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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Philip Services Corporation,	)	Docket No. EPCRA-10-99-0001
	)	
Respondent	)	

ORDER ON COMPLAINANT'S MOTION FOR ACCELERATED DECISION

I. Background

This proceeding was initiated by a Complaint dated October 27, 1998, issued by Complainant, Director of the Environmental Cleanup Office, United States Environmental Protection Agency Region 10, pursuant to Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609. The Complaint alleges that Respondent, Philip Services Corporation, violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to notify the National Response Center (NRC), the State Environmental Response Commission (SERC), and the Local Environmental Planning Committee (LEPC), as soon as it had knowledge of a release of approximately 641 pounds of nitrogen dioxide gas. The Complaint alleges further that Respondent violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide written follow up emergency notice as soon as practicable to the SERC and LEPC. For the five counts of violation, Complainant proposes a total penalty of $146,850.

Respondent answered the Complaint, denying the alleged violations, and requesting a hearing. After attempts at settlement of this matter were unsuccessful through an Alternative Dispute Resolution proceeding, a Prehearing Order was issued, directing the parties to engage in the prehearing exchange of documents. Complainant filed its Prehearing Exchange on July 1, 1999. Respondent has not yet filed its Prehearing Exchange.

On May 26, 1999, Complainant filed a Motion for Accelerated Decision as to Liability and Penalty, along with a Memorandum of Points and Authorities in Support (Motion), pursuant to Rule 22.20 of the Rules of Practice, 40 C.F.R. Part 22. Complainant asserts therein that no genuine issue of fact exists as to Respondent's liability for the alleged violations, and that Complainant is entitled to judgment as to liability on all counts of the Complaint. Complainant also requests accelerated decision as to the proposed penalty "because the penalty is justified by the record." Motion at 1. Respondent submitted a Brief in Opposition to Motion for Accelerated Decision (Opposition) on June 10, 1999, to which Complainant replied on June 24, 1999 (Reply).

Section 103(a) of CERCLA, 42 U.S.C. § 6903(a), provides, in pertinent part, "Any person in charge of a . . . facility shall, as soon as he has knowledge of any release . . . of a hazardous substance from such . . . facility in quantities equal to or greater than those determined pursuant to Section 9602 of this title, immediately notify the National Response Center . . . of such release." Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to promulgate regulations designating hazardous substances and establishing the quantities ("reportable quantity" or "RQ") of each such substance the release of which requires reporting under Section 9603. Such regulations were promulgated at 40 C.F.R. Part 302. Nitrogen dioxide was designated under CERCLA as such a hazardous substance, with an RQ of ten pounds. 40 C.F.R. § 302.4.

Nitrogen dioxide is also designated as an "extremely hazardous substance" under Section 302 of EPCRA, with an RQ of ten pounds as set forth in regulations promulgated thereunder at 40 C.F.R. Part 355, Appendix A. Section 304(a) of EPCRA provides, in pertinent part, "If a release of an extremely hazardous substance . . . occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of [CERCLA], the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section." Section 304(c) of EPCRA provides as follows: "As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide written followup emergency notice . . . setting forth and updating the information required under subsection (b) of this section, and including additional information . . . ." *See,* 40 C.F.R. § 355.40(b) and (c) (regulations setting forth those requirements and content of notice).

The parties do not dispute that on June 26, 1998, from about 8:10 p.m. until about 10:30 p.m. Pacific Daylight Time,[(1)] a release into the air of approximately 641 pounds of nitrogen dioxide gas occurred from Respondent's facility located at 1701 Alexander Avenue, Tacoma, Washington. Respondent admits in its Answer that the release was one for which notice to the National Response Center is required under Section 103(a) of CERCLA, and that Respondent had knowledge of the release contemporaneously with the period of the release. Respondent also admits in its Answer that the release was one for which notice was required under Section 304(a) of EPCRA. The parties also do not dispute that a person from a neighboring facility notified the Tacoma Fire Department of the release, whereupon the Tacoma Fire Department dispatched personnel to Respondent's facility and contacted the SERC around 9:00 p.m. on June 26, 1998. *See,* Motion, Exhibits B, C; Opposition at 3, 11. Also undisputed is that Respondent contacted the NRC some time between 9:00 a.m. and 10:00 a.m. on June 27, 1998. Complaint ¶ 12; Opposition at 4.

