

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:) RCRA DOCKET VI-446-H
)
WEBBCRAFT, INC.)
(a/k/a WEBBCRAFT BOATS),)
)
RESPONDENT)

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EPA REGIONAL OFFICE
MEMPHIS, TENNESSEE

RESOURCE CONSERVATION AND RECOVERY ACT:

1. In determining whether a penalty proposed to be assessed is appropriate, the criteria set forth in Section 6928(c) of the Act, i.e., the seriousness of the violation and any good faith efforts of the violator to comply with applicable statutory and regulatory requirements, must be considered.

RESOURCE CONSERVATION AND RECOVERY ACT:

2. The extent and character of hazardous waste is considered in determining the seriousness of a violation, and where but one non-toxic hazardous waste was handled, which was listed only because of its ignitability, such circumstances are properly to be considered in determining an appropriate amount to be assessed as a civil penalty.

RESOURCE CONSERVATION AND RECOVERY ACT:

3. In determining the appropriateness of a proposed civil penalty, Respondent's good faith efforts to comply with applicable requirements, and to remedy violations found, should properly be considered.

Entry of Appearance

For Complainant: Jacob R. Billig
 U.S. Environmental Protection Agency
 Region VI
 1201 Elm Street
 Dallas, Texas 75270

For Respondent: Charles W. Shipley, Esquire
 First National Tower
 Suite 3401
 Tulsa, Oklahoma 74103

INITIAL DECISION

By Complaint and Compliance Order filed on September 27, 1984, Complainant, United States Environmental Protection Agency (hereinafter "EPA", "Complainant" or "Agency"), Region VI, charges Respondent, Webbcraft Boats, Inc. (hereinafter "Respondent" or "Webbcraft") with violation of Subtitle C of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") and, particularly, Sections 3004, 3005 and 3010 thereof, 42 USC §6924, 6925 and 6930, and the regulations promulgated thereunder, and Sections 1-2001 through 1-2014 of the Oklahoma Controlled Industrial Waste Disposal Act of 1976, Okla. Stat. Ann. Title 630.5. 1981 (hereinafter "OCIWDA"), and the regulations promulgated hereunder, as the Rules and Regulations for Industrial Waste Management ("the Rules"). Further, pursuant to 42 USC §6928, Complainant issued its Compliance Order requiring that Respondent take specified remedial actions within thirty (30) days of receipt of same, as more fully set forth on pages 14 through 17 of said Complaint and Compliance Order.

In a Stipulation executed and jointly filed by the parties on April 2, 1985, prior to an adjudicatory hearing held in Conference Room 9E21, U.S. Federal Building, 1100 Commerce Street, in Dallas, Texas, Respondent admits that

Complainant provided requisite notice to the State of Oklahoma (OSDH), pursuant to Section 3008(a)(2) of RCRA, and that Complainant has jurisdiction to enforce said Subtitle C of RCRA, and regulations promulgated thereunder, and Sections 1-2001 through 1-2014 of OCIWDA.

By said stipulation, dated April 2, 1985 (Transcript [hereinafter "TR"] 4 and 5), the parties agreed to

FINDINGS OF FACT

which support the following

CONCLUSIONS OF LAW

1. Respondent is a person as defined in Section 1004(15) of RCRA, 42 USC §6903(15) and as defined in Section 1-2002.6 of OCIWDA, Okla. Stat. Ann. Tit. 63 O.S. 1981.
2. Acetone waste, EPA code F003, is a listed hazardous waste under 40 CFR Part 261, Subpart D.
3. Respondent is a generator of hazardous waste, and the owner or operator of a hazardous waste management facility used for the treatment, storage or disposal of hazardous waste as those terms are defined at Section 1004 of RCRA, 42 USC 6903 and 40 CFR §260.10, and Rules 1.1.1 through 1.1.43, and is subject to the requirements of RCRA, its accompanying regulations and the OCIWDA and its accompanying regulations.
4. Respondent has violated Section 3010(a) of RCRA, 42 USC §6930(a), by failing to notify Complainant that it was generating, treating, storing and/or disposing of hazardous waste at the above facility.
5. Respondent has violated Section 3005(e) of RCRA, 42 USC §6925 and 40 CFR §270.10(e) (formerly 40 CFR §122.22) by failing to submit Part A of its hazardous waste permit application on or before November 19, 1980.

