

4/1/96

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| In the Matter of                | ) |                             |
|                                 | ) |                             |
| American Diversified Products,  | ) | Docket No. IF&R-04-94F002-C |
| Inc., Genesis Industries, Inc., | ) |                             |
| and Bob Diamond,                | ) |                             |
|                                 | ) |                             |
| Respondents                     | ) |                             |

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT

The U.S. Environmental Protection Agency (EPA) moved for an order of default against Respondents for failure to answer the second amended complaint in this proceeding. Respondent filed a response in opposition to EPA's motion. For the reasons that follow, EPA's motion is denied.

Respondent's failure to serve an answer upon EPA and this office was inadvertent. Respondent has subsequently remedied this oversight, and EPA has failed to show that it was prejudiced by the delay. Under these circumstances, a default judgment is unwarranted. See, e.g., Cavedon Chemical Co., Inc., Docket No. TSCA-89-H-20 (February 16, 1990), at 2 ("[a] default order is a harsh remedy, indeed, and great circumspection should be used in weighing the issuance of same."); Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986) ("[d]efault judgments are ordinarily disfavored. Cases should be decided upon their merits whenever reasonably possible.").

ORDER

Accordingly, Complainant's Second Motion for Default is denied.

In light of the second amended complaint adding a Respondent in this matter, the parties may, if necessary, exchange additional prehearing information. Any additional prehearing information must be served upon all parties no later than April 26, 1996.

Carl C. Charneski  
Carl C. Charneski  
Administrative Law Judge

Issued: April 1, 1996  
Washington, D.C.

IN THE MATTER OF AMERICAN DIVERSIFIED PRODUCTS, INC., GENESIS INDUSTRIES, INC. and BOB DIAMOND, Respondents  
Docket No. IF&R-04-94F002-C

Certificate of Service

I certify that the foregoing Order Denying Complainant's Motion for Default, dated April 1, 1996, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Ms. Julia P. Mooney  
Regional Hearing Clerk  
U.S. EPA, Region IV  
345 Courtland Street, N.E.  
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Copy by Regular Mail to:

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Marion Walzel  
Marion Walzel  
Legal Staff Assistant

Dated: April 1, 1996