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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SPITZER GREAT LAKES LTD. CO.) Docket No. TSCA-V-C-082-92
)
)
Respondent)

ORDER GRANTING MOTION FOR ACCELERATED DECISION

On March 18, 1993, Complainant filed a Motion for Accelerated Decision asking that the Respondent be found liable for the violations alleged in the Complaint and that the matter be set for hearing on the appropriateness of the amount of the proposed penalty. On July 18, 1994, an Order to Show Cause was issued indicating that no response had been filed by the Respondent to the Motion for Accelerated Decision and directing the Respondent to show cause why no response was submitted and why the motion should not be granted.

On August 9, 1994, Respondent filed a reply to the Order to Show Cause, stating that no response was submitted to the Motion for Accelerated Decision since the facts in the Complaint are reasonably accurate and since litigation involving those facts is not necessary. In its reply, Respondent also indicated that it will demonstrate that its acts did not result in any harm to the environment since no hazardous materials were released and will show that the penalties should be reduced to a nominal amount.

Accordingly, since good cause has been shown, the Complainant's Motion for Accelerated Decision is granted and the

following findings of facts and conclusions of law submitted by the Complainant in connection with the motion are hereby adopted.

FINDINGS OF FACT

1. That the Complainant is, by lawful delegation, the Director, Environmental Sciences Division, Region 5, United States Environmental Protection Agency ("U.S. EPA").

2. That the Respondent is Spitzer Great Lakes Ltd., Company, which is and was at all times relevant to this action a corporation operating under the laws of the State of Ohio, with a place of business at 400 Colorado Avenue, Lorain, Ohio ("the Facility").

3. That in December 1986, Respondent purchased from the American Shipbuilding Company the Facility and certain items and equipment contained therein, including all transformers, capacitors and switching equipment identified in the Complaint, filed in this action on September 24, 1992.

4. That on August 17 and 18, 1990, U.S. EPA inspectors inspected the Facility, to determine its compliance with the PCB Rule, 40 C.F.R. Part 761.

5. That at the time of the inspection, a representative of Respondent provided U.S. EPA inspectors with records documenting Respondent's prior possession of five PCB transformers that had been located at the Facility, as set forth herein at Finding No. 6.

6. That the records provided U.S. EPA inspectors by Respondent identified the five PCB transformers disposed of, as

follows:

(a)	Westinghouse #YAR97801	100%	PCB
(b)	Westinghouse #YAR97791	100%	PCB
(c)	Westinghouse #2850542	19,356 ppm	PCB
(d)	Pennsylvania #21586-1	27,323 ppm	PCB
(e)	Pennsylvania #21586-3	17,347 ppm	PCB

7. That in March or April of 1990, by agreement with Respondent, Kelly Salvage & Steel, Inc. ("Kelly") drained the oil from all transformers identified in Finding No. 6 into drums at the Facility, marking some of the drums with the serial number of the transformer which was the source of the oil contained in the drum. Kelly then removed the drained transformers from the Facility, leaving the oil-filled drums at the Facility.

8. That at the time of the inspection, U.S. EPA inspectors observed and Respondent acknowledged having at the Facility the following:

- (a) 12 large capacitors, each being a Westinghouse, Type FP, 76KV Style 4x1339; each containing 1.36kg (3 lbs.) or more of dielectric fluid; and each of which would operate at 2,000 volts (a.c. or d.c.) or above;
- (b) 10 labelled 55-gallon drums containing dielectric fluid;
- (c) 105 unlabelled 55-gallon drums containing dielectric fluid, and
- (d) one oil-filled switch.

9. That at the time of the inspection, a representative of Respondent provided U.S. EPA inspectors Respondent's records documenting that each capacitor, identified herein at Finding No. 8(a), contained over 500 ppm PCB.

10. That at the time of the inspection, of the 10 labelled

55-gallon drums containing dielectric fluid, identified herein at Finding No. 8(b), 5 were labelled with the transformer serial number "YAR97801," and 5 were labelled with the transformer serial number "YAR97791."

11. That at the time of the inspection, Respondent was unaware of the PCB content of each unlabelled 55-gallon drum containing dielectric fluid, identified herein at Finding No. 8(c).

12. That at the time of the inspection, the oil-filled switch, identified herein at Finding No. 8(d), contained untested oil.

