UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of National Railroad Passenger Corporation (AMTRAK) Respondent	)	TSCA Docket No. VI-24C

INITIAL DECISION

This is a proceeding under the Toxic Substances Control Act ("TSCA"), Section 16(a), 15 U.S.C. 2615(a), for the assessment of civil penalties for violations of a rule promulgated under Section 6(e) of the Act, 15 U.S.C. 2605(e), governing the manufacturing, processing, distribution, and use of polychlorinated biphenyls ("PCB rule"), 40 CFR, Part 761.[1/] The proceeding was instituted by a complaint issued on June 30, 1980, by the United States Environmental Protection Agency ("EPA") charging the National Railroad Passenger Corporation ("Amtrak") with violations of

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1/ Section 16(a) of the Act (15 U.S.C. 2615(a), provides in part, as follows:

> (a) Civil. (1) Any person who violates a provision of section 15 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subjection, constitute a separate violation of section 15.

Section 15 of the Act, 15 U.S.C. 2614, provides, in pertinent part, that it shall be unlawful for any person to "(1) fail or refuse to comply with . . .(B) any requirement prescribed by section . . . 6, or (c) any rule promulgated under section . . . 6" or to "(3) fail or refuse to (A) establish or maintain records . . . as required by this Act or a rule promulgated thereunder."

the marking, disposal, and record keeping requirements of the PCB rule, 40 CFR 761.20(c)(1), 761.10(a), 761.45(a). Assessment of a penalty in the amount of $21,000 is proposed.

Amtrak answered and denied the violations and pursuant to the rules of practice governing these proceedings, 40 CFR, Part 22, requested a hearing on the charges.

A hearing was held in New Orleans, Louisiana on January 7, 1981. Following the hearing the parties submitted briefs on the legal and factual issues. On consideration of the entire record and the briefs submitted by the parties, a penalty of $3,000.00 is assessed. All proposed findings of fact inconsistent with this decision are rejected.

Findings of Fact

1. Amtrak, since June of 1977, has operated the New Orleans Union Passenger Terminal located in New Orleans, Louisiana ("New Orleans Terminal"). Transcript ("Tr.") 59. The facility itself is owned by the City of New Orleans. Administrative Law Judge ("ALJ") Ex. 1.

2. On August 15, 1979, and September 6, 1979, Richard K. Crawford, an EPA inspector, inspected the premises of the New Orleans Terminal. A written notice of inspection was issued at the commencement of the inspection. ALJ Ex. 1; Tr. 9.

3. Mr. Crawford inspected twenty-nine transformers on the premises of the New Orleans Terminal. Complainant's Ex. 1; Tr. 16.[2/]

2/ There were, however, 35 transformers on the premises in all. See Respondent's Exs. 13 and 14. Respondent's Exhibits are actually marked as "Defendant's Exhibits," but are referred to in the transcript as "Respondent's Exhibits," and will be so referred to in this decision.

4. Three of the transformers inspected, Transformers 1A, 1B and 1C, identified as Transformer Bank 1 for the baggage building, had manufacturer's labels disclosing that they contained Inerteen, a trade name for PCB dielectric fluid. Tr. 70; Complainant's Ex. 1, Table 1. Each transformer contained about 83 fluid gallons of dielectric fluid. The total of 249 fluid gallons of PCB material is equivalent to 1100 kilograms of PCB by weight. ALJ Ex. 1; Tr. 31.

5. The other transformers on the premises either had labels showing that they contained a mineral oil dielectric fluid, or in two instances, had no information at all as to the type of dielectric fluid they contained. Complainant's Ex. 1.

