9/27/90

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
WYCKOFF STEEL, INCORPORATED	)	Docket No. V-W-89-R-15
	)	
Respondent	)	

Resource Conservation and Recovery Act. Where Respondent stated that it would no longer expend any effort in the defense of its case and would not attend the hearing scheduled in this matter, it was found to be in default pursuant to 40 C.F.R. § 22.17, to have admitted the violations charged, and assessed the full amount of penalty proposed in the complaint.

ORDER ON DEFAULT

By: Frank W. Vanderheyden Dated: September 27, 1990

Administrative Law Judge

APPEARANCES:

For Complainant:

Maria E. Gonzales, Esquire
Assistant Regional Counsel
Solid Waste & Emergency
Response Branch
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

For Respondent:

Jack D. Shumate, Esquire
Robert C. Davis, Esquire
Butzel, Long, Gust, Klein &
Van Zile
1650 First National Building
Detroit, Michigan 48226

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This proceeding was initiated under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, by issuance of a complaint on March 31, 1989, charging Wyckoff Steel, Inc. (respondent), with violations of various sections of RCRA and the Michigan Hazardous Management Act, and pertinent regulations promulgated thereunder. An answer to the complaint was dated June 2, 1989, and served pursuant to an extension of time. The answer, in substance, denied some of the allegations in the complaint, contested the penalty amount, asserted various equitable arguments, and requested a hearing. Stated broadly, the alleged violations included treatment, storage and disposal of hazardous waste without the Notification of Hazardous Waste Activity required under RCRA, without a permit or interim status, and in violation of the Loss of Interim Status Deadline, plus noncompliance with requirements applicable to similar treatment, storage or disposal facilities. Complainant sought a civil penalty in the amount of One Hundred Seventy-Six Thousand Seven Hundred Dollars ($176,700) and order requiring compliance with interim status standards until closure, submission and implementation of a groundwater monitoring plan and documentation of compliance with financial requirements.

Respondent is a person defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and the Michigan Hazardous Waste Management Act (sometimes Act), 1979 PA 64, MCL 299.505(2), MSA 13.30(5)(2),

who owns and operates a facility at 1000 General Drive, Plymouth, Michigan, that generates, stores and disposes of hazardous waste. It is a Pennsylvania corporation whose registered agent in Michigan is Corporation Company, 615 Griswold, Detroit, Michigan 48226.

Section 3010(a) of RCRA requires any person who generates or transports hazardous waste, or owns or operates a facility for the treatment, storage or disposal of hazardous waste, to notify the United States Environmental Protection Agency (sometimes EPA) of such activity within 90 days of the promulgation of regulations identifying the characteristics and listing of hazardous wastes under Section 3001 of RCRA, 42 U.S.C. § 6921, and prohibits the transportation, treatment, storage or disposal of hazardous waste unless the required notification has been given. EPA first published regulations concerning the identification, generation, transportation, treatment, storage or disposal of hazardous waste on May 19, 1980. These regulations are codified at 40 C.F.R. Parts 260 through 265. Notification to EPA of hazardous waste activity was required in most instances no later than August 18, 1980. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires EPA to publish regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to obtain a RCRA permit. Such regulations were published on May 19, 1980, and are codified at 40 C.F.R. Parts 270 and 271 (formerly Parts 122 and 123). The regulations require that persons who treat, store, or dispose of hazardous waste submit Part A of the permit application in most instances no later than November 19, 1980.

Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition on the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), concerning notification of hazardous waste activity have been complied with; and (3) Part A of an application for a permit has been made. This statutory authority to operate is known as interim status. EPA regulations implementing these provisions are found at 40 C.F.R. Part 270.

On August 7, 1980, respondent filed a notification of hazardous waste activity for this facility with EPA pursuant to Section 3010(a) of RCRA, stating that it generated a hazardous waste. This waste has been identified and listed as hazardous waste under Section 3001 of RCRA (EPA Hazardous Waste No. K062, spent pickle liquor generated by steel finishing operations). As of the date of the complaint and compliance order, respondent had not submitted Part A of the permit application for this facility pursuant to Section 3005 of RCRA.

