UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of

G & S Motor Equipment Company, Inc.

Respondent

Docket No.

TSCA PCB-81-0102

Gregory Halbert, Esq., General Enforcement Branch, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, for the Complainant.

Richard A. Levin, Esq., "The Common" P. O. Box 721, 225 Millburn Avenue, " Millburn, New Jersey 07041, for the Respondent.

(Decided March 26, 1982)

Before: J. F. GREENE, Administrative Law Judge

DECISION AND ORDER

This matter arises under 15 U.S.C. 2615(a)(1), Section 16(a)(1) of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., hereafter "the Act," and certain regulations issued pursuant to authority contained therein 1/ at 40 C.F.R. Part 761.1 et seq., the polychlorinated biphenyls ("PCBs") "disposal and marking" regulations 2/. In this civil action, the United States Environmental Protection Agency, whose Director, Enforcement Division for Region II, is the complainant herein, seeks assessment of civil penalties against the respondent pursuant to 15 U.S.C. 2615(a)(1) and (2)(B) for certain alleged violations of the Act.

The complaint alleges in effect that the respondent corporation 3/ stored 3000 gallons of dielectric transformer oil containing 110 parts per million of PCBs in a tank at its facility in Kearny, New Jersey, without having prepared and implemented a Spill Prevention Control and Countermeasure plan that met the requirements set forth at 40 CFR 112.3(d) and 112.7, which it was required to do by 40 CFR 761.42(c)(7)(ii). In a further count, the complaint charged that the respondent failed to maintain records of the quantity and date of each addition to the tank of PCB-contaminated waste oil, in violation of 40 CFR 761.42(c)(8). Violations of regulations issued pursuant to authority contained in the Act constitute violations of Section 15 of the Act, 15 U.S.C. 2614(1)(C), for which civil penalties may be assessed. The complainant proposes a penalty of $10,000 for the alleged failure to prepare and implement a Spill Prevention Control and Countermeasure plan, and $1300 for the alleged failure to keep records of the date and quantity of additions of PCB-contaminated oil to the storage tank.

The respondent asserts, with respect to the first charge, that it had prepared a plan that the Environmental Protection Agency (hereafter "Agency") had approved, that it was in substantial compliance with such plan at the time the Agency inspectors visited the facility on September 5, 1979, and that the plan had been wholly complied with by January 31, 1980, except for a detail that did not affect the efficacy of the plan. Regarding the second charge, the respondent argues that the provisions of 40 CFR 761.42 (c)(8) are not applicable to the oil storage tank because it contained less than 50 parts per million of PCBs; or, in the alternative, that the respondent did comply by utilizing batch testing procedures, and keeping records of them, as permitted by the PCB disposal and marking regulations 4/.

1/ See Section 6(e)(1), 15 U.S.C. 2605(e)(1).

2/ Also at 44 Federal Register 31543, May 31, 1979; the final rules were effective July 2, 1979. Before that date, interim rules were in effect.

3/ The corporation was at all relevant times engaged in the salvage and rebuilding of electrical equipment, including transformers (TR 4).

4/ See Agency comments preceding the final rules, 44 Federal Register at 31520-21, May 31, 1979, Section E, Batch Testing of Mineral Oil Dielectric Fluid.

Accordingly, the issues are (1) whether the respondent was in compliance with the approved Spill Prevention Control and Countermeasure plan on September 5, 1979, and, if not, what penalty, if any, is appropriate; (2) what amount of civil penalty, if any, should be assessed against the respondent if it was in "substantial compliance" on September 5, 1979, with the approved plan, and if it was entirely in effective compliance with the plan shortly thereafter; and (3) whether the respondent was required to comply with 40 CFR 761.42(c)(8) by keeping records of the quantity and date of each batch of PCBs added to the oil storage tank, or, in the alternative, whether it did keep such records adequately by batch testing from the tank.

The record discloses, regarding the issue stated first above, that in 1976 inspectors from the Agency visited the respondent's Kearny, N. J., facility and determined, from numerous tests and observations, that PCBs were present in concentrations up to 600 parts per million in various areas of the facility. It was further determined that the respondent had failed to prepare a Spill Prevention Control and Countermeasure plan for the facility. In a settlement agreement executed by the Agency and the respondent in 1977 (Government exhibit 9) the respondent agreed to prepare and implement a plan not later than August 31, 1977, with interim progress reports due at the Agency in April, May, June, and July of that year, and to pay a civil penalty of $1000 for the failure to prepare a plan. The respondent thereupon did prepare a plan, which was recommended for approval (with three additions or modifications) by the same inspector who made the 1976 visit referred to above (respondent's exhibit 1; Government exhibit 2; TR 47-49). The plan in that form was then approved by the Agency.