6. Several of the transformers labelled as containing a mineral oil dielectric were observed to be leaking. Samples taken from these transformers and tested disclosed the presence of over 500 parts per million ("ppm") PCB in the mineral oil contained in Amtrak Transformer No. 3C. Complainant's Exs. 1 and 3; Respondent's Ex. 1.[3/]

3/ EPA's test showed 21,000 ppm PCB. Complainant's Ex. 3A. Amtrak's test showed 20,000 ppm. Respondent's Ex. 1. EPA's tests also showed PCB present in excess of 500 ppm in the mineral oil sample taken from Amtrak Transformer No. 7, which was also observed to be leaking. Complainant's Exs. 1 and 3B. Tests performed by Shilstone Engineering Testing Laboratory, Inc., for Amtrak on a duplicate sample taken at the same time as EPA's sample disclosed PCB present only in the amount of 14 ppm. Respondent's Ex. 1. The discrepancy in test results would appear to be far greater than what could simply be accounted for by random variations inherent in the testing itself. Since there is no evidence either as to the manner in which the samples were tested or as to any other factor which would permit an evaluation of which test was the more reliable, and since EPA has the burden of proving a violation (40 CFR 22.24), I must conclude that no violation has been established with respect to this transformer.

7. Under the PCB rule, the three Inerteen transformers were "PCB Transformers" and were required to be marked with the prescribed large PCB Mark (Mark M_L). 40 CFR 761.20.[4/]

8. None of the three Inerteen Transformers were marked with the Mark M_L at the time of inspection. ALJ Ex. 1.

9. At the time of the inspections no action had been taken by Amtrak to clean up or remove the leakage observed on Transformer No. 3C, which had been found to contain over 500 ppm PCB. Tr. 14.

10. The failure to clean up or remove the leakage of the dielectric fluid containing in excess of 500 ppm PCB constituted a disposal of PCB not in accordance with the requirements of the PCB rule. 40 CFR 761.10(a).

11. The PCB rule requires that an owner or operator of a facility using or storing one or more "PCB Transformers" (A PCB Transformer being defined as any transformer containing over 500 ppm PCB or greater) must develop and maintain records with respect to such transformers. 40 CFR 761.45.

4/ The PCB rule actually requires the M_L Mark on all transformers containing 500 ppm or greater PCB. Transformers labelled as containing a mineral oil dielectric, however, are assumed to contain less than 500 ppm PCB, unless there is reason to believe otherwise. See explanation of PCB rule, 44 Fed. Reg. 31531 (May 31, 1979); Tr. 44. The EPA does not contend that Amtrak should have known that Transformer No. 3C contained over 500 ppm PCB prior to its being tested as a result of the EPA's inspection, and consequently, does not claim that Amtrak violated the marking requirements by not having Transformer No. 3C marked at the time of the inspection. After the transformer was discovered to contain over 500 ppm PCB, it was properly marked by Amtrak. Tr. 75.

12. At the time of the inspections, Amtrak maintained no records with respect to the PCB Transformers that were located at the New Orleans Terminal. ALJ Ex. 1.

Discussion and Conclusions

The complaint charges Amtrak with violating the marking, disposal and recordkeeping requirements of the PCB rule.

With respect to the marking violation, Amtrak argues that the record does not support EPA's claim that Inerteen is a PCB, since the dielectric fluid in the Inerteen Transformers was never tested for its PCB content and Mr. Anderson, on whose testimony the EPA relies, was not shown to have sufficient knowledge about chemical substances to make him competent to testify about the chemical nature of Inerteen. At the time of the inspections it is true that Mr. Anderson said that he was unfamiliar with the term Inerteen. But that appeared to be no longer true by the time he testified. He was unequivocal in testifying in response to a question from Amtrak's counsel that he was familiar with the term Inerteen and that it meant a PCB.[5/] Mr. Anderson is also considered by Amtrak to be knowledgeable enough about PCB to prepare Amtrak's annual report on PCB transformers located at the New Orleans Terminal.[6/]

5/ Tr. 70.

6/ Amtrak's reports for 1979 and 1980, which were signed by Mr. Anderson, list three PCB transformers located in the transformer bank for the baggage building. A photograph of one discloses that it bears the manufacturer's label showing that it contains Inerteen, and the three transformers, in fact, appear to be the same three Inerteen Transformers which were inspected by the EPA. See Complainant's Ex. 1 (Table 1); Respondent's Exs. 9, 13, 14; Tr. 64, 71, 84. Mr. Anderson's testimony as to the serial number for the transformer shown in Respondent's Ex. 9, appears to be in error. Close inspection of Respondent's Ex. 9 shows that the serial number is 6094686, and the same as one of the serial numbers of the PCB transformers reported in the annual reports.