The provisions of 40 C.F.R. § 265.1(b) state in part, that "the standards of this Part apply to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010 of RCRA, and/or failed to file Part A of the permit application as required by 40 C.F.R. §§ 270.10(e) and (g). EPA determined that respondent

owns and operates a surface impoundment for the storage and disposal of hazardous wastes generated at the facility. Prior to October 30, 1986, the date the State of Michigan was granted final authorization pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), respondent was subject to the applicable requirements of 40 C.F.R. Parts 262 and 265. Respondent is currently subject to the applicable requirements of MAC 1985 AACS Parts 3 and 10 and 40 C.F.R. Part 268.

Pursuant to Section 3005(e) of RCRA, all regulated land disposal facilities must have submitted a complete Part B permit application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements by November 8, 1985, in order to avoid losing interim status for those regulated units (including surface impoundments, waste piles, and landfills). If a Part B permit application and certification of compliance were not received by November 8, 1985, the owner or operator was required to submit a closure plan to the Regional Administrator stating intent to close the facility no later than 15 days after termination of interim status as required by 40 C.F.F. § 265.112(d). As of November 8, 1985, respondent had not submitted a certification of compliance with all applicable groundwater monitoring requirements of 40 C.F.R. Part 265 Subpart F and the financial requirements of 40 C.F.R. Part 265 Subpart H, nor a Part B permit application as required by 40 C.F.R. § 270.10. A closure plan in accordance with the requirements of 40 C.F.R.

Subpart G for the surface impoundment was not submitted by November 23, 1985.

On September 28, 1988, the Michigan Department of Natural Resources (MDNR) conducted a RCRA inspection of respondent's facility and observed the following violations: failure to submit a Notification of Hazardous Waste Activity identifying storage and disposal of hazardous wastes as required pursuant to Section 3010 of RCRA; failure to submit Part A of the permit application for storage and disposal of hazardous waste pursuant to Section 3005 of RCRA, and 40 C.F.R. Parts 270 and 271, and failure to obtain the permits required for storage and disposal of hazardous waste pursuant to the Act, 1979 PA 64, MCL 299.518 and 522, and the Michigan Administrative Code (MAC), 1985 AACS, Parts 5 and 6; failure to properly manage generated hazardous waste in accordance with 40 C.F.R. Part 265, Subparts A, B, C, D, E, F, G, H and K, as adopted by reference in the MAC 1985 AACS, R299.11003 for storage and disposal in a surface impoundment; failure to submit a Part B permit application and certification of compliance with all applicable groundwater monitoring and financial responsibility requirements by November 8, 1985, as required by the Hazardous and Solid Waste Amendments of 1984, § 213, and 40 C.F.R. § 270.73(c); failure to properly characterize shot blast waste and spent oil, as required by MAC R299.9302; failure to complete a manifest in its entirety, as required by MAC R299.9304(2)(a); failure to return MDNR copies of the manifest to the State as required in R299.9304(4)(d); failure to complete the annual review of the

initial personnel training, as required by 40 C.F.R. § 265.16, as adopted by reference in MAC 1985 AACS, R299.11003(n); failure to maintain absorbent spill material, as specified in the facility's contingency plan, as required by 40 C.F.R. § 265.32(c), as adopted by reference in MAC 1985 AACS, R299.11003(n); failure to maintain the inspection log and to conduct inspections of the fire detectors, as specified in the facility's contingency plan, and as required by 40 C.F.R. § 265.33, as adopted by reference in MAC 1985 AACS, R299.11003(n); and failure to amend the contingency plan to reflect changes, as required in 40 C.F.R. § 265.54, as adopted by reference in MAC 1985 AACS, R299.11003(n).

