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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
ICPC ETCHED CIRCUITS, INC.,)	DOCKET NO. CWA-IX-FY94-47
)	
)	
RESPONDENT)	

ORDER GRANTING MOTION FOR PARTIAL ACCELERATED DECISION

This proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), was commenced on September 30, 1994, by the filing of an "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing Thereon" (complaint) charging Respondent, ICPC Etched Circuits, Inc. (ICPC), with violations of the Act and implementing regulations. Specifically, the complaint alleged that ICPC discharged 12,000 gallons of wastewater per day into the Sub-Regional Wastewater Treatment Facility, a Publicly Owned Treatment Works (POTW), and that on at least 489 days between January 1990 and October 1991 pollutant concentrations in said discharges were in excess of categorical pretreatment standards for metal finishers (new sources) (40 CFR § 433.17). For these alleged violations, it was proposed to assess ICPC a Class II civil penalty of \$125,000.

ICPC filed an answer on October 19, 1994, denying the alleged violations and contesting the proposed penalty as inappropriate. ICPC requested a hearing.

By a letter-order, dated January 20, 1995, the ALJ directed the parties to file prehearing exchanges on or before March 31, 1995. This date was extended several times based upon representations of the parties that discussions were in progress and that settlement of this matter was likely. By a joint motion, dated July 31, 1995, the parties moved that the time for filing prehearing exchanges be extended pending a ruling on a motion for an accelerated decision to be filed by Complainant. The motion alleged that the parties had agreed to file a joint stipulation which would narrow the focus of the proceeding to penalty issues. By an order, dated August 18, 1995, proceedings in this matter were suspended pending further order of the ALJ.

The Joint Stipulation, dated July 31, 1995, filed by the parties provides that Respondent [ICPC] is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5); that ICPC's printed circuit board manufacturing facility, located at 1602 Tacoma Way, Redwood City, California, is a "new source" within the meaning of 40 CFR § 403.3(k); that this facility qualifies as a metal finishing operation in accordance with 40 CFR § 433.10(a); that the Sub-Regional Wastewater Treatment Facility is a "publicly owned treatment works" within the meaning of 40 CFR § 403.3(o); that ICPC's facility is subject to the federal pretreatment standards for new sources set forth in 40 CFR § 433.17; and that based on samples taken by the South Bayside System Authority, ICPC introduced pollutants from its facility into the mentioned POTW on the days and in the quantities listed in

Attachment I. Attachment I to the stipulation mirrors Table II in the complaint with one exception^{1/} and reflects exceedances of daily maximum and/or monthly average discharge concentration limitations for copper and lead commencing on December 14, 1990, and ending October 9, 1991.^{2/}

Pretreatment standards for new sources, Metal Finishing Point Source Category (40 CFR § 433.17(a)), provide, inter alia, that 3.38 mg/l is the maximum copper discharge in any one day and that the monthly average of copper discharges shall not exceed 2.07 mg/l; that 0.69 mg/l is the maximum lead discharge in any one day and that the monthly average of lead discharges shall not exceed 0.43 mg/l.

The motion for an accelerated decision, dated August 1, 1995, filed by Complainant alleges that there is no dispute of material fact as to ICPC's liability for the violations alleged in the complaint and that Complainant is entitled to judgment as a matter of law. Complainant points out that CWA § 307(d), 33 U.S.C. § 1317(d), prohibits any owner or operator of any source from operating in violation of any affluent standard or prohibition or pretreatment standard. Complainant further points out that ICPC

^{1/} The motion does not include daily maximum and monthly average exceedances for lead in January 1990 shown in the complaint (Table II), because Complainant acknowledges that an issue of material fact exists as to whether ICPC owned the facility at the time of the alleged violations (Memorandum in Support of Motion at 6).

^{2/} No violations are alleged or shown for June 1991.

has admitted or stipulated to all of the material facts which establish the violations alleged in the complaint, except for violations alleged to have occurred in January 1990.

In support of the foregoing assertion, Complainant states that ICPC has admitted that it is a California corporation with its principal place of business located in Redwood City, California, and stipulated that it is a person within the meaning of Section 502(5) of the Act; that ICPC has admitted that it owns or operates a printed circuit manufacturing facility located at 1602 Tacoma Way, Redwood City, California, has admitted that it started operation of the mentioned facility after August 31, 1982, the publication date of the proposed rule for metal finishing; that ICPC has stipulated that the identified facility qualifies as a metal finishing operation under 40 CFR § 433.10(a), has admitted that it discharges approximately 12,000 gallons of wastewater per day and introduces pollutants into the Sub-Regional Wastewater Treatment Facility, a POTW, as defined in 40 CFR § 403.3(o); and has stipulated that its facility is subject to the pretreatment standards for new sources set forth in 40 CFR § 433.17. ICPC has also stipulated that based upon samples taken by the South Bayside System Authority it introduced pollutants into the Sub-Regional Wastewater Treatment Facility, a POTW, on the days and in the concentrations listed in Attachment I of the Joint Stipulation. As indicated above, Attachment I mirrors Table II in the complaint, with the exception of daily maximum and monthly average exceedances for lead in January 1990. ICPC has not responded to the motion.

Discussion

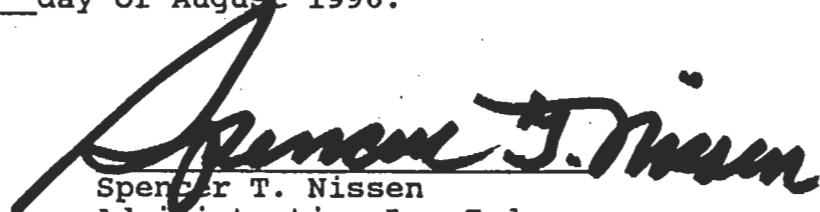
The facts recited above establish that there is no dispute of material fact that ICPC, with the exception of exceedances of daily maximum and monthly average discharge limitation concentrations for lead in January 1990, violated categorical pretreatment standards (40 CFR § 433.17) as to discharges of lead and copper as alleged in the complaint. It follows that Complainant is entitled to judgment as a matter of law and its motion for an accelerated decision as to liability will be granted.

ORDER

It having been determined that, with the exception of exceedances of daily maximum and monthly average discharge limitation concentrations for lead in January 1990, ICPC has violated categorical pretreatment standards (40 CFR § 433.17) as to discharges of lead and copper as alleged in the complaint, Complainant's motion for an accelerated decision as to liability is granted. The amount of the penalty remains at issue and will be determined after further proceedings including a hearing, if necessary. The suspension of proceedings effected by the order, dated August 18, 1995, is lifted. Absent a settlement, the parties

shall file prehearing exchanges in accordance with Rule 22.19(b)
(40 CFR Part 22) on or before October 11, 1996.

Dated this 29th day of August 1996.


Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the original of this **ORDER GRANTING MOTION FOR PARTIAL ACCELERATED DECISION**, dated August 29, 1996, in re: ICPC Etched Circuits, Inc., Dkt. No. CWA-IX-FY94-47, was mailed to the Regional Hearing Clerk, Reg. IX, and a copy was mailed to Respondent and Complainant (see list of addressees).

Helen F. Handon

Helen F. Handon
Legal Staff Assistant

Date: August 29, 1996

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