



**For Respondent:      Nadine Vorenkamp, President  
American Disposal, Inc.  
47 West Division, Suite 360  
Chicago, Illinois 60610**

### **Background**

Pursuant to Order Setting Prehearing Procedures dated August 28, 1997, Respondent was advised that its prehearing exchange in the above proceeding was due on November 26, 1997. Respondent was further notified that "If Respondent elects to conduct cross-examination of EPA witnesses and to forgo the presentation of answering evidence, it shall serve a statement to that effect on November 26, 1997".

Due to the illness of Respondent's president, which precluded a return to work until January 1998, the undersigned extended, by Order dated December 29, 1997, to March 2, 1998, Respondent's deadline to file its prehearing exchange. Since that time, Respondent has failed to file 1) its prehearing exchange; 2) a statement that it would forgo the presentation of answering evidence; or 3) a request for an extension of time to do so.

On June 4, 1998, Complainant filed a Motion for Default, pursuant to 40 C.F.R. Section 22.17. To date, Respondent has failed to respond to Complainant's motion, or request an extension to file the required prehearing submissions.

Section 22.17(a), 40 C.F.R. Section 22.17( a), permits a default order to be issued against a party "... after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer..." As noted above, Respondent failed to comply with the undersigned's December 29, 1997, order and has failed to participate in this proceeding in any way, despite ample opportunity to do so.

Thus pursuant to Section 22.17 (a), all facts alleged in the Complaint are deemed admitted and Respondent is deemed to have waived its right to a hearing. The Findings of Fact and Conclusions of Law are set forth below.

Because this default order constitutes an initial decision, 40 C.F.R. Section 22.17(b), the effectiveness and appeal provisions of 40 C.F.R. Sections 22.27 and 22.30, respectively are applicable.

## **Findings of Fact**

1. The Respondent is American Disposal, Inc., a waste transporter which, at all times relevant to the Complaint, had a business address of 47 West Division Street, Suite 360, Chicago, Illinois 60610. (Respondent's Answer, at para. 2).
2. Respondent owns and operates a waste transportation business which engages in the transportation of waste materials, including asbestos-containing waste materials from demolition and renovation sites. Answer ¶ 6.
3. On August 18, 1994, the Director of the Air and Radiation Division of U.S. EPA, Region V, issued to Respondent a Request for Information pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), requesting various items of information regarding Respondent's involvement in a particular renovation operation. Respondent was required to respond by September 25, 1994. Affidavit of Kathryn Ticho.
4. Respondent received the Request for Information on September 10, 1994. Affidavit of Kathryn Ticho.
5. On October 26, 1994, the Director of the Air and Radiation Division of U.S. EPA, Region V, sent to Respondent a letter offering an additional opportunity, until November 7, 1994, to supply the information requested in the August 18, 1994 Information Request. Affidavit of Kathryn Ticho and Complainant's Initial Prehearing Exchange.
6. Respondent received the October 26, 1994 letter on October 28, 1994. Affidavit of Kathryn Ticho and Complainant's Initial Prehearing Exchange.
7. On January 12, 1996, the Director of the Air and Radiation Division of U.S. EPA, Region V, issued to Respondent an Administrative Order pursuant to Sections 113(a)(3) and 114 of the Act, requiring Respondent to provide the information requested in the August 18, 1994 Information Request. Answer ¶ 9.
8. Respondent received the Administrative Order on January 17, 1996. Answer ¶ 9.
9. On January 25, 1996, over a year after the due date contained in the original Information Request, Respondent provided information requested by U.S. EPA in the August 18, 1994 Information Request. Answer ¶ 10.
10. On August 8, 1996, the Director of the Air and Radiation Division of U.S. EPA, Region V, issued to Respondent a second Request for Information pursuant to Section 114 of the Act, 42 U.S.C. 7414. U.S. EPA received a green certified mail receipt card indicating delivery on August 21, 1996. Answer ¶ 11, Complainant's Initial Prehearing Exchange.

11. On January 23, 1997, U.S. EPA sent to Respondent a Prefiling Notice indicating U.S. EPA's intent to bring a civil administrative or judicial enforcement proceeding against Respondent based on the fact that U.S. EPA had not received information required by the August 8, 1996 Information Request. Answer ¶ 12.

12. On February 11, 1997, Respondent met with U.S. EPA to discuss the January 23, 1997 letter. During the meeting, Respondent denied having received the August 8, 1996 Information Request. U.S. EPA provided a copy of the August 8, 1996 Information Request to Respondent and informed Respondent of the ongoing obligation to comply with the Request. Answer ¶ 13.