6. Respondent has violated Rule 7.1.6 and 40 CFR §265.13(b) by failing to have an adequate written waste analysis plan, and to keep it at the facility.
7. Respondent has violated Rule 7.1.6 and 40 CFR §265.15(b) by failing to develop an adequate written inspection schedule, and to keep it at the facility.
8. Respondent has violated Rule 7.1.6 and 40 CFR §265.16 by failing to have documents pertaining to job positions, job descriptions and training, and to keep them at the facility.
9. Respondent has violated Rule 7.1.6 and 40 CFR §265.112(a) by failing to have an adequate written closure plan at the facility.
10. Respondent has violated Rule 7.1.6 and 40 CFR §262.20(a) by failing to use manifests for the shipment of hazardous waste off-site.
11. Respondent has violated Rules 7.1.6 and 40 CFR §262.31, by failing to properly label containers offered for shipment.
12. Respondent has violated Rule 7.1.6 and 40 CFR §262.32(b) by failing to properly mark containers prior to off-site transportation.
13. Respondent has violated Rule 7.1.6 and 40 CFR §262.33, by failing to placard hazardous waste before transporting it off-site.
14. Respondent has violated Rule 7.1.6 and 40 CFR §265.75, by failing to submit a copy of a biennial report to the OSDH by March 1 of each even-numbered year.
15. Respondent has violated Rule 7.4.1 and 40 CFR §265.14, by failing to post the required warning signs at its facility.
16. Respondent has violated Rule 7.1.6 and 40 CFR §265.37, by failing to make the necessary arrangements with the local authorities.
17. Respondent has violated Rule 7.1.6 and 40 CFR §§265.51 and 265.53(a), by failing to prepare a contingency plan and keep a copy at the facility.
18. Respondent has violated Rule 7.1.6 and 40 CFR §265.73(a), by failing to keep a written operating record at the facility.

19. Respondent has violated Rule 7.1.6 and 40 CFR §265.143, by failing to demonstrate financial assurance for closure of the facility to the EPA or the OSDH.

20. Respondent has violated Rule 7.1.6 and 40 CFR §265.147(a), by failing to demonstrate financial assurance for sudden accidental occurrences at the facility or group of facilities to the EPA or OSDH.

In addition to the foregoing, Complainant proposes the following additional Conclusions of Law:

21. Respondent violated Rule 7.1.6 and 40 CFR §265.171, by failing to transfer hazardous waste from drums in poor condition to containers in good condition.

22. Respondent violated Rule 7.1.6 and 40 CFR §265.173, by failing to keep drums holding hazardous waste closed during storage.

Respondent stipulated (TR 7) that the facts alleged in the Complaint were true except for its denial that "there were hazardous waste drums that were leaking on the site, causing a potential for environmental harm." Respondent did stipulate that it "had some drums in the storage area . . . which contained acetone waste, a listed hazardous waste" but contends that none of the drums in the storage area that had a puncture, or that were in any danger of leaking, contained such listed hazardous waste (TR 8).

A second issue that was raised throughout the proceeding, and still persists, is the amount of the civil penalty appropriately to be assessed. Complainant proposes the assessment of \$71,250.00.

Further, in a "Stipulation Concerning the Proposed Order", received by me on July 3, 1985, Respondent agrees, in part, to the Proposed Order contained in Complainant's post-hearing submission (page 9) which provides that Respondent shall be ordered to take the following actions:

1. Submit within thirty (30) days of receipt of the Order a soil sampling plan for the storage area at the facility for EPA approval.

