UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Substation Maintenance, Inc.,	)	Docket No. TSCA-V-C-407
	)	
Respondent	)	

Toxic Substances Control Act - Rules of Practice - Default - Where Respondent failed to comply with ALJ's order requiring the exchange of prehearing information, Respondent was found to be in default pursuant to § 22.17 of the Rules of Practice (40 CFR Part 22), to have admitted violations charged and assessed full amount of penalty proposed in complaint.

Appearances for Respondent:

Robert W. Russell
Chief Executive Officer
Substation Maintenance, Inc.
480 N. Main Street
Grafton, Ohio 44044

Don P. McFadden
Registered Agent for Substation
Maintenance, Inc.
One Public Square, Suite 1000
Cleveland, Ohio 44113

James L. Kimbler, Esq.
P. O. Box 153
Lodi, Ohio 44254

Appearance for Complainant:

Levi Wood, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Default Order

This proceeding under § 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)) was commenced on June 13, 1985, by the issuance of a complaint charging Respondent, Substation Maintenance, Inc., with violations of the Act and regulations. Specifically, Respondent was charged with failure to properly store at its Grafton, Ohio facility 17 drums of PCB solids and a PCB transformer, to date all PCB articles when they are placed in storage, to clean up spilled PCBs and with illegal disposal of PCBs in violation of § 15 of the Act and applicable regulations, 40 CFR §§ 761.65(b)(1), 761.65(c)(5), 761.65(c)(8) and 761.60(a). For these alleged violations, it was proposed to assess Respondent a penalty totaling $15,000.

Respondent answered, denying the alleged violations and requesting a hearing.

The proceeding was assigned to the undersigned ALJ on August 7, 1985, and by letter, dated August 12, 1985, the parties, failing settlement, were directed to supply certain prehearing information on or before October 2, 1985. Specifically, Respondent was ordered to furnish a summary of any evidence relied upon to support denial of substantive allegations of complaint, to supply a summary of evidence to support allegations that all the PCB materials in question had been removed from the Grafton facility, that said materials were placed there under license from Transformer Services of Ohio, Inc. and to supply financial data, if Respondent contended the proposed penalty was beyond its ability to pay. Neither party

complied with this directive and by an order, dated November 13, 1985, the parties were directed to furnish the informaiton on or before December 13, 1985. The order specifically provided that failure to comply would result in dismissal of the proceeding with prejudice in accordance with 40 CFR 22.20 or entry of a default order pursuant to 40 CFR 22.17.

Complainant furnished its prehearing information under date of December 13, 1985. Respondent failed to comply with the order of November 13, 1985, and has not given any reason for such failure or otherwise responded to the order. Under date of January 23, 1986, Complainant, noting the above failure, moved for a default order pursuant to 40 CFR 22.17. Respondent has not responded to the motion in any manner.

Respondent's failure to comply with the ALJ's order constituting a default in accordance with 40 CFR 22.17(a) and an admission of the factual allegations of the complaint, I hereby make the following:

Findings of Fact

1. Respondent, Substation Maintenance, Inc., is a corporation incorporated under the laws of the State of Ohio.
2. On October 17, 1984, Respondent maintained a place of business and a facility in Grafton, Ohio.
3. On October 17, 1984, Respondent had 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors in storage for disposal at the mentioned facility.
4. The 17 drums of PCB solids and three PCB transformers mentioned above were placed in storage more than 30 days prior to October 17, 1984,

and the drums and one of the transformers (American Transformer, Serial No. 960361) were stored in an area lacking continuous curbing.

5. The 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors referred to above were not dated with the date these articles were placed in storage.

6. Two of the mentioned PCB transformers were in a metal bin containing approximately two inches of an oil-water mixture on October 17, 1984, which mixture contained PCBs at a concentration of 21 ppm.

7. The American PCB transformer referred to in finding 4 had a two-foot x two-foot oil spot beneath its drain tap on October 17, 1984, indicating an uncontrolled discharge of PCBs.

Conclusions

1. Respondent's action in storing 17 drums of PCB solids (PCB articles) and one PCB transformer for more than 30 days in an area lacking continuous curbing constitutes a violation of 40 CFR 761.65(b)(1).

2. Respondent's failure to mark the date the 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors were placed in storage constitutes a violation of 40 CFR 761.65(c).

3. Respondent's failure to clean up the PCBs in the oil and water mixture in the bin containing two PCB transformers constitutes a violation of 40 CFR 761.65(c)(5).

4. The uncontrolled discharges of PCBs from American Transformer, Serial No. 960361, is an illegal disposal of PCBs in violation of 40 CFR 761.60(a).

5. For the above violations of the regulations and § 15 of the Act, Respondent is liable for a penalty in the amount of $15,000 in accordance with § 16(a) of the Act.

Discussion

Respondent, being in default for failure to comply with the ALJ's order of November 13, 1985, is deemed, pursuant to 40 CFR 22.17(a), to have admitted the allegations of the complaint and in accordance with the cited section is liable for the full amount of the penalty of $15,000 proposed in the complaint.

ORDER

Respondent, Substation Maintenance, Inc., having been found to have violated the Toxic Substances Control Act and regulations promulgated thereunder in the particulars recited above, is assessed a penalty in the amount of $15,000 in accordance with § 16(a) of the Act. Payment of the full amount of the penalty shall be made by forwarding a cashiers or certified check, payable to the Treasurer of the United States to the following address within 60 days of receipt of this order:*

Regional Hearing Clerk
Region V, U.S. EPA
P. O. Box 70753
Chicago, Illinois 60673

Dated this 24th day of February 1986.

Spencer T. Nissen
Administrative Law Judge

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* In accordance with 40 CFR 22.17(b), this default order constitutes an initial decision, which pursuant to 40 CFR 22.27(c) will become the final order of the Administrator unless appealed in accordance with § 22.30 or unless the Administrator elects, sua sponte, to review the same as therein provided.