to ensure environmental compliance, coupled with the fact that they were in compliance with all other regulations shows that it simply failed to fully investigate all of its regulatory obligations. The Board has stated that "in some situations, a person's lack of actual knowledge of a regulatory requirement might appropriately be considered in mitigation of a penalty." Catalina Yachts at * 30. Since the Respondent was otherwise in compliance with TSCA and other environmental regulations, failure to recognize only one aspect, the Section 8 reporting provisions, is taken into

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[21] While the Respondent does not raise an inability to pay defense, it does argue that the penalty is disproportionate given the size of their business. This argument will therefore be considered under "other factors as justice may require."

[22]GCA was notified on March 14 , 2000 of the violation and submitted the IUR form on March 20, 2001. Ex. 4 & 6

consideration in the penalty.

Based on the testimony, it is clear that the Respondent was very cooperative in turning over the documents quickly and attempting to reach settlement. After discovering a violation, EPA has the discretion not to file a complaint. While the Respondent's quick turnaround in suppling the required documents would surely be an instance where EPA could have used this discretion, that did not occur. Tr. at 131. If GCA had discovered the violation on its own and voluntarily disclosed it, it could have been eligible for anywhere between a 25% to 100% reduction in the penalty. Ex.11 at 15. However, this disclosure must be made before the Complaint is filed. Id. While the violation was discovered by the Agency, thus precluding the application of the Self Disclosure Policy, it is appropriate that the prompt submission of the documents should have some effect on the penalty.[23]

It is also appropriate to consider that there were only two chemicals involved in this violation. While the inspection initially identified four chemicals, after talking with GCA, the Agency agreed that only two were subject to the IUR. Tr. 66. This shows that even EPA can be uncertain about determining which chemicals require reporting. As mentioned, there was no risk of direct harm to any GCA employees since the four employees in the office never handle or even see the chemicals they import. However, the court recognizes that TSCA is not only concerned about the immediate harm but also the potential harm these chemicals can cause. While these chemicals are not stored at a GCA facility, they are brought into the country and must be accounted for in hazard planning. Tr. 128. EPA needs to know how much of the chemicals on the Chemical Update System are in the country. The obligation to report does not depend on the characteristic of the chemical which must be reported. Once the threshold for reporting has been reached, the regulations do not differentiate between failures to report larger or smaller amounts of chemicals that are not reported; it is considered one violation for each chemical. Tr. 93.

There are a number of facts in this case which, when considered under "such other factors as justice may require," serve to reduce the penalty. First, EPA did not consider the fact that GCA was able to produce the documents within six days of the inspection. Tr. 116. GCA had the information available but did not know that they needed to report it. Tr. 125. Although Mr. George testified that this fact was considered under "attitude," this was not reflected in the penalty calculation worksheet but rather was considered only for settlement purposes.[24] Ex. 13;

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[23]As noted at trial, Mr. George did no favor for GCA by alerting them to the IUR requirements. He had an obligation to inform them of their reporting requirements. The $37,400 bill that followed the advice refutes the notion that GCA received any favor from EPA. Tr. 130.

[24]There are indications in support of the impropriety of including "settlement cooperation" in the penalty calculation. By implication, Section 22.19(e)(2) of the Consolidated Rules of Practice with its reference to "penalty calculations for purposes of settlement" implies

Tr. 117. This fact should have been given weight in the penalty calculation.[25] GCA kept records on the chemicals they imported and was in compliance with other sections of TSCA. Tr. 125. For example, Ms. Bernarding testified that GCA uses a chemical abstract service ("CAS") to make sure that the chemicals they import are listed under TSCA. Tr. 123. However, this service only informs as to the proper registration requirement to import the chemical. Tr. 123. While GCA has never hired an attorney[26] or a consultant to ensure environmental compliance, it is clear that the company was attempting to comply with environmental regulations. Pointing to its retention of this service, Respondent argues that this violation was not intentional but as a result of a misunderstanding of the statute.[27] Ms. Bernarding stated that the Respondent was unaware that, for the IUR, an importer has to follow the same requirements as a manufacturer.[28] Tr. 124. The

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that a settlement calculation should be apart from that derived under the policy itself. The Environmental Appeals Board seems to agree with this proposition as well. In Re City of Kalamazoo Water Reclamation Plant, 3 E.A.D. 109 (Mar. 2, 1990). While the Respondent's cooperation during the settlement may not be considered in calculating the initial penalty, EPA may offer a reduced penalty during settlement negotiations if it feels it is warranted by the Respondent's cooperation.

