UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of

MRM Trucking Company,

Respondent

Docket Number
II MWTA-89-0102

Judge Greene

ORDER UPON MOTION FOR ACCELERATED DECISION AS TO LIABILITY

This matter arises under the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, (hereafter "MWTA" or "the Act"), 42 U.S.C. §§ 6992 - 6992(k), and regulations promulgated in accordance with authority contained therein, 54 Fed. Reg. 12326 (1989), codified at 40 C.F.R. § 259.73 (1990).

The complaint charges respondent MRM Trucking Company with two violations involving failure to transport medical waste in accordance with the requirements of 40 C.F.R. § 259.73(a)(2) and 40

C.F.R. § 259.73(b)(3)[1] In count 1, complainant alleges that respondent failed to ensure that regulated medical waste was not subjected to mechanical stress or compaction during loading, unloading, or transit, in violation of 40 C.F.R. §259.73(a). In count 2, it is alleged that the trailer used to transport medical waste did not bear proper identification, i.e. the words "INFECTIOUS WASTE" or "MEDICAL WASTE," in violation of 40 C.F.R. §259.73(b). The charges in the complaint are based upon an

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[1] 40 C.F.R. § 259.73 (1990) on "Vehicle Requirements" reads as follows:

> (a) Transporters must use vehicles to transport regulated medical waste that meet the following requirements: (1) The vehicle must have a fully enclosed, leak-resistant cargo carrying body; (2) The transporter must ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit; (3) The transporter must maintain the cargo-carrying body in good sanitary condition; and (4) The cargo-carrying body must be secured if left unattended
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> (b) The transporter must use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of 3 inches in height: (1) The name of the transporter; (2) The transporter's State permit or license number, if any; and (3) A sign or the following words imprinted: (i) MEDICAL WASTE; or (ii) REGULATED MEDICAL WASTE.
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> (c) A transporter must not transport regulated medical waste in the same container with other solid waste unless the transporter manages both as regulated medical waste in compliance with this subpart.
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> [Note: Paragraph (b) has been revised with a clarification that the phrase "INFECTIOUS WASTE" may be used in the vehicle markings, as explained at 54 Fed. Reg. 12354 (1989). 55 Fed. Reg. 27228, 27230, July 2, 1990.

inspection of respondent's trailer by a United States Environmental Protection Agency (EPA) representative on August 10, 1989. Complainant moved for partial "accelerated decision"[2] as to liability on both counts.

The parties have stipulated (see Stipulations, attached) that (a) respondent accepted untreated regulated medical waste generated by United Hospital, 15 South 9th Street, Newark, New Jersey and transported it from a facility at 1601 Delaware Avenue, Philadelphia, PA, to Southland Joint Venture Exchange, an incineration facility in Hampton, South Carolina (hereafter "Southland"); (b) that Southland accepts "regulated medical waste" [as that term is defined at 40 C.F.R. § 259.10(b)] generated in a "Covered State," as defined at Section 11001(a) of the MWTA and 40 C.F.R. § 259.10(b);[3] that (c) respondent's trailer held the United Hospital waste at the time of the EPA inspection at Southland on August 10, 1989; and (d) that respondent's trailer

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[2] 40 C.F.R. § 22.20(a) (1990) provides that an "accelerated decision" may be rendered "upon motion of any party or sua sponte" at any time "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law as to all or any part of the proceeding." "Accelerated decision" is analogous to summary judgment under Federal Rule of Civil Procedure 56(c), which provides that "[summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law".

[3] "Covered States" means those states that are participating in the demonstration medical waste tracking program. It includes states identified under Subtitle J of RCRA that have not petitioned out of the program pursuant to § 259.21 of this part. 40 C.F.R. § 259.10(b) (1990). New Jersey is a Covered State under the program.

bore the words "MRM Trucking Inc." and identification numbers "ICC MC 216705" and "PA 193".

COUNT 1 OF THE COMPLAINT

It is alleged that at the time of inspection many of the cardboard boxes of regulated medical waste in respondent's trailer were collapsing because of the weight of other boxes of waste piled on top of them; as a consequence, many boxes were crushed or broken, and the contents were being compacted.

