

6/24/91

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
COLONIAL PROCESSING, INC.,) Docket No. II EPCRA-89-0114
Respondent)

INTERLOCUTORY ORDER GRANTING COMPLAINANT'S
MOTION FOR PARTIAL ACCELERATED DECISION

Complainant has filed a motion, pursuant to Section 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, for a partial accelerated decision in favor of the Complainant as to liability in this proceeding without further hearing, contending that no genuine issue of material fact exists and the Complainant is entitled to judgment as a matter of law as to both counts of the complaint. Respondent has not filed a response to this motion.

I. The Complaint

An administrative complaint was filed on June 23, 1989, under Section 325(c) of Title III of The Superfund Amendments and Reauthorization Act of 1986 (SARA), also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. Section 11045(c).

The complaint alleged that Colonial Processing, Inc. (Respondent) failed to submit a timely, complete and correct Toxic Chemical Release Inventory Reporting Form (EPA Form 9350-1 (1-88)

or Form R) as required by Section 313 of EPCRA, 42 U.S.C. Section 11023, and the regulations promulgated pursuant to the authority thereto, 40 C.F.R. Part 372. More particularly, the complaint alleged that Respondent failed to submit to the U.S. Environmental Protection Agency (EPA), by July 1, 1988, a Form R for each of two chemicals, Sulfuric Acid and Methyl Ethyl Ketone, which Respondent used at its facility during calendar year 1987 in excess of the applicable threshold level for reporting each such chemical.

II. Findings of Fact and/or Conclusions of Law

Based upon the complaint and the answers, the prehearing exchanges and exhibits filed by the parties, I make the following findings of fact and/or conclusions of law:

1. Respondent is Colonial Processing, Inc., 1930 South Sixth Street, Camden, New Jersey 08104.
2. Respondent maintains a facility that is the subject of this Complaint, said facility located at 1930 South Sixth Street, Camden, New Jersey 08104 (hereinafter, "Respondent's facility").
3. Respondent is a corporation organized pursuant to, and duly existing under, the laws of the State of New Jersey.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. Respondent's facility is a "facility" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and within the meaning of 40 C.F.R. § 372.3.
6. Respondent is the owner of Respondent's facility.
7. Respondent is the operator of Respondent's facility.

8. Respondent's facility has 10 or more "full time employees," as that term is defined by 40 C.F.R. § 372.3.

9. Respondent's facility is in Standard Industrial Classification Code 3471.

10. Respondent's facility is subject to the requirements of EPCRA, Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22.

11. On or about November 8, 1988, authorized representatives of the EPA conducted an inspection of and at Respondent's facility (hereinafter, "the inspection").

12. The inspection was conducted for the purpose of determining whether Respondent was in compliance with the Toxic Chemical Release Reporting requirements of EPCRA and the EPA regulations promulgated pursuant thereto, 40 C.F.R. Part 372.

13. During 1987 Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 73,881 pounds of Sulfuric acid (100% basis), Chemical Abstracts Service (CAS) Registry Number 7664-93-9.

14. Sulfuric acid is a chemical listed under 40 C.F.R. § 372.65 and is subject to the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023. The established toxic chemical threshold amount for reporting of a chemical "otherwise used" is 10,000 pounds for the applicable calendar year, 40 C.F.R. § 372.25(b).

15. Sulfuric acid was otherwise used by Respondent in calendar year 1987 in quantities exceeding the established threshold for reporting (40 C.F.R. § 372.25).

16. During 1987 Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 16,280 pounds of Methyl Ethyl Ketone, CAS Registry Number 78-93-3.

17. Methyl Ethyl Ketone is a chemical listed under 40 C.F.R. § 372.65 and is subject to the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023. The established toxic chemical threshold amount for reporting of a chemical "otherwise used" is 10,000 pounds for the applicable calendar year, 40 C.F.R. § 372.25(b).

18. Methyl Ethyl Ketone was otherwise used by Respondent during calendar year 1987 in quantities exceeding the established threshold for reporting (40 C.F.R. § 372.25).

In response to the Complaint, Respondent filed a letter dated July 11, 1989, in which Respondent admitted that "[t]he Form "R" was filed late." Subsequently, Respondent filed a more detail and formal "Response to Complaint" in which it admitted those findings of fact and/or conclusions of law listed above. In that "Response to Complaint" Respondent admitted again that "[t]he Form "R" was filed late." Finally, the Form R's which Respondent's Vice President, J. Steven Gove, signed were submitted to EPA in an envelope with a return address of Colonial Processing, Inc., 1930 So. Sixth St., Camden, N.J. 08104 and with a postmark of May 4, 1989. Each form bears a date stamp of May 8, 1989 which apparently

indicates the date of receipt thereof. Therefore, I make the further findings of fact:

19. Respondent failed, in a timely manner, to submit to the Administrator of EPA and to the State of New Jersey a complete and correct Form R for Sulfuric acid for calendar year 1987.

20. Respondent failed, in a timely manner, to submit to the Administrator of EPA and to the State of New Jersey a complete and correct Form R for Methyl Ethyl Ketone.

