

9/7/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

SCA Chemical Services, Inc. &) Docket Nos. II-TSCA-PCB-88-0205
CWM Chemical Services, Inc.) II-TSCA-PCB-88-0204
) (consolidated)
Respondents)

ORDER ON CROSS MOTIONS FOR ACCELERATED DECISION

Summary

In this enforcement action the Environmental Protection Agency (EPA) charges the Respondent with violating the conditions of EPA's landfill approval by failing to test the PCB concentration of each truckload depositing waste in a chemical waste landfill. The Respondent maintains that (1) the Paperwork Reduction Act (PRA) applies to testing and that it was under no obligation to test and (2) in any event, Respondent's testing of the waste streams prior to loading of the trucks fulfilled its testing obligation.

This order finds that (1) the PRA does not relieve Respondent of its obligation to test and (2) the conditions of EPA's landfill approval required Respondent to test each truckload's PCB concentration.

Background

This proceeding was initiated by a complaint filed by EPA's Region II on September 2, 1988 in Docket No. II-TSCA-PCB-88-0204 ("0204"). An amendment to the complaint was permitted by an order dated December 23, 1991. The complaint charged Respondent with 48 counts of violating section 15(1)(C) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2614(1)(C).

In January of 1985, EPA issued a PCB (polychlorinated biphenyl) Disposal Approval (1985 Approval), pursuant to 40 C.F.R. § 761.75. The 1985 Approval gave Respondent the authority to operate Secure Landburial Facility Number 11 (SLF-11) at its chemical waste landfill located in Model City, New York. Respondent allegedly failed to comply with the 1985 Approval by accepting for disposal and disposing of PCB-containing wastes without having PCB concentration tests performed on the wastes as required by a condition of the 1985 Approval.

Each count corresponds to a particular date between February 14, 1985 and June 5, 1985. Between these dates one or more

truckloads of PCB-containing wastes, totaling in excess of 11,000 pounds, was received for disposal in the SLF-11 facility. The total number of truckloads addressed by the complaint in this proceeding is 136. Complainant proposes a civil penalty, under section 16(a) of TSCA, of \$25,000 for each of the 48 counts, for a total of \$1,200,000.

Respondent CWM Chemical Services, Inc. is the successor corporation to SCA Chemical Services, Inc. SCA Chemical Services, Inc. operated the facility during the time period at issue and received the January 1985 Disposal Approval. Respondent's answer to the complaint denies the allegations of violation, seeks dismissal of the complaint, and requests a hearing.

The parties each submitted prehearing exchange documents. The amended complaint was consolidated with another complaint filed by EPA, in Docket No. II-TSCA-PCB-88-0205 ("0205"), charging Respondent with seven violations of PCB regulations promulgated under TSCA.

Complainant submitted a motion for partial accelerated decision, dated December 1, 1993, requesting judgment on the issue of Respondent's liability for the 48 violations alleged in 0204. On December 3, 1993, Respondent filed a motion for accelerated decision in its favor on the same 48 counts and on the first six counts of the 0205 complaint. On January 7, 1994, an order was issued granting a motion to stay the latter proceeding. Accordingly, this order does not address docket 0205.

The parties each seek an accelerated decision on liability as a matter of law. An accelerated decision may be granted under 40 C.F.R. § 22.20 of the Consolidated Rules of Practice if no genuine issue of material facts exists. No disputes of material fact as to the question of Respondent's liability have been asserted or demonstrated by either party. The matter is therefore ripe for decision.

The parties submitted responses and replies to each of the motions. The pleadings beyond the initial response and reply were accompanied by motions for leave to file such pleadings. Because the additional pleadings are not repetitive and may be helpful in the consideration of the issues, the motions are granted. The issues presented are discussed below.

I. Arguments of the Parties

A. The PCB Testing Requirement

The issue here is the proper interpretation to be given section I.B.4 of the appendix to the 1985 Approval (Condition I.B.4), that Respondent is alleged to have violated. That section reads as follows:

B. The following shall be appended to SCA's Operations Report:

* * * *

4. Prior to accepting PCBs identified under Condition A(1) and A(10) for disposal, the following procedures shall be followed:

a. Batch testing must be performed on representative samples (obtained utilizing the procedures designated in the "Excerpt from Waste Analysis Plan") of the contents of each transport vehicle to determine the PCB concentration. No dilution, pretreatment and/or stabilization shall have been performed on these PCBs prior to this testing. PCB analyses may only be performed by laboratories which have a quality assurance program approved by EPA Region II.