II. Arguments of the Parties

A. Counts I, II, II: Immediate Notification Requirements

With respect to Count I, the Complaint alleges that the NRC was first notified by Respondent on June 27, 1998 at 9:56 a.m., approximately thirteen hours after the release occurred. Complaint ¶ 12. In its Answer, Respondent denies this allegation for lack of knowledge and asserts as follows:

> Philip [Respondent] states that it understood from the Tacoma Fire Department incident commander, who was at the site immediately after the release began, that the National Response Center . . . had been notified of the release less than two hours after the release began, and further states that Philip immediately notified the NRC upon learning that the NRC had not actually been notified.

Answer ¶ 13.

As to Count II, the Complaint alleges that the Washington State SERC first received a report of the release from Respondent on July 13, 1998, approximately seventeen days after the release occurred. Complaint ¶ 27. Denying the violation alleged in Count II, Respondent explains in its Answer as follows:

> Philip states that it understood from the Tacoma Fire Department incident commander, who was at the site immediately after the release began, that the appropriate State of Washington representatives had been notified of the release less than two hours after the release began. Philip further states that its understanding was confirmed when the State of Washington Department of Ecology Spill Response Coordinator arrived at the site between 10:00 p.m. and 10:30 p.m. on June 26, 1998, the same night that the release occurred.

Answer ¶ 28.

As to Count III, the Complaint alleges that the Pierce County LEPC first received notice of the release on July 13, 1998, approximately seventeen days after the release occurred. Complaint ¶ 32. Denying the violation alleged in Count III, Respondent in its Answer asserts that it provided written notification to the LEPC on July 9, 1998, thirteen days after the release, and again on July 13, 1998.

Complainant argues in its Motion that a delay of nearly thirteen hours in reporting to the NRC, and a delay of thirteen days in reporting to the SERC and LEPC, are not "immediate" notice as contemplated by Congress in enacting the emergency notification provisions of CERCLA and EPCRA, citing, *inter alia,* to legislative history of CERCLA Section 103(a). Complainant argues further that "Respondent alone was responsible for the notification and any assertions by it that others were mistakenly believed to have reported are irrelevant." Motion at 9. Complainant cites to statements by the Environmental Appeals Board (EAB) in *Green Thumb Nursery, Inc.,* FIFRA Appeal No. 95-4a, slip op. at 20 (EAB, March 6, 1997) that environmental statutes "consistently have been construed as imposing strict liability for failure to meet their requirements," and that under Federal law, "mandatory duties to achieve certain results may not be avoided by failure to retain control over the situation."

In its Opposition, Respondent requests that the Motion be denied on the basis that genuine issues of material fact exist which preclude a determination as to liability. Attached to the Opposition is an Affidavit of Mark Warner, who was the Director of Engineering and Regulatory Affairs of Respondent during the time relevant to this proceeding. Respondent argues that local, State and Federal authorities "had effective notice of the release immediately after the release occurred and that these authorities were actually working with Philip representatives on site in the minutes and hours immediately following the release." Opposition at 1. Respondent asserts that the Tacoma Fire Department is part of the LEPC, and that it assured Respondent that it had notified the Washington State Department of Ecology and the EPA. Opposition at 3-4; Affidavit of Mark Warner, ¶¶ 7, 8. Respondent asserts that by 11:30 p.m., Federal EPA contractors, including Drew Wojtanik, arrived at Respondent's facility, and therefore Respondent had no reason to doubt that the NRC had been contacted. Opposition at 4; Affidavit of Mark Warner ¶ 9.

Nevertheless, Respondent concedes as follows:

> Philip acknowledges that a technical violation of Section 103(a) of CERCLA may have occurred as a result of a misunderstanding the evening of the release, and assumes responsibility for any misunderstanding. Philip's disagreement with EPA on Count I relates to EPA's proposed penalty.

