RECEIVED
12 SEP 17 PM 4:53
HEARINGS CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of: JOSEPH OH and HOLLY INVESTMENT, LLC Respondents.	Docket No. RCRA-10-2011-0164 **REOPEN CASE AND SET ASIDE DEFAULT ORDER OF AUGUST 3, 2012**

RELIEF REQUESTED

1. Joseph Oh and Holly Investment, LLC pursuant to 40 C.F.R. § 22.27(c)(1)(3) moves the United States Environmental Protection Agency before the administration to one, reopen the case as captioned above and two, move to set aside Default Order that constitutes an initial decision.

2. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties. The Respondents Motion is based on F.R.C.P. 60(b) relief is requested on the basis of excusable neglect.

Joseph Oh
4905 70th Ave W
University Place, WA 98466

BACKGROUND AND FACTS

3. Joseph Oh and Holly Investment, LLC will not recite the background and facts for the purpose of this motion. Attached herein by reference are the Default Order and Initial Decision which include 13 pages, pages 1 through 7 are an accurate recital of the facts which demonstrate neglect and inadvertence by Respondent from EPA request timelines and remittance of papers and pleadings. It appears from the record Respondents are in default for good cause.

4. It also appears from the record that Mr. Joseph Oh and Holly Investment, LLC were completely disconnected from the hearing deadlines and phone conferences. The majority of the communication was transmitted through Mr. Tift and later through the chapter 11 bankruptcy attorney but almost never directly with the Respondent Joseph Oh. [1]

5. Mr. Joseph Oh speaks very little English, although Mr. Tift can understand what Mr. Oh is saying it typically requires a translator to interpret what Tift or others and trying to communicate. This is typically not a problem when significant lead time is granted but it creates difficulties when a response is needed on any shortened time scenario. The Court should reopen the case and vacate the Order of Default for the reasons demonstrated as set forth below.

6. Mr. Joseph Oh is a Korean immigrant who speaks limited English. From the period of November 13, 2009 to May 14, 2012 Joseph Oh did not operate the Grocery and Deli that covered the two underground storage tanks. The store was operated by Helen and Chan Ho a management team who were eager to purchase the Grocery and Deli. The facts stated in the Declaration of Joseph Oh that Helen Ho and Chan Ho kept the EPA warning and

[1] The EPA did transmit by electronic means all requests and timelines as well as by mail it appears from the record

Joseph Oh
4905 70th Ave W
University Place, WA 98466

notices originally hidden from Joseph Oh as well as other critical business operations that resulted in much of Mr. Oh's financial instability and eventually lead to him filing personal bankruptcy and bankruptcy on multiple corporations of his.

7. Upon receipt of the EPA Complaint Mr. Oh directed Helen Ho to work with Mr. Tift to attempt to satisfy the requirements of the EPA Complaint.[2] It appeared the corrections were in the near future as stated by Helen and Chan Ho the management team in place at the Grocery and Deli. The management team reassured Mr. Oh and Mr. Tift that corrections were to be made and that passing the leak test would be possible, also the five corrections of violations of Section 9003 of the Solid Waste Disposal Act would be handled. The buck was passed and a company was hired and contracted resulting in some of the violations being corrected. The evidence of those corrected violations was never presented to the EPA because the Grocery and Deli and Mr. Oh could never tender payment to the correction company NW Tank and Environmental Services Inc. This action severally prejudiced the Respondent as they could not complete payment to secure proof that some corrections were in fact resolved (attached as **exhibit B** is true and accurate correspondence between NW Tank and Environmental Services Inc. and Respondent).

8. On March 21, 2012 Respondent Mr. Oh was forced to file personal bankruptcy chapter 11.

9. The chapter 11 bankruptcy brought about a new set of problems for Mr. Oh as all expenses and professional fees need to be pre approved by the Court, this further tightened Mr. Oh's ability to respond and participate in the EPA Complaint.

[2] Mr. Tift and Mr. Oh are hotel partners on the Rainer Inn.

Joseph Oh
4905 70th Ave W
University Place, WA 98466

10. Any assistance Mr. Tift could provide immediately was delegated to legal counsel Dallas Jolley as he was the approved chapter 11 counsel for debtor in possession which included the entire estate of the debtor and all businesses. It was during this time that the Respondent and debtor in bankruptcy was inundated with court appearances and also terminated the Grocery and Deli management team.

11. On May 13, 2012 Joseph Oh terminated Helen Ho and Chan Ho. The result was even more catastrophic as Mr. Oh discovered the Grocery and Deli had additional hidden debt that included NSF checks and numerous nonpayment to suppliers and distributors of goods.

12. The Respondent was of the belief that the bankruptcy filing afforded him more time to respond to the EPA Complaint and focus on the stores financial problems.

13. The number of new issues raised by the bankruptcy, the delays in communications due to interpretations caused the Respondent to be unavailable to file coherent pleadings responsive to the hearings and deadlines set by the EPA.