40 C.F.R. § 259.73(a)(2) (1990) requires that "[t]he transporter must ensure that waste is not subject to mechanical stress or compaction during loading and unloading or during transit." Various practical and safety considerations support this requirement. Medical waste that has not been stressed during handling obviously poses less threat of contamination to the public and to handlers of the waste.[4]

In support of the allegation, complainant offers an affidavit from the EPA inspector,[5] who observed that several of the boxes in respondent's trailer were "crushed and compacted to varying

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[4] Demonstration Medical Waste Tracking Program, 42 U.S.C. § 6992(b)(a)(B) (1988). Regulations promulgated under this portion of the Medical Waste Tracking Program appear at 54 Fed. Reg. 12353-54 (1989) (explaining that "[the] requirement that the vehicle not compact those wastes is based on evidence that compaction will frequently break the containers holding the medical waste, resulting in the generation of loose needles or sharps protruding from containers, or leaking blood and other fluids, all of which are potential sources of exposure to waste handlers and the public").

[5] Affidavit of EPA inspector Raymond Slizys. (Exhibit 1 attached to Complainant's Motion for Partial Accelerated Decision).

degrees."[6] A photograph of some of the boxes, taken by the inspector through the (open) back end of the trailer, supports this statement.[7]

The complaint alleges further that "[t]he aforementioned crushed and/or broken boxes that contained regulated medical waste generated in a Covered State identified in respondent's vehicle indicated the Respondent did not ensure that the waste was not subject to mechanical stress or compaction during loading and unloading or during transit." Respondent states, in its answer to the complaint at 2, paragraph 17, that:

> [i]f said boxes were crushed or broken said condition resulted not from the negligence or failure of respondent to comply with Federal Regulations but was due solely and exclusively to the fact that the contents of the trailers were not timely disposed of at the Southland incineration facility. . . . [Or] it was due to the seepage of moisture and humidity which occurred at Southland during the extended period of time that the trailers had to wait to be unloaded. . . .

Comments which accompanied the regulations at the time of publication in the Federal Register noted that "(C)ompaction and/or rough treatment of packaged regulated medical wastes may compromise the integrity of the packaging and, therefore, must be avoided."[8] Given the importance of the objective, it is not enough merely to assert that factors out of respondent's control could have caused

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[6] Id. at 9, paragraph 27.

[7] The photograph shows several boxes and barrel-shaped containers stacked vertical. The degree of compaction increases toward the base of the load. The bottom boxes appear to have been mashed considerably by the boxes on top. (See Exhibits 4 and 5 attached to complainant's reply prehearing exchange).

[8] 54 Fed. Reg. 12353 (1989), codified at 40 C.F.R. § 259.73.

the waste to be compacted.[9] Complainant has shown that some of the boxes were compacted at the time of inspection and respondent has not denied it. For purposes of the regulation in question, stress upon the packaging constitutes an unacceptable risk of breakage, leakage or spillage of the waste itself,[10] with subsequent threat of contamination and injury. Respondent's responsibility to prevent such compaction during loading, unloading, and transit is absolute under the terms of 40 C.F.R. § 259.73(a)(2), and may not be avoided by mere denials.

Accordingly, it is held that compaction of the waste has been sufficiently demonstrated, when, as here, it is shown that outer cartons which contain regulated medical waste have been compacted. It will be held further that there is no genuine issue of material fact regarding count 1 and that respondent violated 40 C.F.R. § 259.73(a)(2) as charged.

COUNT 2 OF THE COMPLAINT

In count 2, complainant alleges that respondent violated 40 C.F.R. § 259.73(b)(3) by transporting regulated medical waste in a

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[9] Respondent's contention that the alleged crushed and broken condition of the boxes was due to "seepage or moisture" runs into trouble under 40 C.F.R. § 259.73(a)(1). This provision specifically states that "[t]he vehicle must have a fully enclosed, leak-resistant cargo-carrying body." A "leak-resistant cargo-carrying body" would not allow seepage. Respondent, therefore, is responsible for using trailers that do not leak and that protect the condition of the load.

