

3/1/94

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
R & F ALLOY WIRES, INC.,) Docket No. II-EPCRA-93-0111
)
Respondent)

ORDER GRANTING MOTION FOR PARTIAL
ACCELERATED DECISION ON LIABILITY

For the reasons stated in its motion served January 14, 1994, complainant, pursuant to 40 C.F.R. § 22.20(a), seeks an order granting its motion concerning respondent's liability. In the eleven-count complaint, respondent is charged with violations of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023 and 40 C.F.R. § 372.30, for failure to report to the U.S. Environmental Protection Agency and the State of New Jersey, by the statutory deadline, its otherwise use and processing, in amounts exceeding the reporting threshold of listed toxic chemicals during the calendar years 1987, 1988, 1989 and 1990.

In support of the motion, complainant submitted a comprehensive brief consisting of 22 pages, plus 20 exhibits. Respondent's response consisted of two sentences: "Please be advised that the Respondent does not contest the liability issue with respect to the above-referenced matter. However, Respondent

reserves its right to contest any and all proposed civil penalties." (emphasis supplied).

The pertinent section of the Consolidated Rules of Practice, 40 C.F.R. § 22.20, provides that an accelerated decision may be rendered if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or part of a proceeding. Complainant established persuasively that genuine issues of material fact did not exist in this matter. (Mot. at 15-19.) Standing alone, that would be sufficient to grant the motion. Most telling, however, is respondent's response to the motion where it admitted liability. This admission, by itself, would also be sufficient to grant the motion.

It is concluded that there exists no genuine issue of material fact concerning liability in this matter; and that respondent has violated section 313 of EPCRA, and 40 C.F.R. § 372.30, as charged in the complaint. However, respondent is entitled to a hearing on the issue of the amount of civil penalty to be assessed.

IT IS ORDERED that:

1. Complainant's motion for an accelerated decision concerning the issue of liability be **GRANTED**.

2. The parties engage in good faith settlement negotiations with regard to the civil penalty amount sought in this matter.

3. Complainant shall submit a status report to the undersigned no later than April 8, 1994 and bimonthly after that, as stated on page 4, paragraph 10 of the undersigned's Notice and Order of May 13, 1993.

Frank W. Vanderheyden

Frank W. Vanderheyden
Administrative Law Judge

Dated: *March 1, 1994*

IN THE MATTER OF R & F ALLOY WIRES, INC., Respondent,
Docket No. II-EPCRA-93-0111

Certificate of Service

I certify that the foregoing Order, dated 3/1/94, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region II
Jacob K. Javits Federal Building
New York, NY 10278-0012

Copy by Regular Mail to:

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Marion Walzel
Marion Walzel
Legal Staff Assistant

Dated: March 1, 1994