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

F	I L E	D
FEB 14 2014		
CLERK, ENVIRONMENTAL APPEALS BOARD INITIALS <u>KAS/ED</u>		

In re:)	
)	
Ross Transport Co., Inc. & Arnold Steinman)	RCRA (9006) Appeal No. 14-01
)	
Docket No. RCRA-03-2010-0268)	
)	
)	

**ORDER ELECTING TO EXERCISE SUA SPONTE REVIEW
AND ESTABLISHING BRIEFING SCHEDULE**

On December 31, 2013, the Regional Judicial Officer ("RJO") for the U.S. Environmental Protection Agency, Region 3 ("Region") issued an Initial Decision and Default Order ("Default Order") in the above-captioned matter. The Default Order found Ross Transport Co. and Arnold Steinman in default for failing to respond to a motion for default and for failing to file an answer to the administrative complaint ("Complaint") the Region filed pursuant to 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. The three-count Complaint alleged violations of RCRA subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's federally authorized underground storage tank program. The Default Order found the Respondents jointly and severally liable on the first and third counts and assessed a total administrative penalty of \$23,821.

Upon examination of the Default Order, the Environmental Appeals Board ("Board") has decided to exercise sua sponte review, pursuant to 40 C.F.R. §§ 22.27(c), .30(b).2. Accordingly, this order constitutes notice, required under 40 C.F.R. § 22.30(b), of the Board's intent to review the Default Order.

The Consolidated Rules of Practice that govern this proceeding provide that “[s]ervice of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery system.” 40 C.F.R. 22.7(c). The Default Order relies on documentation in Exhibit 2 of the Memorandum of Law in Support of Complainant’s Motion for a Default Order (Memorandum of Law) to reflect delivery of the Complaint to Mr. Steinman by United States Postal Service, certified mail, return receipt requested, on September 2, 2010, and to Ross Transport on August 4, 2010, by UPS next day delivery.¹ Default Order at 2. Although the return receipt card reflecting delivery to Mr. Steinman is included in Exhibit 2 to the Memorandum of Law, proof of service of the Complaint upon Ross Transport does not appear to be included in the exhibit. Thus, it appears that evidence of a signed return receipt from Ross Transport is lacking.

In considering whether to review the Default Order on a sua sponte basis, the Board was also unable to determine whether the Region served the Default Order. The Certificate of Service for the Default Order indicates that service upon both Mr. Steinman and Ross Transport was effectuated by certified mail, return receipt requested. However, the Board learned that despite the Regional Hearing Clerk’s certification on the Certificate of Service that she served the Default Order upon Respondents on December 31, 2013, there may be irregularities with the Certificate of Service, and the record lacks return receipt cards to refute the potential irregularities.

Due to the aforementioned irregularities, the Board questions whether the Region properly served both the Complaint and Default Order upon Ross Transport and Mr. Steinman. Accordingly, the Board has determined that additional briefing will assist its deliberations and

¹ A Certificate of Service dated August 3, 2010, accompanies the Complaint and provides that the Complaint was served on “June , 2010” “via UPS Express Service, signature confirmation requested” upon both Mr. Steinman and Ross Transport. Complaint at 12 (Certificate of Service). A second Certificate of Service dated September 8, 2010, states that the Complaint was delivered to Mr. Steinman by United States Postal Service, certified mail, return receipt requested, on September 2, 2010.

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establishes the following briefing schedule:

(1) On or before March 14, 2014, the Region shall file with the Clerk of the Board and all parties its brief, including any supporting documentation, addressing the issue of whether the Region's service of the Complaint and the Default Order upon Ross Transport and Mr. Steinman was adequate.

(2) On or before April 4, 2014, Ross Transport and Mr. Steinman shall file with the Clerk of the Board serve on the Region its brief, if any, responding to the Region's brief.

So ordered.

Dated:

February 14, 2014

ENVIRONMENTAL APPEALS BOARD

By: _____

Kathie A. Stein

Kathie A. Stein

Environmental Appeals Judge

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule in *In re Ross Transport Co., Inc. & Arnold Steinman***, RCRA (9006) Appeal No. 14-01, were sent to the following persons in the manner indicated:

By First Class Certified U.S. Mail, Return Receipt Requested:

Mr. Arnold Steinman
c/o Ross Transport Co., Inc.
4220 Almond Street
Philadelphia, PA 19137

Ross Transport Co., Inc.
4220 Almond Street
Philadelphia, PA 19137

By EPA Pouch Mail:

Joyce Howell (3RC30)
Office of Regional Counsel
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19130

Renée Sarajian (3RC00)
Regional Judicial Officer/Presiding Officer
U.S. EPA Region 3
1650 Arch Street
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Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19130

Date: 2/14/14



Kathie Stein