2. Implement the soil sampling plan within fourteen (14) days of receipt of EPA approval.
3. Submit to EPA the results of the soil sampling within seven (7) days after the Respondent has received the laboratory analysis.
4. Amend and submit a closure plan to the Oklahoma Department of Health (State) for approval, based on the results of the soil sampling, within fourteen (14) days of receipt of the soil sampling results. A copy of the amended closure plan shall be sent to EPA within fourteen (14) days of receipt of the soil sampling results.
5. Within one hundred eighty (180) days from the date the State approves the closure plan, the Respondent must close out the facility.
6. If Respondent fails to close its facility no later than 180 days from the date of State approval of the submitted closure plan, or if the plan is not approved by the State, Respondent will be required, no later than the 181st day from the State approval date or within sixty (60) days of the State's disapproval, whichever comes first, to:
 - a. Obtain financial assurance for closure in accordance with 40 CFR §265.143.
 - b. Obtain financial assurance for post-closure in accordance with 40 CFR §265.145.
 - c. Obtain financial assurance for sudden accidental occurrences in accordance with 40 CFR §265.147(a).
 - d. Obtain financial assurance for non-sudden accidental occurrences in accordance with 40 CFR §265.147(b).
 - e. Submit documentation to show compliance with all financial assurance requirements to EPA and to the State.
 - f. Submit a proper notification of hazardous waste activity in accordance with Section 3010 of RCRA.

g. Submit a completed Federal Part A Permit application in accordance with 40 CFR §270.10.

7. Respondent shall provide Notice of Compliance, with a description of any and all action taken to achieve compliance within five (5) days of completion, to the following:

- a. Regional Administrator, U.S. EPA, Region VI;
- b. Regional Hearing Clerk, U.S. EPA, Region VI, and
- c. Complainant's Counsel of Record.

Said provisions are hereby adopted as part of the Compliance Order set forth infra.

HAZARDOUS WASTE STORAGE ISSUE

There is no dispute that, on or about August 15, 1984, the date of subject inspection, there were open drums as well as punctured, rusted and bent drums in the container storage area where evidence of spillage was observed (see paragraphs 32 and 39, "Statement of Stipulations", April 2, 1985). In said Stipulation, the parties also agree (paragraph 6, page 2) that Respondent uses acetone, which generates acetone waste, EPA Code F003, which is stored in 55-gallon drums, and that there were 120 drums on site at the time of said inspection. On this record, I find that, among the 120 drums that contained acetone waste generated by Respondent, there were open, corroded, punctured and leaking drums which contained acetone waste (see Complainant [hereinafter "C"] Exhibit [hereinafter "EX"] 1, Containers Storage Check List, Items 2, 3, 5 and 6 and narrative therewith; TR 15-21). Respondent's president states (TR 84) that each of 120 barrels observed in the storage area "at one time or another . . . had acetone in them" and that the 120 drums stored a mixture of acetone and resin in solid and liquid form. One-hundred-twenty-one (121) drums of waste were transported from said storage area in mid-October, 1984, and

were manifested by Respondent as containing acetone waste (Respondent [hereinafter "R"] EX 6 and 7). Stains on the ground, and burned vegetation underneath and around the drums, evidenced leakage at the drum storage area of the acetone-resin mixture, which took on a darker tint than unmixed acetone, which is a clear liquid (TR 19-22).

CIVIL PENALTY

The Act, Section 6928(c), provides for a penalty determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts (by Respondent violator) to comply with applicable requirements.

40 C.F.R. 22.27(b) provides that:

". . . the Presiding Officer shall determine the dollar amount of the . . . civil penalty to be assessed in the initial decision in accordance with any criteria set forth in the Act . . . and must consider any civil penalty guidelines issued under the Act. If an amount different from that proposed in the Complaint is assessed, specific reasons must be given therefor." (Emphasis supplied.)

In considering the seriousness of the violations, I shall consider the extent and character of the subject waste. In determining if good faith efforts were present, I shall consider the conduct of Respondent in the handling of subject waste and the circumstances attendant thereto. In arriving at an appropriate penalty to be assessed, I am required to consider, but am not bound by, said civil penalty guidelines (Fremont [Ohio] City Schools, TSCA-V-C-264, June 26, 1985).

