UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Scott Manufacturing, Inc.	)	**Docket No. EPCRA-3-99-0001**
	)	
Respondent	)	

DEFAULT ORDER and INITIAL DECISION

Syllabus

Pursuant to the Emergency Planning and Community Right-to-Know Act ("EPCRA") §325(c), 42 U.S.C. §11045, the Respondent, Scott Manufacturing, Inc., is assessed a civil penalty of $25,000 for five violations of EPCRA §313(a), 42 U.S.C. §11023(a), failing to file required annual toxic chemical release forms. The Respondent defaulted in this proceeding by failing to comply with a prehearing order requiring a prehearing information exchange.

Proceedings

The Region 3 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") filed an administrative Complaint against Scott Manufacturing, Inc., of Ferrum, Virginia (the "Respondent" or "Scott") on January 4, 1999. The Complaint alleged that Scott committed five violations of EPCRA §313(a) by failing to file five required annual toxic chemical release forms for chemicals used at its cabinet manufacturing facility in Ferrum, Virginia. The Complaint proposed assessment of a civil penalty of $25,000 from Respondent, on the basis of $5000 for each of the five alleged violations.

The Respondent filed its Answer on February 1, 1999. In the Answer, Scott admitted it did not file the forms, but alleged that for two of the counts, filing was not required because the amount of chemical used was below the threshold. The Respondent also disputed the amount of chemicals that the Complaint alleged it used, and stated it was now in compliance with EPCRA reporting requirements.

The parties engaged in this office's alternative dispute resolution program for several months, but failed to reach a settlement. The alternative dispute resolution process terminated on November 1, 1999. The Chief Judge then designated this case to the undersigned Administrative Law Judge for litigation.

I issued a Prehearing Order on November 4, 1999 that established a schedule for the parties to submit their prehearing information exchanges as required by 40 CFR §22.19(a). The Complainant submitted its prehearing exchange as scheduled on January 6, 2000. The Respondent was scheduled to submit its prehearing exchange by January 27, 2000. However, the Respondent has never filed any prehearing exchange to date.

On March 24, 2000, I issued an Order to Show Cause why the Respondent should not be found in default. This directed Scott to explain why it had not complied with the Prehearing Order, and allowed Scott to submit a proposed prehearing exchange. Scott has not responded to the Order to Show Cause to date. On May 1, 2000, the Region filed a motion for a default, seeking a determination of liability and assessment of the full $25,000 civil penalty against Scott.

Respondent's Default

The Respondent defaulted by failing to comply with the information exchange requirements of the Prehearing Order. 40 CFR §22.17(a). When given a chance to remedy its default, Scott further failed to respond to the Order to Show Cause. In the motion for a default, counsel for Complainant states that he personally contacted the Respondent's President and representative, John Harrison, about the need to file a prehearing exchange. Hence, the record indicates that Scott was fully aware of its obligations in this proceeding, yet chose to ignore them.

Respondent's default constitutes an admission of all facts alleged in the Complaint, and a waiver of Respondent's right to contest such factual allegations. The record of this proceeding consists of the Complaint, the Answer, the Complainant's prehearing exchange, and motion for a default. There is nothing in that record to show why a default order should not be issued, or why the proposed relief is inappropriate. Therefore, pursuant to 40 CFR §22.17(c), this default order will resolve all issues in this proceeding, and order the relief sought in the Complaint.

Findings of Fact

1. The Respondent, Scott Manufacturing, Inc., is a Virginia corporation that operates a kitchen and bath cabinet manufacturing facility in Ferrum, Virginia. Scott employed about 50 employees during 1995 and 1996. At that time, Respondent's facility had a primary Standard Industrial Classification ("SIC") code of 24. According to a Dun & Bradstreet report, Scott's sales in 1998 were approximately $3,000,000.

2. The Region conducted an inspection of Respondent's facility on April 29, 1998, for the purpose of determining Scott's compliance with the reporting requirements of EPCRA §313. The Respondent presented documents to the Region indicating the amounts of certain chemicals it used at its facility in 1994, 1995, and 1996.

3. In 1994 Scott used 25,495 pounds of toluene at its facility. In 1995, it used 31,234 pounds of toluene. In 1996, it used 43,031 pounds of toluene. Scott did not file annual toxic chemical release forms, known as "Form Rs," with the EPA for its use of toluene in 1994, 1995, and 1996 (or the alternative threshold report, "Form A") by their respective due dates the following years (July 1, 1995; August 1, 1996; and September 8, 1997).

4. In 1996 Scott used 13,167 pounds of n-butyl alcohol at its facility. Scott did not file a Form R or Form A for its use of n-butyl alcohol in 1996 by the due date of September 8, 1997.

