

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
San Francisco, California

BEFORE THE REGIONAL ADMINISTRATOR

In re:)
)
Industrial Marine) Docket No. RCRA 09-93-001
Purification Systems, Inc.)
d/b/a R & G Trucking)
)
Respondent)
_____)

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Order dated April 16, 1993, Complainant, the Director of the Hazardous Waste Management Division of the United States Environmental Protection Agency, Region 9, moved for an Order assessing a civil penalty in the amount of forty-four thousand two hundred and ninety-five dollars (\$44,295) against Respondent, Industrial Marine Purification Systems, Inc., d/b/a R & G Trucking.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules") at 40 C.F.R. Part 22 and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Civil Penalty Amount, Complainant's Motion for Default Order is hereby GRANTED.

I. FINDINGS OF FACT

Pursuant to 40 C.F.R. §22.17(c) and based on the entire record, I make the following findings of fact:

1. Industrial Marine Purification Systems, Inc., d/b/a R & G Trucking ("Respondent") is a Hawaii corporation.

2. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §§ 260.10 and 270.2.

3. Respondent is a "transporter" of hazardous waste as defined in 40 C.F.R. §260.10.

4. Respondent transported wastes which are "hazardous wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and 40 C.F.R. §§ 260.10 and 261.3.

5. On or about November 1, 1983, pursuant to Section 3010 of RCRA, 42 U.S.C. §6930, Respondent submitted a Notification of Hazardous Waste Activity to EPA. The Respondent received EPA Identification No. HID069804755.

6. The State of Hawaii, Department of Health ("HDOH"), has been duly designated by the Regional Administrator of U.S. EPA, Region 9, as a representative of EPA for the purpose of conducting inspections to determine compliance with RCRA.

7. On or about September 26 and October 1, 1991, HDOH conducted an inspection at the Facility.

8. 40 C.F.R. §263.20(b) requires a transporter to sign and date the manifest acknowledging acceptance of the hazardous waste

from the generator before transporting the hazardous waste.

9. Information obtained during the September 26, 1991 and October 1, 1991 HDOH inspections revealed that the Respondent had not complied with the manifest requirements for transporters.

10. Manifests revealed that an individual who was not the Respondent signed and dated the manifests as transporter number one.

11. Manifests were signed by an individual who is not an employee of Respondent and who is a hazardous waste "broker."

12. 40 C.F.R. §§263.12, 264.1(g)(9), 265.1(c)(12), and 270.1(c)(2)(vi) provide an exemption from regulation under Parts 264, 265, 268 and 270 of RCRA to transporters who store manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less.

13. Hazardous waste stored by a transporter at a transfer facility for a period greater than ten days is subject to regulation under 40 C.F.R. Parts 270, 264, 265 and 268 with respect to the storage of those wastes.

14. On or after May 19, 1980, the treatment, storage, and disposal of any hazardous waste was prohibited except in accordance with a hazardous waste permit issued pursuant to 40 C.F.R. Part 270 of the RCRA regulations or unless the owner or operator met the requirements for interim status facilities contained in 40 C.F.R. §270.1(b) and RCRA Section 3005(a) and (e), 42 U.S.C. §6925(a) and (e).

15. Section 3005 of RCRA, 42 U.S.C. §6925, and 40 C.F.R. §

270.1 require each person owning or operating a hazardous waste storage facility to have a permit.

16. Information obtained during the September 26, 1991 and October 1, 1991 HDOH inspections revealed that the Respondent had stored hazardous wastes (EPA Hazardous Waste Nos. D001, D002, D004, D007, D008, F001, F002, F005) for periods of time greater than ten days ranging from 11 to 48 days.

17. Respondent has not filed Part A or Part B of the RCRA Permit Application and does not have a permit to store hazardous waste under 40 C.F.R. §270.1(c).

18. A Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing ("Complaint") was filed against the Respondent pursuant to §3008(a)(1) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6928(a)(1) on January 11, 1993, and was served on Respondent on January 16, 1993.

19. More than twenty (20) days have elapsed since the date on which the Respondent was served with a copy of the Complaint, excluding the date thereof.

20. As of this date the Respondent has failed to answer or otherwise defend against EPA's Complaint as authorized by 40 C.F.R. Part 22, or file a copy of any answer or other defense which it might have, with the Regional Hearing Clerk, Region 9, United States Environmental Protection Agency, as authorized by 40 C.F.R. Part 22, or serve a copy upon the U.S. Environmental Protection Agency, Region 9, or upon the attorney of record for EPA.

21. On April 16, 1993 Complainant filed a Motion for Default

Order.

22. The Motion was served on the Respondent by certified mail on April 20, 1993.

23. Respondent had twenty days from the date of service to reply.

24. As of this date the Respondent has failed to reply to the Motion.

II. CONCLUSIONS OF LAW

____ Pursuant to 40 C.F.R. §22.17(c), and based on the entire record, I make the following conclusions of law:

1. The Complaint in this action was lawfully and properly served upon the Respondent, in accordance with 40 C.F.R. §22.05(b)(1) of the Consolidated Rules.