13. Paragraph 1 of Appendix A to the August 8, 1996 Information Request required Respondent to submit to U.S. EPA, as soon as Respondent was hired, notice of each job involving the transportation or disposal of asbestos-containing material that Respondent was hired to perform. Paragraph 2 of Appendix A to the August 8, 1996 Information Request required Respondent to submit to U.S. EPA, within 10 days following the completion of the job, waste shipment records prepared pursuant to 40 C.F.R. § 61.150(d) for each of its jobs involving the transportation or disposal of asbestos-containing material. Answer ¶ 14.

14. Between February 11, 1997, the date of the meeting between Respondent and U.S. EPA, and the date of the filing of the Complaint, Respondent had been listed on Notices of Renovation and Demolition filed by owners or operators as the waste transporter for at least 20 jobs involving the transportation of asbestos-containing material within Illinois. Affidavit of Kathryn Ticho.

15. As of the date of the filing of the Complaint, Respondent had not provided to U.S. EPA any advance notices of jobs or waste shipment records regarding the jobs, as required by the August 8, 1996 Information Request. Affidavit of Kathryn Ticho.

16. It is important to U.S. EPA that the Agency timely receive the information requested in the August 8, 1996 Information Request in order that U.S. EPA has the opportunity to observe the transportation and disposal of asbestos-containing waste material by Respondent. Without information concerning Respondent's jobs, U.S. EPA cannot schedule or perform inspections to ensure that Respondent is disposing of the asbestos-containing waste material properly. Affidavit of Kathryn Ticho.

17. Complainant calculated the penalty proposed in the Complaint in accordance with Section 113 of the Act, 42 U.S.C. § 7413, and the Clean Air Act Stationary Source Penalty Policy, as amended by a May 9, 1997 memorandum "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)."

18. The Penalty Policy and the Act require consideration of the economic benefit Respondent derived from the alleged violations in determining the appropriate penalty. In

this case, because the violations involve the submission of information, there is no economic benefit component.

19. The Penalty Policy and the Act require consideration of the seriousness of the violation. Because the Complaint does not include any allegations of a violation of an emission standard, there is no adjustment to the penalty for harm to the environment.

20. The Penalty Policy and the Act require consideration of the seriousness of the violation and the importance of the violation to the regulatory scheme. The Penalty Policy provides that an incomplete response to an information request warrants a \$5,500 to \$16,500 penalty assessment. Because Respondent failed to supply a substantial amount of information responsive to the information request, the penalty includes \$11,000 assessment for this category.

21. The Penalty Policy and the Act require consideration of the duration of the violation in assessing the actual or possible harm resulting from the alleged violations. In this case, at the time of the filing of Complaint, there had been more than 135 days of violation, since February 17, 1997 (the date of the first job Respondent conducted after meeting with U.S. EPA on February 11, 1997), warranting a \$13,200 penalty assessment.

22. The Penalty Policy and the Act require consideration of the size of a violator's business in determining the appropriate penalty. Based upon Respondent's net worth and financial status, there is no increase of the penalty based on the size of the violator's business.

23. The Penalty Policy and the Act allow for adjustments to the gravity component of the proposed penalty based the degree of willfulness or negligence, the degree of cooperation, and Respondent's history of noncompliance. U.S. EPA's August 8, 1996, Information Request specifically listed the information Respondent was to submit and described the consequences of its failure to do so. Respondent had complete control over its ability to submit the required information and was made aware of the legal ramifications of violating the terms of the Information Request. Based upon Respondent's willfully negligent behavior, the gravity portion of the proposed penalty is increased by 10 percent, in accordance with the Penalty Policy and the Act.

Respondent has demonstrated a history of failure to respond to the Agency's Information Requests. Complainant issued a prior Information Request to Respondent on August 18, 1994. After Respondent failed to respond within the allotted time frame, Complainant offered Respondent an additional opportunity to supply the requested information. After yet another missed deadline, Complainant issued to Respondent an Administrative Order on January 12, 1996, requiring the company to supply the delinquent information. Over a year after the initial due date, Respondent supplied the information. Based upon this history of failure to comply with Section 114 Information Requests, the gravity component of the penalty is increased by 10 percent, in accordance with the Penalty Policy and the Act.