[10] 54 Fed. Reg. 12353 (1989) (codified at 40 C.F.R. § 259.73(a)(2)) (stating that "[c]ompaction and/or rough treatment of packaged regulated medical wastes may comprise the integrity of the packaging and, therefore, must be avoided").

vehicle which did not have signs on two sides and on the back to identify the cargo as medical waste. However, this charge is based upon the inspection of August 10, 1989, which took place some time -- apparently several days -- after the truck arrived at the Southland facility.[11] Respondent's answer to the complaint asserts that all of its trailers have signs, and that " . . . . if there was no sign on a particular trailer . . . the sign may have been caused to fall off . . . due to . . . humidity and rainfall while said trailer was required to wait at Southland or was the result of vandalism." (Answer, at 4, paragraph 21). This assertion is supported by an affidavit (supra, n. 11). Complainant takes the position that respondent must comply with the regulation "at least until the destination facility has made a discrepancy check" pursuant to 40 C.F.R. §259.81. (Complainant's supplemental brief, December 18, 1990, at 4-5, pp. 28-29). The checking process had apparently not taken place before the August 10, 1989, inspection, although the record is not clear in this regard.[12] Complainant's

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[11] See affidavit of Mr. David Smalls submitted by respondent, wherein Mr. Smalls states that respondent's trailer arrived at Southland on August 3, 1989. The EPA inspector makes the following statement in his affidavit: "I did not see on the back of Respondent's trailer or on either of the two sides of this trailer any sign stating, or the words imprinted, 'MEDICAL WASTE' or 'REGULATED MEDICAL WASTE'." (Exhibit 1, EPA inspector's affidavit, p. 8, paragraph 23, attached to complainant's Brief in Support of Motion for Partial Accelerated Decision).

[12] The copy of the tracking form attached to complainant's Brief in Support of Motion for Partial Accelerated Decision (Exhibit 6) indicates that the destination facility officially received the load on August 10, 1989. The load actually arrived some time prior to that date. (Complainant's Motion at 6). The affidavit of David Smalls, a copy of which is attached hereto, states that respondent's trailer arrived on August 3, 1989, i. e.

Exhibit 1 supra n. 5 at 4-5, paragraphs 13-14, seems to suggest that checking for discrepancies is carried out at the time the vehicles are unloaded at the facility. The affidavit further states at 5, paragraph 16, that about 100 trailers were waiting to be unloaded when the inspector arrived at Southland on August 10, 1989.

While complainant's counsel makes an impressive effort to support this interpretation, the regulation simply does not require signs on the transporting vehicle at any time other than during transit. In its present form, it states only that transporters must use vehicles which bear certain identification, including ". . . . a sign or the following words imprinted: (i) MEDICAL WASTE; or (ii) REGULATED MEDICAL WASTE," to transport regulated medical waste.[13] Nothing requires the transporter to ensure that the signs remain in place once trailers have been surrendered at the disposal facility. Nothing in the regulations or comments, or, indeed, in the legislative history, suggests that complainant's interpretation must be read into § 259.73(b)(3). Nor does any legal principle come to mind that would require the word "transport" to be so construed.

In the legislative history to the Act, legislators made clear that the demonstration program was intended to track medical waste

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seven days before the inspection.

[13] 40 C.F.R. § 259.73(b)(3) (1990). (The words "INFECTIOUS WASTE" may also be used, 55 Fed. Reg. 27228, 27230). There is no requirement that the signs be permanently affixed, possibly because of the problems such a requirement would cause when the trailers are used for other purposes.

from "cradle to grave."[14] While identifying signs play a part in the tracking system, it is primarily the documentation that tracks the waste from pickup to disposal.[15] No allegations of violations respecting the documentation that accompanied respondent's load have been made.[16] By delivering the medical waste to the disposal facility with documentation in order, respondent operated in conformity with important requirements of the Act.[17],[18]

Complainant's interpretation of the rules would require

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[14] See, e.g., 134 CONG. REC. S15327 (daily ed. October 7, 1988) (statement of Rep. Chafee). See also, 54 Fed. Reg. 12327 (1989).