Verification of this fact must accompany each analysis

. . . .

(Complainant's Motion, Affidavit of Daniel J. Kraft (Kraft Affidavit), exhibit 1.)

Complainant asserts that Condition I.B.4 required Respondent to take samples of the contents of each truckload of certain PCB-contaminated wastes¹ and to have each sample tested for the concentration of PCBs, prior to accepting the waste for disposal in SLF-11. As evidence that Condition I.B.4 was not complied with, Complainant points to Respondent's records. For 134 of the 136 truckloads addressed in the complaint, the records do not include data entries for PCB concentration, date of testing, and the laboratory performing the testing. Testing dates listed for the remaining two truckloads are after the dates of disposal. (Kraft Affidavit, exhibit 4; Respondent's prehearing exchange dated November 16, 1989 (11/19/89 PHE) exhibit 3.)

Respondent disagrees with Complainant's interpretation of the language in Condition I.B.4--"batch testing must be performed on representative samples . . . of the contents of each transport vehicle." Respondent construes the language as requiring pre-acceptance batch testing of each waste stream in order to demonstrate that the PCB concentration limit (500 ppm) was met,

¹ The type of wastes subject to Condition I.B.4 were identified in the 1985 Approval as A(1) and A(10) wastes. They are defined as liquids (A(1)) and PCBs which are not identified in the other listed items (A(10)), containing a PCB concentration of 50 parts per million (ppm) or greater, but less than 500 ppm. The wastes referred to in the complaint were A(10) PCB-contaminated sludges originating from three sources, and are thus referred to herein as three waste streams. (Respondent's Motion at 19-25.)

but not as requiring that a sample be taken from each truck for PCB analysis.

Each of the three waste streams, from which the 136 truckloads of PCB waste originated, was tested for PCB concentration prior to accepting the waste for disposal, Respondent asserts. Two of the waste streams were regularly sampled and analyzed for PCB concentration by the generator, and the other waste stream was tested by, or under the supervision of, the Maryland Department of Health, for approval for disposal. (11/16/89 PHE, exhibits 5, 6, 9, 11, 12, 14, 16, 22-26, 28, 46.) They were found to have a PCB concentration below the 500 ppm limit. Respondent tested and verified the PCB concentration of two of the three waste streams, and found all to be under 500 ppm. (11/16/89 PHE exhibit 3.) Therefore, according to Respondent, subsequent testing of individual truckloads was not required.

B. The Paperwork Reduction Act

The PRA and implementing regulations of the Office of Management and Budget (OMB) require prior approval of OMB before an agency may engage in a "collection of information." If subject to OMB review, an OMB approval number must be displayed on the information request. 44 U.S.C. §§ 3506, 3507; 5 C.F.R. § 1320.4(a).

The PRA and OMB regulations also provide that no person shall be subject to penalty if an agency does not meet the PRA requirements. The PRA's "Public protection" provision, 44 U.S.C. § 3512, states as follows:

Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director [of OMB], or fails to state that such request is not subject to this chapter.

Similarly, OMB regulations provide that "no person shall be subject to any penalty for failure to comply with any collection of information" if it "does not display a currently valid OMB control number," or, in the case of an information collection submitted to nine or fewer persons, if it fails to state that it is not subject to OMB review under the PRA. 5 C.F.R. § 1320.5.

Respondent argues that Condition I.B.4 constitutes a "collection of information" that was "submitted to nine or fewer persons" and that failed to state that it is not subject to OMB review under the PRA. Consequently, no penalty may be assessed for failure to comply with such collection of information.

OMB regulations define "collection of information" as "obtaining or soliciting of information by an agency . . ." (5 C.F.R. § 1320.7(c)), which in turn "includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information." 5 C.F.R. § 1320.7(c).

Respondent emphasizes the words "obtain . . . information" in that definition, and asserts that testing requirements are part of the burden of a collection of information. OMB regulations define "burden" as the requirement "to conduct tests . . . to obtain the information." 5 C.F.R. § 1320.7(b). Therefore, Respondent reasons, the Condition I.B.4 testing obligation constitutes a "collection of information" within the meaning of the PRA and 5 C.F.R. § 1320.5(a).

Respondent argues further that the PCB disposal permitting regulations did not have OMB approval during the time period at issue. An OMB approval lapse for 40 C.F.R. 761 Subpart D existed between January 31, 1985 and July 31, 1985. That lapse impacts PCB disposal cases, according to an EPA enforcement guidance memorandum (attachment to Respondent's Opposition, dated January 7, 1994). 40 C.F.R. § 761.75, which addresses PCB disposal in landfills, never displayed a currently valid OMB control number. Respondent opines that "the testing of each incoming truck, regardless of how well the wastestream has been characterized, is a perfect example of the type of wasteful 'red tape' requirements the PRA was intended to eliminate."