Finally, Mr. Anderson's testimony that Inerteen is a PCB is corroborated by the EPA's publication, EPA's Final PCB Ban Rule: Over 100 Questions and Answers To Help You Meet These Requirements (hereinafter cited as EPA's Final PCB Ban Rule).[7/] It is stated therein (page 2, Par. 3) that Inerteen is a trade name under which PCBs are sold. The record does establish, therefore, that Inerteen is a PCB dielectric fluid and this, in turn, is sufficient to make the three transformers which contained Inerteen, PCB Transformers within the meaning of the rule.[8/] It is concluded, therefore that Amtrak's failure to mark its Inerteen transformer is a violation of the marking requirements of the PCB rule.

As to the disposal violation, this involved the leakage observed as having emanated from Amtrak Transformer No. 3C, which was found to contain PCBs in excess of 500 ppm.[9/] Amtrak argues that this leakage does not constitute "disposal" of PCB under the PCB rule.

7/ It is stipulated that I may take official notice of this publication. Tr. 7.

8/ Amtrak does not dispute that if Inerteen is a PCB dielectric fluid, the three transformers containing Inerteen are PCB transformers under the rule. The EPA in any event has made its position clear that a transformer must be assumed to be a PCB transformer if the nameplate indicates that the transformer contains PCB dielectric fluid. See preamble to PCB rule, 44 Fed. Reg. 31517, 31531, and EPA's Final PCB Ban Rule, 11, Par. 27. This construction of the PCB rule is consistent with the rule itself and I am entitled to rely on it. Bowles v. Seminole Park & Sand Co., 325 U.S. 410, 414 (1945) I find, accordingly, that it was not necessary for the EPA to test the dielectric fluid in the Inerteen transformers in order to establish that the dielectric fluid contained 500 ppm or greater PCB. Instead, the burden was on Amtrak to show that the dielectric fluid contained less than 500 ppm PCB, and Amtrak has made no such showing.

9/ The EPA's test showed the presence of 2200 ppm PCB (Complainant's Ex. 3A) and Amtrak's test showed 20,000 ppm PCB (Respondent's Ex. 1). The difference is immaterial.

Pertinent is the provision of the PCB rule dealing with spills, which provides as follows (40 CFR 761.10(d)):

> Spills. (1) Spills and other uncontrolled discharges of PCBs constitute the disposal of PCBs.
>
> (2) PCBs resulting from spill clean-up and removal operations shall be stored and disposed of in accordance with paragraph (a) of this section. In order to determine if a spill of PCBs has resulted in a contamination level that is 50 ppm of PCBs or greater in soil, gravel, sludge, fill, rubble, or other land based substances, the person who spills PCBs should consult the appropriate EPA Regional Administrator to obtain information on sampling methods and analytical procedures for determining the PCB contamination level associated with the spill. (emphasis added).

"Disposal" is defined in the PCB rule as follows (40 CFR 761.2(h)):

> "Disposal means to intentionally or accidentally discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

The record shows that Mr. Crawford, the EPA Inspector, observed that dielectric fluid had leaked to the outside surface on several of the transformers. Not all were leaking to the same extent. In Mr. Crawford's words, "Some had pools underneath. Some actually had drips formed where you could actually see it starting to full off . . .. Some just had the material adhered to the surface, but you could see how it had streamed down to the bottom edge."[10/] Mr. Crawford, however, was

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10/ Tr. 12-13.

unable to identify Amtrak Transformer No. 3C as one of the transformers which had pools underneath or where the fluid was dripping onto the ground.[11/] Consequently, there is nothing in this record to indicate that the leakage on Transformer 3C was anything more than the "weeping" or "sweating" of a small amount of fluid around the transformer's terminals resulting from temperature variations causing the terminal's seals to expand and contract.[12/]

Disposal would seem to include here not only the accidental discharge of PCBs through leakage, but also the action taken to prevent the PCB from entering the environment by cleaning up the leakage or otherwise containing it. Here no action appears to have been taken to clean-up or contain the leakage prior to the EPA's inspection. It is true that evidence does not show that the leaking oil had formed pools underneath the transformer or was dripping onto the ground. The transformer, however, does appear to have been exposed to the elements.[13/] There was still a risk, consequently, that PCBs could have been washed off by rain into the surrounding environment.