Opposition at 9.

As to Counts II and III on the other hand, Respondent characterizes Complainant's allegations as "a clear case of agency overreaching." *Id.* Respondent asserts that it is absurd to require facility personnel to step back from active response to the release in order to place a call to the LEPC, despite the fact that LEPC officials were standing right there. The required notice may be made in person, as provided by Section 304(b) of EPCRA.[(2)] Respondent points out the dismissal of a similar claim in *Thoro Products Co.,* EPA Docket No. EPCRA-90-04 (ALJ, May 19, 1992), where the respondent did not seek to contact the LEPC, but relied upon discussion with LEPC personnel who were already present on site.

Respondent asserts that the SERC was contacted by the Fire Department less than an hour after the release began, that Respondent's representative, Mark Warner, was assured that such contact was made, and that SERC officials arrived between 10:00 and 10:30 p.m. on June 26, 1998 and began responding to the release. Respondent concludes that these facts do not support a finding of liability.

B. Follow Up Emergency Notices: Counts IV and V

The Complaint alleges that the designated contact for the SERC, and the LEPC, first received written follow up notice of the release from Respondent on July 13, 1998, approximately seventeen days after the release occurred. Complaint ¶¶ 37, 41. Respondent denies the allegations of Counts IV and V. Respondent asserts that on July 9, 1998, Respondent met with representatives of various State and Federal agencies, including EPA, the LEPC and the SERC, to follow up on the release, and that Mark Warner, Respondent's representative, hand delivered to the representatives a written report which included the information required by EPCRA, and was consistent with the disclosures required under 40 C.F.R. § 255.40(b). Answer ¶ 57; Opposition at 13-15, Exhibit 1 to Warner Affidavit.

In its Motion, Complainant asserts that a seventeen day delay is not "as soon as

practicable," citing, *Great Lakes Division of National Steel Corp.,* EPA Docket No. EPCRA-007-1991, slip op. at 42 (ALJ, July 13, 1993), *aff'd,* EPCRA App. 93-3 (EAB, June 9, 1994) and *All Regions Chemical Labs, Inc.,* EPA Docket No. CERCLA-I-88-1089, slip op. at 47-48 (ALJ, December 1, 1989), *penalty aff'd,* CERCLA App. 90-1, EPCRA App. 90-1 (July 2, 1990); *aff'd,* No. 1715 (1st Cir., May 6, 1991).

Citing to Mr. Warner's Affidavit, Respondent asserts that an EPA representative, Suzanne Powers, told Mr. Warner at the July 9 meeting that Respondent needed to provide a different follow-up report to comply with EPCRA, and that EPA considered follow-up notice to be timely if provided within fourteen days of the release. Opposition at 13-14, Warner Affidavit ¶ 14. Respondent asserts that the follow up notification dated July 9, a copy of which is provided as an attachment to Mr. Warner's Affidavit, was provided to the SERC and LEPC within 14 days of the release. Respondent asserts, "[g]iven the information to be compiled and the numerous government officials who would be assembled, the July 9 meeting at which the follow-up report was circulated did not constitute an unreasonable delay." Opposition at 14. Thus, Respondent asserts that EPA is not entitled to an accelerated decision as to liability for Counts IV or V.

Complainant's Reply addresses the issue of whether the report Respondent delivered at the meeting on July 9, 1998 met the requirements of Section 304(c) of EPCRA and 40 C.F.R. § 355.40(b)(3). Complainant contends that the report was not addressed to the SERC and LEPC, and that it met only four of eleven requirements for the content of the report. For example, Complainant asserts that Respondent did not indicate whether the substance released (nitrogen dioxide) was extremely hazardous, the quantity released, the medium (air) into which it was released, the health risks from the release, and advice for medical attention.

