

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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ENVIR. APPEALS BOARD

**Via UPS next day delivery**

Clerk of the Board  
U.S. EPA Environmental Appeals Board  
Room 3334  
WJC East Building  
1201 Constitution Avenue, NW  
Washington, DC 20004

MAR 11 2014

Re:

IMO Ross Transport Co., Inc. and Arnold Steinman  
RCRA (9006) Appeal No. 14-01

Dear Respondents:

Enclosed is Complaint's Response to Order Electing to Exercise *Sua Sponte* Review and Establishing Briefing Schedule issued by the Environmental Appeals Board on February 14, 2014. Under cover of this letter, I am copying Respondents with the same.

Respectfully submitted,

  
Joyce A. Howell  
Sr. Assistant Regional Counsel

Enclosures

cc: Marie Owens Powell(3LC70)  
Hon. Renée Sarajian (3 RC00)  
Mr. Arnold Steinman  
Ross Transport Co., Inc.

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
In re: )

Ross Transport Co., Inc. )  
and Arnold Steinman )

RCRA-03-2010-0268 )  
\_\_\_\_\_)

RCRA(9006) Appeal No. 14-01

TABLE OF CONTENTS

Table of Authorities .....3  
Index to Exhibits .....4  
Issues Presented .....5  
Procedural History .....6  
Argument .....8  
    A. Service of the Complaint on Respondents was Adequate .....8  
    B. Service of the Default Order on Respondents was Adequate .....10  
Conclusion .....11  
Exhibits .....12

TABLE OF AUTHORITIES

Cases

IMO Geason Enterprises, LLC, et al, 2014 EPA ALJ Lexis 6 (February 6, 2014)..... 8

IMO Scotts-Sierra Crop Protection Company, 1997 EPA ALJ Lexis 144 (FIFRA-09-0864-C-95-03).....9

Statutes

231 Pa. Code Rule 402(a)(2)(iii).....8, 9, 11

Rules

The Federal Rules of Civil Procedure 4(e).....8

The Consolidated Rules of Practice 40 C.F.R. § 22.5(a)(1)(i).....8

The Consolidated Rules of Practice 40 C.F.R. § 22.5(a)(1)(ii).....9

The Consolidated Rules of Practice 40 C.F.R. § 22.5(b)(1)(i).....9

The Consolidated Rules of Practice 40 C.F.R. § 22.5(b).....10

The Consolidated Rules of Practice 40 C.F.R. § 22.6.....10

## INDEX TO EXHIBITS

- Exhibit 1. Documentation of Service on Respondent Steinman
- Exhibit 2 Documentation of Service on Respondent Ross Transport
- Exhibit 3 Documentation of Service of Motion for Default Order
- Exhibit 4 Documentation of Service of first submission on Order to supplement the record
- Exhibit 5 Certification of Joyce A. Howell
- Exhibit 6 Certification of Marie Owens Powell
- Exhibit 7 Documentation of Service of second submission on Second Order to supplement the record
- Exhibit 8 Documentation of Service of Default Order

ISSUES PRESENTED:

- A. Was service of the Complaint on Respondents adequate?
  
- B. Was service of Default Order on Respondents adequate?

## PROCEDURAL HISTORY

Respondents were the subject of an EPA compliance inspection on April 21, 2009. EPA subsequently filed an Administrative Complaint, Compliance Order, and Notice of Opportunity For Hearing (“Complaint”) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively “RCRA”), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which was enclosed with the Complaint and served on Respondents. The Complaint alleged that Respondents violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program with respect to a certain underground storage tank at Respondents’ facility located at 4220 Almond Street, Philadelphia, Pennsylvania, 19137.

Service of the Complaint was made on Respondent Arnold Steinman on September 2, 2010 by United States Postal Service (“USPS”) certified mail, return receipt requested. Exhibit 1. Service of the Complaint on Respondent Ross Transport, Inc. was made on August 4, 2010 by UPS, next day delivery, signature required. Exhibit 2.

Respondents did not file an Answer or otherwise respond to the Complaint. On November 9, 2010 EPA filed a Motion for Default Order against Respondents for failure to Answer the Complaint as provided by 40 C.F.R. § 22.17(b). Exhibit 3.

Neither Respondent filed a response to the Motion for Default Order.

On July 2, 2013 the Presiding Officer (the Region III Regional Judicial Officer) issued an Order requiring Complainant to supplement the record regarding calculation of the proposed penalty. On July 18, 2013, Complainant submitted a response to the Order to Supplement the Record and served copies of the same on Respondents. Exhibit 4.

In July, 2013, Respondent Steinman telephoned EPA Region III and spoke with the undersigned and Marie Owens Powell. Exhibit 5. Certification of Joyce Howell dated March 11, 2014; Exhibit 6, Certification of Marie Owens Powell dated March 11, 2014.

On August 8, 2013 the Presiding Officer issued a Second Order requiring Complainant to supplement the record regarding calculation of the proposed penalty. On August 8, 2013, Complainant submitted a response to the Second Order to Supplement the Record and served Respondents with the same. Exhibit 7.

On December 31, 2013, the Presiding Officer issued an Initial Decision and Default Order. The Regional Hearing Clerk subsequently served the Initial Decision and Default Order on the parties. Exhibit 8.

On February 14, 2014, the Environmental Appeals Board (“Board”) issued an Order Electing to Exercise *Sua Sponte* Review and Establishing Briefing Schedule. Complainant now submits the following brief as ordered by the Board.

## ARGUMENT

### A. Adequate Service of the Complaint was made on Respondents.

The Consolidated Rules require that a complaint be served “on respondent, or a representative authorized to receive service on respondent’s behalf.” Consolidated Rules 40 C.F.R. § 22.5(a)(1)(i).