[25] "Attitude" is not factor listed under TSCA Section 16 nor is a Respondent's "conduct" during settlement. Gilbert Martin at *24. However, the Respondent's actions and conduct throughout its dealing with EPA and filing the Form U shortly after discovery of the violation should be considered under the "as justice may require" factor. As Mr. George admitted, GCA was cooperative throughout the entire process even though the settlement process was unsuccessful. Tr. 104. For example, during the inspection Mr. George at first identified four chemicals thought to be subject to TSCA. Tr. 65. Mr. George conducted a number of conference calls with GCA in an attempt to settle the matter. As a result, they were able to agree that two of the chemicals GCA imports in fact were not subject to IUR reporting. Tr. 66. Additionally, GCA never disputed that the violations occurred and worked with EPA to try to reach a fair settlement. GCA Prehearing Exchange at ¶3; Tr. 65.

[26] Mr. George testified that he initially discussed settlement with Ms. Bernarding and Mr. Haughey. Tr. 64. Ms. Bernarding also testified that she consulted an attorney, Mr. Haughey and received the forms to comply with TSCA from him. It is unclear in what capacity Mr. Haughey worked for GCA. Tr. 126.

[27]Bernarding disclosed that neither she nor anyone at GSA has read TSCA in its entirety. She only reviewed the sections referenced in the audit after the enforcement action was filed. Tr. 126.

[28]Ms. Bernarding was not the only witness unsure of the manufacturer and importer requirements. Mr. Walker testified that he was unsure if a manufacturer who bought the Tris from GCA would also have to report every four years. He said that it would appear to be redundant for both to report but he was unsure who would be responsible. Tr. 41. Later, Mr. George clarified EPA's position, stating that unless there was an agreement between the importer

Penalty Policy does not take into account whether a small company is aware of the Form U requirement, nor does it consider the problems small companies face in becoming aware of the requirements. Tr. 120. While lack of knowledge does not create an exemption from compliance, GCA's rapid response to the EPA investigation demonstrates that it was not trying to hide anything from EPA but rather, due to lack of awareness, failed to report it as required. Mr. George testified that the six day response was the most rapid EPA has ever had from a company. Tr. 117. Thus it is clear that the Respondent had the information but did not realize that it needed to be reported. The prompt response should therefore be taken into account in the penalty.

The Court also notes, as the Respondent argues, that a small company would have difficultly determining if it must comply with the IUR requirement. If a company does not produce, manufacture or have OSHA compliance considerations, there is no notification from EPA regarding the IUR.[29] Tr. 44. Mr. Walker testified that the requirements are listed in the Federal Register and on EPA's web site,[30] and that a company would have to look up the chemicals it imports on the Agency's web site to learn of the IUR. Tr. 43, 45.[31] While companies are expected to be aware of their regulatory obligations, the evidence is clear that this is not an easy task to accomplish. Particularly for a first time violator, in assessing a penalty, the theoretical duty of complete awareness must be tempered by the reality of vast and complex reporting obligations that small companies must face.

The fact that GCA does not actually handle the chemicals also merits some consideration in the gravity of the violation. Ms. Bernarding testified that GCA is a small office employing four people. Tr. 125. None of GCA's four employees touch or have any contact with the chemicals; they only import them and sell them. Tr. 128. Nor do they store these chemicals. Id. While paperwork violations are important to the TSCA regulatory program, it should be noted that the violations did not involve exposures to chemicals and that the other requirements of TSCA, such as proper importing, were met.

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and the customer, the importer is responsible for reporting under TSCA. Tr. 88.

[29]The Agency referred to Exhibit 6 which is a letter from the Agency to GCA dated March 28, 2000 acknowledging receipt of the TSCA Form U. The bottom of this letter directs the recipient to the Agency's web site for reporting assistance. However, as pointed out at trial, this letter was sent nearly four months *after* the EPA inspection.

[30]However, only chemicals which are imported or produced over a million pounds are listed on EPA's web site. Tr. 43.

[31]Bernarding testified that the company subscribes to the Chemical Abstract Service which informs them of the reporting requirements for each of the chemicals they import. Tr. 123. The CAS system only tell you that you meet the proper TSCA registration requirements. Id. However, a reasonable person should have investigated further to see that no other TSCA requirements apply.