11/ Tr. 18-19. The EPA described the condition of Transformer No. 3C as "slightly leaking mineral oil." Complainant's Ex. 4.

12/ See Tr. 68. The EPA is currently making a study of the phenomenon of transformers weeping or sweating dielectric fluid at the gasket seals of their terminals to determine whether it should be dealt with by an amendment to the PCB rule. See 45 Fed. Reg. 14232 (March 5, 1980).

13/ See Respondent's Ex. 10.

I find, therefore, it was improper disposal of PCB for the leaking PCB to be left standing on the exterior surface of the transformer without any action being taken to clean it up or otherwise contain it.[14/]

Amtrak also argues that the EPA failed to prove that PCBs were leaking from Transformer No. 3C since the EPA took its sample from the dielectric fluid inside the transformer and did not take a wipe sample of the leak outside.[15/] In support of this argument Amtrak points to the fact that the leakage emanated from the top of the transformer and relies on Mr. Noonan's testimony that PCBs are "heavier [in weight]" than mineral oil dielectric fluid and "tend to concentrate at the bottom of the container." This testimony is far too general to establish that the sample of dielectric fluid taken from inside the transformer was not reasonably representative of the PCB content of the fluid which leaked out.

14/ The factual situation here is distinguishable from that in Yaffee Iron and Metal Company, Inc., TSCA Docket No. VI-IC (Initial Decision, filed March 27, 1981). There the leaking drum was being stored for disposal, and was under a corrugated roof which protected the drum from the rain. Id. at 17-20.

15/ Tr. 112. The collection report (Complainant's Ex. 2A) shows that the sample was taken from the drain valve. Presumably, this is at the bottom of the transformer.

The Penalty

Section 16(a)(1) of the Toxic Substances Control Act, 15 U.S.C. 2615(a)(1), provides that a person who violates the Act is liable for a civil penalty in an amount "not to exceed $25,000," with each day the violation continues constituting a separate violation. Pertinent here is section 16(a)(2)(b), which provides as follows:

> In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

The $21,000 penalty proposed by the EPA was derived from the EPA's penalty policy for PCB rule violations, issued under the guidelines for assessment of civil penalties under TSCA, Section 16.[16/] According to this policy, a graduated penalty schedule ranging from $25,000 down to $200 is established, with the amount depending on the gravity of the violation as determined from the "nature" of the violation, the "extent" of environmental harm that could result, and the "circumstances" of the violation. The penalty so determined can then be adjusted upward or downward within certain limits on the basis of the violator's culpability, history of such violations, ability to pay, ability to continue in business and such other matters as justice may require.[17/]

16/ See 45 Fed. Reg. 59770, 59776 (Sept. 10, 1980).

17/ 45 Fed. Reg. 59770.

The EPA claims that the failure to mark the three Inerteen transformers, which contained some 1100 kilograms of PCB, justifies a penalty of $10,000, since it created a significant risk that PCBs would be introduced into the environment in an amount that could cause significant damage to human health and the environment. The failure to keep records on the disposition of PCB transformers is regarded as creating a somewhat lesser risk of harm and a penalty of $6,000 is proposed. Finally, the improper disposal of PCBs leaking from Transformer No. 3C is said to create a "high" risk of PCBs entering the environment but likely to cause only minor damage because of the small amount of PCB involved, and a penalty of $5,000 is proposed. The proposed penalty thus calculated amounts to $21,000. Amtrak's "culpability" and history of no prior violations is said to be grounds for neither reducing or increasing this penalty. It is also argued that there are no other factors which justice would require be considered in assessing the penalty.[18/]

The rules of practice for this proceeding provide that I am to consider the EPA's penalty policy in determining the appropriate penalty. I need not, however, accept the penalty proposed in the complaint, even if it arguably conforms to the policy, if I find the penalty so calculated is inappropriate.[19/]

Turning to the marking violations, the record disclosed that at the time of the EPA's inspection, Amtrak's employees at the New Orleans Terminal who were responsible for maintaining the transformer, the electrician and

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18/ Tr. 39-40. Amtrak does not contend that it is unable to pay the penalty or that the penalty will adversely affect its ability to continue to do business.