In response, Complainant asserts that the 1985 Approval is not an "information collection request" as referred to in 44 U.S.C. § 3512 and defined in 44 U.S.C. § 3502(11). Instead it is a "collection of information requirement" which was not subject to the public protection provision until 1986, after the time period at issue.² Condition I.B.4 is part of the regulatory scheme of 40 C.F.R. § 761.75, which was approved by OMB through January 1985. Condition I.B.4 is "contained in a regulation" because "OMB's approval of the 40 C.F.R. § 761.75 regulatory scheme included the regulatory provision under which the I.B.4 requirement was imposed." (Complainant's Reply, dated March 30, 1994, at 14-15.) Because the testing requirement was a request for information imposed under authority of a regulation, namely

² OMB's regulatory public protection provision protects persons from being subjected to any penalty for "failure to comply with any collection of information." 5 C.F.R. § 1320.5. However, in 1985, it provided such protection only for "failure to comply with any information collection request," defined as one of two types of "collection of information," the other being a "collection of information requirement." 48 Fed. Reg. 13666, 13691 (March 31, 1983); 5 C.F.R. § 1320.7(c) (1985).

40 C.F.R. § 761.75(c)(3),³ it was not subject to the public protection provision of the PRA, 44 U.S.C. § 3512.

II. Discussion

A. The Paperwork Reduction Act

The threshold issue is whether Complainant is barred from imposing a penalty on grounds of EPA's alleged noncompliance with the Paperwork Reduction Act. The PRA only protects persons, in the event of noncompliance with the PRA, from being subjected to any penalty "for failure to maintain or provide information to any agency." 44 U.S.C. § 3512. Because Respondent is not charged with a paperwork violation, but rather a failure to conduct appropriate testing, this enforcement action is not barred.

The requirement of Condition I.B.6 to maintain monthly records and to submit them to EPA, and the requirement of section I.B of the 1985 Approval appendix to append Conditions I.B.1 through I.B.13 to its Operations Report, concern maintaining or providing information to an agency.⁴ However, Respondent was not charged with violations of those provisions. Respondent was charged with "failure to test a representative sample of the contents of each transport vehicle of 'A(10)' PCB wastes as required by appendix item I.B.4" which "constitutes a refusal or failure to comply with the PCB disposal approval issued pursuant to 40 CFR § 761.75." (Complaint ¶¶ 9, 13, 17, 21, 25, 29, 33, 37, 41, 45, 49, 53, 57, 61, 65, 69, 73, 77, 81, 85, 89, 93, 97,

³ 40 C.F.R. § 761.75(c)(3) provides, in pertinent part:
Contents of Approval.* * *

(ii) In addition to the requirements of paragraph (b) of this section, the Regional Administrator may include in an approval any other requirements or provisions that the Regional Administrator finds are necessary to ensure that operation of the chemical waste landfill does not present an unreasonable risk of injury to health or the environment from PCBs. * * *

⁴ Condition I.B requires Respondent to append thirteen items, including Condition I.B.4, to Respondent's Operations Report. However, it is an independent requirement from the thirteen items, Conditions I.B.1 through I.B.13, which are not all paperwork requirements. For example, Condition I.B.1 states, "PCB disposal as authorized by this approval shall be confined to SLF No. 11's Halogenated Cell and General Cell," and Condition I.B.11 states, "Any ponded water within the landfill, must be treated as leachate and shall be removed within 24 hours." Violations of those conditions clearly do not constitute "failing to maintain or provide information to any agency," and therefore are not subject to the protection of 44 U.S.C. § 3512.

101, 105, 109, 113, 117, 121, 125, 129, 133, 137, 141, 145, 149, 153, 157, 161, 165, 169, 173, 177, 181, 185, 189, 193, 197.) Condition I.B.4 is not a recordkeeping or reporting provision, and its requirement to conduct PCB testing does not include a requirement to maintain or provide information to EPA.

Respondent's argument that conducting PCB tests is part of the burden of paperwork, and thus presumably an integral part of maintaining or providing information, is not persuasive.

