

6/14/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
MJP Management, Inc.) Docket No. 5-TSCA-95-011
)
Respondent)

ORDER DENYING MOTION FOR
ACCELERATED DECISION

The Region 5 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") commenced this proceeding by filing a Complaint against MJP Management, Inc. (the "Respondent" or "MJP") on January 23, 1995. The Complaint charges Respondent with a series of violations of the Toxic Substances Control Act ("TSCA") §15, 15 U.S.C. §2614, and the TSCA regulations in 40 C.F.R. Parts 761 and 180, concerning its alleged ownership and/or operation of electrical transformers containing polychlorinated biphenyls ("PCBs") on the rooftop of an industrial building in Duluth, Minnesota. The Complaint proposes a total civil penalty of \$25,000. The Respondent filed an Answer and Request for Hearing on or about February 14, 1995. In the Answer, Respondent denied liability and contested the amount of the proposed civil penalty.

The parties have filed prehearing exchanges pursuant to the EPA Rules of Practice, 40 C.F.R. §22.19(b), as ordered by the presiding Administrative Law Judge ("ALJ"). In an Order dated April 22, 1996, the ALJ scheduled the hearing in this matter to be held on July 16-18, 1996 in Duluth, Minnesota.

The Complainant filed a Motion for Partial Accelerated Decision, pursuant to 40 C.F.R. §22.20, dated June 6, 1996, received in the ALJ's office on June 7, 1996. The motion seeks a determination that the Respondent is liable for the alleged violations, and contemplates that, if granted, the hearing will be held to determine the amount of the penalty to be assessed for the violations. Respondent has not yet responded to Complainant's motion for partial accelerated decision.

Complainant's motion is denied as untimely. Although the regulations allow an accelerated decision to be rendered "at any time" (40 C.F.R. §22.20[a]), there will not be enough time to do so here. Complainant has requested leave to reply to Respondent's response to the motion, within 10 days after service of any such response. Under the standard motion practice and service rules in EPA hearings, the time for such reply pleading could easily extend to within 10 days of the scheduled date for the hearing. This is

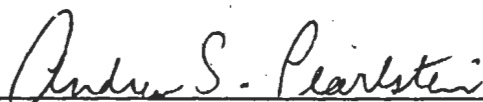
because Respondent is allowed to respond within 10 days to the motion, pursuant to 40 C.F.R. §22.16, plus up to an additional 5 days if the response is served by mail (40 C.F.R. §22.07[c]). The two remaining responses could thus consume 30 days, or until approximately July 7, 1996. This might not give the ALJ sufficient time to issue an decision on the motion. At best, a decision could be issued only virtually on the eve of the hearing.

In any event, there is little to be gained by the parties or ALJ in scrambling to resolve this motion in the little time left before the hearing. The facts and circumstances surrounding the alleged violations would still have to be presented at the hearing in relation to the issue of the amount of the penalty. In addition, although this motion is denied on the grounds of untimeliness, a perusal of the parties' submissions and prehearing exchanges indicates that a material issue of fact is likely to remain concerning Respondent's operation or ownership of the subject PCB transformers.

The best way to foster a fair, efficient, and focused hearing would be for the parties to stipulate to those facts that are not genuinely in dispute. The parties are encouraged to engage in discussions toward that end before the date of the hearing.

The Regional Hearing Clerk will notify the parties shortly of the exact location of the hearing. The ALJ will then issue a further notice addressing hearing procedures.

It is ordered that Complainant's Motion for Partial Accelerated Decision is denied, and that the hearing proceed as scheduled.



Andrew S. Pearlstein
Administrative Law Judge

Dated: June 14, 1996
Washington, D.C.