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DEC 13 1989

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION V REGIONAL HEARING CLERK U.S. ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
AMERICAN CHEMICAL SERVICE, INC.) Docket No. V-W-89R-37
420 SOUTH COLFAX AVENUE)
GRIFFITH, INDIANA 46319)
IND 016 360 265)

Ruling and Order

This case is before the undersigned on Respondent's Motion to Stay Proceedings pending resolution of its variance request filed with the Indiana Department of Environmental Management. For the reasons set forth below, the motion is denied.

On August 4, 1989, Complainant, U.S. Environmental Protection Agency, filed a Complaint and Compliance Order against Respondent, American Chemical Service, Inc., alleging violations of Sections 3004 and 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§6924 and 6925; the Indiana Code Section 13-7 (1982); and the Indiana Administrative Code 329 IAC 3-22-24(a). The Complaint alleges that Respondent failed to obtain and demonstrate liability coverage for sudden accidental occurrences arising from operations at Respondent's facility from March 12, 1986 to present. Respondent filed a Motion to Stay Proceedings pending disposition of its Petition for Variance currently before the Indiana Department of Environmental Management. As grounds for its motion, Respondent claims, among other things, that if the variance is granted, U.S. EPA's claim will be baseless. Complainant has filed a Response in Opposition to Respondent's Motion to Stay Proceedings.

An entity is subject to existing requirements until a variance is obtained. It litigates a variance request on its own time. Train v. Natural Resources Defense Counsel, 421 U.S. 60 (1975). Respondent has been in alleged violation of RCRA since March 12, 1986. It did not file its Petition for Variance with the state agency until November 7, 1989. Furthermore, there is no indication as to the amount of time it will take the state agency to rule on the petition. Both 40 C.F.R. Part 22 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" and 40 C.F.R. Part 24 "Rules Governing Issuance of and Administrative Hearings on Interim Status Corrective Actions" envision expeditious resolution of cases.

WHEREFORE, for the above reasons, Respondent's Motion for Stay is Denied. Respondent is given thirty (30) days from service of this order within which to respond to the Complaint and request a hearing.


Regina M. Kossek
Regional Judicial Officer
Region V

Dated: Dec. 13, 1989

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Ruling and Order in the matter of American Chemical Service, Inc., Docket No. V-W-89R-37, were sent to the following persons in the manner indicated:

Certified Mail
Return receipt requested:

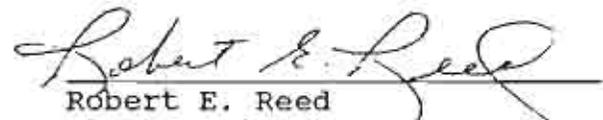
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Dated: Dec 13, 1989


Robert E. Reed
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