



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
CHIE PING WU)
 AND) DOCKET NO. RCRA-3-99-003
PING AUTO CENTER, INC.,)
)
RESPONDENTS)

**ORDER GRANTING SECOND MOTION FOR
PARTIAL DEFAULT JUDGMENT**

An order, dated October 23, 2000, which is incorporated herein by reference, granted Complainant's motion for partial default, concerning liability only, as to Counts I through IV of the complaint in this proceeding under Section 9006 of the Solid Waste Disposal Act, as amended (42 U.S.C. § 6991e). Respondents were found to be in default for failing to file a prehearing exchange in accordance with an order of the ALJ and to have violated Subtitle I of the Act, 42 U.S.C. §§ 6991-6991i, regulations at 40 C.F.R. Part 280 and District of Columbia Underground Storage Tank Regulations, District of Columbia Municipal Regulations ("DCMR"), Title 20, Chapters 55-68. In general, the Act and regulations require that owners and operators of underground storage tanks ("USTs") implement leak detection systems in accordance with specified requirements by listed dates and failing to apply leak

detection systems in accordance with those requirements to complete closure in accordance with other provisions of the regulations, i.e., remove the USTs from service. The District of Columbia received final approval to operate its own UST management program in lieu of the Federal program effective as of May 4, 1998, and Counts II, IV and V of the complaint allege violations of DCMR.

Under date of October 11, 2000, Complainant filed a second motion for partial default judgment as to liability for Count V of the complaint. Count V concerns the alleged failure of Respondents to register and pay the registration fee for the 500-gallon waste oil tank prior to the deposit or the dispensing therefrom of regulated substances as required by DCMR §§ 5601.1, 5601.3, 5601.4, 5601.7, 5601.10 and 5601.11. The use of this unregistered UST is alleged to have continued from at least May 4, 1998, to September 30, 1999, the date the complaint was issued.

Complainant's uncertainty as to the manner of proceeding on Count V stemmed at least in part from assertions by Respondents' former counsel that Respondents had in fact registered their 500-gallon waste oil UST with DCERA in June of 1999, but that the application had not been acted upon until October 18, 1999.^{1/}

^{1/} A letter to Respondent's counsel from counsel for complainant, dated April 28, 2000 (Exh A to Complainant's Motion for Partial Default Judgment, dated August 11, 2000), acknowledges receipt of a June 1999 Notification for the 500-gallon waste oil UST submitted to DCERA on behalf of Ping Auto Center, Inc. by Calco Installation and Service, Inc. (Order Granting Motion for Partial
(continued...)

Complainant asserts, however, that the 500-gallon waste oil tank was not in fact registered with DCERA until after September 29, 1999, the date the complaint was issued (Motion at 3). Complainant points out that a "Notification for Underground Tanks", which includes the 500-gallon waste oil tank and which lists the owner as Ping Auto Center, Inc, submitted by a fax from Respondents' then counsel, dated April, 27, 2000, is missing page 2, the signature page (Motion, Exh B).

A fax from Sharon K. Hamilton of the D.C. Environmental Regulation Administration, dated September 5, 2000, encloses copies of what are stated to be the only notifications from Respondents that show the [500-gallon] used oil tank (Motion, Exh C). The first of these documents appears to be the same notification enclosed with the referenced fax from Respondents' counsel with the exception that it includes the signature page, reflecting that it was signed by Chie Ping Wu as manager of Ping Auto Center, Inc. on November 30, 1999. Page 5 of the notification is the location for the representations and signature of the installer. Although this form contains the handwritten name Calco Installation and Service and a date of 6/99, it was not signed by Calco.^{2/} The first page

^{1/} (...continued)
Default at 11).

^{2/} This notification indicates erroneously that there are a total of three USTs at Respondent's facility, a 10,000-gallon tank for gasoline, a second 10,000-gallon tank having compartments of
(continued...)

of this notification bears a handwritten notation that it was received on 1-18-2000. An explanation for the dates on the form and how the notifications are handled by DCERA states that the "date received" is the date the notification is received by the person entering the data into the computer rather than the date it was received in the office (Motion, Exh D). Additionally, the explanation states that contractors [installers of USTs] usually have a supply of notification [forms] on hand and they complete their portion of the form and send or deliver the notification to the owner for completion and delivery to the D.C. case manager.