A Case Development Officer in the EPA Enforcement Section prepared penalty calculation worksheets (C EX 3) assessing a penalty for each violation found at Respondent's facility on August 15, 1984 (TR 29), which resulted in the Proposed Penalty, contained in subject Complaint, of \$71,250.00 1/ Said worksheets accord with the matrix contained in the RCRA Final Penalty Policy (May 8, 1984.) The

1/ Said worksheets, using the midpoint of the penalty range provided by the matrix in the RCRA Penalty Policy, dated May 8, 1984, calculate penalties totaling \$81,000.00; no explanation appears for the difference in the amounts.

matrix axes indicate, horizontally, Extent of Deviation (from the Regulatory Requirement) and, vertically, Potential for Harm. The extent and potential of the violation is, on the respective axes, classified as Major, Moderate or Minor, and produces a gravity-based penalty. The gravity-based penalty may be increased or decreased to reflect particular circumstances surrounding the violation.

THE CIRCUMSTANCES

On this record, acetone is a listed waste, EPA Code F003 (40 C.F.R. Part 261, Subpart D) because of EPA's determination that, being ignitable (TR 19) and volatile (TR 23; TR 84), it presents a potential for harm to human health and the environment. Acetone is the only hazardous waste produced at the site (C's Reply Brief, page 3). There was one area (TR 24) designated by Respondent for storage of drums containing such waste (TR 16; 22; C's Reply Brief, page 4).

Respondent is a fiberglass boat manufacturing facility located in Collinsville, Oklahoma. Acetone is used as a solvent in the fiberglass operation and the operation generates approximately twelve 55-gallon drums each month of waste acetone and resin mix (C EX 1). Fiberglass waste is also generated but said solid waste is not a hazardous waste (TR 15; C EX 1).

Respondent's shop foreman (TR 14), Stephen Logsdon, was designated by Respondent's president to answer questions of the EPA inspector during the course of the EPA inspection on August 15, 1984 (TR 13), and pointed out a storage area consisting of approximately 500 square feet where approximately 120 drums containing acetone waste (TR 21) were sitting on the ground (TR 16); some drums were open, some were laying on their side and some were upright. There was no concrete pad or impermeable layer beneath the drums, nor was the area equipped with curbing or berms to catch any leakage or to prevent run-on from getting into the area and carrying (waste) materials off-site (TR 17).

Respondent has operated said business, since 1971, as a manufacturer of fiberglass boats (TR 57). Acetone is used to clean equipment and the like (TR 58). In the past, and particularly since 1980, the "used acetone" was put in a drum and it was picked up (for recycling) when new acetone was delivered to Respondent. Respondent first began to store and accumulate acetone waste in late 1983, when the supplier ceased picking up said waste and Respondent endeavored to find a recycler to take it. None of the waste was ever handled in any way except the aforementioned drum storage (TR 59). It was in June, 1984, after said waste was refused by Recyclers, Inc., and that Respondent found and realized the waste was not recyclable, that Respondent obtained information from a disposal source in Arkansas. From this information, Respondent contacted a firm in Tulsa, Oklahoma (TR 61), who estimated disposal costs. Respondent obtained an estimate for transportation and disposal from the site by U.S. Pollution Control, Inc. ("USPCI"; R EX 3). The USPCI Control Plan, dated August 24, 1984 (R EX 4) was submitted to OSDH on September 11, 1984, and approved by them on October 10, 1984 (R EX 5). The instant Complaint was filed September 28, 1984, and served on Respondent October 2, 1984. A total of 121 barrels was shipped in two shipments to USPCI on October 17, 1984, and October 26, 1984, respectively. The truck hauled only 93 barrels on the first load and returned for the remaining 28 barrels. Two invoices, showing cost to Respondent for transportation and disposal of waste (R EX 7), were rendered (TR 68-9). All of the drums, at one time, had acetone in them (TR 84). As USPCI would not accept any drums with a leak, the waste was transferred to new drums where bungs could not be replaced due to stripped threading (TR 70). The empty drums were sold to a salvage yard after assurance from EPA that such sale of empty drums was permissible (TR 71).

On the date of hearing, a Notification of Hazardous Waste Activity and

Part A Permit Application (R EX 8), were filed with the Agency (TR 72).