19/ 40 CFR 22.27(b).

his supervisor, testified that they did not know that Inerteen was a trade name for PCB.[20/] There is no reason to disbeleive this testimony in view of the fact that neither of them appears to have handled PCB during the time of their employment at the New Orleans Terminal, which in the case of the electrician extended back to 1954.[21/]

The EPA does not question this lack of knowledge about PCBs on the part of the employees at the New Orleans Terminal. It argues, however, that Mr. Noonan, who had general supervision over Amtrak's compliance with the PCB rule, had sufficient knowledge to identify PCBs at the terminal and yet failed to take the necessary steps to do so.

The record discloses that Amtrak has been conscientious in complying with the PCB rules in these instances where it knew that it had PCBs in hand. Thus, in the case of railroad transformers used in Amtrak's electric locomotives going in and out of New York City, where PCB has been required by local regulation because it is nonflammable, and also in the case of Amtrak's facilities that handle PCBs in connection with servicing such transformers, Amtrak seems to have complied fully and effectively with the PCB rule's requirements.[22/]

As to Amtrak's failure to comply at the New Orleans Terminal, Mr. Noonan explained that since Amtrak had no history of using PCBs in New Orleans, he assumed that there were no PCB transformers at the Terminal.[23/]

20/ Tr. 70-72, 82.

21/ Tr. 125.

22/ Tr. 92-99.

23/ Tr. 100, 106-107.

While his assumption was incorrect, it cannot be said to have been totally unfounded. Only three of the 35 transformers at the New Orleans Terminal had labels indicating that they contained PCB as the dielectric fluid.[24/]

In addition, the unmarked condition of these three transformers did not appear to create any imminent risk that they or their contents would be improperly disposed of, or handled. All three transformers appear to have been still in use and in good condition, since none were leaking.[25/]

Finally, once Amtrak learned that there were PCB items at the New Orleans Terminal, it moved promptly to bring itself into compliance with the PCB rule. The dielectric fluid in all transformers, whether leaking or not, was tested for PCB content; transformers identified as having PCBs present in concentrations of 500 ppm or greater were properly marked; all leaking transformers were cleaned to remove the leaks; steps were taken to contain leaks which may occur in the future; the materials used to clean up the leaks were disposed of in accordance with the PCB rule's requirements; and records for all transformers were established.[26/]

The purpose of the penalty is to assure compliance with the PCB rule by eliminating economic incentives for violating the rule and deterring persons from violating the rule.[27/] Here it does appear that the violations

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24/ Of the remaining 32 transformers, all but two appear to have had labels indicating that they had a mineral oil dielectric and did not have to be marked. See Respondent's Exs. 13 and 14; Finding No. 5, supra at 3. Two of the transformers had no label identifying the nature of the dielectric fluid they contained. Their dielectric fluid was tested and apparently no PCBs were found to be present, since no violation is claimed as to them. See Tr. 49-52.

25/ See Complainant's Ex. 1; Tr. 64.

26/ Tr. 73-76. 114, 134.

27/ See Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA, 45 Fed. Reg. 59770.

are not the result of Amtrak's simply disregarding the PCB rule's requirements or seeking some economic advantage by not complying, and that Amtrak's admittedly successful efforts in correcting the violations make it unlikely that such violations will recur. Some penalty is called for since it is doubtful that Amtrak used that degree of care in bringing itself into compliance with the PCB rule which should be exercised given the hazardous nature of PCB. I find, however, that the proposed penalty of $10,000 is too high under the circumstances of this case, and that an appropriate penalty would be $2,000.[28/]

With respect to the record-keeping violation, Amtrak's obligation to keep records seems to have arisen from the fact that it was using one or more PCB Transformers at its New Orleans Terminal.[29/] The records are to be used for the preparation of an annual report which is to include information on the removal from service and disposal of PCBs and PCB items, on the facilities where they are stored for disposal, and on the PCBs and PCB items remaining in service at the end of the year.[30/] The purpose of keeping records

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28/ Amtrak contends that at the time of the inspection, it was in the process of obtaining further information about the possible presence of PCBs at the New Orleans Terminal and its other facilities throughout the county. Mr. Noonan, who was conducting the survey, however, admitted that he did not get in touch with the New Orleans Terminal until after the inspection, because he assumed that there were no PCBs there. Tr. 121.