The surface impoundment at respondent's facility was permitted by the State of Michigan to have groundwater discharge up until 1982. Respondent allowed the permit to expire without making a timely reapplication submittal. In 1984, respondent reapplied; however, the reapplication was not timely. The waste discharged to the impoundment is hazardous. Therefore, a groundwater discharge permit is not applicable and the impoundment should have been managed in accordance with the provisions of RCRA since November 19, 1980.

On September 30, 1988, MDNR sent a letter to respondent indicating that MDNR had identified a hazardous waste surface impoundment at the facility for which respondent had not notified or submitted a Part A permit application pursuant to Sections 3010 and 3005 of RCRA, stating that the shot blast waste and spent oil had not been properly characterized pursuant to 40 C.F.R. § 261.24,

and citing the violations noted during the September 28, 1988 inspection. MDNR requested in the September 30, 1988 letter that within ten (10) days of its receipt respondent eliminate the discharge to the surface impoundment, provide notice to MDNR of eliminating the discharge, and provide notice to MDNR as to what provisions are in place to properly manage this hazardous waste; that within twenty (20) days of receipt respondent would perform the characterization of the waste oil, shot blast waste and contaminated soil in accordance with the requirements of R299.9302, and containerize the oil contaminated soil and the shot blast waste spilled on the property; that within thirty (30) days of receipt respondent would either manage the containerized oil contaminated soil and the shot blast waste in accordance with the Act 641 provisions or the Act 64 provisions, depending upon characterization as a nonhazardous or hazardous waste, and correct the remaining violations noted in items 6-15 of the letter; and that within forty-five (45) days of receipt of the letter respondent would prepare and submit a closure plan which complies with the requirements of 40 C.F.R. Part 265 Subpart G, 40 C.F.R. § 265.228, 40 C.F.R. Part 265 Subpart F, and the permit requirements of 40 C.F.R. § 270.9(c), and document that the financial assurance for closure/post-closure and the liability requirements have been established, pursuant to the requirements of 40 C.F.R. Part 265 Subpart G and MAC 1985 AACS R299.11003.

On October 19, 1988, respondent submitted a letter to MDNR in response to the September 30, 1988 communication. The response included analyses of the waste oil and shot blast material in addition to other information and a statement that no more waste would be placed in the impoundment after October 23, 1988. On October 28, 1988, MDNR sent a letter to respondent acknowledging receipt of the October 19, 1988 letter. The communication from MDNR reiterated the seriousness of the violations concerning the unauthorized surface impoundment and also detailed the additional items necessary to bring respondent into compliance, including a schedule for the sewer hook up, submittal of a closure plan with groundwater monitoring by December 19, 1988, submittal of analysis of waste oil, documentation of completed annual training and revised contingency plan by November 11, 1988, and submittal of a remedial work plan addressing waste oil contaminated soil by November 18, 1988. On November 10, 1988, respondent sent a letter to MDNR in further response to the September 30, 1988 communication. This included a copy of the analysis of the waste oil, a copy of the revised facility contingency plan; and a commitment to provide a progress report on the sewer hook-up, the development of a closure plan that includes groundwater monitoring, and the development of a workplan for the clean-up of the waste oil contaminated soil. On November 16, 1988, respondent submitted an assessment and remedial action plan for the waste oil tank and oil-contaminated soils at its facility.

On November 29, 1988, MDNR conducted a follow-up inspection at respondent's facility. The purpose of the inspection was to evaluate the continued efforts of respondent to correct the deficiencies identified in the September 28, 1988 inspection. MDNR sent respondent a letter on December 15, 1988 to delineate the remaining issues necessary to achieve compliance with the September 28, 1988 inspection violations. The closure plan for the surface impoundment, including the groundwater monitoring requirements, was required to be submitted by January 6, 1989, the revised contingency plan was to be provided to all the emergency agencies identified in the plan, a status report on corrective actions was to be provided to MDNR every twenty (20) days, and a notification reflecting treatment, storage or disposal (TSD) status in addition to generator status was to be submitted to EPA, copy to MDNR.