On September 5, 1979, the same inspector, accompanied by another Agency representative, again visited the facility. On this occasion, the inspector took the position that the plan as approved had not been fully implemented by the respondent, in that:

(a) The oil storage tank and water tank were not located where the plan specified they were to be located (TR 51-52);

(b) The oil storage tank was not totally surrounded by a 16-inch high curb or dike which would separate the tank from the work area (TR 52-53, 81). Neither was the water tank so surrounded. Government exhibit 14, a photograph of the oil tank area, was offered in support of the reported failure to dike the oil tank.

(i) Concrete epoxy coated blocks were not used in separating the tank from the fence along the respondent's property line (TR 53-55).

(ii) There were no provisions for the storage of water that might accumulate in the area that was diked;(such water would necessarily be contaminated by PCBs). No adequate roof had been installed over the tanks to minimize the amount of water that would collect (TR 56).

(c) An area completely surrounded by a curb had not been constructed for the storage of sealed transformers 5/; in this connection, an "area of secondary containment" was said to be required (TR 85-86).

With respect to (a) above, i. e. the tanks not having been moved to the area specified in the approved plan, it was agreed at several points during the testimony 6/ of the inspector who had recommended Agency approval of the plan for the respondent's facility that the location of the tanks, in and of itself, made no difference to the effectiveness of the plan. Rather, it was the dike and other construction around the tanks that were critical (TR 79-80). The location of the tanks on September 5, 1979, therefore, taken alone, was of no importance. Although the complainant and the inspector argue that the elements of the plan, including the location of the tanks, cannot be considered separately, it seems clear that the September 5 location of the tanks should not form the basis for the assessment of a penalty against the respondent if the location was of no practical consequence.7/

5/ This point appears at TR 81, during the discussion, on cross-examination, of a September 14, 1979 (TR 75) report, not in evidence, prepared by the inspector who had recommended approval of the plan.

6/ See TR 78, 79, 80, 81, 85, 90.

7/ At TR 80, the inspector testified that "the tank location is only significant in terms of whether the affidavit that was signed [stating that the plan had been implemented by the respondent] was true or not."

Respondent's president testified that he later discovered that the place designated for the oil tank in the approved Spill plan was actually on land leased by the respondent from Public Service Electric & Gas Company, and the lease was subject to termination upon 30 days notice. For this reason the tanks were not moved in accordance with the plan (TR 207-208).

With respect to (b) above, the diking and construction around the oil and water storage tanks, the record is more complex. It is apparent, however, that the unambiguous requirements of the approved plan as to a dike completely surrounding both tanks [Government exhibit 2, respondent's exhibit 3, enclosure 2] and as to the use of concrete blocks (Government exhibit 1, "New Curb Detail") were not fully complied with on September 5, 1979, and that the failure to comply, at least with the surrounding dike requirement, was not without potentially harmful consequences (TR 115-116). 8/ The record also shows that some of the deficiencies were corrected within a few days, and all except the failure to use concrete block were corrected by January 30, 1980 (respondent's exhibit 3, TR 200). 9/ As to the matter of the concrete block, however, the respondent asserts that the retaining wall has a concrete base, and the firm hired by the Agency to inspect the premises in connection with the plan does not mention the block as being nonconforming (respondent's exhibit 3). There is no evidence to contradict the respondent's assertion that the block was coated with epoxy, as required by the plan (TR 121, 226-229).

Regarding (b)(ii) above, in the portion referring to the adequacy of the roofing over the oil storage tank, it must be noted that the approved plan does not require roofing over the tanks (TR 117, 119). It requires only that the roof cover "a portion of this (work) area . . . (approximately 25 ft x 45 ft)," (see Government exhibit 2, addendum). The complainant, in fairness, must be bound at this point by the plan approved by the Agency in arguing that the respondent's implementation did not conform or was not adequate. Since some portion of the work area was roofed on September 5, 1979, (there is no evidence as to how much of the area was roofed), since neither the architect who prepared the plan (TR 113, 116) nor the Agency-retained firm which visited the respondent's facility on January 31, 1980 seem to have considered the roofing inadequate, and, above all, since the approved plan does not say the tanks must be covered, it does not seem reasonable to penalize the respondent for failure to cover the tanks. This is true even if it had been demonstrated that the lack of roofing over the tanks constituted a threat to human safety or to the environment.

