

10/19/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
SCA Chemical Services, Inc. &)	Docket Nos. II-TSCA-PCB-88-0205
CWM Chemical Services, Inc.)	II-TSCA-PCB-88-0204
)	(consolidated)
Respondents)	

ORDER DENYING MOTION FOR RECONSIDERATION AND GRANTING MOTION FOR CERTIFICATION OF ORDER TO THE ENVIRONMENTAL APPEALS BOARD

In papers filed September 19, 1994, the Respondents move for reconsideration of the undersigned's September 7, 1994 ruling that EPA's action for civil penalties (Docket No. II-TSCA-PCB-88-0204) is not barred by the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et seq. ("PRA").

In the alternative, if its motion for reconsideration is denied, Respondents seek certification of the ruling for interlocutory appeal pursuant to 40 C.F.R. §§ 22.29.

The Complainant, EPA, opposes both requests in its September 30, 1994 answer. On October 17, 1994, the Respondents filed in opposition to EPA's opposition.¹

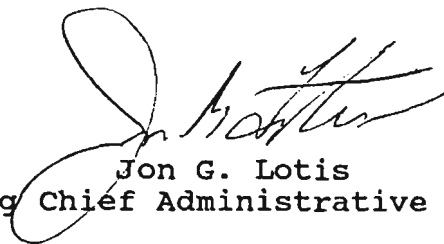
The Respondents argue that this Court's finding, i.e., that the PRA did not bar EPA's cause of action, was based on a legal rationale that the EPA had not advanced. The Respondents conclude, therefore, that they did not have an opportunity to address the legal conclusions reached by this Court. The motion for reconsideration then proceeds to address and to take exception to the ruling.

¹ The agency's rules governing this proceeding make no provision for answers to answers. An issue is joined when an answer to a motion is filed. No further pleadings may be filed as a matter of right. Of course, the Court, in its discretion, may direct the parties to file additional papers if it desires further comment. Also, upon a showing of good cause, the Court may grant parties leave to submit further pleadings. Here, I found it unnecessary to solicit further comment on this matter. Nor did the Respondents request leave to file their unsolicited response. Accordingly, Respondents' second-round pleading is rejected.

Upon review of the Respondents' arguments I find no reason to disturb my September 7 ruling. The arguments advanced in the motion for reconsideration are not persuasive and, to a large extent, merely represent a repackaging of arguments previously made.

The Respondents' request for certification of my ruling to the Environmental Appeals Board is well taken. An appeal is appropriate under the criteria set forth in 40 C.F.R. § 22.29. The issue here is purely legal--Does the PRA relieve Respondents of their obligation to test? (In this case the testing was for the purpose of determining the PCB concentration of each truck depositing waste in a chemical waste landfill). The ruling involves an important question of law concerning which there is substantial grounds for difference of opinion; an immediate appeal will materially advance the ultimate termination of the case and; review after a final order will be inadequate from the standpoint of judicial economy because of the threshold nature of the issue involved. If the issue is decided in Respondents' favor all parties would be spared the time and expense of the trial on this matter. Further, this is an issue of first impression which could have a precedential effect in other cases.

Upon review and consideration of the pleadings, I find good cause to permit the appeal. The motion for certification of the September 7, 1994, order is granted.



Jon G. Lotis
Acting Chief Administrative Law Judge

Dated: October 19, 1994
Washington D.C.

IN THE MATTER OF SCA CHEMICAL SERVICES, INC. AND
CWM CHEMICAL SERVICES, Respondent
Docket Nos. II TSCA-PCB-88-0205 and
II TSCA-PCB-88-0204 (Consolidated)

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion for Reconsideration and Granting Motion for Certification of Order to the Environmental Appeals Board, dated October 19, 1994, was mailed in the following manner to the addressees listed below:

Original by Regular Mail to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region II
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Room 437
New York, NY 10278


Copy by Certified Mail, Return
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Dated: October 19, 1994
Washington, D.C.