

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
Loggins Oil Company, Inc.)	CWA Appeal No. 00-6
)	
Docket No. OPA-4-99-01)	
_____)	

ORDER REDUCING PENALTY AWARD

Ronald and Kim Loggins are the owners/operators of Loggins Oil Company, Inc. (collectively “respondents”), a commercial petroleum storage facility in Canton, Georgia. The facility consists of seven 20,000-gallon above-ground storage tanks and is located approximately 100 feet from a tributary of Scott Mill Creek, which drains into Canton Creek and the Etowah River. The Logginses purchased the facility in 1991 and began using it to store and distribute gasoline, diesel fuel, and other petroleum products in November of that year. During inspections of the facility in March 1995 and May 1997 by Region IV of the U.S. Environmental Protection Agency (“EPA” or “Agency”), respondents were unable to establish that they had or were developing a Spill Prevention Control and Countermeasures (“SPCC”) Plan, as required by federal regulations promulgated pursuant to the Clean Water Act, as amended by the Oil Pollution Act of 1990. *See* 40 C.F.R. § 122.3(a)(“[o]wners or operators of onshore and offshore facilities * * * that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities * * * into or upon the navigable waters of the United States or adjoining shorelines” must prepare and implement an SPCC Plan).

On April 19, 1999, Region IV filed an administrative complaint against Ronald and Kim Loggins and Loggins Oil Company, Inc. alleging that these parties had failed to comply with the federal regulations on SPCC Plans. Administrative Law Judge Spencer T. Nissen (“Presiding Officer”) subsequently entered a judgment of default against respondents for failing to provide prehearing exchange materials as directed in a preliminary order. *See* Order on Default (Aug. 3, 2000); 40 C.F.R. § 22.17(a) (2000) (“[a] party may be found to be in default * * * upon failure to comply with the information exchange requirements of § 22.19(a) [prehearing exchange] or an order of the Presiding Officer”). The default order held respondents liable for violating the federal regulations requiring the preparation and implementation of SPCC Plans and assessed a \$75,254 penalty, as proposed by Region IV.

Under the Consolidated Rules of Practice that govern this administrative enforcement proceeding, a presiding officer’s default order constitutes an “initial decision” of the Agency if it resolves, as this one did, all outstanding issues and claims in the proceeding. 40 C.F.R. § 22.17(c). An initial decision may be appealed to the Environmental Appeals Board (“Board”) by the respondent or, in the absence of such an appeal, may be reviewed by the Board on its own initiative. *Id.* § 22.30(a)-(b).

In this case, respondents did not file an appeal of the default order. After conducting its own review of the order, however, the Board issued a Notice of Intent to Review the Presiding Officer’s Decision in *In re Loggins Oil Co.* (“Notice of Review”), stating:

The Board hereby orders EPA Region IV to show cause as to why the penalty proposed in the complaint, \$74,254, which the Presiding Officer awarded as part of the default order, should not be reduced to \$50,000 consistent with a July 21, 1999 letter from the Region to Loggins' counsel indicating that EPA had determined Loggins' ability to pay to be \$50,000. *See* Complaint ex. 15 (Letter from Maria J. Cottrell, Associate Regional Counsel, EPA Region IV, to Elliot R. Baker, Esq. (July 21, 1999)). Region IV must file its response to this order with the Clerk of the Board on or before Friday, October 6, 2000.

Notice of Review at 1; *see* 40 C.F.R. § 22.30(b) (notice of Board intent to conduct review of initial decision on own initiative must include statement of issues to be briefed by parties and time schedule for filing and service of briefs).

On October 6, 2000, Region IV responded to the Board order by stating that its "analysis of Loggins' ability to pay the proposed penalty was impeded by Loggins' failure to submit a complete record of its finances." Response to Request for Show Cause at 1. The Region notes that, despite making repeated requests for financial information from respondents, it had never received an explanation as to why respondents were unable to pay the proposed penalty. *Id.* Nonetheless, the Region does not refute its earlier conclusion, based on the information available to it, that respondents had the ability to pay \$50,000. Moreover, Region IV states that it does not oppose a reduction in the default award from \$74,254 to \$50,000. *Id.* at 2.

Accordingly, the penalty assessed against respondents is reduced from \$74,254 to \$50,000 -- the amount that the Region has determined respondents have the ability to pay. Respondents are hereby ordered to pay the full amount of the revised penalty within sixty (60) days of receipt of this final order. Payment should be made by forwarding a cashier's or certified check payable to the Treasurer, United States of America, at the following address:

Regional Hearing Clerk
U.S. EPA, Region IV
Post Office Box 100142
Atlanta, Georgia 30384

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 10/19/00

By: _____ /s/
Scott C. Fulton
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Reducing Penalty Award in *In re Loggins Oil Co.*, CWA Appeal No. 00-6, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

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Dated: 10/20/00

/s/
Annette Duncan
Secretary