Accordingly, it is determined that the respondent was not in compliance with the Agency approved Spill plan on September 5, 1979, and that the potential consequences of this failure were such that it may not be

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8/ It is noted that the approved plan (Government exhibit 2) begins with the comment "(T)his report is being instituted to prevent a reoccurence of an oil spill such as described in EPA violation # OH-II-76-57," (Government exhibit 9, Settlement Agreement OH-II-76-57).

9/ James H. Cowles, who prepared the plan (TR 111) testified that the "elements of the plan . . . were by and large conformed with," except for the location of the water tank and some "minor cracks in the dike area" (TR 113).

found that the respondent was in "substantial" compliance with the approved plan. It can, however, be found, on the basis of this record [which includes the January 31, 1980 inspection report from the Agency-retained firm (respondent's exhibit 3)] that compliance was effected within the next few weeks.

With respect to (c) above, the record discloses that the Spill plan as approved by the Agency for the respondent's facility did not specifically require a completely surrounded (by a dike or curb) storage or secondary containment area for the transformers. The plan does require, however, that "(A)n area of 45 x 100 ft . . . will be diked . . . to store sealed transformers" 10/. It is not clear, therefore, that the area had to be surrounded by a curb in order to conform to the approved plan. 11/ The respondent constructed a retaining wall (TR 122) of some length -- it appears to be at least 100 x 45 feet, at right angles -- around a corner of the work area. 12/ In the absence of the requirement being clear, it cannot be said on the basis of this record that the retaining wall did not satisfy the requirement, and, accordingly, no penalty should attach under these circumstances. 13/

10/ The inspector who recommended the plan for approval testified that "the plan does not discuss the storage of transformers," (TR 87) by which he perhaps meant that the plan does not elaborate upon the requirement of a storage area.

11/ The "surrounding" requirement is perfectly clear elsewhere in the approved plan. See, for instance, the last paragraph of page 2, Government exhibit 2; first paragraph on page 3 of the same exhibit; and paragraph 1 of the Addendum to the plan (same exhibit) where the surrounding of both the work area and the oil storate tank are discussed.

12/ The retaining wall area was marked by respondent's counsel on the upper left corner of the "site plan" portion of Government exhibit 1 by his initials, "RAL" along the black line he drew to designate the wall. See also respondent's exhibit 3, page 3 (the diagram attached to the report of Mr. Webster on the degree of respondent's compliance with the approved plan).

13/ The plan specified that the 45 x 100 foot diked area be "to the east of the proposed tank area." The retaining wall was built to the north and west of the proposed, as well as the actual, tank area. However, in the absence of any evidence that this change is not trivial, it will not be considered further. In addition, the report of the firm hired by the Agency to perform a plan inspection of the respondent's facility did not comment upon this specifically, and seemed to think the "concrete block retaining wall" would contain any water tank spill (respondent's exhibit 3, page 1).

Turning to the third issue stated above, the respondent argues that since the oil storage tank did not contain measurable levels of PCBs, according to an August, 1979, test, record-keeping pursuant to 40 CFR 761.42(c)(8) was not triggered. In the alternative, it argues that the records kept met the "batch-testing" requirements of that section, which were elaborated upon in the Agency's comments to the final version of the "disposal and marking" regulations (see notes 2 and 4, above)..

On September 5, 1979, it was stipulated (TR 4) that the respondent was storing for disposal 3000 gallons of dielectric transformer fluid in its 5000 gallon (Government exhibit 2) or 8000 gallon (TR 270) tank. In August, 1979, a test of the tank fluid 14/ showed an undetectable 15/ level of PCBs. 16/ In October, 1979, a test of the tank oils (respondent's exhibit 2-c) showed a PCB level of 37.8 parts per million.