2. The Consolidated Rules required the Respondent to file an Answer to the Complaint within twenty (20) days of the service of the Complaint on Respondent. 40 C.F.R. §22.15(a).

3. Respondent's failure to file a timely Answer to the Complaint constitutes an admission of all of the factual allegations in the Complaint, and a waiver of Respondent's right to a hearing on such factual issues. 40 C.F.R. §§22.15(d) and 22.17(a).

4. Respondent is subject to the federal regulations adopted pursuant to Sections 3003 and 3005 of RCRA, 42 U.S.C. §§6923 and 6925.

5. Federal regulations establishing transporter standards, 40 C.F.R. Part 263, became effective on November 19, 1980.

6. The Facility is an "existing hazardous waste management facility" as defined in 40 C.F.R §260.10.

7. Respondent is the "owner and operator" of a facility as defined in 40 C.F.R. §260.10 and Part 265.

8. Respondent has stored hazardous wastes including but not limited to D001, D002, D004, D007, D008, F001, F002, F005, which are "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and 40 C.F.R. §§ 260.10 and 261.3.

9. Federal regulations establishing interim status standards, 40 C.F.R. Part 265, and permit application requirements, 40 C.F.R. Part 270, for owners and operators of hazardous waste treatment, storage and disposal facilities became effective on November 19, 1980.

10. The Respondent's facility was in operation on or before November 19, 1980 and is subject to Section 3005(e) of RCRA, 42 U.S.C. §6925(e), and therefore subject to all interim status standards set forth in 40 C.F.R. Part 265.

11. Section 3008 of RCRA, 42 U.S.C. §6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 et seq., 42 U.S.C. §6921 et seq.

12. On the basis of information obtained during the HDOH inspection, EPA has determined that Respondent violated regulations adopted pursuant to Sections 3003 and 3005 of RCRA, 42 U.S.C. §§

6923 and 6925, namely, 40 C.F.R. Parts 263, 265, and 270 concerning standards applicable to transporters of hazardous waste and standards for storage of hazardous waste and permit issuance.

13. Respondent's storage of hazardous waste for a period greater than ten days renders the Respondent subject to the requirements of 40 C.F.R. Parts 270, 264 and 265 for storage of hazardous waste requiring a permit.

14. Respondent, in violating 40 C.F.R. Parts 263, 265, and 270, violated Subtitle C of RCRA, and therefore is subject to the enforcement powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. §6928.

15. The Administrator has delegated this authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9.

16. Respondent violated 40 C.F.R. §263.20(b) by failing to sign and date the manifest acknowledging acceptance of hazardous waste from the generator before transporting the hazardous waste, as required for all transporters. Manifests were signed by an individual who is not an employee of Respondent.

17. Respondent violated Section 3005 of RCRA, 42 U.S.C. §6925, and 40 C.F.R. §270.1(c), by storing hazardous wastes (EPA Hazardous Waste Nos. D001, D002, D004, D007, D008, F001, F002, F005) for a period greater than ten days without a hazardous waste permit issued pursuant to 40 C.F.R. Part 270 of the RCRA regulations.

18. When the Regional Administrator finds that a default has occurred, he shall issue a Default Order against the defaulting

party, and the default order shall constitute the Initial Decision. 40 C.F.R. §22.17(b).

19. This authority of the Regional Administrator has been delegated to the Regional Judicial Officer pursuant to 40 C.F.R. §22.04(a)(3).

20. Respondent's failure to file a timely Answer to the Complaint is grounds for the entry of a Default Order against the Respondent assessing a civil penalty for the violation described above.

21. Section 3008(g) of RCRA, 42 U.S.C. §6928(g) authorizes a civil penalty of up to \$25,000.00 per day for each violation of Subtitle C of RCRA, 42 U.S.C. §6921 et seq.. Based on the facts alleged by Complainant, and the RCRA Civil Penalty Policy, Respondent is liable for (i) a civil penalty in the amount of One Thousand Four Hundred Dollars (\$1,400) for failure to comply with the manifest system requirements set forth at 40 C.F.R. §263.20(b); and (ii) a civil penalty in the amount of Forty-two Thousand Eight Hundred Ninety-Five Dollars (\$42,895) for storage of hazardous waste without a permit in violation of 42 C.F.R. §§263.12 and 270.1.

III. DETERMINATION OF CIVIL PENALTY AMOUNT

I have determined pursuant to 40 C.F.R. §22.17(a) and (c) that forty-four thousand two hundred and ninety-five dollars (\$44,295), the penalty amount proposed in the Complaint, is the appropriate civil penalty to be assessed against the Respondent.

Under the Consolidated Rules, the amount of the proposed civil penalty "shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." 40 C.F.R. §22.14(c).

The proposed civil penalty sought in the Complaint was determined in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928, and the "October 1990 RCRA Civil Penalty Policy."

