

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 DALLAS, TEXAS



IN THE MATTER OF:	) )	
RASMUSSEN GROUP, INC. d/b/a CAPITAL STEEL AND IRON COMPANY OKLAHOMA CITY, OKLAHOMA	) )	DOCKET NO. EPCRA-06-2003-0502
RESPONDENT	) ) )	

# DEFAULT ORDER AND INITIAL DECISION

On October 15, 2002, the Complainant filed a Complaint and Notice of Opportunity for Hearing (Complaint) against the Respondent, alleging violations of the Emergency Planning and Community Right-to-Know Act (ECPRA). The Complaint sought a civil penalty of \$9,350.

No answer was filed by the Respondent. On April 9, 2003, the Presiding Officer issued an Order requiring EPA to file proof of service of the Complaint, and show cause, by April 28, 2003, why the Complaint should not be dismissed for lack of prosecution.

The Order to Show Cause was issued because almost six (6) months had passed since the Complaint was filed, and the Respondent had not filed an answer. However, the Complainant had not filed a motion for a default order. The Presiding Officer could not, sua sponte, find the Respondent in default for failing to file an answer. The Presiding Officer noted that unless some action was taken by the Complainant, this case could remain on his docket indefinitely. In

addition, there was no proof of service filed, as required by 40 C.F.R. § 22.5(b)(1)(iii).

However, the Complainant failed to file a response to the Order to Show Cause. Thus, the Complainant will be found in default for failing to respond to the Presiding Officer's order. 40 C.F.R. § 22.17(a). Default by the Complainant constitutes a waiver of the Complainant's right to proceed on the merits of the action, and results in the dismissal of the Complaint with prejudice. *Id*. Therefore, it is hereby **ORDERED** that the Complaint is dismissed with prejudice.

This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceedings within thirty (30) days from the date of service provided in the certificate of service accompanying this Order, (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board elects, sua sponte, to review the Initial Decision within forty-five (45) days after its service upon the parties.

Dated this 30<sup>th</sup> day of April, 2003.

/S/

Evan L. Pearson Regional Judicial Officer

# CERTIFICATE OF SERVICE

I hereby certify that on the day of April, 2003, I
served true and correct copies of the foregoing Default Order and
Initial Decision on the following in the manner indicated below:
CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Wayne Nyberg, President Capitol Steel and Iron Company 5500 N.E. 22 <sup>nd</sup> Street Des Moines, Iowa 50313
CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Clerk of the Environmental Appeals Board (1103B) U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W.

# CERTIFIED MAIL - RETURN RECEIPT REQUESTED \_\_\_\_\_

Washington, D.C. 20460-0001

J.P. Suarez
Assistant Administrator
Office of Enforcement and Compliance
Assurance (2201A)
Ariel Rios Building
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1200 Pennsylvania Avenue, N.W.
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## INTEROFFICE MAIL

Stan Lancaster
EPCRA 313 Enforcement Officer
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Lorena S. Vaughn Regional Hearing Clerk