

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of }
Petroleum and Power Maintenance } Docket No. TSCA V-C-189
(PPM), Inc., }
Respondent } A7: S4

Toxic Substances Control Act - Rules of Practice - Default Orders -
Where Respondent failed to supply information directed to be furnished
by the ALJ in a prehearing exchange and failed to respond to an order to
show cause why a default order should not be entered, Respondent was in
default pursuant to 40 CFR 22.17(a), Complainant's prehearing exchange
was sufficient to make a prima facie case in its favor, and an order was
entered finding violations of Act and assessing full amount of penalty
proposed in complaint.

Appearance for Complainant: Lisa S. Seglin
Assistant Regional Counsel
EPA, Region V
Chicago, Illinois

Appearance for Respondent: Larry A. Ring
President
Petroleum and Power Maintenance (PPM),
Inc.
Canton, Ohio

Default Order

This is a proceeding under § 16(a) of the Toxic Substance Control
Act (TSCA), 15 U.S.C. 2615(a), instituted by a complaint filed by the
Director of the Waste Management Division, Region V, United States
Environmental Protection Agency, against Respondent, Petroleum and

Power Maintenance, Inc. (PPM), on January 18, 1984. PPM filed an answer to the complaint and request for hearing on April 6, 1984. The matter was referred to the ALJ by order of designation on April 24, 1984. By letter, dated May 7, 1984, the ALJ directed counsel for Complainant to file a statement regarding settlement by June 15, 1984, and an exchange of prehearing information by both parties on or before June 29, 1984, if the case was not settled. On June 15, 1984, counsel for Complainant filed a statement reflecting that the parties had not reached an agreement to settle the matter.

As part of the prehearing exchange, the parties were required to submit a list of witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony and copies of all documents and exhibits intended to be introduced into evidence. Additionally, the Complainant was required to submit summary evidence supporting its allegations and PPM was required to explain its denial of Complainant's allegations. The Complainant fully complied with this directive on June 29, 1984, but PPM made no response.

On July 24, 1984, the ALJ issued an order directing PPM to show cause on or before August 17, 1984, why a default order should not be entered for PPM's failure to comply with the ALJ's directive. PPM did not reply to the order to show cause.^{1/} On August 21, 1984, the Complainant filed a

^{1/} The order was sent certified mail, return receipt requested, but was returned as unclaimed on August 21, 1984. A copy of the order was then mailed to Respondent by regular mail on August 21, 1984. The envelope containing the order has not been returned and is presumed to have been received by PPM.

motion for default judgment, which was served upon the PPM by certified mail.^{2/} The documents and exhibits submitted by Complainant on June 29, 1984, establish a prima facie case against the Respondent, that is, that PPM has violated Federal regulations regarding recordkeeping and storage required for polychlorinated biphenyls (PCBs) set forth in 40 CFR Part 761, promulgated under § 6 of TSCA, thereby violating § 15 of TSCA, 15 U.S.C. 2614. Said documents and exhibits are incorporated into and made a part of the record of this proceeding.

By reason of the foregoing, Respondent is found to be in default pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR 22.17. Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent as to such factual allegations.

Findings of Fact

1. The Respondent, PPM, is a Delaware corporation, which has a place of business in Louisville, Ohio.
2. On February 25, 1983, a representative of U.S. EPA conducted an inspection of Respondent's Louisville, Ohio facility.
3. At the time of inspection, PPM maintained a PCB storage area on the east end of the feed mill.

^{2/} In a telecon on September 12, 1984, counsel for Complainant stated the motion had been returned unclaimed on September 11, 1984 and that the secretary to PPM's president had stated the firm had filed for bankruptcy and was no longer accepting mail. It is concluded that the motion and the order to show cause have been available to PPM for more than the 20-day period specified by 40 CFR 22.17(a).

4. The regulation, 40 CFR 761.65(b), requires that areas used for storage of PCBs and PCB items designated for disposal have an adequate roof and walls, impervious floor, continuous 6-inch-high curbing, and meet the minimum containment volume requirements.
5. At the time of inspection, PPM had stored numerous drums of PCB liquids, PCB solids, and empty PCB-contaminated drums in an area which did not have an impervious floor and continuous curbing.
6. 40 CFR 761.65(c)(5) requires all PCB articles and PCB containers in storage be checked for leaks at least once every 30 days.
7. Respondent's drums of PCB liquids, PCB solids, and PCB-contaminated drums are "PCB Containers" and "PCB Items" within the meaning of 40 CFR 761.3(v) and (x).
8. At the time of inspection, PPM had not conducted monthly inspections for leaks in the storage area.
9. 40 CFR 761.65(c)(8) requires that PCB articles and PCB containers shall be dated when they are placed in storage.
10. At the time of inspection, PPM's PCB containers, located in the PCB storage area, were not dated as to when they were placed in storage.
11. 40 CFR 761.180(b) requires that each owner or operator of a facility used for the storage or disposal of PCBs and PCB items prepare and maintain a document which includes: the date when any PCBs and PCB items were received by the facility during the previous calendar year for storage or disposal; the date when any PCBs and PCB items were disposed of at the disposal facility or transferred to another disposal or storage facility; a summary of the total weight in kilograms of PCBs and PCB articles in containers and the total weight of PCBs

contained in PCB transformers that have been received, transferred, or retained at the facility during the previous calendar year.

12. At the time of inspection, there were 78 55-gallon drums containing PCB liquids, PCB solids, and empty PCB-contaminated drums located in Respondent's storage area.
13. At the time of inspection, PPM had records for only 56 55-gallon drums located in storage.

Conclusions

By reason of the facts set forth in the findings above, PPM failed to comply with Federal regulations governing PCBs as follows: Respondent failed to properly store, inspect and date PCB containers in violation of § 15 TSCA, 15 U.S.C. 2614, and 40 CFR 761.65(b), (c)(5) and (c)8; Respondent failed to prepare and to maintain complete annual PCB documents in violation of § 15 of TSCA, 15 U.S.C. 2614, and 40 CFR 761.180(b).

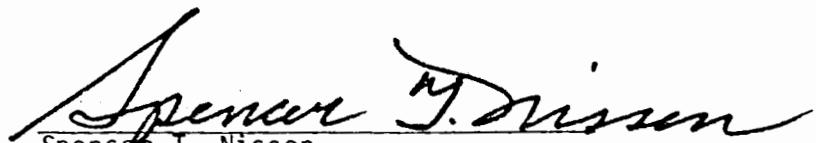
Pursuant to 40 CFR 22.17, the penalty proposed to be assessed in the complaint, \$20,000, shall become due and payable by Respondent, PPM, without further proceedings upon the issuance of this default order.

Order

Pursuant to § 16(a) of TSCA, 15 U.S.C. 2615(a), a civil penalty of \$20,000 is hereby assessed against Respondent, PPM, for violations of the Act found herein.

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order upon Respondent, PPM, by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America.^{3/}

Dated this 14th day of September 1984.



Spencer T. Nissen
Administrative Law Judge

^{3/} Pursuant to 40 CFR 22.17(b), this default order constitutes an initial decision, which shall become final unless appealed in accordance with 40 CFR 22.30 or unless the Administrator elects, sua sponte, to review the same as therein provided.