



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5**



In the Matter of:)	
)	
I. Deutch & Sons Scrap Processors)	Docket No. 5-CAA-021-98
Cincinnati, Ohio)	
)	
Respondent.)	
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INITIAL DECISION AND DEFAULT ORDER

This initial decision is upon Motion for Default Judgment, filed by Complainant, the Acting Director of the Air and Radiation Division, United States Environmental Protection Agency (“U.S. EPA”). The motion seeks an order assessing a civil penalty in the amount of Ten Thousand Fifty Dollars (\$10,050) against the Respondent, I. Deutch & Sons Scrap Processors (“Respondent” or “Deutch”). Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (revised Consolidated Rules) at 64 Fed. Reg. 40138 (July 23, 1999) (to be codified at 40 C.F.R. Part 22)¹, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law and Penalty Calculation, Complainant’s Motion for Default Judgment is hereby GRANTED.

¹All further references are to the revised Consolidated Rules.

Background

This civil administrative action was instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. 7413(d), and the Consolidated Rules. On September 15, 1998², a Complaint was issued against the Respondent alleging violations of Section 608(a) of the CAA, 42 U.S.C. 7671g(a), due to the Respondent's disposal of appliances without either recovering refrigerant from the appliances or verifying that the refrigerant had been evacuated from the appliances previously. A civil penalty of Ten Thousand Fifty Dollars (\$10,050) was proposed in the Complaint.

The Complaint issued to the Respondent states on page 8, in the section headed "Answer" that, "If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing under 40 C.F.R. 22.17. The civil penalty proposed herein shall become due and payable without further proceedings 60 days after the Default Order becomes a Final Order of the Administrator pursuant to 40 C.F.R. 22.27 and 22.31."³

The Complaint was sent by certified mail on September 15, 1998. The Domestic Return Receipt evidencing delivery was signed by S. Lewis and dated September 18, 1998. On September 25, 1998, Joel G. Deutch, the attorney representing I. Deutch & Sons, sent a letter to U.S. EPA stating

²Revisions to 40 C.F.R. Part 22 became effective on August 23, 1999 for proceedings commenced prior to that date, unless to do so would cause substantial injustice. 64 Fed. Reg. 40138 (July 23, 1999).

³Revised 40 C.F.R. 22.27 has changed the time period within which an Initial Decision becomes a final order from 60 days to 45 days.

that as a result of the Respondent's financial condition, the Respondent has been advised not to answer the administrative complaint. On December 28, 1998, the Complainant sent a second letter, via certified mail, to the Respondent offering the Respondent another opportunity to answer the Complaint. To date, the Respondent has failed to file an Answer to the Complaint.

On November 30, 1999, the Complainant filed Complainant's Motion for Default Judgment. It was served on the Respondent by Certified Mail. To date, the Respondent has failed to file a Response to the Complainant's Motion for Default Judgment .

Findings of Fact

1. On September 15, 1998, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. 7413(d) (the "Act"), U.S. EPA filed an administrative complaint against the Respondent, I. Deutch & Sons Scrap Processors, alleging violation of the regulations promulgated pursuant to Section 608(a) of the Act and 40 C.F.R. Part 82.

2. On April 23, 1998, the Respondent was an Ohio corporation with a place of business at 311 Bay Miller Street, Cincinnati, Ohio.

3. On April 23, 1998, the Respondent operated a scrap processing facility. As part of its business, the facility disposed of appliances and small appliances.

4. On April 23, 1998, the U.S. EPA conducted an inspection of the Respondent's facility. Representatives from the Hamilton County Department of Environmental Services were present during the inspection.

5. During the inspection, U.S. EPA observed that the Respondent had disposed of appliances without recovering refrigerant from the appliances or verifying that the refrigerant had been evacuated from the appliances previously.

6. The Complaint sought a civil administrative penalty of \$10,050.

7. To date, the Respondent has failed to file an Answer to the Complaint.

8. The Respondent was served with a Motion for Default Judgment.

9. To date, the Respondent has failed to respond to the Motion for Default Judgment.

Conclusions of Law

1. Jurisdiction for this action was conferred upon U.S. EPA by Section 113(d) of the Clean Air Act, 42 U.S.C 7413(d).

2. The Respondent was properly served the Complaint.

3. The Respondent has not filed an Answer to the Complaint.

4. The Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing on such factual allegations. 40 C.F.R. 22.15(d) and 22.17(a).

5. The Respondent is a person as defined at Section 302(e) of the CAA, 42 U.S.C. 7602(e), to whom the CAA applied.

6. The Respondent owned or operated a scrap processing and disposal business, as those terms are defined at Section 112(a)(9) of the CAA, 42 U.S.C. 7412(a)(9).