The requirement in Condition I.B.4 to conduct testing is independent from any paperwork request. The purpose of the requirement is to ensure that all waste disposed of in SLF-11 meets the PCB concentration limit of 500 ppm. That is, compliance with Condition I.B.4 provides verification to Respondent that Condition I.A of its permit is not being violated by the disposal of wastes exceeding the 500 ppm limit. The obligation to perform PCB concentration tests functions as a screening process, a basis for Respondent's decisionmaking regarding disposal⁵ and, as an assurance that the landfill is not being contaminated by environmentally unsafe levels of PCB laden wastes.

On the other hand, a requirement to maintain records of the test data or to provide it to an agency has a separate and different function. Similarly, an obligation to conduct testing solely for the purpose of providing the information to an agency has a different function from that of Condition I.B.4.

The fact that a paperwork requirement not in compliance with the PRA was involved in a PCB disposal approval does not mean that the person may violate other conditions of the approval and be protected from assessment of any penalty. As the preamble discussion of 5 C.F.R. § 1320.5(c) of the final rule promulgated in 1983 notes:

the public does not automatically become entitled to any particular benefit simply because at some point an unapproved collection of information was involved; rather, an individual otherwise entitled to a benefit may not be "subject to a penalty for failing to maintain or provide information" pursuant to the unapproved or disapproved collection of information.

48 Fed. Reg. 13666, 13672 (March 31, 1983). Thus, Respondent is entitled to the benefit of EPA's approval for PCB disposal, and must comply with all conditions of the approval, except for any requirements to maintain records or provide information to EPA which do not comply with the PRA. Respondent could avoid penalty

⁵ See infra, at 9-10.

assessment only for allegations of failure to comply with those particular collection of information obligations. In other words, Respondent would be free to disregard or ignore such provisions, but not the other provisions of the PCB disposal approval. Id.; S. Rep. No. 930, 96th Cong., 2d Sess. 52 (1980), reprinted in 1980 U.S.C.C.A.N. 6292 ("Information collection requests which do not display a current control number, or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public.").⁶

In the accelerated decision pleadings, the parties do not dispute Respondent's compliance with other conditions of the 1985 Approval. Respondent apparently maintained and submitted monthly records, collecting information including data for the 136 truckloads. The data was incomplete for 134 of those truckloads to the extent that it did not include PCB concentration.⁷ Other data for those truckloads, such as date and quantity of waste received, compaction test results, and quantity, location and date of disposal, were recorded. (Complainant's Motion at 29-32, Kraft Affidavit ¶¶ 17, 21 n. 3, exhibit 4.)

While the incomplete data is the evidence upon which Complainant relies to conclude that Respondent did not conduct testing, it is not the gravamen of the complaint. Proof that the testing had been properly performed presumably would provide a defense to liability. (See, Complainant's Motion at 28-33; Complainant's Reply to Respondent's Opposition, dated February 11, 1994, at 3.)

⁶ An EPA enforcement guidance memorandum concerning PRA reflects this, advising as follows with regard to analyzing the impact of information collection request (ICR) lapses on enforcement cases:

A. Cases which do not include violations based on failure to report or maintain records are not impacted by ICR issues and thus should not be delayed * * *

(Memorandum, dated June 11, 1993, from Michael J. Walker, Enforcement Counsel for Toxics, to Office of Regional Counsel Toxics Branch Chiefs and Regional Counsels, at 2, attached to Respondent's Opposition.) Although that memorandum states (at 6), "PCB disposal requirement cases at 40 C.F.R. § 761.60 (subpart D) are impacted by the lapse period . . . (1/31/85 to 7/31/85) . . . all PCB disposal requirement cases are impacted" they "should be evaluated using bullets A-D above," referring, inter alia, to paragraph A quoted above.

⁷ The data appears to be complete for the other two truckloads. (Complainant's Motion at 30-31, Kraft Affidavit, exhibit 4.)

In summary, Respondent was not charged in the complaint with a "failure to maintain or provide information" to an agency, and therefore the public protection provision of the PRA does not shield Respondent from liability or the imposition of a penalty in this proceeding.

B. The PCB Testing Requirement

The next issue is whether Condition I.B.4. of the 1985 Approval required PCB concentration testing from samples taken from each individual truckload, prior to accepting it for disposal at Respondent's facility. The pertinent part of Condition I.B.4 states:

Prior to accepting the PCBs identified under Condition A(1) and A(10) for disposal, the following procedures shall be followed:

a. Batch testing must be performed on representative samples (obtained utilizing the procedures designated in the "Excerpt from Waste Analysis Plan") of the contents of each transport vehicle to determine the PCB concentration. No dilution, pretreatment and/or stabilization shall have been performed on these PCBs prior to this testing. (Footnote omitted.)