On December 20, 1988, respondent submitted a subsequent notification to EPA to reflect TSD status at its facility. It also submitted on January 6, 1989 a closure plan for the surface impoundment which incorporated a groundwater investigation.

Following the issuance of the complaint, the matter was assigned to the undersigned Administrative Law Judge (ALJ) on June 8, 1989. By order dated June 13, 1989, the parties failing settlement, were directed to exchange certain prehearing information consisting of witness lists, documentary evidence and responses to inquiries concerning their respective cases no later than July 31, 1989. Complainant served its prehearing exchange on

the date ordered. Respondent submitted a pre-trial statement and certificate of service which indicated that its prehearing exchange had been served on August 1, 1989. During a telephone prehearing conference (PHC) on May 17, 1990, respondent, through counsel, indicated that it was liable in this matter. By order served June 13, 1990, this matter was set for hearing on June 27, 1990. On June 22, 1990, respondent, through counsel, advised the ALJ during a PHC, that it would not expend any more resources in defense of this matter and would not appear at the hearing in this matter. The hearing scheduled for June 27, 1990, was canceled and continued until August 22, 1990. By order issued June 28, 1990, served on respondent's president and registered agent as well as on respondent's counsel, the ALJ required complainant to serve a motion for proposed order on default together with a draft of the same no later than July 20, 1990. The order also required the corporate respondent to advise the ALJ and complainant, within ten (10) days if it intended to appear at the August 22, 1990 hearing. In a letter dated July 5, 1990, respondent's counsel advised the ALJ that his firm still represented respondent in this matter, that respondent directed counsel not to pursue an active defense of this matter and understood this may result in issuance of a default order.

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, complainant has the authority to institute enforcement proceedings concerning violations of federal and equivalent state hazardous waste regulations in those states that receive EPA approval of

their Hazardous Waste Management programs pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Respondent's answer to the complaint admits the jurisdictional allegations and does not raise any questions which could support a decision that complainant has failed to establish a prima facie case, or justify the dismissal of the complaint. An examination of the prehearing exchange documents submitted by complainant buttress the allegations in the complaint, including the charge that respondent stored and disposed of hazardous waste in a surface impoundment at its facility without submitting Part A of a RCRA permit application, and without complying with interim status requirements for such facilities. Complainant has established a prima facie case to support the allegations in the complaint that respondent violated Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. Sections 6922, 6924 and 6925, respectively; the Michigan Hazardous Waste Management Act, 1979 PA 64, MCL 299.501 et seq. MSA 13.30(1) et seq.; and Michigan hazardous waste management regulations, specifically Michigan Administrative Code 1985 AACS, R299.9301 through R299.9309 and R299.11003. Pursuant to 40 C.F.R. § 22.17, respondent's failure to comply with the prehearing order, and respondent's refusal to comply with the hearing order and its failure to show good cause amount to a default and constitutes an admission of all facts alleged in the complaint and a waiver of a hearing on the factual allegations.

ULTIMATE CONCLUSION

It is concluded that respondent is in violation of Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. § § 6922, 6924 and 6925; the Michigan Hazardous Waste Management Act, 1979 PA 64, MCL 299.501 et seq. MSA 13.30(1) et seq.; and Michigan hazardous waste management regulations, specifically Michigan Administrative Code 1985 AACS, R299.9301 through R299.9309 and R299.11003.

THE PENALTY

The penalty proposed in the complaint is One Hundred Seventy-Six Thousand Seven Hundred Dollars ($176,700). It is recognized that RCRA specifies that in assessing a penalty the Administrator shall take into account the seriousness of the violation and any good faith efforts of respondent to comply with applicable requirements. Respondent by its default, however, has waived the right to contest the penalty which shall become due and payable without further proceedings.