The records kept by the respondent begin on September 11, 1979, six days after the Agency inspector's visit (respondent exhibit 2-d). On September 11, 1979, the total number of gallons of oil in the tank is not noted. If the records are accurate, however as of the dates they were purportedly made, then at some date after the August "undectable" PCB level and the start of record keeping on September 11, 1979, a high PCB level batch of oil must have been added to the tank, or the October test could not be accurate. It is difficult to imagine that the PCB level of such a batch could have been less than 50 parts per million, if the total level of the tank could thereby be raised to 37.8 parts per million.

The question at hand, however, is whether records must be kept for this tank. Based upon this record, it is concluded that, whether by oversight or not, the section does not require records to be kept for a 5000 gallon tank if the PCB level of the entire tank does not exceed 50 parts per million, even if specific batches added to such a tank do exceed 50 parts per million. Since it is elsewhere concluded that the sample taken on September 5, 1979, was not in fact taken from the tank (see discussion of this sample, infra), there is insufficient evidence to find that the PCB level of the tank exceeded 50 parts per million PCBs on that date. Accordingly, the record keeping requirements of 40 CFR 761.42(c)(8) are not triggered, whatever the intent of the section may have been.

14/ There is no evidence to contradict the testimony that the tested oil came from the storage tank.

15/ In the Agency's tests of waste oil, the "detectable" level was 20 parts per million (TR 42).

16/ Apparently the respondent was attempting, in December, 1976, to avoid accepting PCB-containing oils (Government exhibit 2, page 3).

One further matter regarding the evidence of record must be addressed. During the September 5, 1979, visit to the respondent's facility, the Agency inspectors acquired three samples: one from a leaking transformer; one from the soil near the transformer (the soil contained some oil), and one, both parties apparently thought, from the oil storage tank. The soil and transformer samples were taken by one of the inspectors. The third was taken by an employee of the respondent and handed back to the inspectors. Where this latter sample was obtained has been the subject of conflicting testimony and much argument by counsel. When the disputed sample was tested, about a year later, the analysis showed PCBs at a level of 110 parts per million (TR 4).

In its Answer to the Complaint, the respondent conceded (paragraph 2) that a sample had been taken from the storage tank, but denied that "an analysis disclosed the presence of PCBs at a level of 110 parts per million," and further denied that the storage tank was a "PCB container as defined in 40 CFR 761.2(v)". Apparently the denial of the PCB level was based upon the respondent's own test results from this tank, obtained in August and October, 1979 (respondent's exhibits 2a, b, c), and upon its effort not to accept PCB-contaminated waste oils (Government exhibit 2, page 3). During preparation for the trial of this matter, however, the employee who took the sample informed the respondent that he had obtained the sample from a transformer, and not from the oil storage tank (TR 195). It appears from the testimony that he may have misunderstood what sample was wanted; it seems likely that he was asked for a sample of "transformer oil," (which, of course, is what the storage tank contained, TR 230-231) and, taking the request literally, obtained the oil sample from a transformer. 17/

As a result of this discovery, counsel for the respondent requested, and counsel for the complaint agreed to, a stipulation that the admission in the respondent's Answer (that the sample had come from the tank) be stricken (TR 5). Further reflecting the discovery, counsel for the respondent agreed to stipulate to the accuracy of the Agency's analysis of the sample. Accordingly, the 110 parts per million PCBs result was stipulated (TR 4). (Complaint counsel also stipulated to the accuracy of the respondent's August test results, TR 4, which showed no measurable presence of PCBs).

Counsel for the complainant argues vigorously that the testimony of the employee who took the sample should not be believed, on the grounds that the testimony was confused, that the employee and his wife both work for the respondent, that the testimony was unresponsive to complaint counsel's questions, that the employee appeared uncomfortable while testifying, and, finally, on the ground that the respondent's president concedes that the employee is not very bright. He also argues, in effect, that the testimony of both inspectors

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17/ See generally the testimony of Edmond Graves, TR 142-177, and of Gaby Newmark, TR 193, 213-216, 218, 223, 229, 230-231.

should be believed because they are experts, trained to be observant and to remember their observations.

