UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	**)**	
	)	
Marc Mathys d/b/a Green Tree Spray Technologies LLC,	**)**	**Docket No. RCRA-03-2005-0191**
Respondent,	**)**	
	)	

DEFAULT ORDER

This civil administrative penalty proceeding arises under Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a)(1) and (g). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. Part 22 (2005). The Respondent is Mark Mathys, doing business as Green Tree Spray Technologies LLC, Located at 105 Park Avenue, Seaford, Delaware, and owner of a production facility at the same address.

On June 30, 2005, the United States Environmental Protection Agency ("Complainant" or the "EPA") initiated this proceeding by filing a Complaint against Respondent. The Complaint charges Respondent with failure to comply with the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, its implementing regulations at 40 C.F.R. Parts 260-265, 268, and 270, and the Delaware Regulations Governing Hazardous Waste, Parts 122, 124, and 260-79. Complainant seeks the imposition of a civil administrative penalty in the amount of $103,738 against Respondent.

For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17(a) of the Rules of Practice, 40 C.F.R. § 22.17(a), and is assessed the proposed penalty of $103,738.

On September 14, 2005, this Tribunal entered an Order Setting Prehearing Procedures ("Prehearing Exchange Order") setting forth a schedule for the parties to submit their prehearing exchange information. The Order directed the parties to file Opening Prehearing Exchanges by October 26, 2005, specifying the required content of such exchanges. Prehearing Exchange Order at 1. On October 13, 2005, Complainant filed its Opening Prehearing Exchange as directed. To date, Respondent has not filed a prehearing exchange.

Thereafter, on October 26, 2005, Complainant filed a Motion for Issuance of Show Cause Order, Extension of Time to File Replies to Opening Prehearing Exchanges and Other

Appropriate Relief ("Motion to Show Cause") noting that Respondent had failed to file its prehearing exchange as directed. On November 2, 2005, this Tribunal directed Respondent to respond to Complainant's Motion to Show Cause no later than November 17, 2005. To date, a response to the November 2 Order has not been received.

Accordingly, as discussed below, Respondent's failure to comply with this Court's September 14, 2005, Prehearing Exchange Order and subsequent Order of November 2, 2005, results in the entry of a default judgment.

A. Liability on Default

Section 22.17 (a) of the Rules of Practice lists those instances in which a party may be found to be in default. 40 C.F.R. § 22.17(a). It provides, in part, that a default judgment may be entered against a party for "failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." *Id*. That is precisely the case here. In fact, respondent satisfied both criteria in failing to comply with the Prehearing Exchange Order of September 14, as well as the related order of November 2.

Section 22.17 (a) of the Rules of Practice further provides that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17(a). Thus, the facts alleged in the instant Complaint establish Respondent's liability for eight violations of 40 C.F.R. Parts 260-265, 268, and 270, and the Delaware Regulations Governing Hazardous Waste ("DRGHW"), Parts 122, 124, and 260-79.

Specifically, the alleged facts, deemed to be admitted, establish that Respondent: (1) owned and operated a hazardous waste storage facility without a permit or interim status, in violation of DRGHW § 122.1(c) and RCRA § 3005, 42 U.S.C. § 6925(a), Complaint ¶46; (2) failed to keep a hazardous waste container closed during storage at the Facility while it was not necessary to add or remove waste from the hazardous waste container, in violation of DRGHW § 264.173(a), Complaint ¶49; (3) failed to provide and ensure that the Facility's personnel completed introductory and continuing hazardous waste training, in violation of DRGHW §§ 264.16(a)-(c), Complaint ¶57; (4) failed to list the name, address, phone number of a qualified emergency coordinator, and a copy of the Facility's evacuation plan in its contingency plan, in violation of DRGHW § 264.174, Complaint ¶61; (5) failed to conduct weekly inspections of a hazardous waste storage area in the Production area at the Facility, in violation of DRGHW § 264.174, Complaint ¶64; (6) failed to submit an adequate 2003 Annual Report to the Delaware Department of Natural Resources and Environmental Control, in violation of DRGHW § 262.41(a), Complaint ¶70; (7) improperly managed universal waste lamps by accumulating them in open containers, failing to properly label or mark a container of universal waste lamps, and by accumulating on-site universal waste lamps for more than one year, in violation of DRGHW §§

273.14(d)(1), 273.14(e) and 273.15, Complaint ¶80; and (8) improperly stored hazardous waste restricted from land disposal in containers, in violation of DRGHW §§ 268.50(a)(1) and (2), Complaint ¶87.