ORDER[1]

IT IS ORDERED, pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), that respondent, Wyckoff Steel, Inc., shall

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[1] Pursuant to 40 C.F.R. § 22.17(b), this order constitutes the initial decision in this matter. Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this decision on his own motion, this decision shall become the final order of the Administrator. 40 C.F.R. § 22.27(c).

be assessed a civil penalty of ONE HUNDRED SEVENTY-SIX THOUSAND SEVEN HUNDRED DOLLARS ($176,700).

I. A. Payment of the full amount of the penalty assessed shall be made by forwarding a cashier's or certified check, payable to the Treasurer of the United States, to the following address within sixty (60) days after the final order is issued. 40 C.F.R. § 22.17(a).

U.S. EPA
Region V
P.O. Box 70753
Chicago, Illinois 60673

B. Failure upon part of respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 40 C.F.R. §§ 102.13(b)(c)(e).

C. Copies of the transmittal of payment should be sent to both the Regional Hearing Clerk, Planning and Management Division (5MF-14), and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel (5CS-TUB-3), U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

II. The following Compliance Order is also entered in this proceeding. Respondent shall:

A. Within thirty (30) days after the final order is issued, maintain compliance with interim status standards pursuant to 40 C.F.R. Part 265 Subparts B, C, D, E, G, I and K and MAC 1985 AACS R299.11003, until such time that closure of the surface impoundment is completed and certification by an independent registered professional engineer is submitted to EPA and MDNR and

respondent is released from financial responsibility by both aforementioned Agencies pursuant to 40 C.F.R. § 265.115 and MAC 1985 AACS R299.11003.

B. Within thirty (30) days after the final order is issued, submit a groundwater monitoring plan to EPA and MDNR describing how the facility will comply with the requirements of MAC 1985 AACS R299.11003 (which rule adopts 40 C.F.R. 265 Subpart F, by reference). The groundwater monitoring system shall be implemented within fourteen (14) days of approval by MDNR.

C. Within thirty (30) days after the final order is issued, submit documentation of compliance with the financial requirements of MAC 1985 AACS R299.11003 (which rule adopts 40 C.F.R. Part 265 Subpart H, by reference).

D. Notify EPA in writing upon achieving compliance with this order or any part thereof. This notification shall be submitted no later than the time stipulated above to the Waste Management Division, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Peter Miller, RCRA Enforcement Branch, 5HR-12. A copy of these documents and all correspondence with EPA regarding this order shall also be submitted to Dennis Drake, Chief, Compliance and Enforcement Section, Waste Management Division, Michigan Department of Natural Resources, P.O. Box 30028, Lansing, Michigan 48909.

III. Any written submissions required to be made to EPA pursuant to the order, other than the payment of the civil penalty, shall be addressed to:

Waste Management Division
U.S. EPA
Region V
230 South Dearborn Street
Chicago, Illinois 60604
Attention: Peter Miller
RCRA Enforcement Branch (5HR-12)

Any written submission required to be made to MDNR pursuant to the order, shall be addressed to:

Chief, Compliance and Enforcement Section
Waste Management Division
Michigan Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

Notwithstanding any other provision of this order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority where the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at this facility may present an imminent and substantial endangerment to human health or the environment.

Failure to comply with any requirements of the order shall subject the above-named respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS ($25,000) for each day of continued noncompliance with the deadlines contained in this order; EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c), 42 U.S.C. § 6928(c).

Frank W. Vanderheyden
Administrative Law Judge

Dated: September 27, 1990

CERTIFICATE OF SERVICE

IN THE MATTER OF

WYCKOFF STEEL, INCORPORATED)))))))) DOCKET NO. VW-89-R-15

I HEREBY CERTIFY THAT THE ORDER ON DEFAULT AND CERTIFICATE WAS SERVED TO THE FOLLOW PARTIES ON OCTOBER 2, 1990.

BESSIE HAMMIEL
CHIEF ADMINISTRATIVE LAW JUDGE
U.S. ENVIRONMENTAL PROTECTION AGENCY
401 M STREET, S.W. (A-110)
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BEVERELY SHORTY

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LEGAL TECHNICIAN
OCTOBER 2, 1990