

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE REGIONAL ADMINISTRATOR

07-25 A 8:29

IN RE:)
)
Carolina Transformer Co.,) TSCA IV-84-0002
Inc.)
)
Respondent)
)
)

DEFAULT ORDER

Preliminary Statement

This is a proceeding under Section 16(a) of the Toxic Substances Control Act (15 U.S.C. §2601 et. seq.), instituted by a Complaint filed by the Director, Air and Waste Management Division, Region IV. United States Environmental Protection Agency, which was served upon Respondent, March 7, 1984. The Respondent filed an Answer dated March 26, 1984. The matter was referred to the undersigned by Order dated April 24, 1984. A pre-hearing letter was issued on May 7, 1984 requiring the parties to submit certain information by June 12, 1984 with replies due on June 26, 1984.

A Motion for Extension of Time was filed by the Complainant in order that Respondent could forward financial data, which might impact prospects for settlement. This motion was granted on May 31, 1984, and a final filing date of July 12, 1984 was ordered with replies to be filed no later than July 26, 1984. On June 20, 1984, Counsel for Respondent waived the right to a hearing in this matter and Complainant filed a

Status Report on June 29, 1984, stating that Respondent's counsel had further advised that Respondent does not intend to file prehearing papers and would "stand on its Answer alone." July 10, 1984, Complainant then filed a Motion for Stay of the Prehearing Exchange, scheduled to be filed July 12, in that Complainant anticipated filing a Motion for an Accelerated Decision in the near future. The stay was granted on July 11, 1984. Complainant then filed, on July 13, 1984, a Motion to Amend the Complaint reducing the proposed penalty by \$4,000 and requesting that Respondent's original Answer be applied to the Complaint. (Complainant's Errata Sheet was filed July 16, 1984, correcting page 3 of the First Amended Complaint.) Such Motion was granted on July 16, 1984. Complainant's Motion for an Accelerated Decision with supporting exhibits was filed August 7, 1984 and received by Respondent on August 9, 1984. Respondent has made no reply to the Motion for an Accelerated Decision. Rather than rule on this Motion, I chose to treat it as a Motion for Default Judgment in that Respondent's notice of July 21, 1984 constitutes an anticipatory breach of my prehearing order and, indeed, no correspondence or documents of any kind have been filed by Respondent since the June 21, 1984 notice of waiver of right to an administrative hearing.

All of the above documents are hereby incorporated into and made a part of the record in this proceeding.

By reason of the foregoing, the Respondent is hereby found to be in default pursuant to the Consolidated Rules of Practice as issued under the Act (40 C.F.R. §22.17). Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent. (Respondent also filed a waiver of its right to a hearing on June 29, 1984.)

Findings of Fact

1. Respondent is a corporation doing business in the State of North Carolina.
2. Respondent is included in the term "Person" as defined in 40 C.F.R. §761.3(aa) and as such is subject to the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. and the regulations promulgated thereunder, 40 C.F.R. Part 761 (July 1, 1983).
3. On or about April 26-27, 1983, an inspection of Respondent's facility was performed by an authorized employee of EPA pursuant to Section 11 of TSCA.
4. At the time of the aforementioned inspection, Respondent collected waste oils from transformers and stored them in a bulk storage tank. The storage tank contained approximately 1500 gallons of liquid of which 2 ounces were obtained as a sample. The sample, identified as TS235114, revealed upon analysis 72 ppm PCBs.

5. The storage tank which was unmarked is a PCB container as defined at 40 C.F.R. §761.3(v) and 40 C.F.R. §761.1(b). Respondent violated 40 C.F.R. §761.40 (a) (1) by failing to mark the PCB container.

6. There was no secondary containment surrounding the storage tank as described in 40 C.F.R. §112.7(c)(1) and 40 C.F.R. §112.7(e)(2). Respondent violated 40 C.F.R. §761.65(c)(7)(ii) by improperly storing PCBs.