A party's failure to comply with an order of the Administrative Law Judge subjects the defaulting party to a default order under Section 22.17(a) of the Rules of Practice, unless the record shows good cause why a default order should not be issued. Here, Respondent failed to offer any explanation for its noncompliance. Based on the "totality of the circumstances," Respondent is found to be in default, and the record does not show good cause why a default order should not be issued. *See Pyramid Chemical Co.*, RCRA Appeal No. HQ-2003-0001, 11 E.A.D. __ , (EAB Sept. 16, 2004).

B. Penalty on Default

The Rules of Practice also direct that where a party is found in default, as is the case here, "the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c). In that regard, Section 22.17(c) of the Rules of Practice states, in pertinent part:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. *The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act....*

40 C.F.R. § 22.17(c). (Emphasis added).

Here, EPA proposes that Marc Mathys be assessed a civil administrative penalty in the amount of $103,738 for violating the RCRA hazardous waste provisions. Pursuant to 40 C.F.R. § 22.17(c), it is held that an administrative penalty in the amount of $103,778 is appropriate under the circumstances of this case.

III. Conclusions of Law

1. Respondent is found to be in default for failing to comply with the Prehearing Exchange Order of September 14, 2005, as well as the related Order dated November 2, 2005.

Moreover, the record does not show good cause why such a default order should not be issued. 40 C.F.R. § 22.17(a).

2. The default by Respondent constitutes, for purposes of the above-cited matter only, an admission of all facts alleged in the Complaint and a waiver of its right to contest such factual allegations. 40 C.F.R. § 22.17(a).

3. Based on the allegations deemed admitted in the Complaint, Respondent: (1) owned and operated a hazardous waste storage facility without a permit or interim status, in violation of DRGHW § 122.1(c) and RCRA § 3005, 42 U.S.C. § 6925(a), Complaint ¶46; (2) failed to keep a hazardous waste container closed during storage at the Facility while it was not necessary to add or remove waste from the hazardous waste container, in violation of DRGHW § 264.173(a), Complaint ¶49; (3) failed to provide and ensure that the Facility's personnel completed introductory and continuing hazardous waste training, in violation of DRGHW §§ 264.16(a)-(c), Complaint ¶57; (4) failed to list the name, address, phone number of a qualified emergency coordinator, and a copy of the Facility's evacuation plan in its contingency plan, in violation of DRGHW § 264.174, Complaint ¶61; (5) failed to conduct weekly inspections of a hazardous waste storage area in the Production area at the Facility, in violation of DRGHW § 264.174, Complaint ¶64; (6) failed to submit an adequate 2003 Annual Report to the Delaware Department of Natural Resources and Environmental Control, in violation of DRGHW § 262.41(a), Complaint ¶70; (7) improperly managed universal waste lamps by accumulating them in open containers, failing to properly label or mark a container of universal waste lamps, and by accumulating on-site universal waste lamps for more than one year, in violation of DRGHW §§ 273.14(d)(1), 273.14(e) and 273.15, Complaint ¶80; and (8) stored improperly labeled hazardous waste restricted from land disposal, in violation of DRGHW §§ 268.50(a)(1) and (2), Complaint ¶87.

4. Inasmuch as this order "resolves all outstanding issues and claims in the proceeding" it constitutes an initial decision under the Rules of Practice. *See* 40 C.F.R. § 22.27(c).

IV. Order

Marc Mathys, doing business as Green Tree Spray Technologies , LLC, is found to be in default and, accordingly, is found to have violated RCRA Subtitle C and the Delaware Regulations Governing Hazardous Waste, Parts 122, 124, and 260-79 as charged in the Complaint. For these violations, Respondent is assessed a civil administrative penalty of $103,378.

Payment of the full amount of this civil penalty shall be made within "30 days after the

default order becomes final under [40 C.F.R.] § 22.27(c)." 40 C.F.R. § 22.17(d). Respondent is directed to submit a cashier's check or certified check in the amount of $103,378, payable to "Treasurer, United States of America," and mailed to:

Attn: U.S. EPA Region 3
P.O. Box 360515
Pittsburgh, PA 15251-6515[1]

Failure to pay the penalty within the prescribed period after the entry of this Order may result in the additional assessment of interest. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

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Carl C. Charneski
Administrative Law Judge

Issued: December 16, 2005
Washington, D.C.

[1] Respondent and EPA may arrange for an alternative method of payment.