3/15/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
General Electric Company,	)	Docket Nos.
	)	TSCA-III-520
	)	TSCA-V-C-93-90, 94-90 & 95-90
	)	TSCA-VI-477C
	)	TSCA-1090-02-14-2615
	)	
Respondent	)	

ORDER ON MOTION FOR ACCELERATED DECISION
AND ORDER CONSOLIDATING PROCEEDINGS

On January 12, 1994, Complainant in the Region X proceeding (Docket No. TSCA-1090-02-14-2615) filed a motion for accelerated decision as to liability on the first or "disposal count" of the amended complaint.* The mentioned count alleges that GE's operation of its "freon-flush system" constituted disposal of PCBs in violation of 40 CFR § 761.60(e). Section 761.60(e), however, provides in effect that methods of destroying PCB's alternative to incineration with specified exceptions required by § 761.60(a) require the approval of EPA. While it is undisputed that GE did not have such an approval, the gravamen

* The complaint does not follow the salutary practice of setting forth the alleged violations in numbered counts.

of the violation alleged here is the disposal of PCBs other than in an incinerator complying with § 761.70 in violation of § 761.60(a). GE has not been misled by this miscitation as to the true nature of the alleged violation for in its response to the motion GE refers to the alleged violation as of 40 CFR § 761.60(a) (Response of GE, dated January 24, 1994, at 1).

The EAB has decided the question of whether GE's operation of its "freon-flush system" constituted disposal of PCBs adversely to GE (General Electric Company, TSCA Appeal No. 92-2a, EAB, November 1, 1993). On the authority of that decision, the ALJ granted Complainant's motion for accelerated decision as to liability in the Region V complaints (Docket Nos. TSCA-V-C-93-90, 94-90 and 95-90, Order on Cross-Motions For Accelerated Decision, December 8, 1993). Complainant's motion for accelerated decision that GE's operation of its "freon-flush system" constituted the disposal of PCBs and thus, a violation of the PCB disposal regulation is granted. For the same reason, I sua sponte enter an accelerated decision finding that GE violated § 761.60(a) as alleged in the complaints in the Region III and Region VI Dockets, Nos. TSCA-III-520 and TSCA-VI-477C, respectively.

In its motion herein, Complainant states that it has agreed to "drop" or dismiss counts of the complaint alleging violation of the storage requirements of § 761.65(c)(8) and of the marking requirements of § 761.40(a)(1). Because of the EAB decision that "disposal" and "use" provisions of the regulations are

mutually exclusive, Complainant also states that it will not pursue the "use" violation alleged in the amended complaint. Accordingly, the mentioned counts are dismissed and the only issue remaining in the Region X complaint is the amount of an appropriate penalty.

In the mentioned Order On Cross-Motions For Accelerated Decision, I indicated my intention to consolidate these proceedings and to hold a hearing thereon in Washington, D.C. It appearing that these proceedings involve common issues of law and fact, and no objections having been filed, the proceedings are consolidated pursuant to 40 CFR § 22.12(a).

Pending are GE's motions to dismiss for non-compliance with the Paperwork Reduction Act (44 U.S.C. §§ 3501 et seq.) counts of the Region III, Region V and Region VI complaints alleging violations of the recordkeeping requirements of 40 CFR § 761.180(a). In responding to GE's motion, Complainant in Docket No. TSCA-V-C-94-90 submitted a motion to strike with prejudice Counts II and III, relating to "improper use" and "improper recordkeeping." This motion is granted. Accordingly, the only issue in the Region V proceedings is the amount of an appropriate penalty. After the motions in the Region III and Region VI proceedings are decided, I will be in contact with the

parties for the purpose of scheduling a hearing in Washington, D.C., at which the primary issue will be an appropriate penalty for the disposal violations.

Dated this 15th day of March 1994.

Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the original of this **ORDER ON MOTION FOR ACCELERATED DECISION AND ORDER CONSOLIDATING PROCEEDINGS**, dated March 15, 1994, in re: General Electric Company, Dkt. Nos. TSCA-III-520, TSCA-V-C-93-90, 94-90 & 95-90, TSCA-VI-477C and TSCA-1090-02-14-2615, was mailed to the Regional Hearing Clerk, Reg. X, and a copy was mailed to the Complainants and Regional Hearing Clerks, Regs. III, V & VI, and to Respondent (see list of addressees).

Helen F. Handon
Helen F. Handon
Legal Staff Assistant

DATE: March 15, 1994

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