The Federal Rules of Civil Procedure further inform what constitutes authorization to receive service:

An individual----may be served in a judicial district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.

FRCP 4(e). The Commonwealth of Pennsylvania, the state in which Mr. Steinman and Ross Transport, Inc. are both located, allows service of original process, *inter alia*, by “handing a copy at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.” 231 Pa. Code Rule 402(a)(2)(iii).

In a recent decision, the EPA Office of Administrative Law Judges rejected a renewed motion for default order because there was no documentation as to the status of the signatory to a United States Postal Service certified mail return receipt. IMO Geason Enterprises, LLC, et al, 2014 EPA ALJ Lexis 6 (February 6, 2014). In this instance, documentation as well as secondary evidence indicates service of the Complaint on Respondent was adequate.

Service of the Complaint as to Respondent Arnold Steinman, the president and sole proprietor of Ross Transport, Inc., was made by certified mail, return receipt requested. Exhibit 1. The return receipt is signed by Clarence Craig. As noted in the

Certification of Marie Owens Powell, Mr. Craig is an employee of Ross Transport, Inc. and was the “person in charge” of the business in Mr. Steinmann’s absence. Exhibit 6.<sup>1</sup> As such, service of the complaint as to Respondent Arnold Stein was adequate.

The Consolidated Rules require that a complaint be served on a domestic corporation by:

[S]ervice on an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

Consolidated Rules 40 C.F.R. § 22.5(a)(1)(ii).

Service of the Complaint as to Respondent Ross Transport, Inc. was made by UPS next day delivery, signature required. UPS is a “reliable commercial delivery service.” Consolidated Rules 40 C.F.R. § 22.5(b)(1)(i). The return receipt is signed. Exhibit 2. Although the signature is illegible, it was delivered to Respondent’s business and signed by a person staffing the office at the time the UPS delivery was made. There is a presumption that such a signature is legitimate. See IMO Scotts-Sierra Crop Protection Company, 1997 EPA ALJ Lexis 144 (FIFRA-09-0864-C-95-03) (a presumption that notice was delivered is created where notice was not returned as undeliverable, and a signed receipt of delivery indicates that someone at the address accepted notice and did not refuse delivery); Under Pennsylvania law, service of the Complaint was made by “handing a copy at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.” 231 Pa. Code Rule 402(a) (2)(iii). Thus, service of the complaint as to Respondent Ross

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<sup>1</sup> Mr. Craig was also the signatory on behalf of Mr. Steinman and Ross Transport Inc. on United States Postal Service certified mail return receipts of the Default Motion and Complainant’s submissions in response to two Orders to Supplement the Record. *See* Exhibits 4 and 7.

Transport was adequate.

Last, in July 2013, Mr. Steinman contacted Ms. Powell and the undersigned by telephone to express his interest in avoiding default. This expressed concern effectively constitutes an admission as to service of the Complaint, since the Complaint was attached as Exhibit 1 to Complainant's Motion for Default Order.

For these reasons is respectfully submitted that the service of the Complaint on Respondents was adequate pursuant to Consolidated Rule 40 C.F.R. § 22.5(b).

B. Service of the Default Order on Respondents was Adequate

The Consolidated Rules provide, in pertinent part:

All rulings, orders, decisions, and other documents issued by the ...Presiding Officer shall be filed with the Regional Hearing Clerk. ....Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail including certified mail or return receipt requested, Overnight Express and Priority Mail) by EPA's internal mail, or any reliable commercial delivery service , upon all parties by ... the Regional Hearing Clerk.

Consolidated Rule 40 C.F.R. § 22.6.

The undersigned obtained a copy of the Certificate of Service for the Default Order from the Regional Hearing Clerk. The Certificate of Service together with the USPS certified mail return receipt cards were present in the Regional Hearing Clerk's file and copies of the same are attached to this brief as Exhibit 8.

As set forth above, service of the Default Order requires that it be served on "the parties." Id. In this instance, the requirement of the Consolidated Rule was satisfied in that the signed and dated certified mail receipts indicate that the Default Order was served on both Respondents on January 6. As previously demonstrated, this service was adequate because it was left at Respondents' "usual place of business" with the "person

for the time being in charge thereof," consistent with 231 Pa. Code Rule 402(a) (2)(iii).

### CONCLUSION

For the reasons stated above together with the documentation submitted with this brief, it is respectfully submitted that service of both the Complaint and Default on Respondents was adequate.

Respectfully submitted,



March 11, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be delivered the original and two copies of the Complainant's Brief and Exhibits to the Environmental Appeal Board's Order Electing to Exercise *Sua Sponte* Review and Establishing Briefing Schedule to the Clerk of the Board at the address noted below.. I further certify that on the date set forth below, I caused true and correct copies of the same to be served upon each of the following persons at the following addresses and in the manner identified below:

Via UPS next day delivery:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue  
WJC East Building, Room 3334  
Washington, DC 20004

Via Hand Delivery to:

Renée Sarajian  
Regional Judicial Officer (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2019.

Via, Certified Mail, Return Receipt Requested, Postage Prepaid, to:

Mr. Arnold Steinman  
c/o Ross Transport Co., Inc.  
4220 Almond Street  
Philadelphia, PA 19137  
Certified mail, return receipt requested

Ross Transport Co., Inc.  
4220 Almond Street  
Philadelphia, PA 19137  
Certified mail, return receipt requested

Date: March 11, 2019

  
\_\_\_\_\_  
Joyce A. Howell  
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