On that date, acetone waste was still being generated at a rate of one barrel per workday and disposed of to a recycler on a schedule where he recycles on site (TR 80) approximately once a month (TR 73). Disposal costs over the past six months were \$9800 (TR 79). On March 22, 1985, a closure plan (R EX 9) was filed with OSDH. Respondent now properly labels, placards and marks drums stored on site temporarily or disposed of. Respondent discards drums in poor condition and makes certain all drums are sealed (TR 76). Prior to the inspection, Guy Webb, Respondent's President, was about the storage area once a month. Now, each Monday morning, he inspects the drums stored, with a view to avoid unlawful disposal.

After Respondent learned that Recyclers, Inc., would not accept his waste, and he would have to find a means of disposing of it, Respondent's president attempted to get copies of the regulations to learn what was required to manage his waste, after he was told it was subject to regulation. He wrote the EPA Regional Office in Dallas, and sent a \$7.00 check, which was returned with the advice that copies were not available, after which he called the EPA Regional Office in Kansas City, and EPA Headquarters in Washington, D.C., without obtaining the information he sought (TR 91).

Upon consideration of the circumstances, I find that a civil penalty appropriately to be assessed is as follows:

1. For late filing of the notification (RCRA 3010): \$250.00.
2. For late filing of the Part A application (RCRA 3005[e]): \$250.00.
3. For failing to obtain a Waste Analysis (265.13): \$150.00.

These violations clearly exist but I have considered that only one listed hazardous waste is handled by Respondent generator; the extent and character of the waste and the potential for harm from said violations is minimal, and when

Respondent discovered he would have to handle and dispose of said waste, he was unsuccessful in receiving advice from EPA as to how to legally proceed.

4. For failing to inspect said waste on a schedule (265.15): \$1500.00

On this record, I adopt the calculation shown by C EX 3, except I find the lower point of the range to be appropriate; although inspections were made, they were not thorough and timely.

5. For Failure to Train Personnel (265.16): \$100.00

Since Respondent is only a generator of but one item of hazardous waste, the seriousness and potential for harm are minimal.

6. Failure to have a Closure Plan (265.112): \$500.00

Respondent generates but one hazardous waste which is stored in one area. The one waste is not toxic, but is hazardous because of its ignitibility; it is also very volatile and evaporates very quickly. Respondent, though regulated as a TSD, is not in the hazardous waste business, as usually contemplated by the regulations. I find that, because of the nature and extent of the waste, such violation, while existent, presents, under the circumstances, a hazard that is less serious than that calculated, and can be remedied without great potential for harm.

7. Failure to prepare manifests (262.20): \$1500.00

Because Respondent has at all pertinent times generated but the one hazardous waste and for a relatively short period, and has now remedied this omission, I find a Major deviation and Minor potential for harm.

8., 9. and 10. Failure to mark, label and placard containers (262.31; 262.32 and 262.33): \$750.00

For the reason given above, that but one hazardous waste existed, this violation, while existent, was not serious, and is now being remedied, \$250.00 for each violation is assessed.

11. Failure to timely prepare a biennial report (265.75): \$500.00

Because of the circumstances set forth, supra, I find the Deviation Moderate and the Potential for Harm Minor; but one hazardous waste was generated, none was received and the amount generated was foreseeable. Respondent has taken remedial action.

12. No Security Warning Signs (Rule 7.4): \$100.00

Because of the nature of Respondent's business and the attendant security measures necessitated by its operation, I find this violation to be minimal from the standpoint of either seriousness or the exercise of good faith.

13. Containers in Poor Condition (265.171): \$8000.00

The findings submitted and the penalty proposed (C EX 3) are supported by the record. For the reasons stated supra, I find the low point of the matrix range appropriate.

14. and 15. Arrangements with Local Authorities and Contingency Plan (265.37; 265.53): \$200.00

Because of the nature of Respondent's business and the community interest implicit by the employment of a large segment of the community, the seriousness of said violations is greatly reduced and I feel the potential for harm by such omissions is minimal. I have lowered the assessment for each to \$100.00.

16. Operating Record (265.73): \$100.00

It is apparent that this regulation is primarily directed to facilities receiving more than one, and likely many, wastes varying in character, volume and extent. Since Respondent dealt with but one waste and generated it in amounts that are foreseen, and now has taken remedial measures, I find a minimal amount is an appropriate penalty.

