9/30/97

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
F. C. HAAB COMPANY, INC.	)	Docket No. EPCRA-III-154
	)	
Respondent	)	

ORDER GRANTING UNOPPOSED MOTION FOR ACCELERATED DECISION AS TO LIABILITY

Introduction

On August 2, 1997, Complainant filed a motion for accelerated decision as to liability in this proceeding. In its answer, submitted on September 11, 1997, Respondent states that it does not oppose Complainant's motion for accelerated decision as to liability but continues to challenge the penalty issue. For good cause shown, Complainant's motion is **granted** as follows.

Findings and Conclusions

1. The Complaint in this matter was issued on April 4, 1995 under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045, and 40 C.F.R. § 22.14(d). The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation No. 22-3-A, dated October 31, 1989. This authority was further delegated to the Director, Hazardous Waste Management Division by EPA Regional Delegation No. 22-3 dated December 13, 1990. The Director, Hazardous Waste

Management Division, EPA Region III (Complainant), issued the Complaint. Respondent, F. C. Haab Company, Inc. (Haab or Respondent), answered on April 25, 1995, denying the substantive allegations of the Complaint and raising certain defenses.

2. F. C. Haab Company, Inc. (hereinafter Haab or Respondent) is a Pennsylvania corporation with its principal place of business at 2314 Market Street, Philadelphia, Pennsylvania 19103.

3. Respondent is a "person" as defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

4. Respondent owned and/or operated a "facility," as defined under Section 329(4) of EPCRA, 42 U.S.C § 11049(4), located on Morris and Schuylkill Avenues, in Philadelphia, Pennsylvania, (the facility) at all times relevant to this matter.

5. Respondent produced, used or stored #2 Heating Oil; #6 Oil; Kerosene, CAS # 8008-20-6; Lube Oil, and Unleaded Gasoline, at the facility.

6. Section 311 of EPCRA, 42 U.S.C. § 11021, requires that for each "hazardous chemical" present at a facility in quantities equal to or greater than the minimum threshold level, the owner and/or operator of the facility shall submit, on or before October 17, 1987, or within three months of when an owner or/an operator is required to prepare or have available an MSDS (Material Safety Data Sheet) or list of hazardous chemicals to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC") and to the fire department with jurisdiction over the facility. This requirement is continuing until the

owner/and or operator complies with this requirement.

7. The minimum threshold level for the following hazardous chemicals, as defined at Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), is 10,000 pounds: light petroleum distillate, CAS No. 68476-30-2, a constituent of #2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of #6 Oil; Kerosene, CAS # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline.

8. The LEPC for Respondent's facility is the Philadelphia County LEPC.

9. The SERC for Respondent's facility is the Pennsylvania Emergency Management Council.

10. The local fire department with jurisdiction over Respondent's facility is the Philadelphia Fire Department.

11. An inspection of the Haab facility located at Morris and Schuylkill Avenues took place on September 16, 1993.

12. Present at the inspection were Inspectors John H. Kim of Dynamac Corporation; Joseph F. Hollingsworth of Dynamac Corporation; F. Christian Haab, Jr., General Counsel; and Larry Gramlich, Vice President of Operations.

13. At the time of the inspection on September 12, 1993, the Inspectors obtained from Respondent Hazardous Substance Survey Forms and Tier II Reports for calendar years 1990, 1991 and 1992.

14. The Hazardous Substance Survey Forms for 1990, 1991 and 1992 are each signed by Chris Haab.

15. The Hazardous Substance Survey Forms for 1990, 1991 and 1992 each list, under the block for "name of company" F. C. Haab Company. Respondent had not filed an MSDS or list of hazardous chemicals with the LEPC, SERC or local fire department.

16. Respondent did not submit an MSDS for, or a list of chemicals identifying, light petroleum distillate, CAS No. 68476-30-2, a constituent of #2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of #6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, to the Philadelphia County LEPC, or the Pennsylvania Emergency Management Council, prior to September 22, 1997.

17. Section 312 of EPCRA, 42 U.S.C. § 11022, provides that the owner and/or operator of a facility is required to prepare or have available an MSDS for a hazardous chemical, under the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. §§ 651 et seq., shall also submit a completed Emergency and Hazardous Chemical Inventory Form containing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the LEPC, the SERC, and the local fire department with jurisdiction over the facility, on or before March 1, 1988, and annually thereafter, and shall contain data with respect to the preceding calendar year.

18. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for light petroleum distillate, CAS No. 68476-30-2, a constituent of # 2 Heating Oil; vacuum residue, CAS

No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, by the due date of March 1, 1991, to the Philadelphia County LEPC, the Pennsylvania Emergency Management Council and the Philadelphia Fire Department.

19. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for light petroleum distillate, CAS No. 68476-30-2, a constituent of # 2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, by the due date of March 1, 1992, to the Philadelphia County LEPC, Pennsylvania Emergency Management Council and the Philadelphia Fire Department.

20. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for light petroleum distillate, CAS No. 68476-30-2, a constituent of # 2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, by the due date of March 1, 1993, to the Philadelphia County LEPC, the Pennsylvania Emergency Management Council and the Philadelphia Fire Department.

21. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for light petroleum distillate, CAS No.

68476-30-2, a constituent of # 2 Hearing Oil; vacuum residue, CAS No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, to the Philadelphia County LEPC, the Pennsylvania Emergency Management Council and the Philadelphia Fire Department for calendar years 1990, 1991 and 1992, before September 22, 1993.

22. Respondent self-identified its petroleum products as hazardous in its Hazardous Substance Survey Forms for 1990-93.

23. The exemption to EPCRA §§ 311 and 312 reporting requirements known as the "household use exemption" is set forth at EPCRA § 311(e) which provides, in pertinent part:

> For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations except that such term does not include the following:
>
> > (3) Any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

Sections 311(e), 311(e)(3), 42 U.S.C. §§ 11021(e), 11021(e)(3) (hereinafter "Household Product exemption").

24. At the facility which is the subject matter of this action, F. C. Haab stores petroleum products in several above-ground storage tanks before delivery of the same to Haab's customers.

25. Respondent describes the facility as having 17 above-ground tanks, ranging in size from 500 gallons to 1.5 million gallons in capacity.

26. According to Schuylkill Terminal, Inc.'s articles of incorporation, the purpose of the facility is to:

"To own, lease and conduct terminal, bulk storage, thruput and blending facilities for petroleum products, to store, sell and deal in petroleum products and to engage in all other related and kindred business."

27. The preamble published in the Federal Register with the Final Rule implementing EPCRA Sections 311 and 312 specifically discusses the application of the Household Product Exemption to petroleum products and provides guidance in the validity of this defense as applied to Respondent:

> With respect to petroleum products, a petroleum product is excluded from the definition of hazardous chemical only when used for personal, family or household purposes, such as gasoline in a family motor vehicle, or when the petroleum product is packaged in the same manner as a product available to the general public, such as a can of motor oil.

52 Federal Register 38348 (Oct. 15, 1987).

28. The application of the preamble's guidance regarding the Household Products exemption to the facts herein directs a conclusion that the exemption does not apply to Haab's products. Nothing in the exemption contemplates the quantities of petroleum products that are stored at a tank farm. The average householder does not purchase petroleum products in tank farm quantities. This fact is underscored by an examination of the means by which

petroleum products are purchased for household use. These products are usually purchased from a distributor: gasoline from a gas station, home heating fuel from a distributor that delivers the product by means of a tanker truck. This is easily distinguished from the householder's purchase of oil in quart cans, as suggested by the Rule's preamble. The exemption clearly does not apply to Haab's facility.

29. Absent an exemption, petroleum products are classified as hazardous substances based upon the Occupational Safety and Health Administration's (OSHA) Hazardous Communication Standard which defines "hazardous chemical" to mean any chemical which has a physical hazard or a health hazard. The Respondent's petroleum products meet the definition of flammable, 29 C.F.R. § 1910.1200(b). Therefore, they are a physical hazard. Substances which are physical hazards are also classified as health hazards. 29 C.F.R. § 1910.1200(B). Haab's petroleum products are hazardous as defined under EPCRA.

30. Respondent's failure to submit an MSDS or a list of hazardous chemicals identifying, by October 17, 1987, or within three months after it was required for light petroleum distillate, CAS No. 68476-30-2, a constituent of # 2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillate, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, to the Philadelphia County LEPC, or the Pennsylvania Emergency Management

Council, prior to September 22, 1997, violates Section 311 of EPCRA, 42 U.S.C. § 11021.

31. Respondent's failure to submit an Emergency and Hazardous Chemical Inventory Form for light petroleum distillate, CAS No. 68476-30-2, a constituent of # 2 Heating Oil; vacuum residue, CAS No. 64741-56-6, a constituent of # 6 Oil; Kerosene, CA # 8008-20-6; hydrotreated heavy paraffinic distillates, CAS # 64742-54-7, a constituent of Lube Oil, and light petroleum distillate, CAS # 8006-61-9, a constituent of Unleaded Gasoline, to the Philadelphia County LEPC, or the Pennsylvania Emergency Management Council, prior to September 22, 1997, violates Section 312 of EPCRA, 42 U.S.C. § 11022.

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, F. C. Haab Company, Inc. has violated Sections 311 and 312 of EPCRA, as alleged in Counts I-XII of the Complaint. An accelerated decision on the issue of liability on the violations alleged in Counts I-XII is hereby rendered in favor of Complainant and against Respondent.

Charles E. Bullock
Administrative Law Judge

Dated: September 30, 1997
Washington, D.C.

IN THE MATTER OF F. C. HAAB COMPANY, INC., Respondent,
Docket No. EPCRA-III-154

Certificate of Service

I certify that the foregoing Order, dated September 30, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Lydia A. Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

Copy by Facsimile and by Regular Mail to:

Attorney for Complainant:

Lori G. Kier, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

Attorney for Respondent:

Charles L. Casper, Esquire
Humane L. Zia, Esquire
MONTGOMERY, MCCRACKEN, WALKER & RHOADS
123 South Broad Street
Philadelphia, PA 19109

Marion Walzel
Legal Staff Assistant

Dated: September 30, 1997