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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTERS OF)
)
BOYER VALLEY FERTILIZER CO.,) IF&R Docket No. VII-1132C-92P
A SUBSIDIARY OF CONAGRA, INC.)
and)
UAP SPECIAL PRODUCTS, INC.,) IF&R Docket No. VII-1133C-92P
A SUBSIDIARY OF CONAGRA, INC.,)
)
Respondents)

ORDER GRANTING MOTION FOR PARTIAL
ACCELERATED DECISION

For the reasons stated in an order served December 23, 1992, the undersigned Administrative Law Judge (ALJ) granted complainant's motion, pursuant to 40 C.F.R. § 22.20, for an accelerated decision on the issue of liability in this matter. The complaint in each of the subject matters sought an assessment of \$4,000. However, no resolution of the penalty question was made in the accelerated decision for the reason, in part, that the motion concerned solely the liability issue.

Respondents served a motion on January 5, 1993, requesting the ALJ, pursuant to 40 C.F.R. § 22.29, to certify his order of December 23, 1992 to the Environmental Appeals Board (EAB) for review. Complainant served its response in opposition to the motion on January 14, 1993, respondent's reply followed on January 20, 1993, and on January 25, 1993 complainant submitted a

pleading in response to the reply. For the reasons stated in an order of February 2, 1993, the ALJ denied respondents' motion for an interlocutory appeal to the EAB.

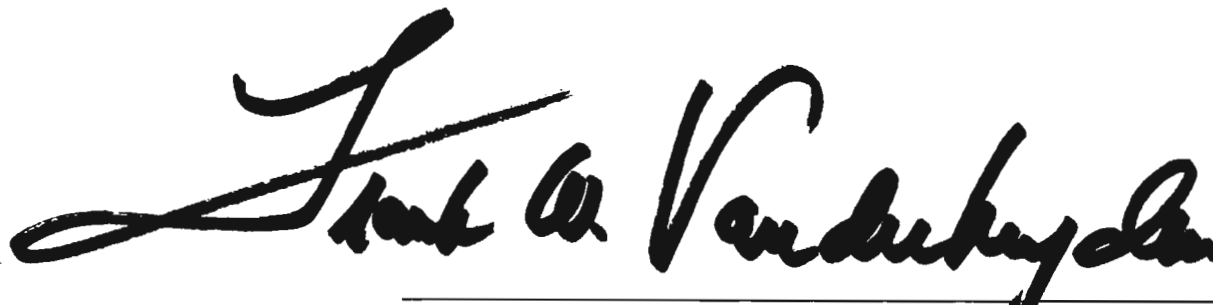
In its motion served February 17, 1993, complainant, pursuant to 40 C.F.R. § 22.20, served a motion for a partial accelerated decision concerning the penalty question, seeking a \$4,000 assessment against each respondent. In that pleading, complainant stated why the base penalty was reduced from \$5,000 to \$4,000. It set forth, with sufficient detail, and in a persuasive manner, how the Final Enforcement Policy (ERP) of July 2, 1990, was used to arrive at the \$4,000 figure. For the reasons stated in its response and cross-motion served March 2, 1993, respondents did not challenge the assessment of a penalty, but moved "for an order issuing a partial accelerated decision imposing a civil penalty of \$3,000" on each respondent. The nub of respondents' position is that a value of "0" should be assigned to the culpability factor in the case. In its response to the cross-motion, served March 9, 1993, complainant successfully rebutted respondents' arguments by demonstrating that the value of "2" assigned to the culpability factor was proper for the reasons that respondents' actions are "at the least, negligent." On the facts of this case, the ALJ concurs in complainant's thoughts and concludes that \$4,000 as a proposed penalty for each respondent is a condign amount.

IT IS ORDERED that there is assessed a penalty of \$4,000 against each respondent, Boyer Valley Fertilizer Company and UAP Special Products, Inc., that this shall be paid by each respondent

by submitting a certified or cashier's check in the aforementioned amount, within 60 days of the receipt of this decision and order, payable to the Treasurer of the United States, and mailed to:

EPA - Region 7
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, PA 15251

IT IS FURTHER ORDERED that this decision and order concerning the penalty amount, coupled with the decision and order served December 28, 1992 regarding the liability question, comprise a complete accelerated decision and order* which is dispositive of the entire proceeding.



Frank W. Vanderheyden
Administrative Law Judge

Dated: _____

March 19, 1993

* Unless appealed in accordance with the time frames and other provisions set forth in 40 C.F.R. § 22.30, or unless the Administrator elects to review same sua sponte as provided therein, this complete decision and order shall become the final order of the Administrator in accordance with 40 C.F.R. § 22.27(c).