ISSUE PRESENTED

14. The EPA should take notice that the Respondent is asking for the case to be reopened for the purpose of presented relief from penalty only.

(B) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

15. Should the EPA reopen the case and set aside default?

Joseph Oh
4905 70th Ave W
University Place, WA 98466

EVIDENCE RELIED UPON

16. The Declaration of Gregory Tift, the Declaration of Joseph Oh, the Exhibits herein, and the case file itself.

AUTHORITY AND ARGUMENT

RESPONDENT SEEKS RELIEF FROM JUDGMENT ON GROUNDS OF EXCUSABLE NEGLECT

Respondents are Entitled to Relief From the Order of EPA Based Upon Mistake, Inadvertence and Excusable Neglect.

17. Default judgments are not favored in law. As such, CR 60(b)(1) provides that the Court may set aside any order or final judgment obtained as a result of mistake, inadvertence, or excusable neglect. [3]

18. In ruling on an F.R.C.P. 60(b) motion, the Court should exercise its authority liberally to preserve the substantial rights of the parties and to ensure that justice is done.

19. In ruling on a motion to set aside a judgment, the Court considers four facts: 1) whether there is evidence to support a defense to the claim; 2) failure to respond was occasioned by mistake, inadvertence, surprise or excusable neglect; 3) the moving party acted with due diligence after notice of the default judgment; and 4) no hardship will result to the opposing party. Under all four elements the facts of this case favor an order to vacate judgment and allow Respondent to apply for waiver of penalty inability to pay.

20. Excusable neglect is an equitable determination, and requires the court to take into account all of the relevant circumstances, including the reason for delay, the length of the delay and its potential impact on the proceedings, the danger of prejudice to the nonmoving

[3] Respondent has cited Federal Rules of Civil Procedure in their Motion as the Plaintiff is the United States EPA (US Government Plaintiff)

Joseph Oh
4905 70th Ave W
University Place, WA 98466

party, and whether the moving party acted in good faith. *Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395 (1993). In Oh's case the factors weigh in favor of an order to reopen the hearing and set aside default for the purpose of setting aside the penalty of $48,078.00.

A. Respondent meets the criteria of whether there is evidence to support a defense to the claim. Respondent Mr. Oh is in bankruptcy so clearly there is evidence that Respondents insolvency should be considered to reduce or eliminate the penalty.

B. The facts demonstrate as stated in the foregoing that meet the criteria that Respondents failure to respond was occasioned by mistake, inadvertence, surprise, or excusable neglect.

C. The Respondent acted with due diligence after Notice of Default. Upon being notified of the default Respondent immediately filed the initial pleading to reopen the case on August 17, 2012. The Respondent moved quickly to file this motion and to clarify the record.

D. Prejudice to opposing parties and prejudice to Respondent. There is no prejudice to either party as the EPA mission statement [4] and the Default

[4] Our Mission. The mission of EPA is to protect human health and the environment. EPA's purpose is to ensure that: all Americans are protected from significant risks to human health and the environment where they live, learn and work; national efforts to reduce environmental risk are based on the best available scientific information; federal laws protecting human health and the environment are enforced fairly and effectively; environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy; all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks; environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and the United States plays a leadership role in working with other nations to protect the global environment.

Joseph Oh
4905 70th Ave W
University Place, WA 98466

Order are not compromised by an order reopening and setting aside the default of the penalty only. The Respondent as demonstrated is in chapter 11 reorganization bankruptcy which includes the Grocery and Deli. Respondent is actively executing the compliance order (page 12 ¶ 1 through 9).

CONCLUSION

20. Pursuant to 40 C.F.R. § 22.16(a) and § 22.28(a) good cause and supporting evidence exists to reopen the case and set aside default. Respondent takes the position that the proposed penalty should be reduced or eliminated or inability to pay. Respondent's Motion should be approved and there is no just reason to deny.

Submitted this 16th day of September 2012

Joseph Oh individually
FBO Holly Investment, LLC

Joseph Oh
4905 70th Ave W
University Place, WA 98466

CERTIFICATE OF SERVICE

In the Matter of Joseph Oh and Holly Investment, LLC, No. RCRA-10-2011-0164, I hereby certify that a copy of Reopen Case and Set Aside Default Order was sent to the following persons in the manner specified on the date below:

A true and correct copy of each document, by mail and electronic mail to

Deborah Hillsman
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mailstop: OCE-082
Seattle, WA 98101

Candace Smith, Regional Hearing Clerk
U.S. EPA Region X
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mailstop: OCE-082
Seattle, WA 98101

Honorable M. Lisa Buschmann, Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Mail Code 1900 L
Washington, DC 20460

Dated: 09/17/2012

Joseph Oh

Joseph Oh
4905 70th Ave W
University Place, WA 98466