

10/25/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
BOYER ALASKA BARGE LINES, INC.,) TSCA-1094-04-09-2615
Respondent,)

ORDER GRANTING MOTION FOR PARTIAL
ACCELERATED DECISION

The complaint in this matter under § 16(a) of the Toxic Substances Control Act (15 U.S.C. § 2615(a)), filed on July 19, 1994, charged Respondent, Boyer Alaska Barge Lines, Inc. (Boyer) with transporting PCB waste on eight separate occasions in 1991 and 1992 without having obtained an EPA identification number in violation of § 15 of the Act and the regulation, 40 CFR § 761.202(b)(2). For these alleged violations, it was proposed to assess Boyer a penalty of \$18,750.

Boyer answered, admitting the shipments at issue and that it did not have an EPA identification number pursuant to 40 CFR § 761.202(b)(2), but alleging that it did have a RCRA identification number which is identical to the number which would have been issued under § 761.202(b)(2). Boyer contested the penalty as excessive and requested a hearing.

In pre-hearing statement supplied at the direction of the ALJ, Complainant defended the amount of the penalty, pointing out, inter alia, that Boyer's use of its RCRA identification number on

the manifests did not provide EPA with information as to Boyer's PCB waste handling activities and that, although there were eight separate shipments involving over 40,000 kg of PCB waste, only a single penalty was being assessed. Complainant indicated, however, that it was willing to reduce the penalty to \$15,000, in consideration of Respondent's attitude. Boyer, on the other hand, argued, among other things, that only a nominal penalty, if any, was justified, alleging that the hazardous waste manifests were in all respects identical to the manifests it would have completed had it obtained an EPA PCB number, that it immediately complied once it became aware of the rule, and that EPA was treating the Penalty Policy as binding even though it was not promulgated by notice and comment rulemaking in accordance with the APA.

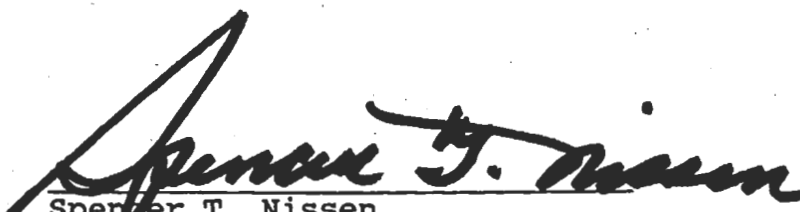
Under date of May 17, 1995, Complainant filed a motion for partial accelerated decision, asserting that the admissions in Boyer's answer established that it had manifested and transported PCB wastes at a time when it did not have an EPA identification number for such activity as alleged in the complaint. Accordingly, Complainant averred that there was no dispute as to material fact within the meaning of Rule 22.20(a) (40 CFR Part 22) and that it was entitled to judgment as a matter of law. Boyer responded to the motion on May 23, 1995, stating that it has never denied that a technical violation of the regulation occurred, and that, although it continued to oppose the penalty sought as disproportionate to the nature of the violation, it did not oppose the motion for accelerated decision as to liability.

It being clear that Boyer violated the regulation (40 CFR § 761.202(b)(2)) as alleged in the complaint and the motion for accelerated decision as to liability being unopposed, the motion will be granted.

O R D E R

Complainant's motion for 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.*

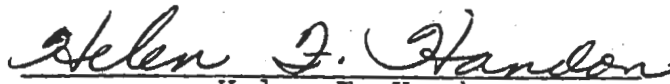
Dated this 25th day of October 1995.


Spencer T. Nissen
Administrative Law Judge

*Absent a settlement of this matter, I will be in contact with counsel for the purpose of setting a date for hearing which will be held in Seattle, Washington.

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER GRANTING MOTION FOR PARTIAL ACCELERATED DECISION, dated October 25, 1995, in re: Boyer Alaska Barge Lines, Inc., Dkt. No. TSCA-1094-04-09-2615, was mailed to the Regional Hearing Clerk, Reg. X, and a copy was mailed to Respondent and Complainant (see list of addressees).



Helen F. Handon
Legal Staff Assistant

Date: October 25, 1995

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