11-5-92

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
APEX MICROTECHNOLOGY, INC.,	)	Docket No. EPCRA-09-92-00-07
	)	
Respondent	)	

INTERLOCUTORY ORDER FOR PARTIAL ACCELERATED DECISION

Complainant has filed, pursuant to Section 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.20(a), a Motion for Partial Accelerated Decision in this matter on the grounds that no genuine issue of material fact exists and the Complainant is entitled to judgment as a matter of law as to the issue of liability.

In reply, Respondent states that it "does not contest the fact that they have technically violated Section 313 of the Emergency Planning and Community Right-to-Know Act." Furthermore, in its answer to the complaint, Respondent "agree[d] that we failed to file the forms as stated in the complaint."

I. The Complaint

An administrative complaint was filed on May 6, 1992, 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 Apex Microtechnology, Inc. (Respondent) failed to submit a timely, complete and correct Toxic Chemical Release Inventory Reporting Form (Form R) for Freon 113 for 1989 and 1990 as required by Section 313 of EPCRA, 42 U.S.C. Section 11023, and the regulations which set out in greater detail the Section 313 reporting requirement, 40 C.F.R. Part 372.

II. Findings of Fact and/or Conclusions of Law

Upon consideration of the pleadings, the prehearing exchanges filed by the parties, the motion and supporting memorandum filed by the Complainant and the memorandum filed by the Respondent, I conclude the Complainant's motion should be granted as to the issue of liability. I therefore make the following findings of fact and/or conclusions of law as alleged in the complaint:

1. Complainant is the Director, Air & Toxics Division, Region IX, United States Environmental Protection Agency (EPA). Respondent is Apex Microtechnology Corp., which owns and/or operates a facility at 5980 North Shannon Road, Tucson, Arizona, 85741.

2. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R., Part 372. Subsection 313(a), as implemented by 40 C.F.R. § 372.30, provides that owners or operators of a facility subject to the requirements of Subsection 313(b) and 40 C.F.R. § 372.22, are required to submit annually, no later than July 1st of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (rev. 1-91)

(hereinafter "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, imported, processed or otherwise used during the preceding calendar year in quantities exceeding the established thresholds.

3. Completed and corrected Forms R, as published under Subsection 313(g), for each of calendar years 1989 and 1990, were required to have been submitted by Respondent to the Administrator of EPA and to the State in which Respondent's facility is located on or before July 1st of each succeeding year. EPA deems a Form R to be submitted as of the date on which the Form R is postmarked.

4. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

5. On March 17, 1992, an authorized representative of EPA inspected Respondent's facility. The purpose of the inspection was to determine compliance with the reporting requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023, as implemented by 40 C.F.R. Part 372.

6. Respondent is an owner and/or operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.

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

8. Respondent's facility is classified in Standard Industrial Classification as Code 3674.

9. During calendar years 1989 and 1990, toxic chemicals at Respondent's facility were "otherwise used," as that term is

defined in 40 C.F.R. § 372.3, in quantities exceeding the established thresholds.

10. Subsection 313(b) of EPCRA and 40 C.F.R. § 372.22 require that owners and operators of facilities subject to the requirements of Subsection 313(b) and 40 C.F.R. § 372.22, which are facilities that have 10 or more full-time employees, which are in Standard Industrial Classification Code 2000-3999, inclusive, and which manufacture, process or otherwise use one or more toxic chemicals listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under Subsection 313(f) and 40 C.F.R. § 372.25, must submit a Form R for each such chemical for the applicable reporting year. The requirements of EPCRA Section 313, 42 U.S.C. § 11023, therefore, apply to Respondent's facility.

11. During calendar year 1989, Respondent otherwise used approximately 11,192 pounds of Freon 113, CAS Number 76-13-1, a chemical listed under 40 C.F.R. § 372.65. This usage exceeded the established threshold for 1989 of 10,000 pounds. 40 C.F.R. § 372.25(a). Respondent, therefore, was required to submit to the Administrator for EPA and to the State of Arizona, a Form R for Freon on or before July 1, 1990.

12. Respondent failed to submit a Form R to the Administrator and/or to the State of Arizona on or before July 1, 1990. Respondent also failed to submit a Form R at the time Respondent was contacted by EPA's authorized representative during the inspection of Respondent's facility.

13. Respondent's failure to submit a Form R was a violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

14. During calendar year 1990, Respondent otherwise used approximately 12,730 pounds of Freon 113, CAS Number 76-13-1, a chemical listed under 40 C.F.R. § 372.65. This usage exceeded the established threshold for 1990 of 10,000 pounds. 40 C.F.R. § 372.25(a). Respondent, therefore, was required to submit to the Administrator for EPA and to the State of Arizona, a Form R for Freon on or before July 1, 1991.

15. Respondent failed to submit a Form R to the Administrator and/or to the State of Arizona on or before July 1, 1991. Respondent also failed to submit a Form R at the time Respondent was contacted by EPA's authorized representative during the inspection of Respondent's facility.

16. Respondent's failure to submit a Form R was a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

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, Apex Microtechnology, Inc., has violated Section 313 of Title III of EPCRA, 42 U.S.C. § 11023, as alleged in the complaint. Consequently, a partial accelerated decision on the issue of liability on the violations alleged in the complaint should be, and is hereby, rendered for Complainant. Pursuant to 40 C.F.R. § 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: November 5, 1992
Washington, DC

IN THE MATTER OF APEX MICROTECHNOLOGY CORP., Respondent
Docket No. EPCRA-09-92-00-07

Certificate of Service

I hereby certify that this Interlocutory Order for Partial Accelerated Decision, dated NOV 5 1992, was mailed this day in the following manner to the below addressees:

Original by Regular Mail to:

Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Copy by Certified Mail,
Return Receipt Requested to:

Attorney for Complainant:

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Doris M. Thompson
Secretary

Dated: NOV [illegible]