[15] 40 C.F.R. § 259.81(a)(2) and 40 C.F.R. § 259.82 requires destination facilities to check for a list of discrepancies when receiving a load of medical waste.

[16] Affidavit of EPA inspector, p. 12, paragraphs 34 and 35. (Exhibit 1 attached to complainant's motion).

[17] Further support for the contention that the agency is primarily concerned that the waste reaches the disposal site is found in the requirements for certification of disposal. The regulations state that it is necessary only to certify receipt of the waste at the disposal site to the waste generator. Certification of destruction is said not to be necessary. 54 Fed. Reg. 12359 (1989). See also 134 CONG. REC. H9537 (daily ed. October 4, 1988) (statement of Rep. Whitaker) (stating that "[t]he hope is that these tracking programs will help reduce improper dumping, and provide some assurance that medical waste reaches the intended site"); Id. at H9539 (statement of Rep. Florio) (stating that "a sensible tracking system can make sure that wastes are safely routed to disposal sites, not discarded in storm sewers, by the side of the road, or in the ocean").

[18] See 134 CONG. REC. S15327 (daily ed. October 7, 1988) (statement of Sen. Baucus) (explaining that the Act "will provide authority for a State or the Federal Government to take civil and criminal enforcement actions against those who ignore the law."). See also 134 CONG. REC. S15328 (daily ed. October 7, 1988) (statement of Sen. Lautenberg) (stating that "[a] tracking system will also deter those who contemplate illegally disposing of medical waste.").

respondent to be responsible for an indefinite period for the maintenance of signs on a trailer that may not always be under respondent's direct control at the disposal facility. In the present case, for example, it is not clear when Southland checked respondent's trailer for discrepancies.[19] Respondent would be exposed to additional liability, well beyond that presently set forth in the regulation where , as here, the discrepancy check was not performed upon arrival of the vehicle at the facility, but at some undetermined subsequent date. Nor can such additional potential for liability be justified on the basis that the public or facility employees would receive significant protection from signs on the transporting vehicle. After arrival of the vehicle at Southland, the public was in much less need of knowing what the cargo was. Danger to facility employees would seem remote, given that many of the boxes were labelled "BIO HAZARD MEDICAL WASTE (Complainant's Exhibit 7, attached to Brief in Support of Motion for Partial Accelerated Decision; Exhibit 4 attached to complainant's reply pretrial exchange).

Respondent's affidavit from Mr. David Smalls (attached hereto), who was "employed by MRM Trucking to work in conjunction with Southland . . . guards as manager of Dispatching and Receiving MRM Tractors and Trailers" states that the required signs were on

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[19] Disposal facilities are apparently required to check upon receipt whether there are discrepancies between the load and descriptions of the load on the tracking form. The regulation states: "Upon receipt, the owner or operator [of the destination facility] must determine that the tracking form accurately reflects the waste received at the facility . . . . ." 54 Fed. Red. 12358 (1989) [codified at 40 C.F.R. §§ 259.81-259.82 (1990)].

respondent's trailer when it arrived at Southland on August 3, 1990, seven days before the inspection by the EPA inspector. This evidence makes it clear that there is no genuine issue of material fact respecting count 2 of the complaint.