Complainant's arguments are more persuasive than Respondent's with respect to the meaning of the provision. Although Condition I.B.4 would have been more explicit if it had substituted the words "taken from" [the contents of each transport vehicle] for the word "of," the condition is not ambiguous.

Because the particular wastes referenced in the complaint were not separate A(10) wastes collected and deposited onto a truck, Respondent reasoned that there is no purpose for Condition I.B.4 to include the term "batch testing" rather than simply "testing." However, it is conceivable that the condition was drafted with the words "batch testing" for clarity in the event that a transport vehicle would be loaded with PCB waste from different sources or units, such as from two locations within the same facility, or with waste material that is otherwise not homogenous.

Respondent's argument that contents of individual truckloads are consolidated in the waste stream for batch testing is flawed. Once the waste material is considered to be "contents of [a] transport vehicle," which occurs upon loading it onto a truck, it is not subsequently consolidated into the waste stream for sampling and analysis. In other words, it makes little sense to interpret the phrase "representative samples . . . of the contents of each transport vehicle" to mean taking samples prior

to the vehicles having any contents. There appears to be no reason for the provision to be drafted with those words if it was intended to allow merely taking representative samples of the waste streams to be disposed of at Respondent's facility. Therefore that language of Condition I.B.4 unambiguously refers to the testing of samples taken from the contents of each individual transport vehicle.

Respondent's waste analysis plan which encompasses all wastes including PCBs buttresses that conclusion. It provides that sampling and testing of waste material occurs not only prior to approval of the waste for shipment to one of Respondent's facilities ("initial waste evaluation"), but also upon arrival of transport vehicles at the site ("quality control of incoming waste shipments," acceptance for disposal): "Truck arrives at the gate . . . If it's a bulk load, it is checked at the scale and sent to the main laboratory to be sampled and analyzed." (Respondent's Reply, dated February 11, 1994, exhibit 1, Excerpt From Waste Analysis Plan, Figures 6.1, 6.2, 6.3; § 6.2 p. 30; § 6.3 p. 31 ¶ F and pp. 32-34 "Incoming Load" ¶¶ A, B, C, F, G; § 6.9 pp. 48-49.) Thus, acceptance of waste for disposal occurs first prior to shipment and then upon arrival at Respondent's site. Sampling and testing occur during both of those phases.

For example, samples were taken from each incoming truckload of PCB wastes and tested for structural integrity ("compaction test"). Condition I.B.5 of the 1985 Approval required these tests to be performed on samples of the contents of each transport vehicle prior to disposing of PCBs. The 136 truckloads are listed on Respondent's data sheets with the results and dates of compaction testing. For most of those truckloads, the date received, the date of the compaction test, and the date of disposal are the same. (Complainant's Answer dated January 7, 1994, at 38-39; Complainant's Motion exhibit 4; Respondent's 11/16/89 PHE exhibit 3.)

It would seem reasonable for Respondent to test samples taken from incoming trucks for PCB concentration as well, but for the two-day delay that Respondent asserts is required to obtain the PCB test results. (Respondent's Motion, attachment 1, Affidavit of Jill Knickerbocker.)

However, any impracticality and burden from such delay does not provide a defense to liability. Respondent has not claimed that it was impossible to take samples from each transport vehicle and test them for PCB concentration prior to acceptance for disposal. Complainant suggests that Respondent could have requested a variance from the requirement or at least a discussion with EPA concerning the burden of the requirement. Respondent does not deny Complainant's assertion that it has not done so. (See, Complainant's Answer, dated January 7, 1994, at 44.)

If, as Respondent asserts, knowledge of the waste stream's characteristics were sufficient, then Respondent would not require any sampling and analysis of waste loads upon arrival at the site. The 1985 Approval sets forth additional and more specific requirements than the waste analysis plan. The plan does not preclude conducting PCB concentration analysis on samples taken upon arrival at the site, and does not override the 1985 Approval requirements.⁸

Not only the waste analysis plan, but also the recordkeeping and reporting provision of the 1985 Approval is consistent with truck-by-truck PCB testing. Condition I.B.6 requires the monthly record to list "by contents of individual transport vehicles, the data designated," which includes the "PCB concentration obtained utilizing the procedures designated in Condition [I.B.4] including the date of analysis and the laboratory conducting the test." Respondent accordingly provided columns on its monthly logs for PCB concentration, date of test and laboratory, for each row, which represents data for each individual truckload of waste. (Complainant's Motion, Kraft Affidavit, exhibit 4.)

