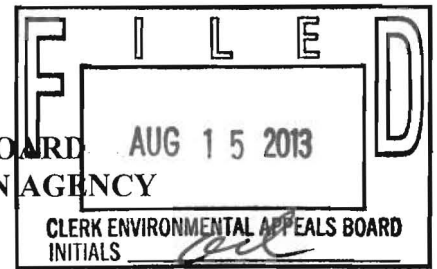


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
Hagerstown Aircraft Services, Inc.) RCRA (3008) Appeal No. 13-01
Docket No. RCRA-03-2011-0112))
_____)

**ORDER TRANSFERRING MOTION
TO SET ASIDE DEFAULT ORDER**

On June 27, 2013, Regional Judicial Officer Renée Sarajian (“RJO”) issued an Initial Decision and Default Order holding Hagerstown Aircraft Services, Inc. (“HAS”) liable for violating the Resource Conservation and Recovery Act and corresponding regulations and assessing a \$64,000 penalty therefor. That motion was served on HAS on July 1, 2013. The RJO specified that the Initial Decision and Final Order would become final forty-five days after being served on the parties, *unless* a party appealed it to the Environmental Appeals Board (“Board”) under 40 C.F.R. § 22.30(a) or moved to have it set aside under 40 C.F.R. § 22.27(c)(3), *or unless* the Board elected to review the Order on its own initiative. *See* Init. Dec. & Def. Order at 23 (citing 40 C.F.R. § 22.27(c)).

On August 5, 2013, HAS filed with the Board a motion to set aside the Default Order and temporarily stay the proceedings in the case. HAS argues in the motion that “good cause” exists for setting aside the Order, and thus the company asks the Board to stay further action in the case pending possible settlement discussions between it and complainant EPA Region 3. Mot. to Set Aside Def. Order & Temp. Stay Proc. at 1-4.

Under the Consolidated Rules of Practice that govern these proceedings, HAS timely filed its motion. *See* 40 C.F.R. § 22.27(c) (providing forty-five-day period of time within which to file motions to set aside default orders); *see also In re B&L Plating, Inc.*, 11 E.A.D. 183, 187-92 (EAB 2003) (affirming Administrative Law Judge’s dismissal of motion for reconsideration of default order as untimely in case where motion was filed more than forty-five days after service of default order). HAS did not, however, file the motion in the proper forum. On August 5, 2013, the date HAS submitted the motion to the Board, jurisdiction over any motions in this case rested with the RJO, not with the Board. *See* 40 C.F.R. § 22.16(c) (assigning to RJO jurisdiction over all motions filed before an answer is filed and before an initial decision becomes final or is appealed); *see also* 40 C.F.R. § 22.17(c) (specifying that “[f]or good cause shown, the Presiding Officer [here, the RJO] may set aside a default order”).

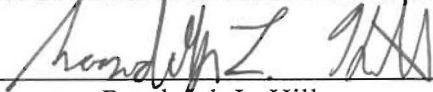
Rather than dismiss HAS’s pending motion for lack of jurisdiction (which at this point could result in HAS missing the forty-five-day filing period for a motion to set aside a default order), the Board instead chooses to exercise its case management discretion to transfer HAS’s motion to the RJO. *See* 40 C.F.R. § 22.4(a)(2) (“[i]n exercising its duties and responsibilities under these Consolidated Rules of Practice, the [] Board may do all acts and take all measures as are necessary for the efficient, fair, and impartial adjudication of issues arising in a proceeding”); *see also In re Midwest Bank & Trust Co.*, 3 E.A.D. 696, 698 n.4 (CJO 1991) (procedural rules may be relaxed when “ends of justice” so require). The Clerk of the Board is directed to transfer HAS’s motion and all accompanying exhibits filed with the Board to the Regional Hearing Clerk.

The RJO is directed to treat the motion as timely filed and to rule on it in the ordinary course of administrative decisionmaking.¹ In the event the RJO renders a decision denying HAS's motion, HAS will have thirty days after the date that decision is served (plus five days if served by a method slower than overnight or same-day delivery) to appeal the decision to the Board. *In re JHNY, Inc.*, 12 E.A.D. 372, 381-82 n.14 (EAB 2005) (motions to set aside default orders stay the running of the time period for appeal of default orders to Board); *B&L Plating*, 11 E.A.D. at 190 (date of default order is changed to correspond to date of order denying motion to set aside default order); *see also* 40 C.F.R. §§ 22.7(c), .30(a)(1) (appeal and mailing time periods).

So ordered.²

Dated: August 15, 2013

ENVIRONMENTAL APPEALS BOARD

By: 
Randolph L. Hill
Environmental Appeals Judge

¹ The Board notes that the deadline for filing a motion to set aside a default order has not passed as of today.

² The two-judge panel responsible for this order is composed of Randolph L. Hill and Catherine R. McCabe.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Transferring Motion to Set Aside Default Order** in the matter of *Hagerstown Aircraft Services, Inc.*, RCRA (3008) Appeal No. 13-01, were sent to the following persons in the manner indicated:

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Date: AUG 15 2013



Annette Duncan
Secretary