40 C.F.R. §259.73(b) in its present form does not give fair notice to the regulated community that transporting vehicles may be required to retain the medical waste signs until the destination facility has checked for discrepancies in the shipment. See Gates & Fox Co. v. OSHRC, 790 F.2d 154, 156 (D.C. Cir. 1986), in which Judge (now Justice) Scalia, writing for a unanimous court that included Judges Wald and Silberman, quoted with approval from Diamond Roofing Co. v. OSHRC, 528 F.2d 645, 649 (5th Cir. 1976):

> The respondents contend that the regulations should be liberally construed to give broad coverage because of the intent of Congress to provide safe and healthful working conditions for employees. An employer, however, is entitled to fair notice in dealing with his government. Like other statutes and regulations which allow monetary penalties against those who violate them, an occupational safety and health standard must give an employer fair warning of the conduct it prohibits or requires. . . .
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> If a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not adequately express. . . . [T]he Secretary as enforcer of the Act has the responsibility to state with ascertainable certainty what is meant by the standards he has promulgated.[20]

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[20] The recent decision in Rollins Environmental Services (N.J.) Inc. v. United States EPA, No. 90-1508, C.A. D.C., July 5, 1991, is not inconsistent, since it appears that the specific regulation pursuant to which Rollins was charged in the complaint was not itself ambiguous. (See p. 3, slip sheet).

It is noted also that in Gates, at 156-157, the possibility of the regulation at issue being interpreted in the manner contended for by OSHA had previously been brought to Gates' attention. Judge Scalia commented, however, that

> . . . . the 'warning' . . . came not from OSHA but from the general contractor's safety inspector, and was therefore not an authoritative interpretation of the regulation. It shows, at most, that some person (and one who had nothing to lose by an abundance of caution) read the regulation as OSHA suggests. That is insufficient, in our view, to cure the impermissible vagueness. [Emphasis original]

Consequently, it is determined that respondent is entitled to judgment as a matter of law as to the violation of 40 C.F.R. § 259.73(b)(3) alleged in count 2 of the complaint. Complainant's motion for accelerated decision as to liability for the violation charged in count 2 of the complaint is denied. Accelerated decision as to count 2 is rendered in favor of respondent.

Findings of Fact and Conclusions of Law

1. EPA has jurisdiction to enforce 40 C.F.R. § 259.73, and regulations issued pursuant thereto under authority granted by 42 U.S.C. § 6992(d) (1988).

2. Respondent is a "person" within the meaning of section 1004(15) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 259.10(a), and is subject to the Act. Respondent is a corporation organized pursuant to and existing under the laws of the State of Pennsylvania.

3. At all times relevant to this action, respondent has been a "transporter" [as that term is defined in 40 C.F.R. § 259.10(a)] of regulated waste that had been generated in a "Covered State."

4. Respondent leased a facility at 1601 Delaware Avenue, Philadelphia, Pennsylvania, from which it transported regulated medical waste generated in the State of New Jersey to an incineration facility at Southland Exchange Joint Venture, 100 Nix Street, Hampton, South Carolina.

5. Southland Joint Venture Exchange is an incineration facility which accepts "regulated medical waste" [as that term has been defined in 40 C.F.R. § 259.10(b)] generated in a "Covered State" [as that term is defined in Section 11001 of the MWTA and in 40 C.F.R. § 259.10(b)]. (Stipulation #11).

6. An EPA representative inspected respondent's trailer (Tennessee license plate, number U 71287) (Stipulation #10) which was used to transport medical waste generated at United Hospital, 15 South 9th Street, Newark, New Jersey (Stipulation #21), at the Southland facility on August 10, 1989 (Stipulation #10),

7. At the time of inspection, respondent's trailer contained regulated medical waste generated in New Jersey, a "Covered State." (Stipulations #19-21).

8. There is no genuine issue of material fact relating to count 1 of the complaint. At the time of inspection, regulated medical waste in respondent's trailer was compacted, in violation of 40 C.F.R. §259.73(a)(2). Complainant's showing that the boxes of waste were compacted in respondent's trailer before the trailer was unloaded is sufficient to establish the fact of compaction of waste. Respondent failed to ensure that the medical waste was not subject to mechanical stress or compaction during loading, unloading, or transit, and, accordingly, has violated 40 C.F.R. § 259.73(a)(2). Complainant is entitled to judgment as a matter of law.