While size of the business is not a factor under the statute, in a particular case it may be appropriate to consider it under the "other matters as justice may require" factor.[32] There is no argument that the company can pay the proposed penalty, however, GCA has argued that the penalty is not fair in light of the circumstances.[33] EPA has argued that the size of the business is irrelevant because it has already been considered in the threshold for reporting. It notes that the threshold for reporting differs for each company depending on their earnings. In this case, since GCA's earning fell within the category which covers between 4 and 40 million dollars, it is required to report all chemicals over 100,000 pounds. Ex. 10; 40 C.F.R. §§ 710.29, 704.3. EPA also asserts that large companies are typically fined higher penalties because they are subject to more than one environmental statutes, have numerous facilities and produce more goods. EPA Reply Brief at 13; citing In the Matter of EI DuPont De Nemours & Co., TSCA-III-731(March 30, 1998)("DuPont TSCA"), Partial Accelerated Decision; In Re: EI DuPont De Nemours & Co., FIFRA Appeal No. 98-2 (April 3, 2000)("DuPont FIFRA"). However, the cases cited do not support EPA's position. DuPont TSCA was a Partial Accelerated decision in which no penalty was assessed for violating the TSCA pre-manufacturing regulations. The second case, DuPont FIFRA, concerned the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and was remanded for further proceedings. Obviously, DuPont is a very large corporation with numerous facilities, while GCA only employs four people. Tr. 125.

One purpose of a penalty is to deter people from violating the law and persuade them to take precautions to prevent future non-compliance. In Re: Rogers Corp., TSCA Appeal No. 98-1 (Nov. 28, 2000) at Fn 19, *quoting* US EPA General Enforcement Policy #GM021, Policy on Civil Penalties (Feb. 17, 1984). It is difficult to determine a company's ability to comply with environmental regulations simply by calculating the amount of its sales. As in this case, a company may have large sales but not be able to afford to hire a dedicated environmental manager. Resp. Reply Brief at 2. As GCA argues, the cost of hiring an attorney or subscribing

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[32]The TSCA Penalty Policy for Sections 8, 12 & 13 does not discuss size of business, the TSCA Penalty Policy for Residential Lead-Based Paint Hazard Reduction Act of 1992 includes "size of business" under "other factors as justice may require." *See also*, In Re Billy Yee, Docket No. TSCA-7-99-0009, 2000 EPA ALJ LEXIS 51, *8 (June 6, 2000).

[33]The Respondent has asserted that the proposed penalty is more than they pay a year in rent but there is not support for this statement in the record. GCA Reply Brief at 3. In its Brief, the Respondent also argues that EPA's Penalty Policy violates SBREFA. GCA Brief at 7. The only information in the record concerning SBREFA is the attachment to the Notice of Violation of the TSCA and Notice of Opportunity to Show Cause letter sent March 14, 2001. Ex. 4. This attachment lists the web pages and phone numbers to receive information on compliance assistance. Ex. 4. GCA maintains that it tried to contact EPA Small Business offices for assistance but their phone calls were not returned. GCA Brief at 7. Since there is no information in the record to support these allegations, this aspect of GCA's SBREFA contentions can not be considered in determining the penalty.

to the Federal Register can be a burden on a small company.[34] For this reason, GCA's TSCA compliance responsibilities are handled by Ms. Bernarding. GCA notes that there was no intent to violate TSCA. Ms. Bernarding testified that GCA was in compliance with all other TSCA requirements but, as mentioned, the CAS system, which it relied upon for regulatory information, did not alert the company to the Section 8 requirements. Tr. 123. Since GCA is a very small company, it neglected to investigate whether they were in compliance with regulations not listed on the CAS report. However, since the inspection, GCA has begun earmarking each chemical it imports so that now they will be reported as required. Tr. 125. This action shows that they are working to prevent future violations.

Upon consideration of each of the TSCA Section 16 factors, as reflected in the foregoing discussion, it is the Court's determination that a penalty in the amount of $3,300 per count is imposed for Counts I and II, for a total penalty amount of $6,600. Under the particular facts and circumstances present, the Court considers the penalty imposed to be appropriate for the violations committed.

[34]GCA consulted an attorney who supplied the forms needed to comply with TSCA Section 8. Tr. 126.

ORDER

A civil penalty in the amount of $ 6,600 is assessed against the Respondent, GCA Chemical Corporation. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c). Payment shall be submitted by a certified check or cashier's check *payable to* the **Treasurer, United States of America** and mailed to:

United States Environmental Protection Agency
Region IV
Patricia A. Bullock, Regional Hearing Clerk
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

A transmittal letter identifying the subject case and EPA docket number, plus the Respondent's name and address must accompany the check. Failure of the Respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalties.

Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of the Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the EAB is taken from it by a party to this proceeding, pursuant to 40 C.F.R. § 22.30(a), within thirty (30) days after the Initial Decision is served upon the parties; or (3) the EAB elects, upon its own initiative, under 40 C.F.R. § 22.30(b), to review the Initial Decision.

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William B. Moran
United States Administrative Law Judge

Dated: June 18, 2002