III. Discussion and Conclusions

Respondent has denied that under Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Respondent was required to submit by July 1, 1988, a Form R for Sulfuric Acid and a Form R for Methyl Ethyl Ketone for 1987 to the Administrator of EPA and to the State of New Jersey. Respondent also has denied that Respondent's failure to so submit the Form R's constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

Section 313(a) of EPCRA, 42 U.S.C. Section 11023(a), provides:

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State

designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

Pursuant to subsection (g) of Section 313, EPA has published a Toxic Chemical Release Inventory Reporting Form, known as "Form R",¹ together with instructions for completing the form.² Pursuant to subsection (c) of Section 313, a specific toxic chemicals list has also been published for the chemicals and chemical categories to which Part 372 applies.³ In Section 313(f), 42 U.S.C. § 11023(f), the threshold quantity for reporting toxic chemicals is listed:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

Section 313(b)(1)(A), 42 U.S.C. § 11023(b)(1)(A), provides:

The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

The regulations implementing the Section provide, at 40 C.F.R. § 372.5 that: "Owners and operators of facilities described in § 372.22 . . . are subject to the requirements of this part."

¹40 C.F.R. Section 372.85(a).

²40 C.F.R. Section 372.85(b).

³40 C.F.R. Section 372.65.

Subpart B of Part 372, 40 C.F.R. § 372.22, describes those facilities in the following terms:

A facility that meets all of the following criteria for a calendar year is a covered facility for that calendar year and must report under [40 C.F.R.] § 372.30.

(a) The facility has 10 or more full-time employees.

(b) The facility is in Standard Industrial Classification Codes 20 through 39 (as in effect on January 1, 1987) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with a primary SIC code of 20 through 39.

* * * * *

(c) The facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of the applicable threshold quantity of that chemical set forth in [40 C.F.R.] § 372.25.

The specific reporting requirements and the reporting schedule set forth in 40 C.F.R. § 372.30:

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in [40 C.F.R.] § 372.25 at its covered facility described in [40 C.F.R.] § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1) in accordance with the instructions in Subpart E [40 C.F.R. § 372.85].

* * * * *

(d) Each report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year. The first such report for calendar year 1987 activities must be submitted on or before July 1, 1988.

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IN THE MATTER OF COLONIAL PROCESSING, INC., Respondent,
Docket No. II EPCRA-89-0114

Certificate of Service

I hereby certify that this Interlocutory Order Granting Complainant's Motion for Partial Accelerated Decision, dated August 7, 1990, was mailed this day in the following manner to the below addressees:

Original by Regular Mail to:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
26 Federal Plaza
New York, NY 10278

Copy by Certified Mail,
Return Receipt Requested, to:

Attorney for Complainant:

Lee A. Spielmann, Esquire
Assistant Regional Counsel
U.S. EPA, Region 2
26 Federal Plaza
New York, NY 10278

For Respondent:

John C. Gove, President
Colonial Processing, Inc.
1930 So. Sixth Street
Camden, NJ 08104

for Marvin Wajzel
Doris M. Thompson
Secretary

Dated: August 7, 1990

The two chemicals which Respondent "otherwise used" are included on this list. I have found that during the calendar year 1987, Respondent otherwise used toxic chemicals so listed in quantities exceeding the established threshold of 10,000 pounds per year. That threshold is published at 40 C.F.R. Section 372.25(b). The Respondent is the owner and operator of the facility in question. The facility had 10 or more full-time employees during 1987. The facility is an establishment with a primary SIC code of 20 through 39. Therefore, Respondent was required to submit the Form R for each of the two chemicals by July 1, 1988. Respondent failed to do so.

Under Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Respondent was required to submit by, and no later than, July 1, 1988 a complete and correct Form R for Sulfuric acid for the calendar year 1987 to the Administrator of EPA and to the State of New Jersey.

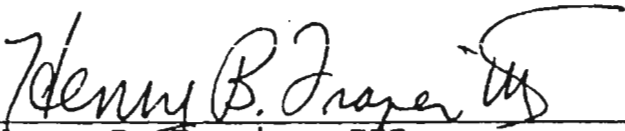
Under Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Respondent was required to submit by, and no later than July 1, 1988 a complete and correct Form R for Methyl Ethyl Ketone for the calendar year 1987 to the Administrator of EPA and to the State of New Jersey.

Respondent's failure to submit in a timely manner a complete and correct Form R for Sulfuric Acid constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

Respondent's failure to submit in a timely manner a complete and correct Form R for Methyl Ethyl Ketone constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

Therefore, I conclude that no genuine issue of material fact exists as to the question of liability and Complainant is entitled to judgment as a matter of law. I find that Respondent, Colonial Processing, Inc., has violated Section 313 of Title III of SARA, or EPCRA, 42 U.S.C. Section 11023, as alleged in the Complaint. Consequently, a partial accelerated decision on the issue of liability on both counts alleged in the complaint should be, and is hereby, rendered for Complainant. Pursuant to 40 C.F.R. Section 22.20(b)(2), I further find that the issue of the amount, if any, of the civil penalties, which appropriately should be assessed for the violations found herein, remains controverted and the hearing requested shall proceed for the purpose of deciding that issue.

So ORDERED.


Henry B. Frazier, III
Chief Administrative Law Judge

Dated: August 7, 1990
Washington, DC