9. Respondent's trailer had identifying signs in compliance with 40 C.F.R. §259.73(b) at the time it arrived at the Southland facility. Respondent did not violate 40 C.F.R. §259.73(b). There is no genuine issue of material fact relating to count 2 of the complaint. 40 C.F.R. §259.73(b) does not require identifying "MEDICAL WASTE" signs on the cargo carrying body of the vehicle after it has arrived at the disposal facility. Respondent is entitled to judgment as a matter of law as to count 2 of the complaint.

ORDER

Based upon the foregoing, and pursuant to authority granted in Section 11005(a) of the MWTA, it is ORDERED that respondent shall

not fail to comply with 40 C.F.R. §259.73(a)(2), upon the effective date of this Order.

And it is FURTHER ORDERED that the parties shall, no later than September 20, 1991, confer for the purpose of attempting to settle the matter of the penalty sought for the violation of 40 C.F.R. § 259.73(a)(2) found herein, and shall report upon their progress during the week ending September 27, 1991.

J. F. Greene
Administrative Law Judge

Dated: September 5, 1991
Washington, D.C.

Peter J. Scuderi
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(215) 546-5650

August 1, 1990

Lee A. Spielmann, Esquire
Assistant Regional Counsel
Air, Waste and Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, NY 10278

RE: IN THE MATTER OF MRM TRUCKING CO.
DOCKET NO.: II-MWIA-89-0203

Dear Lee:

The stipulations which you faxed to me on July 31, 1990 meet with my approval.

Very truly yours,

PETER J. SCUDERI

PJS/mr

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of MRM TRUCKING COMPANY, Respondent, Proceeding under Section 11005 of the Medical Waste Tracking Act of 1988.	Docket No. II MWTA-89-0102

STIPULATIONS

IT IS HEREBY STIPULATED, AGREED TO, and ACCEPTED BY an between the parties hereto, through their respective counsel, a follows:

1. This is a civil administrative action instituted pursuan to 11005 of the Medical Waste Tracking Act of 1988, 42 U.S.C. § 6992 et seq. ("MWTA").

2. The Environmental Protection Agency ("EPA") ha jurisdiction to prosecute this action by virtue of the authorit granted to it in the MWTA.

3. Respondent is MRM Trucking, Inc. (hereinafte "Respondent").

4. Respondent is a corporation organized pursuant to, an existing under, the laws of the State of Pennsylvania.

5. Respondent is a "person" within the meaning of Sectio 1004(15) of the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6903(15), and 40 C.F.R. § 259.10(a).

6. At all times relevant to the matters alleged in th Complaint herein, Respondent leased a facility located at 160 Delaware Avenue, Philadelphia, Pennsylvania (hereinafte "Respondent's facility").

7. At all times relevant to the matters alleged in th Complaint herein, Respondent has operated Respondent's facility.

8. At all times relevant to the matters alleged in th Complaint herein, Respondent has controlled Respondent's facility

9. On or about August 10, 1989, a duly designate representative of the EPA conducted an inspection at Southlan Joint Venture Exchange, 100 Nix Street, Hampton, South Carolin (hereinafter "Southland").

10. On or about August 10, 1989, a duly designate representative of the EPA conducted an inspection at Southland c a trailer that had been transported to Southland by Respondent.

11. Southland is an incineration facility acceptin "regulated medical waste" (as that term has been defined in 4 C.F.R. § 259.10(b)) generated in a "Covered State" (as that ter has been defined in Section 11001 of the MWTA and in 40 C.F.R. § 259.10(b)).

12. The aforementioned inspection (Paragraphs 9, and 1 above; hereinafter "the inspection") was conducted pursuant t Section 11004 of the MWTA.

13. The inspection was conducted for the purpose o determining Respondent's compliance with the EPA regulations fo the tracking and management of regulated medical waste, sai regulations codified at 40 C.F.R. Part 259.

14. The trailer bore a Delaware license plate, number T488 with an expiration and/or renewal date of July 1990.

15. The trailer bore the following words: "MRM Trucking Inc.", and included the following identification numbers: "ICC M 216705" and "PA 193" (hereinafter the trailer referred to as "Respondent's trailer").

