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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)) FLEISCHER MANUFACTURING, INC.) COLUMBUS, NEBRASKA,) 98- H- 005)) RESPONDENT)))	DOCKET NO. VII -
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ACCELERATED DECISION

Under consideration is Complainant's motion for accelerated decision on the issue of liability. The complaint in this matter was filed June 30, 1998. Pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a) and (g), Complainant charges Respondent in one count with violating Title 128, Chapter 19, Section 002 of the Nebraska Department of Environmental Control Regulations ("128 CSR § 19.002"), the federally authorized equivalent of 40 C.F.R. § 262.11. ⁽¹⁾

THE COMPLAINT

The complaint alleges that Respondent, Fleischer Manufacturing Inc., generates solid and hazardous paint waste in the course of its farm equipment manufacturing operations. Respondent notified EPA of its hazardous waste activity at its 2074 14th Avenue facility in Columbus, Nebraska on or about November 16, 1990 and indicated that it was a large quantity generator of F003 and F005 hazardous waste. ⁽²⁾ Complainant's Exhibit ("CX") 3. A subsequent notification dated January 9, 1991 informed EPA that Respondent was generating more than 100 kilograms but less than 1,000 kilograms of F003 and F005 hazardous waste per month.

The complaint further alleges that on June 10, 1997, environmental engineer Dedriel Newsome conducted an EPA RCRA screening inspection at Respondent's facility. CX 4. In the course of that inspection Respondent informed Newsome that it had not made a hazardous waste determination for ash generated from the burning of paint waste off of paint hooks used to hold products while they were painted. The failure to make a hazardous waste determination for the paint hook ash, Complainant contends,

constitutes a violation of 128 CSR § 19.002. [\(3\)](#)

FINDINGS AND CONCLUSIONS

Consolidated Rule 22.20(a) provides that entry of accelerated decision is appropriate only where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. 40 C.F.R. § 22.20(a). Complainant urges that admissions in Respondent's answer demonstrate that there is no dispute as to any material fact and that Complainant is entitled to judgment as a matter of law. Respondent has filed no opposition to Complainant's motion.

Complainant does not offer an argument in support of its motion. Instead, Complainant simply asserts that admissions in Respondent's answer establish Respondent's liability. In support of this assertion Complainant offers a list matching the numbered paragraphs in Respondent's answer that admit allegations in the complaint, with the numbered paragraphs in the complaint.

Respondent, in its answer, does admit to the facts establishing its liability. Specifically, Respondent admits that it is a Nebraska corporation; that it is a "person" as that term is defined in RCRA § 1004(15), 42 U.S.C. § 6903(15); that, in the course of its business of manufacturing farm equipment, it generates solid and hazardous paint waste; and that it notified EPA of its hazardous waste activity in November of 1990 and again in January of 1991. Respondent also admits that a RCRA screening inspection occurred at its facility on June 10, 1997, during which Respondent informed Newsome that it had not made a hazardous waste determination for the ash generated from the burning of waste paint off of the paint hooks. Finally, Respondent admits that such failure constitutes a violation of 128 CSR § 19.002 which requires facilities that generate solid waste to determine if that waste is a hazardous waste. [\(4\)](#)

The admissions in Respondent's answer relied upon by Complainant to establish liability are further supported by an examination of documents submitted in prehearing exchange, in particular the inspection report prepared by environmental engineer Newsome. In the report Newsome notes that the paint hooks were removed and burned for cleaning purposes and that classification of the waste was either uncertain or not done. CX 4 at 2. The report also notes that at the conclusion of the inspection Newsome issued Respondent a Notice of Violation for its failure to perform a hazardous waste determination on the paint hook ash and two other waste streams at the facility. Id. at 14.

ACCORDINGLY, IT IS FOUND that Respondent failed to make a hazardous waste determination for the waste paint ash generated from the burning of the paint hooks as required under 128 CSR § 19.002, and Complainant's motion IS GRANTED.

Edward J. Kuhlmann
Administrative Law Judge

November 16, 1998
Washington, D. C.

1. The State of Nebraska was granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), effective February 7, 1985. 50 Fed. Reg. 3345 (Jan. 24, 1985). Section 3008(a)(2) of RCRA empowers EPA to enforce the provisions of an authorized state program, and the regulations promulgated pursuant to such program, provided EPA notifies the state in which the violation has occurred before issuing any order or commencing any action. Complainant asserts that the State of Nebraska has been notified of

this action as required under RCRA § 3008(a)(2). Complaint ¶ 2.

2. Respondent's facility was assigned EPA identification number NED007267024.

3. 128 CSR § 19.002 directs that "A person who generates a solid waste, as defined in Chapter 4, must determine if that waste is a hazardous waste" following the method described in subsections 002.01 through 002.03B.

4. In its answer Respondent contests only the proposed penalty and the number of times that it burned the paint hooks, neither of which are at issue in the instant motion.

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