7. A drained 250 gallon capacity Westinghouse transformer, serial number 6356153, was stored at the I-95 and Middle Road facility. A sample of residual oil was collected and identified as TS235118. The sample revealed upon analysis 60 ppm PCBs. A 9 gallon capacity Allis Chalmers ACP transformer, serial number 29992349, was also stored at the I-95 and Middle Road facility. A sample of oil was collected and identified as TS235115. The sample revealed upon analysis 62 ppm PCBs. The two transformers are PCB Articles as defined at 40 C.F.R. §761.3(t). Respondent violated 40 C.F.R. §761.80(a) by failing to maintain records on the PCB container and PCB articles.

Conclusions

By reason of the facts set forth in the above, the Respondent failed to (1) properly mark a PCB container, as required by 40 C.F.R. §761.40(a)(1); (2) failed to properly store PCBs as required by 40 C.F.R. §761.65(c)(7)(ii); and (3) failed to

maintain records on the PCB articles and PCB container as required by 40 C.F.R. 761.80(a). These are violations of Section 6(e) of TSCA [15 U.S.C. §2605(e)].


Pursuant to Section 22.17 of the Consolidated Rules of Practice, the penalty proposed to be assessed in the First Amended Complaint, \$26,000.00, shall become due and payable by Respondent, Carolina Transformer Co., Inc., without further proceedings.

ORDER

Pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, a civil penalty of \$26,000.00 is hereby assessed against Respondent, Carolina Transformer Co., Inc. 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, Carolina Transformer Co., Inc.,
by forwarding to the Regional Hearing Clerk a cashier's check
or certified check payable to the United States of America in
such amount.^{1/}



Thomas B. Yost
Administrative Law Judge

Dated: SEPT. 19, 1984

^{1/} See Sec. 22.17 of the Consolidated Rules of Practice
with respect to effect and consequences of this Default Order.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

IN RE

CAROLINA TRANSFORMER CO., INC.

Respondent

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TSCA-IV-84-0002

ERRATA TO DEFAULT ORDER

84 SEP 21 P 2:01
RECEIVED
REGIONAL HEARING CLERK
ATLANTA, GEORGIA

Enclosed is a corrected copy of Page 5 of the Default Order issued on September 19, 1984 for the above-captioned case. It is requested that this corrected page be inserted into the Default Order and that the original Page 5 be discarded.

Sandra A. Beck
Sandra A. Beck
Regional Hearing Clerk

DATED: September 20, 1984

Service of this Errata accomplished in the same manner as the Certification of Service (copy attached) dated this 20th day of September 1984.

maintain records on the PCB articles and PCB container as required by 40 C.F.R. 761.80(a). These are violations of Section 6(e) of TSCA [15 U.S.C. §2605(e)].

Pursuant to Section 22.17 of the Consolidated Rules of Practice, the penalty proposed to be assessed in the First Amended Complaint, \$26,000.00, shall become due and payable by Respondent, Carolina Transformer Co., Inc., without further proceedings.

ORDER

Pursuant to Section 16(a) of the Toxic Substances Control Act, a civil penalty of \$26,000.00 is hereby assessed against Respondent, Carolina Transformer Co., Inc. 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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
THE ADMINISTRATOR


IN RE)	
)	TSCA-IV-84-0002
CAROLINA TRANSFORMER CO., INC.)	
)	ORDER
Respondent)	

CERTIFICATION OF SERVICE

In accordance with 40 C.F.R. §§ 22.17(b) and 22.27, I hereby certify that the original of the foregoing Default Order issued by Honorable Thomas B. Yost, along with the entire file of this proceeding was served on the Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, by certified mail return receipt requested; that a true and correct copy was hand-delivered to counsel for Complainant, Donna Matthews Post, Office of Regional Counsel, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365; and that a true and correct copy was served on counsel for Respondent, Ronald E. Winfrey, and Stephen J. O'Connor, Rose, Rand, Ray, Winfrey & Gregory, 214 Mason Street, Post Office Box 1239, Fayetteville, North Carolina 28302-1239, by certified mail return receipt requested.

In no appeals are made within 20 days after service of this order, and the Administrator does not elect to review it, then 45 days after receipt this will become the Final Decision of the Agency (40 CFR §§ 22.27(c) and 22.30).

Dated in Atlanta, Georgia this 20th day of September 1984.


Sandra A. Beck
Regional Hearing Clerk