29/ 40 CFR 761.45(a). The rules provides in pertinent part:

> PCBs and PCB Items in service or projected for disposal. Beginning July 2, 1978, each owner or operator of a facility using or storing at one time... one or more PCB Transformers...shall develop and maintain records on the disposition of PCBs and PCB Items.

30/ 40 CFR 761.45(a).

is to assist the EPA in determining compliance with the rule, and also to assist owners and operators in maintaining effective inventory control and insuring timely disposal.[31/]

In this case there is no evidence of any disposal of PCBs or PCB Items since July 1978, when records were first required. The violation appears to be concerned solely with Amtrak's failure to keep a record of the PCB Transformers it had in service. The EPA has termed this violation as one which presents the likelihood of significant harm to the environment. The risk of harm, however, would seem to be inchoate at this stage, and possibly to materialize into a significant risk when Amtrak disposes of or removes from service for disposal any of its PCB Transformers, whenever that may be. Consequently, I find that an appropriate penalty would be $500.00.

Finally, with respect to the disposal violation, the extent of harm that could occur from this violation is highly problematical since the record shows that there was only a very small amount of leakage. While the possibility of the leaking PCB entering the environment cannot be dismissed entirely, it would be speculative to assume on this record anymore than a very low probability that it would do so, in view of the complete absence of any evidence that there was any dripping or flowing

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31/ See explanation of proposed PCB rule governing the disposal and marking of PCBs, 42 Fed. Reg. 26570 (May 24, 1977). The final record-keeping requirements did not significantly differ from the initial proposed requirements.

of the fluid off of this transformer. Consequently, I find that an appropriate penalty for this violation would be $500.00.[32/]

Accordingly, the appropriate penalty for the violations found in this case is determined to be $3,000.

ORDER[33/]

Pursuant to Section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)), a civil penalty of $3,000.00 is hereby assessed against Respondent National Railroad Passenger Corporation, for the 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 by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America.

Gerald Harwood
Gerald Harwood
Administrative Law Judge

April 30, 1981

32/Amtrak argues that there is no requirement in the PCB rule that every discharge of a dielectric fluid be tested no matter how small to determine whether it is PCB. Yet, this is precisely what the rule seems to require. See the preliminary statement to the PCB rule where it is stated that, "For all practical purposes, testing of mineral oil dielectric fluid will only be used to determine whether the mixture contains less than 50 ppm PCB and is, therefore, exempt from the disposal requirements for mineral oil with over 50 ppm PCB." 45 Fed. Reg 31531. The distinction between the disposal requirements for mineral oil dielectric containing between 50 and 500 ppm PCB and for dielectric fluid containing 500 ppm PCB or greater is not material here, since the violation arises from Amtrak taking no action at all to clean up or contain the leakage.

33/ Unless an appeal is taken pursuant to section 22.30 of the rules of practice or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator (See 40 CFR 22.27(c)).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
National Railroad Passenger Corporation (AMTRAK)	)	TSCA Docket No. VI-24C

Respondent

ORDER CORRECTING INITIAL DECISION

It is ordered that the following corrections be made in the Initial Decision issued on April 30, 1981:

1. Page 6, n.9 -- "2200 ppm" should be changed to "21000 ppm" so that the footnote reads: "EPA's test showed the presence of 21,000 ppm PCB (Complainant's Ex. 3A) and Amtrak's test showed 20,000 ppm PCB (Respondent's Ex. 1). The difference is immaterial."

2. Page 7, third line from the bottom, the word "full" should be changed to "fall" so that the line reads: "drips formed where you could actually see it starting to fall off. . .."

These changes are to correct typographical errors and do not change the substance of the decision.

Gerald Harwood

Gerald Harwood
Administrative Law Judge

CERTIFICATION

I hereby certify that the original of this Order was mailed to the Regional Hearing Clerk, Region VI, and that a copy was sent to counsel for Respondent and Complainant in this proceeding on May 6, 1981.

Leanne B. McCollum
Secretary to ALJ Harwood

May 6, 1981