17. Open Storage Containers (265.173):

\$5000.00

I find the record supports the calculator's use of the Penalty Policy, but find the lower point of the matrix range appropriate under the circumstances, supra.

18. Financial Assurances (265.143; 265.147[a]):

\$1500.00

I find that Respondent's Extent of Deviation was Major and Potential for Harm Minor and have fixed the penalty at the lower amount provided by the matrix. The record shows that the Respondent is solvent and financially responsible. Because of the circumstances hereinabove mentioned, the potential for harm is minimal and Respondent has indicated its intent to cease storing and transporting subject hazardous waste, as such waste is and will be recycled at the hazardous waste site. The record is not explicit as to whether Respondent carries liability insurance of the type specified by the regulation; however, for the year ended April 30, 1984, Respondent's insurance "expense" was \$75,131 (C EX 4). Considering the nature and extent of the business operated by Respondent, this is an indication that any contingency or risk which might here be cause for concern is covered. Further, it seems clear that the regulations here applicable target hazardous waste firms that comprehensively operate in the receipt of hazardous wastes of varying toxicities and propensities, as well as their transport, storage and disposal. Respondent generates but one waste, ignitable but not toxic, which is recycled on site.

ABILITY TO PAY

On this record, a showing was made by the testimony of expert witness Frank Charles Graves (TR 103), a director of Putnam, Hayes and Bartlett, a management and economics consulting firm, that Respondent has grown rapidly and its performance, past and present, is found and projected to be that of substantial profitability (TR 107) and possesses more than adequate ability to pay a lump sum civil penalty of \$71,000 (TR 108; C EX 5). Since the penalty

herein assessed is substantially less, I find that any claim by Respondent that it is financially unable to pay should be and it is hereby rejected.

Having considered the record made at the hearing held herein, along with the stipulations entered into, the post-hearing submissions made by the parties, and in accordance with the criteria set forth in the Act and regulations, I recommend the following

PROPOSED FINAL ORDER 2/


1. Pursuant to 42 U.S.C.A. 6928(c) of the Act, a civil penalty in the total sum of \$20,500.00 is hereby assessed against Respondent, Webbcraft, Inc.
2. Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of Service hereof upon Respondent by forwarding, via certified mail, a cashiers check payable to Treasurer, United States of America, to:

U.S. EPA, Region 6 (Regional Hearing Clerk)
Post Office Box 360582M
Pittsburgh, Pennsylvania 15251.

3. Respondent is hereby ORDERED to fully comply with the stipulated ORDER, beginning on page 5 hereof and continuing to page 7, supra.

IT IS SO ORDERED.

DATE: July 23, 1985



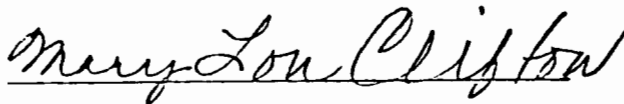
Marvin E. Jones
Administrative Law Judge

2/ 40 C.F.R. 22.27(c) provides that this Initial Decision shall become the Final Order of the Administrator within 45 days after its service upon the parties unless (1) an appeal is taken by a party to the proceedings, or (2) the Administrator elects, sua sponte, to review the Initial Decision. 40 C.F.R. 22.30(a) provides that such appeal may be taken by filing a Notice of Appeal within twenty (20) days after service of this Decision.

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 40 CFR 22.27(a), I have this date forwarded, via Certified Mail, Return Receipt Requested, to Ms. Carmen Lopez, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, the Original of the foregoing Initial Decision of Marvin E. Jones, Administrative Law Judge, and have referred said Regional Hearing Clerk to said section which further provides that, after preparing and forwarding a copy of said Initial Decision to all parties, she shall forward the Original, along with the record of the proceeding, to the Hearing Clerk, EPA Headquarters, Washington, D.C., who shall forward a copy of said Initial Decision to the Administrator.

DATED: July 23, 1985



Mary Lou Clifton
Secretary to Marvin E. Jones, ADLJ