C. The Penalty

Complainant asserts that it calculated the proposed penalty of $146,850 using the Interim Enforcement Response Policy for Sections 304, 311 and 312 of EPCRA and Section 103 of CERCLA (January 8, 1998)(ERP). Complainant explains in its Motion how it calculated the penalty, addressing the factors to be applied under the ERP, referring to the thirteen hours it took for Respondent to report to the NRC and the "long delay" in reporting to the SERC and LEPC, and applying the penalty matrix and per day penalties set forth in the ERP.

Respondent opposes the motion for accelerated decision on the penalty on grounds that the ERP is not binding on the Presiding Judge, Complainant failed in calculating the penalty to consider statutory factors of ability to pay, prior history of violations, degree of culpability, any economic benefit or savings from the violation, and other matters as justice may require, and that factual issues exist which undermine Complainant's calculations of the penalties proposed for Counts II through V.

III. Discussion

The applicable Rules of Practice provide at 40 C.F.R. § 22.20(a) that the Presiding Judge:

> 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. * * * *

Accelerated decisions under Section 22.20 of the Rules of Practice are analogous to summary judgments in Federal court under Federal Rule of Civil Procedure 56, and therefore standards and Federal court practice on summary judgment are instructive here. *Puerto Rico Aqueduct and Sewer Authority v. EPA,* 35 F.3d 600, 606 (1st Cir. 1994), *cert. denied,* 513 U.S. . 1148 (1995); *CWM Chemical Services, Inc.,* 6 E.A.D. 1, 1995 TSCA LEXIS 10 (EAB 1995). The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact. *Adickes v. S.H. Kress & Company,* 398 U.S. 144 (1970). That party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). If this is done, then the burden shifts to the nonmovant to establish the existence of an issue of fact which is "genuine" and "material." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986). A "material" issue is one which "affects the outcome of the suit," *Anderson,* 477 U.S. at 248, or "needs to be resolved before the related legal issues can be decided." *Mack v. Great Atlantic and Pacific Tea Co.,* 871 F.2d 179, 181 (1st. Cir. 1989). A dispute is "genuine" if "there is sufficient evidence supporting the claimed factual dispute to require a choice between the parties' differing versions of truth at trial." *Garside v. Osco Drug, Inc.,* 895 F.2d 46, 48 (1st Cir. 1990). The party opposing the motion must demonstrate that the issue is "genuine" by referencing probative evidence in the record, or by producing such evidence. *Clarksburg Casket Company,* EPCRA Appeal No. 98-8, slip op. at 9 (EAB, July 16, 1999); *Green Thumb Nursery,* 6 E.A.D. 782, 793 (EAB 1997). The record must be viewed in a light most favorable to the party opposing the motion, indulging all reasonable inferences in that party's favor. *Griggs-Ryan v. Smith,* 904 F.2d 112, 115 (1st Cir. 1990).

As to Count I, Respondent does not dispute that it failed to notify the NRC until approximately 9:00 on the morning following the release, more than twelve hours after Respondent knew of the release. There is no issue raised as to whether Respondent knew that the release was reportable. For purposes of the motion for accelerated decision, the undisputed statement in the Affidavit of Mark Warner (¶ 8) that he was assured by the Tacoma Fire Department that they had called the "federal hotline" shortly after the release began, is assumed as true. The legal question is whether the Respondent's notification more than twelve hours after it knew of a reportable release, or whether the statement to Respondent by a fire department official that the federal hotline was notified, constitutes compliance with the requirement of Section 103(a) of CERCLA to "immediately notify" the NRC as soon as Respondent had knowledge of the reportable release.

The delay of twelve hours after the release does not constitute "immediate" notification. *Genicom Corporation,* EPA Docket No. EPCRA-III-057, 1992 EPA ALJ LEXIS 528 (ALJ, July 16, 1992)(releases not reported until two hours after respondent acquired knowledge of them were not reported "immediately"), *aff'd,* 4 E.A.D. 426 EPCRA Appeal No. 92-2 (December 15, 1992); S. Rep. No. 99-11, 99th Congress, 1st Sess. 8-9 (1985)(delays in notification under Section 103(a) of CERCLA "should not exceed 15 minutes after the person in charge has knowledge of the release, and 'immediate notification' requires shorter delays whenever practicable.") Reliance on a third party's statement that it notified the NRC is taken at the Respondent's own risk, as the statute places responsibility on Respondent -- the "person in charge of a . . . facility"-- to provide such notification. Respondent cannot