13. That at the time of the inspection, no item identified herein at Finding No. 8 was being used by Respondent.

14. That at the time of the inspection, all items identified herein at Finding No. 8 were located in an unenclosed and uncovered area at the facility.

15. That at the time of the inspection, the surface area on or over which the items identified herein at Finding No. 8 were located was ground, consisting of gravel, dirt and weeds.

Count I

16. That Respondent was either using or storing at the Facility five PCB transformers, identified herein at Finding No. 6, during the following calendar years:

1989
1988
1987.

17. That at the time of the inspection, Respondent had not

developed and maintained complete records on the disposition of the PCB items identified herein at Finding No. 16, and did not have annual PCB documents for the following calendar years:

1989
1988
1987.

Count II

18. That from December 1986 to March 1990, Respondent had each transformer, identified herein at Finding No. 6, in use or stored for reuse at the Facility.

19. That at the time of the inspection, Respondent possessed no records documenting any visual inspection and maintenance history of transformers (a) and (b), identified herein at Finding No. 6, performed during any of the following calendar quarters:

First Quarter		1989	1990
Second Quarter		1989	
Third Quarter		1989	
Fourth Quarter	1988	1989.	

20. That at the time of the inspection, Respondent possessed no records documenting any visual inspection and maintenance history of transformers (c), (d) and (e), identified herein at Finding No. 6, performed during calendar year 1989.

Count III

21. That at the time of the inspection, the items of Respondent, identified herein at Finding No. 8, were stored for disposal at the Facility, in the manner identified herein at Findings No. 14 and 15.

Count IV

22. That at the time of the inspection, the PCB articles and PCB containers, identified herein at Finding No. 8, were no longer being used by Respondent and were awaiting their disposal.

23. That at the time of the inspection, Respondent had not dated any PCB article or PCB container, identified herein at Finding No. 8, with when it was placed in storage for disposal.

Count V

24. That at the time of the inspection, no 55-gallon drum containing oil or capacitor, identified herein at Finding No. 8, was marked with the M_L label.

Count VI

25. That at the time of the inspection, the area, described herein at Findings No. 14 and 15, wherein Respondent stored for disposal its PCB items, identified herein at Finding No. 8, was not marked with the M_L label.

Count VII

26. That subsequent to the draining and removal of Respondent's transformers, as set forth herein at Finding Nos. 5-7, Kelly, by agreement with Respondent, delivered the transformers as salvage to its scrap yard.

CONCLUSIONS OF LAW

27. That the Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing,

Distribution in Commerce and Use regulations ("PCB Rule") were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514), and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

28. That under the definition of "PCB-Contaminated Electrical Equipment," at 40 C.F.R. § 761.3, certain oil-filled electrical equipment, including transformers, capacitors and switches, must be assumed to be PCB-contaminated if their PCB concentration is unknown.

29. That each item of Respondent, identified herein at Finding Nos. 6 and 8, is either a "PCB Article" or "PCB Container," as defined at 40 C.F.R. § 761.3, and therefore, a "PCB Item," as defined at 40 C.F.R. § 761.3..

Count I

30. That during all times herein applicable, 40 C.F.R. § 761.180(a) required that each owner or operator of a facility using or storing at one time at least 45 kilograms of PCBs contained in PCB containers, or one or more PCB transformers, or 50 or more PCB large capacitors, develop and maintain records on the disposition of PCBs and PCB items; that these records were to form the basis of annual PCB documents prepared by each facility by July 1, covering the previous calendar year; and that these records and documents be maintained for at least five years after the facility ceased using or storing PCBs and PCB items.

31. That Respondent's failure to develop and maintain

records on the disposition of the PCB items identified herein at Finding No. 16, and to have annual PCB documents for the following calendar years:

1989
1988
1987

constitutes violations of 40 C.F.R. § 761.180(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count II

32. That during all times herein applicable, 40 C.F.R. § 761.30(a)(1)(ix) required that a visual inspection of each PCB transformer in use or stored for reuse shall be performed at least once every three months; for any PCB transformer which had been tested and found to contain less than 60,000 ppm PCBs, a reduced visual inspection frequency of at least once every 12 months was permitted by 40 C.F.R. § 761.30(a)(1)(xiii)(B). Pursuant to 40 C.F.R. § 761.30(a)(1)(xii), records of such inspections and maintenance history were required to be maintained at least three years after disposing of any PCB transformer, and be made available for inspection, upon request by U.S. EPA.