The employee in question is the foreman at the respondent's facility. and his wife, who also testified, is employed in the office of the same faci (Her testimony will be found specifically to be credible). It is apparent t the foreman does not possess remarkable intellectual skills. This, in itsel in no way suggests that his testimony is not credible. Indeed, although he was hesitant and seemed occasionally not to understand the questions put, as a whole his testimony is consistent and believable. At no time, after he unc stood a question, did he seem confused as to where he obtained the sample. A careful reading of the full testimony, moreover, will reveal that what was be asked in some of the questions is not at all clear, which makes some hesitati and confusion in responding rather natural. 18/ Given this witness, with his particular capacities, it is easy to believe that if he were asked for a sampl of transformer oil, which another person might have understood to mean storage tank oil, he would have unscrewed the top of a transformer and taken the sampl from it. Further, under these circumstances and given this witness, it does n seem improbable that the actual source of the sample would have been discovere only when preparations for the trial were being made. It must be remembered that the disputed sample was not tested for at least one year after it was obtained, and that, even then, the respondent was not informed of the test result Until it learned of the test result, obviously, there was no reason to wonder about the 110 parts per million PCB level. Last, it is suggested that the testimony is not credible because the witness was not able to identify the transformer from which he took the sample after examining the Polaroid photographs taken by the inspectors. The record makes clear, however, that the work area at the respondent's facility is adjacent to many transformers, many of which, in the photographs, look alike. It is not remarkable, therefore, that the witness could not identify the particular transformer from which the sample came. See, in this connection, Government exhibits 13-18.

With respect to the testimony of the Agency inspectors, it should be noted that they have conducted a great number of inspections of facilities in connection with the Act, and, consequently, it is not surprising that some failure of detail could occur after many months and many inspections. Counsel for the complainant argues that the testimony of both inspectors is nearly identical, although the second inspector to testify was sequestered while the first was testifying. To the extent that their testimony is similar, this is easily accounted for by the fact that they had discussed their recollections before testifying (TR 263-266), presumably after they learned of the foreman's own recollections. A careful reading of the testimony of both inspectors, however, discloses numerous differences. For instance, one testified that the foreman was never out of sight in obtaining the sample (TR 34-35). The other

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18/ As to his discomfort, it should be noted that (a) the courtroom was warm, (b) the foreman was wearing a three-piece suit. It is also not unreasonable to suppose that the foreman does not testify in a federal proceeding very frequently. Some reaction to the courtroom situation would be natural even in people other than foremen.

testified that the foreman took a route through the work area that would have taken him out of sight for a substantial, in these circumstances, period, since it is a very quick process to take an oil sample from a transformer, according to the testimony of both the foreman and the respondent's president. (TR 156-157; 224-225).

Last, on the subject of the disputed sample, the testimony of the respondent's president is that he and the two Agency inspectors stood together talking, out of sight of the foreman while he collected the sample, and that none of them could have seen just where the foreman went. There is no inconsistency in this testimony and that of the foreman, who also said the Agency inspectors were out of his line of sight.

Turning finally to the matter of whether a civil penalty ought to be assessed for the failure to conform to the approved Spill plan, it is concluded that the departures from the plan were not without potentially serious consequences, that the terms of the plan were not ambiguous on the diking of the tanks and the use of concrete block, and that a penalty should be assessed. In setting the amount, both the previous violation and the respondent's efforts to comply quickly after the September 5, 1979, Agency inspection are noted. Further, it is noted that the respondent has discontinued handling diaelectric fluid. Under these circumstances, a penalty of $900 will be assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent G & S Motor Equipment Company is a corporation organized and existing under the laws of the State of New Jersey, having as its principal place of business a facility located at 1800 Harrison Avenue, Kearny, New Jersey (TR 3-4)

2. At all relevant times herein the respondent has engaged in the business of salvaging and rebuilding electrical equipment, including transformers, with gross sales of approximately 1.6 million dollars for the years 1978-1979, and of $800,000 - $900,000 for 1979-1980 (TR 4).

3. The respondent is a "person," within the meaning of 40 CFR 761.1(x), and is subject to the Act and to the "PCB disposal and marking" regulations, published at 40 CFR 761.1 et seq., pursuant to authority, 15 U.S.C. 2605 (e)(1), including the provisions relating to the preparation and implementation of a Spill Prevention Control and Countermeasure plan (TR 4, 3-16, 62; Government exhibit 9; respondent's exhibit 2-c; Answer to the Complaint, paragraph 3) set forth at 40 CFR 761.42(c)(7)(ii). 19/

19/ See also 40 CFR 112.7 and 112.3(d), where the specific requirements for such plans are set out.