escape liability for failure to contact immediately the NRC by reliance on a statement by fire department personnel. *See,* ERP at 12 ("Notification by anyone other than the owner or operator or person in charge does not satisfy the obligation to report.") There are no genuine issues of material fact as to Respondent's liability for failing to notify immediately the NRC, and Complainant is entitled to judgment as a matter of law as to Respondent's liability for the violations alleged in Count I of the Complaint.

As to Count II, for purposes of the Motion, Mr. Warner's assertions in his Affidavit are taken as true, that Ron Holcomb, the State of Washington Department of Ecology Spill Response Coordinator, arrived at the site between 10:00 and 10:30 p.m., approximately two hours after the release began. Warner Affidavit ¶ 9. For purposes of the Motion, it is inferred that proper notice of the release was made by Respondent in person to Mr. Holcomb. The notice to the SERC and LEPC required under Section 304 of EPCRA may be given in person where the appropriate person is already at the site, as EPCRA provides that notice may be given "by such means as telephone, radio, or *in person*." EPCRA § 304(b)(1)(emphasis added); *Thoro Products, supra,* slip op. at 24-25 (respondent's discussion with members of the LEPC who were already present on site within 15 minutes of respondent's knowledge of a reportable release, "does not demonstrate a lack of compliance with the notification requirement.") Assuming Respondent's asserted facts as true, a finder of fact could reasonably find that Respondent notified the SERC of the release approximately two hours after the release began.

Although the documents submitted by the parties do not disclose exactly the time at which Respondent knew that a reportable quantity of nitrogen dioxide had been released, the facts asserted by Respondent, and reasonable inferences drawn therefrom, do not indicate that Mr. Holcomb arrived "immediately," or within 15 minutes, after Respondent had knowledge of a reportable release. *See,* ERP at 12-13 (notification to SERC more than 15 minutes after respondent had knowledge of a reportable release is a violation of Section 304(a) of EPCRA). Thus the Respondent's notification of the SERC in person is not a "material" issue which could affect the outcome of the issue of Respondent's liability for Count II. Respondent's reliance on its understanding that the fire department incident commander had notified the appropriate State representatives does not relieve Respondent of its responsibility or liability for contacting the SERC, as discussed above with respect to the NRC. Therefore, Respondent has not raised any genuine issue of material fact as to the issue of liability for failure to notify immediately the SERC, and Complainant is entitled to judgment as a matter of law as to liability for the violation alleged in Count II of the Complaint.

As to the LEPC, Respondent presents a genuine issue of material fact, which precludes a summary disposition as to liability for Count III. Respondent's assertions that the Tacoma Fire Department is part of the LEPC, that it arrived at the facility by 8:35 p.m., and that Respondent's facility supervisor Roger Grover arrived at the facility at 8:43 p.m. and assumed the role of Emergency Coordinator, are taken as true for purposes of ruling on the Motion (Warner Affidavit ¶¶ 5, 6, 8). Although it was not Respondent's telephone contact but that of a neighboring facility which alerted the Tacoma Fire Department of the release, the latter arrived at the facility very soon after the release began. Respondent's asserted facts do not reveal whether any information was provided by Mr. Grover to the Tacoma Fire Department, but reveal only that Mr. Warner, who arrived at the site at 9:30 p.m., "work[ed] with the incident commander to ensure that all requested chemical and physical information . . . was provided." Warner Affidavit ¶ 8. The precise time at which Respondent had knowledge that the release was reportable is not clear from the documents in the case file. However, drawing reasonable inferences in favor of Respondent, a trier of fact could find that Respondent provided "immediate" notice in person under EPCRA Section 304 to the LEPC. Therefore, Complainant's request for accelerated decision as to Count III is denied.