The second document enclosed with the fax, dated September 5, 2000, from DCERA is an amended notification which lists Chie Ping Wu as the owner and which was signed by Ethel Wu on October 12, 1999.^{2/} The first page of this notification bears a handwritten note "installation", a notation that it was received and entered into the computer on 10-12-99 and on page 5, the signature of Thomas J. Hawks on behalf of the installer, Calco Installation & Service, Inc., and a date of 6/16/99. This notification reflects

^{2/} (...continued)
7,000-and 3,000-gallon capacity, the smaller compartment apparently for diesel fuel, and the 500-gallon waste oil tank at issue here. This error is reflected in the Certificate of Tank Registration for Respondents' facility for the year 2000 (Motion, Exh B).

^{3/} The second page of this notification indicates that Chie Ping Wu is manager and it is probable that the Chie Ping Wu and Ping Auto Center, Inc. are treated interchangeably.

a total of four USTs at Respondents' facility and is accepted as accurate (supra note 2).

As contended by Complainant, the foregoing tends to demonstrate that the 500-gallon waste oil tank was not in fact registered with DCERA until October of 1999. This conclusion is supported by the D.C. UST Registration Invoice, dated October 18, 1999, which appears to reflect an \$800 registration fee payment by Ping Auto Center, Inc. for the 500-gallon waste oil tank, that is, an initial \$200 registration fee, \$500 in renewal fees for the years 1995 through 1999 and a \$100 renewal fee for the year 2000.

Be the foregoing as it may, Respondents' liability for Count V is not, as Complainant points out, dependent upon whether the 500-gallon waste oil UST was registered in June or October of 1999, because the issue of registration for 1998 and the balance of 1999 remains. In this regard, there appears to be no question but that Respondents placed regulated substances in the 500-gallon waste oil tank and dispensed these substances therefrom without having submitted an application for registration and paid the appropriate registration fee in violation of 20 DCMR §§ 5601.10 and 5601.11. The length of time the violation or violations continued is, of course, relevant to the amount of any penalty.^{4/}

^{4/} Page 8, note 15, of the Order Granting Partial Default suggests that the registration fees for USTs provided by DCMR may be a revenue measure rather than fees designed simply to defray the cost of licensing. If the former were determined to be the case, (continued...)

Respondents have not complied with the ALJ's order requiring the exchange of specified prehearing information on or before April 21, 2000. Indeed, Respondents have made no response of any kind to the order nor have they responded to Complainant's motion for partial default judgment concerning Count V of the complaint.^{5/} Respondents' present counsel is clearly aware of the pending motion because it was referred to in the prior order. Information Respondents were to provide is detailed in the prior order and will not be repeated here. Respondent's are found to be in default and to be liable for the violations alleged in Count V of the complaint. Complainant's motion for a partial default judgment on Count V of the complaint will be granted.

Order

Complainant's motion for a default judgment as to liability for the violations alleged in Count V of the complaint is granted. Complainant is directed to file any motions as to how it intends to

^{4/} (...continued)
EPA would lack authority to enforce collection of the fees. The \$500 initial registration fee only applies to tanks above 10,000-gallon capacity, however, and any contention that the fees are a revenue measure as applied to the tanks here may not be cogent as the note implies.

^{5/} . Respondents have retained new counsel who, under date of October 27, 2000, filed a motion for reconsideration of the Order Granting Motion for Partial Default. Among other things, the motion asserts that the mentioned order arose out of the failure of prior counsel to take steps to avoid entry of a partial default. This motion was denied by an order, dated November 20, 2000.

proceed on the penalty phase of this proceeding within 30 days of the date of this order.

Dated this 29TH day of November 2000.

ORIGINAL SIGNED BY UNDERSIGNED

Spencer T. Nissen
Administrative Law Judge