UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Witco Corporation,	)	Docket No. TSCA-V-C-59-91
	)	
Respondent	)	

ORDER GRANTING MOTION FOR PARTIAL ACCELERATED DECISION

The complaint in this proceeding under § 16(a) of the Toxic Substances Control Act, filed on June 28, 1991, charged Respondent, Witco Corporation, with violating the Act and applicable regulations, i.e., the Premanufacture Notification Rule, 40 CFR Part 720. Specifically, the complaint alleged that on (CBI deleted) Witco submitted a Premanufacture Notice (PMN) for (CBI deleted), hereinafter Chemical A, in accordance with Appendix A of Part 720, and, in accordance with 40 CFR § 720.102(b)(1), subsequently submitted a Notice of Commencement of Manufacture (NOC) for Chemical A. The complaint further alleged that at the time of an inspection on December 20, 1989, Witco had not commenced manufacture of Chemical A and that, therefore, the NOC was false in violation of 40 CFR Part 720. For this alleged violation, it was proposed to assess Witco a penalty of $25,000.

Witco answered, admitting the submission of the PMN and NOC referred to in the complaint, denying that the information submitted was false, denying liability for any penalty and contesting the appropriateness of the proposed penalty. Witco requested a hearing.

Under date of January 17, 1992, Witco served an amended answer to the complaint. The amended answer admitted that Witco had filed a NOC for the contemplated manufacture of Chemical A and that it had not commenced manufacture of Chemical A on or before December 20, 1989. Witco asserted that a customer had withdrawn its order for Chemical A and that Witco's failure to withdraw the NOC was inadvertent. Witco, nevertheless, denied submitting false information to the Agency, contested the appropriateness of the proposed penalty and renewed its request for a hearing.

On June 1, 1992, Complainant filed a document entitled "Joint Stipulations of Law and Fact," executed by counsel for the parties. Among other things, the stipulations provide that Witco submitted to EPA a PMN for a chemical substance, generically termed a polyester resin, hereinafter Chemical A; that thereafter Witco filed a NOC with the Agency for Chemical A; that the NOC was based on a customer's order for Chemical A which was to be manufactured on the date the NOC was submitted; that thereafter the customer canceled its order for Chemical A and that as of December 20, 1989, Witco had not commenced manufacture of Chemical A. The stipulations also provide that

the NOC caused the Agency to place Chemical A on the list of chemical substances maintained by the Administrator pursuant to 15 U.S.C. § 2607, that the effect of such placement is to allow any other person to manufacture or import that substance without submitting a PMN to EPA, that Witco inadvertently failed to timely withdraw the NOC after its customer canceled the order for Chemical A, and that, accordingly, the NOC submitted by Witco did not comply with regulations codified at 40 CFR §§ 720.102(b)(1) and 720.120.

Additionally, the stipulations provide that falsely notifying EPA of commencement of manufacture of a new chemical substance violates §§ 5(a)(1)(A), 15(1)(B) and 15(3)(B) of TSCA, that § 16 of TSCA authorizes the assessment of a civil penalty of up to $25,000 per day for each violation of the Act, and that Complainant calculated the proposed penalty in accordance with the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," 45 Fed. Reg. 59770 (September 10, 1980) and the "TSCA Section 5 Enforcement Response Policy" ("Penalty Guidelines") (August 5, 1988). Witco challenges the imposition of the proposed penalty as too high under the circumstances of the case, and challenges the classification of the violation as Major, Level 1 under the Penalty Guidelines. The stipulations conclude by stating that the parties seek to present arguments to the ALJ and to obtain a ruling as to an appropriate penalty for the violation.

On October 9, 1992, Complainant filed a motion for a partial accelerated decision as to liability, alleging that there is no dispute as to material fact that Witco violated the Act as alleged in the complaint and that Complainant is entitled to judgment in this regard as a matter of law. Witco did not respond to the motion.

There being no dispute as to material fact that Witco violated §§ 5(a)(1)(A) and 15(1)(B) and 15(3)(B) of TSCA (15 U.S.C. §§ 2604(a)(1)(A), 2614(1)(B) and 2614(3)(B)) and 40 CFR § 720.120 as alleged in the complaint, Complainant's motion for an accelerated decision as to liability is granted and Witco is determined to be liable for a civil penalty for said violation. The amount of the penalty remains at issue and will be determined after further proceedings.*

Dated this 21st day of July 1994.

Spencer T. Nissen
Administrative Law Judge

* The stipulations being unclear, Witco is directed to inform the ALJ and Complainant whether it is waiving its right to a hearing on the issue of the amount of the penalty. If the answer is in the affirmative, I will establish a briefing schedule. If Witco stands on its right to a hearing, it is my intention to schedule the hearing in Chicago during the week beginning November 7, 1994, when I have another matter to be heard.

CERTIFICATE OF SERVICE

This is to certify that the original of this **ORDER GRANTING MOTION FOR PARTIAL ACCELERATED DECISION**, dated July 21, 1994, in re: Witco Corporation, Dkt. No. TSCA-V-C-59-91, was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to Respondent and Complainant (see list of addressees).

Helen F. Handon

Helen F. Handon
Legal Staff Assistant

DATE: July 21, 1994

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