5. In 1996 Scott used 13,852 pounds of methyl isobutyl ketone at its facility. Scott did not file a Form R or Form A for its use of methyl isobutyl ketone in 1996 by its due date of September 8, 1997.

Discussion

By defaulting, Scott has waived its right to contest the factual allegations in the Complaint. The Complaint sets forth the jurisdictional elements that render Scott's facility covered by the EPCRA §313 reporting requirements. Scott had 10 or more employees and its facility was in SIC Code 24, between codes 20 and 39, as required by EPCRA §313(b)(1)(A). The three subject chemicals - toluene, n-butyl alcohol, and methyl isobutyl ketone – are listed toxic chemicals pursuant to EPCRA §313(c) and 40 CFR §372.25(b). The threshold reporting amount for such chemicals used at a facility is 10,000 pounds, pursuant to EPCRA §313(f)(1)(A). As indicated above in the Findings of Fact, Scott was therefore required to comply with the EPCRA §313 reporting requirements for its use of these chemicals with respect to the five charges alleged in the Complaint.

EPCRA §313(a) requires that the forms reporting the use of listed toxic chemicals in excess of the threshold amount in each calendar year be submitted to the Administrator of the EPA and to

the appropriate State official by July 1 of the following year.[1] Scott did not submit Form Rs by the due date for the five occasions alleged in the Complaint that it exceeded the threshold annual use of listed toxic chemicals.[2] Therefore, Scott is liable for the five alleged violations of EPCRA §313(a) alleged in the Complaint, and is subject to assessment of a civil penalty pursuant to EPCRA §325(c), 42 U.S.C. §11045(c).

The Region proposed assessment of a civil penalty of $25,000 for these violations, on the basis of $5000 for each of the five violations. EPCRA 325(c)(1) provides that a person who violates the reporting requirements of EPCRA §313 shall be liable for a civil penalty of up to $25,000 per violation. The Region followed the guidelines in the Enforcement Response Policy for Section 313 of EPCRA, issued by the EPA in August 10, 1992 (the "ERP"), in calculating its proposed penalty in this case. Under the ERP, these violations, the failure to report in a timely manner, were determined to be in "circumstance level 1." The Region determined the "extent level" of these violations as level "C," based on the amount of toxic chemicals used and the size of the Respondent's business. The ERP matrix (p. 11) assesses a penalty of $5000 for each such violation. In addition, the Region requested documentation from Respondent in support of a claimed inability to pay the proposed penalty. Scott never supplied such documentation.

Where a respondent defaults, the judge must order the relief requested in the complaint unless it is clearly inconsistent with the record of the proceeding or the relevant statute. 40 CFR §22.17(c). In this case, there is nothing in the record indicating that the relief sought is inconsistent with the record or EPCRA. To the contrary, the relief sought is completely appropriate. The penalty of $5000 is at the lower end of the spectrum of possible penalties for failure to report. This is appropriate under the ERP where the amounts of chemicals used were less than ten times the 10,000 pound threshold amount, as here. Therefore, the proposed penalty of $25,000 will be assessed against the Respondent in this proceeding.

Conclusions of Law

1. The Respondent, Scott Manufacturing, Inc., committed five violations of EPCRA §313(a), 42 U.S.C. §11023(a), by failing to

[1] In 1996 and 1997, the due dates were extended administratively.

[2] The record does not indicate when, if ever, Scott subsequently submitted the required forms.

timely file toxic chemical release forms for its use of toluene in 1994, 1995, and 1996; n-butyl alcohol in 1996; and methyl isobutyl ketone in 1996.

2. Pursuant to EPCRA §325(c)(1), an appropriate civil penalty for these violations is $25,000.

Order

1. Respondent, Scott Manufacturing, Inc., is assessed a civil penalty of $25,000.

2. Payment of the full amount of this civil penalty shall be made within 30 days of the date this order becomes final (generally 75 days after service of the order as indicated in ¶4 below) by submitting a certified or cashier's check in the amount of $25,000, payable to the Treasurer, United States of America, and mailed to USEPA Region 3, P.O. Box 360515, Pittsburgh, PA 15251. A transmittal letter identifying the subject case and docket number, and Respondent's name and address, must accompany the payment.

3. If Respondents fail to pay the penalty within the prescribed statutory time period, after entry of the final order, then interest on the penalty may also be assessed.

4. Pursuant to 40 CFR §22.27(c), this Default Order and Initial Decision shall become the final order of the Agency 45 days after its service on the parties unless a party moves to set aside this default order, a party appeals this decision to the Environmental Appeals Board, or the Environmental Appeals Board elects to review this decision on its own initiative.

Dated: May 15, 2000
Washington, D.C.

Andrew S. Pearlstein
Administrative Law Judge