Yet, the PCB data for the 134 of the 136 truckloads was not provided for those columns. If Respondent had provided the waste stream data, the same PCB concentration value would be recorded for each truckload of the waste. Respondent mentions that this would be "pointless," because the waste profile for the waste stream provides such information. (Respondent's Opposition, dated January 7, 1994, at 5.) The fact that PCB concentration data must be recorded separately for each transport vehicle, along with the futility of repeating the same data for each vehicle, seems to suggest that separate test analyses should be obtained from each incoming truckload.

The fact that a subsequent approval for PCB disposal in SLF-12 did not require each truckload to be sampled for PCB concentration analysis does not render Condition I.B.4 arbitrary and capricious. As Complainant noted, the SLF-12 approval has detailed requirements for sampling and analysis for PCB

⁸ Section 6.9 of the waste analysis plan provides, in pertinent part:

The evaluation chemist specifies quality control procedures on incoming waste shipments that are based upon the chemical and physical properties of the waste material. Quality control of incoming waste shipments is performed to compare certain chemical and physical characteristics of the approved waste to the shipment for waste identification. . . . The technician . . . samples the waste for listed quality control items. Quality control analysis may consist of the following items:

. . .
(Respondent's Reply, dated February 11, 1994, attachment 1, p. 48.)

concentration which insure integrity of the analysis in a different, but not necessarily more lenient, way than Condition I.B.4. (Respondent's Motion, Attachment 2, p. iii-v.) For example, under the SLF-12 approval, the minimum number of samples which must be taken for waste material estimated at less than 200 tons is one per 20 tons of waste material. (*Id.* p. iv.) Under the 1985 Approval, each truckload -- which weighs approximately 20 tons -- must be sampled. (Complainant's Motion, Kraft Affidavit ¶ 17, exhibit 4.)

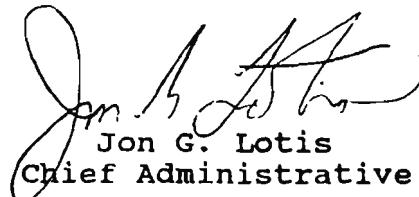
It is undisputed that samples were not taken from the contents of any of the 136 truckloads and analyzed for PCB concentration prior to disposal. Respondent admits, "[w]hile, of course, Respondent has not produced and cannot produce data to demonstrate that it tested a sample removed from each truck, Respondent . . . has provided EPA with results of the testing that was performed on these wastestreams" (Respondent's Opposition, dated January 7, 1997, at 2, 7).

It is concluded that Respondent did not comply with the requirements of Condition I.B.4 as alleged in the complaint. Such noncompliance constitutes failure or refusal to comply with an order issued under § 6(e) of TSCA, 15 U.S.C. § 2605, and is prohibited under section 15(1) of TSCA, 15 U.S.C. § 2614. Accordingly, Complainant is entitled to judgment as a matter of law on the issue of Respondent's liability for the violations alleged in the complaint in Docket No. II-TSCA-PCB-88-0204.

The issues of the amount of civil penalty to assess for these violations, as well as all issues arising from the complaint in Docket No. II-TSCA-PCB-88-0205, remain to be resolved.

O R D E R

1. Respondent's Motion for Accelerated Decision with respect to the complaint in Docket No. II-PCB-88-0204 is DENIED.
2. Complainant's Motion for Partial Accelerated Decision is GRANTED on the issue of Respondent's liability for the violations charged in the complaint in Docket No. II-TSCA-PCB-88-0204.
3. The parties shall in good faith attempt to negotiate a settlement with respect to the civil penalty to assess for the violations found herein. The parties shall file a joint status report on the progress of settlement discussions on or before October 21, 1994.



Jon G. Lotis
Acting Chief Administrative Law Judge

Dated: September 7, 1994
Washington D.C.

IN THE MATTER OF SCA CHEMICAL SERVICES, INC. AND
CWM CHEMICAL SERVICES, Respondent
Docket Nos. II TSCA-PCB-88-0205 and
II TSCA-PCB-88-0204 (Consolidated)

CERTIFICATE OF SERVICE

I certify that the foregoing Order on Cross Motions for Accelerated Decision, dated September 7, 1994, was mailed in the following manner to the addressees listed below:

Original by Regular Mail to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region II
26 Federal Plaza
Room 437
New York, NY 10278

Copy by Certified Mail, Return
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Dated: September 7, 1994
Washington, D.C.