33. That Respondent's failure to maintain records of visual inspections and maintenance history of any transformer, identified herein at Finding No. 6, for the time periods identified herein at Findings No. 19 and 20, constitutes violations of 40 C.F.R. § 761.30(a)(1)(xii), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count III

34. That during all times herein applicable, 40 C.F.R. § 761.65(b) required that PCBs and PCB Items designated for disposal be stored in an area with adequate roof, walls, and continuous floor and curbing made from smooth impervious materials with no drain valves, floor drains, expansion joints, sewer lines or other openings.

35. That Respondent's storage of its PCB items, identified herein at Finding No. 8, in the manner identified herein at Findings No. 14 and 15, constitutes a violation of 40 C.F.R. § 761.65(b), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count IV

36. That during all times herein applicable, 40 C.F.R. § 761.65(c)(8) required that PCB articles and PCB containers be dated on the article or container when they are placed in storage for disposal.

37. That Respondent's failure to date its PCB articles and PCB containers, identified herein at Finding No. 8, with when they were placed in storage for disposal, constitutes a violation of 40 C.F.R. § 761.65(c)(8), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count V

38. That during all times herein applicable, 40 C.F.R. § 761.40(a) required that each PCB container, and, no later than at the time of their removal from use, each PCB large high voltage capacitor, be marked with an M_L label, as identified at

40 C.F.R. § 761.45(a).

39. That Respondent's failure to mark its 55-gallon oil-filled drums, and capacitors, each identified herein at Finding No. 8, with the M_L label, constitutes a violation of 40 C.F.R. § 761.40(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count VI

40. That during all times herein applicable, 40 C.F.R. § 761.40(a) required, in part, that each area used to store PCBs and PCB items for disposal be marked with an M_L label, as identified at 40 C.F.R. § 761.45(a).

41. That Respondent's failure to mark its PCB item storage area with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count VII

42. That during all times herein applicable, 40 C.F.R. § 761.60(b)(1) required that PCB transformers be disposed of in an incinerator that complies with 40 C.F.R. § 761.70, or in a chemical waste landfill that complies with 40 C.F.R. § 761.75, provided that the PCB transformer is first drained and flushed in accordance with this rule.

43. That Kelly's scrap yard, as a site for salvaging PCB transformers, was not an incinerator complying with 40 C.F.R. § 761.70, nor was it a chemical waste landfill in compliance with 40 C.F.R. § 761.75.

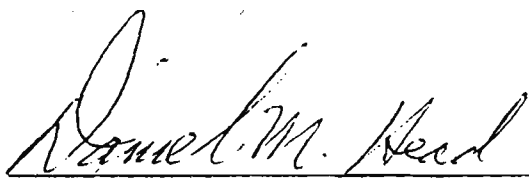
44. That Respondent's agreement with Kelly to dispose of its PCB transformers, as set forth herein at Findings No. 5-7 and 26,

is a failure by Respondent to dispose of its PCB transformers in accordance with the applicable disposal requirements, set forth at 40 C.F.R. § 761.70 or § 761.75, and constitutes a violation of 40 C.F.R. § 761.60(b)(1), and Section 15 of TSCA, 15 U.S.C. § 2614.

In light of the above, the Respondent is hereby held liable for violating the PCB Rule, 40 C.F.R. Part 761, and Section 16(a) of the Toxic Substance Control Act (TSCA), 15 U.S.C. §2615(a).

The amount of the civil penalty to be assessed will be determined at an evidentiary hearing, unless the parties confer and agree that the issue of penalty amount be submitted on the record. If the latter process is adopted, the parties shall submit, on or before 60 days from the service date of this order, a designation of the portions of the record they wish to rely on to determine the penalty amount and shall also submit a brief supporting their position on the appropriateness of the amount of the penalty.

SO ORDERED.


Daniel M. Head
Administrative Law Judge

Dated:

May 25, 1995
Washington, DC

CERTIFICATE OF SERVICE


I certify that the foregoing Order Granting Motion for Accelerated Decision, dated May 25, 1995, was sent in the following manner to the addressees listed below:

Original by Regular Mail to: Jodi L. Swanson-Wilson
Regional Hearing Clerk
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Copy by Certified Mail to:

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Dated: May 25, 1995
Washington, DC