16. At all times relevant to the matters alleged in the Complaint herein, Respondent has been a "transporter" (as that ter has been defined in 40 C.F.R. § 259.10(a)) of regulated medica waste which had been generated in a Covered State.

17. At all times relevant to the matters alleged in the Complaint herein, Respondent has accepted for transport regulate medical waste which had been generated in a Covered State.

18. At all times relevant to the matters alleged in the Complaint herein, Respondent has transported regulated medica waste which had been generated in a Covered State.

19. At all times relevant to the matters alleged in the Complaint herein, Respondent has accepted for transport regulate medical waste from a transporter that had accepted regulate medical waste directly from a "generator" (as that term has bee

defined in 40 C.F.R. § 259.19(a)) in a Covered State, which waste had been generated in a Covered State.

20. As of the date of the inspection, Respondent's trailer contained regulated medical waste which had been generated in a Covered State.

21. The aforementioned regulated medical waste (Paragraph 20 above) had been generated by and at the United Hospital, 15 South 9th Street, Newark, New Jersey (hereinafter said regulated medical waste referred to as the "United Hospital waste" and said hospital referred to as "United Hospital").

22. The United Hospital waste was accepted for transport directly from the United Hospital by a transporter known as T. J. Egan & Co., Inc. (hereinafter "Egan") on August 1, 1989.

23. Egan transported the United Hospital waste from United Hospital to the Decom Medical Waste Systems (NY), Inc. facility, 1061 S. Delaware Avenue, Philadelphia, Pennsylvania 19147 (hereinafter "Decom").

24. Subsequent to Egan having transported the United Hospital Waste to Decom, Respondent accepted for transport the United Hospital waste at Decom.

25. Subsequent to Respondent having accepted the United Hospital waste at Decom, Respondent transported the United Hospital waste to Southland.

26. As of the time and date of the inspection, Respondent's trailer held the United Hospital waste.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized attorneys, have affixed their signatures on the respective dates indicated below.

EXAMINED, AGREED TO, and ACCEPTED BY:

COMPLAINANT - REGIONAL ADMINISTRATOR, U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION II

RESPONDENT - MRM TRUCKING, INC.

By: Lee A. Spielmann
Lee A. Spielmann
Counsel for Complainant

By: S//
Peter J. Scuderi
Counsel for Respondent

Dated: August 1, 1990
New York, New York

Dated: August 1, 1990
Philadelphia, PA

REGION II

IN THE MATTER OF	
MRM TRUCKING COMPANY,	Docket No. II HWTA-89-0102
Respondent.	
Proceeding under Section 11005 of the Medical Waste Tracking Act of 1988.	AFFIDAVIT

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF HAMPTON)

David Smalls, being duly sworn according to law, deposes and says:

1. In August, 1989 and for some time prior thereto I was employed by MRM Trucking to work in conjunction with Southland Exchange Joint Venture Incenerator's (hereafter referred to as "The Facility") guards as Manager of Dispatching and Receiving MRM Tractors and Trailers. The facility from where I worked is located in Hampton, South Carolina.

2. That on August 3, 1989 a trailer in the custody of MRM Trucking, Inc. and bearing Delaware license plate T4887 arrived at The Facility.

3. The trailer was delivered to a cordoned off area within The Facility which was monitored by 24 hour security and by an MRM employee, namely me.

4. At the time the trailer was delivered to the secured area it bore all of the appropriate labels required by the Medical Waste Tracking Act.

5. At the time the trailer was delivered to the area the seal was intact and remained intact until the trailer was unsealed and opened by an agent of U.S.E.P.A. on August 10, 1989.

6. The trailer detained in the secured area from August 3, 1989 until August 10, 1989.

7. During the period August 3, 1989 through August 10, 1989 there were intermediate bouts of torrential rain and intense heat.

David Smalls

Subscribed and sworn to before me
this 26th day of October , 1990.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that the original of this **Order Upon Motion for Accelerated Decision as to Liability** was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on September 5, 1991.

Shirley Smith
Secretary to Judge J. F. Greene

Ms. Karen Maples
Regional Hearing Clerk
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