

5/8/96

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Dominick's Finer Foods, Inc., ) Docket No. EPCRA 007-95  
 )  
Respondent . )

ORDER GRANTING IN PART AND DENYING IN PART  
COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION

The U.S. Environmental Protection Agency ("EPA") seeks accelerated decision as to liability against Dominick's Finer Foods, Inc. ("Dominick's"), for violations stemming from Dominick's alleged release of anhydrous ammonia (Counts 1 through 4), and for failure to submit a Material Safety Data Sheet ("MSDS") and Emergency and Hazardous Chemical Inventory Forms (Counts 5 through 11).

Dominick's does not contest liability as to Counts 5 through 11. Accordingly, EPA's motion is granted as to those Counts. Dominick's does, however, contest liability for the alleged ammonia release. For the reasons set forth below, EPA's motion is denied as to Counts 1 through 4.

In a motion for accelerated decision, the moving party has the burden of establishing that there is no genuine issue as to any material fact. 40 C.F.R. § 22.40. Inferences drawn from the evidence must be viewed in a light most favorable to the party opposing the motion. See, e.g., Behrens v. Pelletier, 516 U.S. \_\_\_, 116 S. Ct. 834 (1996).

Here, EPA falls short of meeting its burden. Through the affidavits of Gregory J. Fata, Charles M. Bugnits, and Richard Majewski, dated March 14, 1996, Dominick's has placed directly in issue the question as to whether a reportable release of anhydrous ammonia occurred as alleged by EPA. As such, there exists a genuine issue of material fact to be resolved. Accordingly, EPA's motion is denied as to Counts 1 through 4.<sup>1</sup>

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<sup>1</sup> Given this holding, there is no need to rule on Dominick's request to file a surrepley.

ORDER

Accordingly, EPA's Motion for Partial Accelerated Decision on Liability is granted as to Counts 5 through 11, and denied as to Counts 1 through 4.

Carl C. Charneski  
Carl C. Charneski  
Administrative Law Judge

Issued: May 8, 1996  
Washington, D.C.

In the Matter of DOMINICK'S FINER FOODS, INC., Respondent  
Docket No. [CERCLA]/EPCRA-007-95

Certificate of Service

I certify that the foregoing ORDER GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION, dated May 8, 1996, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson  
Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

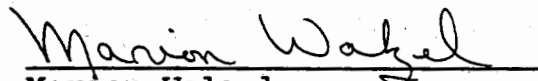
Copy by Regular Mail to:

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\_\_\_\_\_  
Marion Walzel  
Legal Staff Assistant

Dated: May 8, 1996