7. The Respondent disposed of appliances as that term is defined in Section 601(i) of the CAA, 42 U.S.C. 7671(i), and 40 C.F.R. 82.152(a).

8. The Respondent's disposal of appliances and small appliances as part of its scrap recycling operations made it subject to the requirements of 40 C.F.R. Part 82, Subpart F.

9. The Respondent's disposal of appliances without either recovering refrigerant from the appliances, in accordance with 40 C.F.R. 82.156(g) or (h); or verifying that the refrigerant had been evacuated from the appliances previously, in accordance with 40 C.F.R. 82.156(f)(2), constitutes a violation of 40 C.F.R. 82.156(f) and Section 608 of the CAA, 42 U.S.C. 7671g.

10. The Respondent's failure to file a timely answer to the Complaint or otherwise respond to the Complaint, is grounds for the entry of a default order against the Respondent assessing a civil penalty for the violation described above.

11. The Complainant is authorized to collect a penalty, not to exceed \$27,500 per day of violation, for the Respondent's violation of Section 608 of the CAA, 42 U.S.C. 7671g, and 40 C.F.R. 156(f)(2)..

Penalty Calculation

Under Section 113(e)(1) of the CAA, 42 U.S.C. 7413(e)(1), the statutory penalty factors to be considered when assessing a penalty, include the size of the Respondent's business; the economic impact of the proposed penalty on the Respondent's business; the Respondent's full compliance history and good faith efforts to comply; the duration of the violation alleged in the Complaint as established by credible evidence; payment by the Respondent of penalties previously assessed for the same violation; economic benefit of noncompliance; and the seriousness of the alleged violation. The U.S. EPA guidance documents used to implement these statutory penalty factors in a consistent nationwide manner are the *"Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart*

F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant” (CAA Refrigerant Penalty Policy) and “*Clean Air Act Stationary Source Civil Penalty Policy*” (CAA Stationary Source Penalty Policy).

The penalty policies provide that the starting point for assessing a penalty for violation of Section 608 of the CAA and the implementing regulations, 40 C.F.R. Part 82, Subpart F, is to determine the economic benefit and gravity of the violation.

In accordance with the CAA and the penalty policies, EPA made the following determinations:

- Economic benefit of \$2,250. Cost savings of \$2,000 which the Respondent would have had to spend for purchase of refrigerant recovery equipment. Training savings of \$550, which the Respondent would have had to spend to teach personnel refrigerant recovery techniques. (There appears to be an addition error. \$2,000 plus \$550 equals \$2550. As the error benefits the Respondent, and change in the proposed assessed penalty would require reissuance of the Complaint, I will use the \$2,250 figure).

- Gravity penalty of \$7,500. Referring to the CAA Refrigerant Penalty Policy, EPA determined that the violation presented a major risk of environmental harm and the extent of deviation was major. Using the matrix in the policy, an initial gravity component of \$15,000 was calculated. It was reduced by .5 due to the size of the violator.

- The violation was one day.
- There was no indication of bad faith.
- There was no credible indication of inability to pay the penalty.

Therefore, there were no further adjustments to the proposed penalty.

Evaluating all of the information, I have determined that the proposed civil administrative penalty of \$10,050 is appropriate. The proposed penalty was calculated in accordance with Section 113 of the CAA, 42 U.S.C. 7413, the CAA Refrigerant Penalty Policy and the CAA Stationary Source Penalty Policy. The record supports the proposed penalty.

A civil penalty of Ten Thousand Fifty Dollars (\$10,050) is hereby assessed against the Respondent, I. Deutch & Sons.

Default Order

Respondent is hereby ORDERED as follows:

A. Respondent is assessed a civil penalty in the amount of Ten Thousand Fifty Dollars (\$10,050).

B. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States of America" within thirty (30) days after the effective date of the final order. 40 C.F.R.

22.31(c). Such payment shall be remitted directly to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

C. A copy of the payment shall be mailed to the Regional Hearing Clerk (Mail Code R-19J) and Counsel for the Complainant (Mail Code C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. A transmittal letter identifying the name and docket number should accompany both the remittance and the copies of the check.

D. This Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the Environmental Appeals Board (401 M Street, S.W., Washington D.C. , 20460) or the Environmental Appeals Board elects, sua sponte to review this Initial Decision and Default Order. 40. C.F.R. 22.27c. A party may appeal an initial decision within thirty (30) days after service on the parties. 40 C.F.R. 22.30(a)(1).

IT IS SO ORDERED.

Dated: February 1, 2000

_____/s/_____
Francis X. Lyons
Regional Administrator

Prepared by Regina Kossek, Regional Judicial Officer