Counts IV and V allege violations of EPCRA Section 304(c), which provides as follows:

> As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to -
> (1) actions taken to respond to and contain the release,
> (2) any known or anticipated acute or chronic health risks associated with the release, and
> (3) where appropriate, advice regarding medical attention necessary for exposed individuals.

Subsection (b) of Section 304, 42 U.S.C. § 11004(b), requires the following information for the "immediate" notice required by subsection (a):

> (A) The chemical name or identity of any substance involved in the release.
> (B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.
> (C) An estimate of the quantity of any such substance that was released into the environment.
> (D) The time and duration of the release.
> (E) The medium or media into which the release occurred.
> (F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
> (G) Proper precautions to take as a result of the release, including evacuation . . . .
> (H) The name and telephone number of the person or persons to be contacted for further information.

See also, 40 C.F.R. § 355.40(b).

The parties do not dispute that the written report provided submitted by Respondent on July 13, 1998 was not provided as soon as practicable. The question is whether the letter dated July 9, 1998 raises a genuine issue of material fact as to whether Respondent met the requirement to provide written follow-up notice as soon as practicable. The time at which the July 9 letter was provided, 13 days following the release, is considered by EPA policy not to be "as soon as practicable" after the release. ERP at 13 (follow-up notice provided more than seven days following a release constitutes a violation of Section 304(c) of EPCRA). Respondent does not present any extenuating circumstances which show that a follow-up report prior to July 9, 1998 was not practicable.

Moreover, the content of the July 9 letter does not meet all of the requirements of Section 304(c) of EPCRA. The letter does not state whether nitrogen dioxide gas is an extremely hazardous substance, and does not state the quantity released into the environment, although the letter states that the gas was "approximately 75 ft high above the tank farm area." Warner Affidavit, Exhibit 1. As to "known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals," Respondent's

letter states "No reports of injuries to humans or animals have been received." *Id.* Such a statement does not fulfill the requirement to provide information as to the health risks associated with the emergency, which requirement is not contingent on whether a facility has received reports of injuries to individuals. Information as to health risks is intended to assist State and local response authorities in their efforts to protect public health and welfare, not merely to respond to acute symptoms of particular individuals who report injuries immediately after the release.

Respondent has not raised any genuine issue of material fact as to liability for failure to provide the SERC and LEPC with follow-up notice as soon as practicable after the release, as required by Section 304(c) of EPCRA. Accordingly, Complainant is entitled to judgement as a matter of law as to Counts IV and V of the Complaint.

As to accelerated decision on the penalty, Respondent asserts facts which may be material to the calculation of a penalty in this matter. Section 325(b) of EPCRA provides that factors such as the circumstances, extent and gravity of the violation, ability to pay, degree of culpability, and other matters as justice may require must be taken into account in assessing a penalty for violations of Section 304 of EPCRA. Respondent asserts that it posted significant monetary losses in 1997 and 1998. Warner Affidavit ¶ 19. By letter dated July 23, 1999, Respondent reported that it has commenced bankruptcy proceedings. Respondent also asserts facts in its Opposition which it believes should be considered, in relation to the extent of the violations, its attitude and "other factors as justice may require." Taking such facts as true, they may affect the penalty assessment. Therefore, Complainant's motion for accelerated decision as to the penalty is denied.

ORDER

1. Complainant's Motion for Accelerated Decision is **GRANTED in part,** as to Respondent's liability for Counts I, II, IV and V of the Complaint, and **DENIED in part,** as to Respondent's liability for Count III of the Complaint, and as to the amount of any penalty to assess for Counts I, II, III, IV and V.

2. The parties shall continue good faith attempts to negotiate a settlement of this matter. Complainant shall file a report on the status of such settlement negotiations thirty (30) days from the date of this Order.

_____

Susan L. Biro
Chief Administrative Law Judge

Dated: July 30, 1999
Washington, D.C.

1. Unless otherwise noted, all times referenced herein are Pacific Daylight Time.

2. Section 304(b) provides, in pertinent part: "Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the [LEPC] . . . and to the [SERC] . . . ."