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per day for each violation of Subtitle C of RCRA, 42 U.S.C. §6921 et seq. Factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), and the RCRA Civil Penalty Policy include the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require. Under the RCRA Civil Penalty Policy, EPA uses a penalty assessment matrix, which is then adjusted to take into account multi-day violations, case-specific circumstances, and the economic benefit gained from non-compliance, where appropriate.

Using the penalty assessment matrix, the violation in Count 1, failure to comply with the manifest requirements, was classified as presenting a minor potential for harm and a moderate extent of deviation from the requirement. The potential for harm was minor because the violation posed a low risk or likelihood of human or

environmental exposure to hazardous waste. The extent of deviation from the regulations was moderate. Tracking hazardous waste from "cradle to grave" is a significant regulatory function of RCRA. A breakdown in the manifest system occurs when an individual other than the transporter signs and dates the manifest. However, the manifests did contain a signature (of a non-employee) and date and the signature of the next designated transporter.

For the gravity-based designation of minor-moderate, multi-day penalties are discretionary. RCRA Civil Penalty Policy, page 23. As subsequent record reviews have indicated that the violation has not recurred, and no demonstrable savings to R & G Trucking could be determined, the penalty was not adjusted for multi-day violations, case-specific circumstances or economic benefit. Accordingly, the penalty was computed to be \$1,400 for count 1.

Using the penalty assessment matrix, the violation in Count 2, storage of hazardous waste without a permit, was classified as presenting a moderate potential for harm and a moderate extent of deviation from the requirement, yielding a base penalty in the amount of \$6,500. RCRA Civil Penalty Policy, page 19. The potential for harm was moderate because storage of hazardous waste by the Respondent (although in drums within a shipping container) for greater than ten days without a permit significantly increased the potential for exposure of humans and environmental receptors to hazardous waste or constituents. The extent of deviation from the regulation was moderate because, although Respondent exceeded the ten-day limit for storage without a permit, Respondent did notify

EPA of hazardous waste activity as a transporter. Respondent stored hazardous waste for 34 consecutive days in excess of the allowable storage time limit. EPA determined this deviation from the requirement to be moderate.

Multi-day penalties are presumed appropriate for violations having moderate potential for harm and moderate extent of deviation. RCRA Civil Penalty Policy, page 23. The penalty was adjusted for multi-day violations (109 cumulative days). The multi-day penalty was computed by multiplying \$300 per day (RCRA Civil Penalty Policy, page 24) by 109 days, yielding a multi-day penalty add-on of \$32,700.

The proposed penalty for Count 2 was adjusted upward to include the economic benefit that Respondent gained by non-compliance, which was the cost savings from having an inadequate number of shipping containers. Acquisition of three additional shipping containers would have allowed Respondent to ship the waste out of the storage area within the ten-day time limit. In accordance with RCRA Civil Penalty Policy page 28, the BEN Program, a computer model, was used to compute the economic benefit to Respondent of avoiding the cost of acquisition of additional shipping containers for the time period in question. EPA determined that three additional containers were needed, at a cost of \$7,340.25. This amount was entered into the BEN Computer Model, which yielded an economic benefit of \$3,695 to Respondent for not arranging for a sufficient number of containers from March 4, 1991 to August 21, 1991. The penalty for Count 2 was computed to be

\$42,895.

To the extent any good faith efforts by the Respondent to comply with applicable requirements have not been taken into account in the above analysis, they are matters of defense to be raised by the Respondent. Since the Respondent has not appeared in this action and has failed to produce any facts that indicate such good faith efforts, it would be inappropriate to mitigate the penalty further for this factor.

There are no other matters apparent that would warrant a penalty adjustment.

Accordingly, the appropriate civil penalty is forty-four thousand two hundred and ninety-five dollars (\$44,295).

IV. DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §22.17, Complainant's Motion for Default Order is hereby GRANTED. Respondent is hereby ORDERED to comply with all of the terms of this Default Order:

A. Respondent is hereby assessed a civil penalty in the amount of forty-four thousand two hundred and ninety-five dollars (\$44,295) and ordered to pay the civil penalty as directed in this Default Order.

B. Pursuant to 40 C.F.R. §22.27(c), this Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the Environmental Appeals Board or

the Environmental Appeals Board elects, sua sponte, to review it.

C. Respondent shall, within sixty days after the date this Order becomes final, forward a cashier's or certified check, payable to the order of the "Treasurer of the United States of America," in the amount of forty-four thousand two hundred and ninety-five dollars (\$44,295). Respondent shall mail the check by certified mail, return receipt requested, to the following address:

U.S. EPA - Region 9
Regional Hearing Clerk
P.O. Box 360863M
Pittsburgh, PA 15251

In addition, Respondent shall mail a copy of the check, by first class mail, to the following person:

Regional Hearing Clerk (RC-1)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

D. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within sixty (60) calendar days after this Default Order becomes final. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. §102.13(c).

In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will

be assessed as of the first day payment is due under 4 C.F.R.
§102.13(e).

IT IS SO ORDERED.

Date: June 23, 1993

/s/_____

Steven W. Anderson
Regional Judicial Officer
U.S. EPA - Region 9