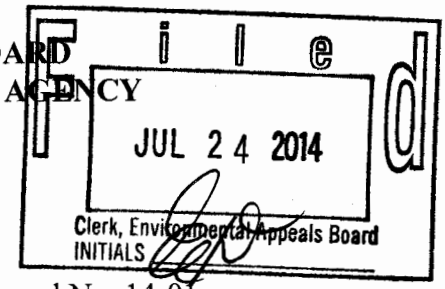
BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:	RCRA (3008) Appeal No. 14-01
Hagerstown Aircraft Services, Inc.	
Docket No. RCRA-03-2011-0112	

ORDER DIRECTING SUPPLEMENTAL BRIEFING

The Board previously elected to review, under its *sua sponte* authority, the U.S. EPA Region 3 Regional Judicial Officer's order denying a motion to set aside a default order as well as the underlying default order in the above-captioned matter. *See* Order Electing to Exercise Sua Sponte Review at 1-2 (May 15, 2014) (referring to *In re Hagerstown Aircraft Servs., Inc.*, Docket No. RCRA-03-2011-0112 (RJO Apr. 3, 2014) (Order on Respondent's Motion to Set Aside Default Order and Temporarily Stay Proceedings); *id.* (RJO June 27, 2013) (Initial Decision and Default Order)).

After reviewing the administrative record, the Board has determined that supplemental briefing would be helpful in its deliberations.[1] Accordingly, the Board directs the parties to file briefs addressing the following issues:

> (1) The Board's opinion in *In re Willie P. Burrell*, TSCA Appeal No. 11-05 (EAB Aug. 21, 2012)[2] lays out the factors the Board considers in deciding whether to set aside a default order, noting that the decision should be based on

[1] The Board's identification of these issues should not be interpreted as suggesting that the Board has made any determinations on the merits regarding any of the facts, issues, or legal matters relating to the proceedings below.

[2] This decision is available on EAB's website, http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Decision~Date?OpenView. *See also* 2012 EPA App. LEXIS 28 (2012).

the "totality of the circumstances." How should the Board evaluate the "totality of the circumstances" in the present case in light of the factors discussed in *Burrell*, and, in particular, what weight should the Board give to the fact that the person who would potentially be able to provide an excuse for the procedural failure is deceased?

(2) What evidence can Hagerstown produce to demonstrate an inability to pay any or all of the $64,000 penalty the RJO assessed? Hagerstown stated below that it was seeking an opportunity to discuss "Respondent's ability to pay the penalties ordered in the Default Order," but did not provide any evidence of inability to pay. *See* Response to Order to Show Cause at 4. If Hagerstown has evidence that it is unable to pay all or part of the penalty, it should explain why it failed to present this evidence to the RJO in responding to the RJO's Order to Show Cause.

Hagerstown shall file a brief addressing these two issues no later than Friday, August 22, 2014. The Region shall file its response brief no later than Friday, September 19, 2014.

So Ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: JUL 24 2014

By: _____
Randolph L. Hill
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Directing Supplemental Briefing** in the matter of *Hagerstown Aircraft Services, Inc.*, RCRA (3008) Appeal No. 14-01, were sent to the following persons in the manner indicated:

By First Class Mail:

Andrew F. Wilkinson
Divelbiss & Wilkinson
13424 Pennsylvania Avenue
Suite 302
Hagerstown, MD 21742

Hagerstown Aircraft Services, Inc.
Attn: Kim Goetz
14235 Oak Springs Road
Hagerstown, MD 21742

By EPA Pouch Mail:

Joyce Howell, Esq.
Senior Assistant Regional Counsel
Office of Regional Counsel, 3RC30
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Heather Gray
Acting Regional Judicial Officer, 3RC41
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Lydia Guy
Regional Hearing Clerk, 3RC00
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Date: JUL 24 2014

Annette Duncan
Secretary