4. On September 5, 1979, the respondent was not in compliance with the Spill Prevention Control and Countermeasure Plan earlier approved by the Agency (Government exhibit 2) in that a 16-inch high curb or dike had not been installed around the oil and water storage tanks, and concrete block had not been used where indicated in the Plan. These requirements of the Plan were clear and not ambiguous, although the use of concrete block is specified in small letters on Government Exhibit 1, "New Curb Detail."

5. The respondent's failure to surround the oil and water storage tanks by a 16-inch high curb or dike and the failure to use concrete blocks constituted departures from the Plan that could have had serious consequences, TR 115-116, 52, 54-55. Accordingly, in not implementing a Spill Prevention Control and Countermeasure Plan as described in 40 CFR Section 112, which would comply with 40 CFR Section 761.42(c)(7)(ii), to which the respondent is subject, the respondent violated TR 4 regulations issued pursuant to authority contained in the Act at 15 U.S.C. 2605(e)(1), i. e. Section 6(e)(1).

6. A violation of regulations issued pursuant to authority contained in the Act constitutes a violation of Section 15 of the Act, 15 U.S.C. 2614(1)(C) for which civil penalties may be assessed, 15 U.S.C. 2615(a)(1), Section 16(a)(1).

7. The result of the test performed on August 27, 1979, by the United States Testing Company, Inc., is accurate (TR 4-5); the test was performed on a sample of waste oil from respondent's oil storage tank received by the testing company on August 15, 1979 (respondent's exhibit 2-a).

8. There is no evidence in this record to refute the result of the October 22, 1979, test performed by Ward Transformer Company, Inc. (respondent's exhibit 2-c), which showed a level of 37.8 parts per million of PCBs. Between August 15 and the October 22 test, therefore, an amount of PCB-contaminated waste oils sufficient to raise the overall tank level to 37.8 parts per million PCBs was added. On September 5, 1979, the tank was storing 3000 gallons of waste oil (TR-4).

9. The provisions of 40 CFR Section 761.(c)(8) did not require the respondent, on September 5, 1979, to have a "record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container," or a "record (that) shall also include the date, quantity, and disposition of any batch of PCBs removed from the container."

10. The testimony of Mrs. Maggie Graves is credible.

11. The sum of $900 is a fair and reasonable amount to be assessed as a civil penalty in this matter, considering the nature of the violation, the possible consequences thereof, the respondent's previous history of one violation, respondent's prompt effort to comply after September 5, 1979, the requirements of the Agency approved Spill Plan.

ORDER

Accordingly, it is ORDERED, pursuant to Section 15 U.S.C. 2615(a)(1), Section 16(a)(1) of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., and upon consideration of the entire record herein, after evaluating the gravity of the violations and the appropriateness of the penalty proposed, that the respondent G & S Motor Equipment Company pay, within 60 days of service upon it of this order, the amount of $900 as a civil penalty for violations of the said Act by forwarding to the Regional Hearing Clerk a cashier's check or a certified check for the said amount payable to the Treasurer, United States of America, 40 C.F.R. Section 22.31(b).

J. F. GREENE
Administrative Law Judge

March 26, 1982
Washington, D. C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	)	
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G & S Motor Equipment Company, Inc.,	)	Docket No. TSCA PCB-81-0102
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Respondent	)	
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ERRATA SHEET

1. Page 7, line 18, of the Decision and Order filed in this matter on March 26, 1981, is corrected by the addition of a comma after the word "however".

2. Page 9, line 21, of the Decision and Order is corrected by the addition of "(TR 63-64)." after the word "result".

3. Page 9, line 33 is corrected by the addition of the words "since September 5, 1979," after the word "Act". The first comma in line 33 is deleted.

4. Page 10, line 2, is corrected by changing the word "substantial" to "significant".

5. Page 10, line 5, is corrected by the addition of "see also TR 61, lines 5, 22-25; TR 257, lines 19-24". at the end of the paragraph.

6. Page 10, line 8 is corrected by changing the words "while he" to the word "who".

7. Page 10, line 19, the word "diaelectric" is changed to "dielectric".

8. A copy of page 11 of the Decision and Order, apparently missing from the original and copies transmitted, is attached hereto.

J. F. Greene
Administrative Law Judge

April 22, 1982
Washington, D.C.