

12/23/92

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
PREMIER METAL PRODUCTS,	)	Docket No. RCRA-09-91-0018
	)	
Respondent	)	

ORDER DENYING COMPLAINANT'S MOTION  
FOR PARTIAL ACCELERATED DECISION

For the reasons stated in a pleading served July 27, 1992 (motion), complainant requests that an accelerated decision be granted in its favor on the issue of respondent's liability for alleged violations of section 3002 of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6922, and the pertinent regulations promulgated thereunder, more specifically those stated in 40 C.F.R. Part 262. The complaint contains three counts. Count I alleges that respondent offered hazardous waste to a facility not permitted to handle same, and not having interim status to engage in such activity. Count II charges respondent did not indicate the site address in the shipment of the hazardous waste, and Count III claims that respondent failed to include the proper U.S. Department of Transportation shipping name and identification number for the waste on a certain manifest document.

Respondent opposed the motion in its response served August 10, 1992. To be decided here is whether or not there exists a "genuine issue of material fact" concerning liability which would

preclude the granting of the motion pursuant to 40 C.F.R. § 22.20(a).

The pertinent section of the Consolidated Rules of Practice, 40 C.F.R. § 22.20(a), states that the Administrative Law Judge (ALJ) may grant an accelerated decision at any time:

without further hearing or upon such limited additional evidence, such as affidavits, as he may require, 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 (emphasis added).

The ALJ may look to the Federal Rules of Civil Procedure (Fed. R. Civ. P.) for guidance in interpreting the Consolidated Rules of Practice. Here, the equivalent of an accelerated decision is Fed. R. Civ. P. 56 addressing summary judgment, which permit a final decision to be rendered without the time or expense of an evidentiary hearing, provided there are no genuine issues of material fact in controversy. Material facts are those which establish or refute an essential defense asserted by a party.<sup>1</sup> Although reasonable inferences may be drawn from the evidence, they must be viewed in the light most favorable to the party opposing the motion.<sup>2</sup> An accelerated decision is a harsh remedy; it should be approached with circumspection.

The burden rests on the motioning party to demonstrate there are no material issues of fact in controversy. It is a firmly-etched principle of law that for the purpose of summary judgment,

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<sup>1</sup> Words and Phrases, "Material Fact."

<sup>2</sup> United States v. Diebold, 369 U.S. 654, 655 (1962). See also, 6 Moore's Federal Practice ¶ 56.15[1-00].

once it is determined that there is an issue of material fact, the inquiry ends.<sup>3</sup> The ALJ is not empowered to resolve that issue or to weigh the evidence supporting each argument.<sup>4</sup>

In short, the core of the complaint is that the waste in issue was a synthetic reducer. Respondent denies this and contends that the substance in question was merely a mixture of water and water-base paint residue that is not subject to regulation under RCRA. The respective arguments of the parties are well-known to them; they will not be repeated here.

The response to the motion is clear, complete and persuasive. Respondent has enumerated at least 14 areas where issues of material fact may exist in this matter. The response is also supported by affidavits and documentation. Without attempting to be exhaustive, the pleadings show that factual questions exist concerning whether or not respondent was a generator in October 1988, whether or not it offered hazardous waste for transport during the relevant time period, and whether or not the manifest included a site address.

The motion and response show luminously that this matter is laden with genuine issues of material fact, and is not one susceptible to an accelerated decision. The ALJ is led ineluctably to conclude that at this stage it is clear as a crystal that an

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<sup>3</sup> Homan Mfg. Co. v. Long, 242 F.2d 645, 656 (7th Cir. 1957).

<sup>4</sup> Cox v. American Fidelity & Casualty Co., 249 F.2d 616, 618 (9th Cir. 1957).

evidentiary hearing will be necessary to resolve the factual and other questions posed in the proceeding.

IT IS ORDERED that:

1. Complainant's motion for a partial accelerated decision on the issue of liability be DENIED.

2. The parties continue good faith efforts to settle this matter.

3. If this matter is not settled by **February 15, 1993**, complainant shall arrange for a telephone prehearing conference for the purpose of scheduling a hearing date.

*Frank W. Vanderheyden*

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Frank W. Vanderheyden  
Administrative Law Judge

Dated

*December 23, 1992*

IN THE MATTER OF PREMIER METAL PRODUCTS, Respondent  
Docket No. RCRA-09-91-0018

Certificate of Service

I certify that the foregoing Order, dated 12/23/92,  
was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Mr. Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

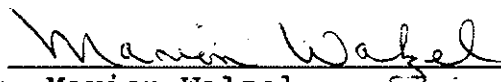
Copy by Regular Mail to:

Attorney for Complainant

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Marion Walzel  
Legal Staff Assistant

Dated Dec. 28, 1992