

6/1/90

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
PEASE AND CURREN, INC.,) Docket No. EPCRA-I-90-1008
)
Respondent)

INTERLOCUTORY ORDER FOR PARTIAL
ACCELERATED DECISION AS TO LIABILITY

Pursuant to Section 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, I hereby render, sua sponte, a partial accelerated decision in favor of the U. S. Environmental Protection Agency (EPA or Complainant) as to liability in this proceeding without further hearing.

I. The Complaint

An administrative complaint was filed on December 28, 1989, under Section 325(c) of Title III of The Superfund Amendments and Reauthorization Act of 1986 (SARA), also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. Section 11045(c).

The complaint alleged that Pease and Curren, Inc. (Respondent) failed to submit a timely, complete and correct Toxic Chemical Release Inventory Reporting Form as required by Section 313 of EPCRA, 42 U.S.C. Section 11023, and the regulations which set out in greater detail the Section 313 reporting requirement, 40 C.F.R. Part 372.

II. Findings of Fact and/or Conclusions of Law

On June 4, 1990, a set of stipulations to which both Complainant and Respondent had agreed was filed in this matter. Based upon those stipula-

tions, I make the following findings of fact and/or conclusions of law as set forth in the parties' stipulations.

1. Respondent Pease and Curren, Inc. ("Respondent") is a corporation incorporated under the laws of the State of Rhode Island and is authorized to do business in Warwick, Rhode Island. Respondent owns and operates a metal recovery facility ("the facility") at 75 Pennsylvania Avenue, Warwick, Rhode Island, 02888.

2. Respondent has total annual sales in excess of 1 million dollars.

3. On or about March 24, 1989, an authorized employee of the United States Environmental Protection Agency inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with the EPCRA Section 313 reporting requirements.

4. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. Section 11049(7).

5. Respondent is an owner or operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. Section 11049(4), and 40 C.F.R. Section 372.3.

6. The facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R. Section 372.3.

7. The facility is classified in Standard Industrial Classification Codes 20 through 39.

8. During the calendar year 1987, Respondent manufactured, imported, processed or otherwise used toxic chemicals listed

under 40 C.F.R. Section 372.65 in quantities exceeding the established thresholds.

9. Subsection 313(b) of EPCRA and 40 C.F.R. Section 372.22 require that owners or operators of facilities that have 10 or more full-time employees, that are in Standard Industrial Classification Codes 20 through 39, and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. Section 372.65 in a quantity exceeding the established threshold are required to submit a Form R for each of these substances for the 1987 reporting year. The requirements of Section 313 of EPCRA, 42 U.S.C. Section 11023, therefore apply to Respondent's facility.

10. During the calendar year 1987, Respondent manufactured, processed or otherwise used hydrochloric acid, a chemical listed under 40 C.F.R. Section 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA and to the State of Rhode Island a Form R for this chemical on or before July 1, 1988.

11. Respondent failed to submit this form to the Administrator of EPA and to the State of Rhode Island on or before July 1, 1988.

12. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

13. During the calendar year 1987, Respondent also manufactured, processed or otherwise used nitric acid, a chemical listed under 40 C.F.R. Section 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the

Administrator of EPA and to the State of Rhode Island a Form R for this chemical on or before July 1, 1988.

14. Respondent failed to submit this form to the Administrator of EPA and to the State of Rhode Island on or before July 1, 1988.

15. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

16. During the calendar year 1987, Respondent also manufactured, processed or otherwise used sulfuric acid, a chemical listed under 40 C.F.R. Section 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA and to the State of Rhode Island a Form R for this chemical on or before July 1, 1988.

17. Respondent failed to submit this form to the Administrator of EPA and to the State of Rhode Island on or before July 1, 1988.

18. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Section 313(a) of EPCRA, 42 U.S.C. Section 11023(a), provides:

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

EPA has published a Toxic Chemical Release Inventory Reporting Form, known as "Form R",^{1/} together with instructions for completing the form.^{2/} A specific toxic chemicals list has also been published for the chemicals and chemical categories to which Part 372 applies.^{3/}

The three chemicals which Respondent manufactured, processed or otherwise used are included on this list. The parties have stipulated that during the calendar year 1987, Respondent manufactured, processed or otherwise used toxic chemicals so listed in quantities exceeding the established thresholds. Those thresholds are published at 40 C.F.R. Section 372.25.

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, Pease and Curren, Inc., has violated Section 313 of Title III of SARA, or EPCRA, 42 U.S.C. Section 11023, as alleged in the Complaint. Consequently, a partial accelerated decision on the issue of liability on all violations alleged in the complaint should be, and is hereby, rendered for Complainant. Pursuant to 40 C.F.R. Section 22.20(b)(2), I further find that the issue of the amount, if any,


1/ 40 C.F.R. Section 372.85(a).

2/ 40 C.F.R. Section 372.85(b).

3/ 40 C.F.R. Section 372.65.

of the civil penalties, which appropriately should be assessed for the violations found herein, remains controverted and the hearing requested shall proceed for the purpose of deciding that issue.

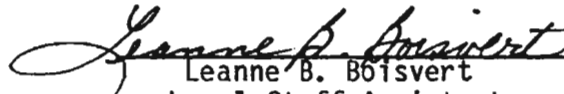
So ORDERED.


Henry B. Frazier III
Chief Administrative Law Judge

Dated: June 7, 1990
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Interlocutory Order for Partial Accelerated Decision as to Liability was sent by certified mail, return receipt requested, to the Regional Hearing Clerk, U. S. EPA, Region I. I further certify that a copy of the aforementioned Order was sent by certified mail, return receipt requested, to Complainant and Respondent in this proceeding.


Leanne B. Boisvert
Legal Staff Assistant

Dated: June 7, 1990