24. Complainant filed the Complaint in this action on July 2, 1997.
25. On August 28 1997, Administrative Law Judge McGuire issued his "Order Setting Prehearing, Procedures", in which, among other things, he required Respondent to file a Prehearing Exchange, including any direct and rebuttal evidence, no later than November 26, 1997.
26. On December 29, 1997, Administrative Law Judge McGuire extended to March 2, 1998 time for Respondent to file a Prehearing Exchange.
27. Respondent has not filed its Prehearing Exchange, or a statement that it would forgo presentation of answering evidence as required by the undersigned's Orders of August 28, 1997 and December 29, 1997.

### **CONCLUSIONS OF LAW**

1. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 302(e).
2. Section 114 of the Act, 42 U.S.C. § 7414, authorizes the Administrator to require any person who may have information necessary for the purposes set forth in Section 114(a), among for other things, to establish and maintain records, make reports and provide other information as the Administrator may reasonably require to determine whether any person is in violation of any requirement of the Act.
3. The Administrator has delegated to the Director of the Air and Radiation Division, Region V, the authority to require a person to provide information pursuant to Section 114 of the Act.
4. Respondent violated Section 114 of the Act by failing to supply information requested in an Information Request issued by the Director of the Air and Radiation Division, Region V, pursuant to Section 114 of the Act.
5. Respondent is in default for failure to file a Prehearing Exchange as required by Administrative Law Judge Stephen J. McGuire's Orders of August 28 and December 29, 1997.
6. Pursuant to 40 C.F.R. Section 22.17(a), Respondent's default constitutes an admission of all facts alleged in the Complaint.
7. Section 113 of the Act, 42 U.S.C. Section 7413, as amended by the Debt Collection Improvement Act of 1996, authorizes the assessment of a penalty of up to \$27,000 per day of violation.

8. The penalty proposed in the Complaint in the amount of \$29,040 is supported by the facts and is appropriate when considering the factors set out in Section 113 of the Act.

9. EPA counsel has asserted that Respondent has failed to supply Complainant with a current address by which service of this Motion could be accomplished. As Respondent has never provided the Agency with a current address, pursuant to Section 22.05(c)(4), of the Rules of Practice, it is "deemed to have waived its right to notice and service under these rules". Order

Within 60 days after a final order is issued in this docket, Respondent shall pay the assessed penalty of \$29,040 by certified check or cashiers check payable to "Treasurer, United States of America", and shall deliver it, with a transmittal letter identifying the name of the case, the docket number of this Complaint and the billing document to:

United States Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and docket number. Respondent simultaneously shall send copies of the check and the transmittal letter to:

Cynthia Curtis  
Air Enforcement and Compliance  
Assurance Branch (AE-17J)  
Air and Radiation Division  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Accordingly for the above-stated reasons, Complainant's Motion for Default is GRANTED.

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Stephen J. McGuire  
Administrative Law Judge

Washington D. C.

**IN THE MATTER OF AMERICAN DISPOSAL, INC., Respondent  
Docket No. 5-CAA-97-010**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Order Granting Complainant's Motion For Default, dated June 29, 1998, was sent in the following manner to the addressees listed below:

**Original by Regular Mail to:** Sonja Brooks  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

**Copy by Regular Mail to:**

**Counsel for Complainant:** Jane D. Woolums, Esq. (C-29A)  
Associate Regional Counsel  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

**Copy by Certified Mail  
Return Receipt:**

**Counsel for Respondent:** Nadine Vorenkamp, President  
American Disposal, Inc.  
47 West Division, Suite 360  
Chicago, IL 60610

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Maria Whiting-Beale  
Legal Assistant



**Dated: June 29, 1998**

**Washington, D. C.**

**IN THE MATTER OF AMERICAN DISPOSAL, INC., Respondent**

**Docket No. 5-CAA-97-010**

**AMENDED CERTIFICATE OF SERVICE**

I certify that the foregoing Order Granting Complainant's Motion For Default dated June 29, 1998, was sent this day in the following manner to addresses listed below:

**Original by Regular Mail to:**

Sonja R. Brooks  
Regional Hearing Clerk  
U.S. EPA  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**Copy by Regular Mail to:**

**Attorney for Complainant:**

Jane D. Woolums, Esquire  
Assistant Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**Copy by Certified Mail  
Return Receipt:**

**Respondent:**

Nadine Vorenkamp, President  
American Disposal Inc.  
1801 West Wabansia Avenue, Apt 2  
Chicago, IL 60622

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Maria Whiting-Beale  
Legal Staff Assistant

**Dated: July 7, 1998**