

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



IN THE MATTER OF

THOMAS & SKINNER, INC.

Dkt. No. EPCRA-026-94

Respondent

**Emergency Planning and Community Right-to-Know Act of 1986** ["EPCRA"], § 313 [42 U.S.C. § 11023]: In the circumstances of this case, respondent is held liable for failure to file "Form Rs" in connection with the processing of nickel and cobalt for each of the years 1988, 1989, and 1990.

**EPCRA § 325(c), 42 U.S.C. § 11045(c)**: Where, as here, a civil penalty otherwise owing for violations of the Act was discharged by a bankruptcy order, it is appropriate to include a finding to that effect in the decision and no civil penalty will be assessed.

Appearances:

For Complainant:

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Office of Regional Counsel  
Region V - EPA  
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Chicago, Illinois 60604-3590

For Respondent:

Sharon A. Hilmes, Esq.  
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300 N. Meridian Street, Suite 2700  
Indianapolis, IN 46204-1782

Before: J. F. Greene  
Administrative Law Judge  
December 22, 1994

## DECISION AND ORDER

The complaint in this matter charges Respondent with failures to submit to the Administrator of the U. S. EPA and to the State of Indiana Form Rs in connection with the processing of nickel and cobalt for calendar years 1988, 1989, and 1990, as required by Section 313 of The Act, 42 U.S.C. § 11023.

Respondent admitted the facts alleged in the complaint, including allegations that Respondent met the criteria which establish its obligation to comply with the Act, that it processed cobalt and nickel in amounts sufficient to require the filing of Form Rs; and admitted that it did not submit the Form Rs on the dates required by Section 313 of EPCRA, 42 U.S.C. § 11023.

Complainant moved for "accelerated decision" on November 18, 1994. Respondent's response of December 5, 1994, states that it has "no objection to the entry of an accelerated decision in this matter as described in Complainant's Motion . . . . provided that the decision includes the finding that no civil penalty will be assessed against Respondent for the violations alleged in the Complaint."<sup>1</sup> Complainant stated in its motion that "Complainant does not dispute that the evidence of Respondent, specifically, the Order Confirming Third Modified Joint Chapter 11 Plan, entitles Respondent to a finding under the Bankruptcy Act, specifically, 11 U.S.C. § 1141(d)(1), that any civil penalty

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<sup>1</sup> Response to Motion for Accelerated Decision, December 5, 1994.

otherwise owing for Respondent's violation of EPCRA, as identified in the Complaint, was discharged by the Order Confirming Third Modified Joint Chapter 11 Plan."<sup>2</sup>

Accordingly, Complainant is entitled to "accelerated decision." Respondent will be found liable for violations of the Act as charged, and as admitted. No penalty will be assessed for these violations.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns or operates a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3. Respondent employed, at all relevant times, the equivalent of at least ten full time employees with total paid hours equal to or in excess of 20,000 hours per calendar year. Respondent's facility has "ten or more" "full-time employees" as defined by 40 C.F.R. § 372.3. Respondent's facility is covered by Standard Industrial Classification Code 3499, which falls within Standard Industrial Classification Codes 20-39.

2. During calendar years 1988, 1989, and 1990, Respondent's facility processed, as defined by 40 C.F.R. § 372.3, nickel and cobalt, which are toxic chemicals identified by Section 313 (c) of the Act, 42 U.S.C. 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and in 40 C.F.R. §

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<sup>2</sup> Complainant's Motion for Accelerated Decision, November 18, 1994, at 2-3.

372.25. Specifically, Respondent processed in calendar year 1988 60,959 pounds of nickel and 153,294 pounds of cobalt; in calendar year 1989, Respondent processed 47,795 pounds of nickel and 119,065 pounds of cobalt; in calendar year 1990, Respondent processed 36,334 pounds of nickel and 84,960 pounds of cobalt.

3. Respondent was required to submit Form Rs for both nickel and cobalt for each of the calendar years 1988, 1989, and 1990, to the Administrator of the U. S. EPA and to the State of Indiana by July 1, 1989 (for calendar year 1988); by July 1, 1990 (for calendar year 1989); and by July 1, 1991 (for calendar year 1990), but failed to do so.


4. Respondent's failure to submit Form Rs in a timely fashion for nickel and cobalt for calendar years 1988, 1989, and 1990 constitutes violations of Section 313 of the Act, 42 U.S.C. § 11023.

5. On August 1, 1991, one month subsequent to the date of the most recent violation alleged in the complaint, the U. S. Bankruptcy Court, Southern District of Indiana, Indianapolis Division, on Respondent's behalf, entered an Order Confirming Third Modified Joint Chapter 11 Plan, in an action captioned **In Re: Thomas & Skinner, Inc., et al., No. IP90-6063-FJO-11.**

6. The Order Confirming Third Modified Joint Chapter 11 Plan comprehends any civil penalty which might otherwise be assessed in this matter, and discharges such civil penalty. Accordingly, no civil penalty is assessed herein for violations found.

## ORDER

It is hereby ORDERED that Complainant's Motion for Accelerated Decision shall be, and it is hereby, granted. And it is further ordered that no civil penalty shall be assessed in connection with violations of the Act found in this matter.



J. F. Greene  
Administrative Law Judge

December 22, 1994  
Washington, D. C.