

3/30/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Cirtek Maryland, Inc.,)
)
Respondent)

Docket No. RCRA-III-177

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ENVIRONMENTAL PROTECTION AGENCY
REGIONAL OFFICE
ATLANTA, GEORGIA

DEFAULT ORDER

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6928(a), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The action was instituted by the filing of a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") by the Director of the Hazardous Waste Management Division, U.S. Environmental Protection Agency, Region III ("Complainant") on September 27, 1989.

It is hereby determined that an appropriate Default Order shall be issued on the Findings of Fact and Conclusions of Law as set out below:

FINDINGS OF FACT

1. On September 27, 1989, the Complainant issued to Cirtek Maryland, Inc. ("Respondent") and filed with the Regional Hearing Clerk a Complaint which alleged that Respondent:

(a) stored hazardous waste on-site for greater than 90 days without a permit, in violation of COMAR (Code of Maryland Annotated Regulations) 10.51.03.05E(1) (40 C.F.R. § 262.34(b));

(b) failed to label each container of hazardous waste stored on-site for 90 days or less with the words "Hazardous Waste," in violation of COMAR 10.51.03.05E(1)(d) (40 C.F.R. § 262.34(a)(3));

(c) stored containers of hazardous waste in an area that was not capable of collecting and holding spills, leaks, and precipitation, in violation of COMAR 10.51.05.09(H) (40 C.F.R. § 264.175(a));

(d) failed to conduct personnel training, in violation of COMAR 10.51.05.02G(1)(a) (40 C.F.R. § 265.16(a));

(e) failed to inspect hazardous waste container areas, in

violation of COMAR 10.51.05.09E (40 C.F.R. § 265.174); and

(f) failed to determine if its waste was restricted from land disposal, in violation of 40 C.F.R. § 268.7(a).

2. The Complaint was served upon Respondent by certified mail, return receipt requested and was received and signed by Respondent on October 3, 1989.

3. Respondent filed its Answer to the Complaint on May 10, 1990.

4. In a letter to the parties dated July, 30, 1990, the Presiding Officer ordered that both parties file prehearing exchanges in accordance with Section 22.19 of the Consolidated Rules by September 4, 1990.

5. On September 4, 1990, Complainant filed an original of its prehearing exchange by hand-delivery to the Regional Hearing Clerk, U.S. EPA, Region III. Copies were also served that day upon Respondent and the Presiding Officer by overnight mail.

6. On December 6, 1991, Complainant filed a Motion for a Default Order against Respondent. In this Motion, Complainant stated that Respondent had failed to file a timely Answer and had failed to comply with the Presiding Officer's prehearing order of July 30, 1990 concerning the filing of a prehearing exchange.

7. Respondent filed its Prehearing Exchange and a response to Complainant's Motion for Default on December 30, 1991.

8. Complainant will be prejudiced if its Motion is not granted as Respondent's counsel will have had an opportunity to review, evaluate and take action in response to Complainant's prehearing exchange while Complainant will not have had a similar opportunity, as would have been the case had Respondent filed its prehearing exchange simultaneously with the timely filing of Complainant's prehearing exchange, as required by the July 30, 1990 order to the parties.

9. The allegations contained in paragraphs 1 through 35 of the Complaint are incorporated herein by reference and adopted herein as Findings of Fact.

10. The allegations contained in Complainant's prehearing exchange and exhibits attached thereto are incorporated herein by reference.

11. The Complaint in this action proposed the assessment of a civil penalty of \$69,472 against the Respondent. The penalty was calculated in accordance with the RCRA Civil Penalty Policy ("RCPP") issued May 8, 1984 as follows:

Count I - Storage of hazardous wastes for greater than ninety days without a permit or interim status.

1. Gravity-Based Penalty

(a) Potential for Harm - MINOR

RCRA exempts generators who store their own hazardous waste onsite from the requirements of interim status or obtaining a storage permit and complying with the standards for storage facilities applicable to interim status or permitted facilities as long as they, among other things, store such hazardous waste onsite for ninety days or less. Cirtek circumvented the storage facility requirements by notifying EPA it was solely a generator, even though it stored waste onsite for more than ninety days. Because there was only one drum of hazardous waste involved in this violation, the potential for harm is minor.

(b) Extent of deviation - MODERATE

Since Cirtek did have a hazardous waste label on the drum and it was dated, its storage over ninety days constitutes a moderate deviation from the applicable requirements.

(c) Using the RCPP matrix, EPA assessed the maximum gravity-based/per-day penalty of \$1,500.00.

2. Adjustments to Gravity-Based Penalty

(a) History of Non-compliance - The gravity-based penalty was adjusted upward by \$375.00 or 25% for history of non-compliance (Cirtek had previously been cited in writing for storing approximately eighty-nine drums of hazardous waste on-site for more than 90 days. Cirtek's improper waste management practices were not adequately deterred by prior notices of violation), providing an adjusted per-day penalty of \$1,875.00.

(b) Multiple/Multi-day Penalty - Cirtek dated the drum on June 7, 1988 and it was found onsite on February 21, 1989. Therefore, Cirtek had the drum onsite for at least 259 days, however, EPA chose to penalize Cirtek for only 100 days of violation, and did not use the adjusted per-day penalty. Instead, a figure of \$100.00 per day was used for calculation of the multi-day penalty, providing a multi-day penalty of \$10,000.00.

3. Economic Benefit

The penalty was not adjusted by this factor.

4. Total Penalty For Count I:

Day 1	\$ 1,875.00
Multi-day	+\$10,000.00
Total	\$11,875.00

Count II - Failure to label containers

1. Gravity-Based Penalty

(a) Potential for Harm - **MINOR**

Cirtek failed to label two drums of D002/D008 waste which had been stored onsite for less than ninety days. Failure to label drums of hazardous waste presents a potential for harm because emergency responders would not be able to identify the waste and therefore would not know how to contain it properly. Such failure also hinders proper waste management. Furthermore, the intent of the RCRA regulations is to provide maximum protection of human health and the environment by requiring generators to store their wastes in drums which are labeled to indicate the contents. Failure to label drums has an adverse effect on the statutory and regulatory purposes for implementing the RCRA program. Because only two drums of hazardous waste were involved in this violation, the potential for harm is minor.

(b) Extent of Deviation - **MODERATE**

Failure to store waste in labelled drums reflects significant noncompliance with RCRA requirements.

(c) Using the RCPP matrix, EPA chose a gravity-based/per-day penalty of \$1,000.00, representing the midpoint of the penalty range for a violation presenting "minor potential for harm/moderate extent of deviation."

2. Adjustments to Gravity-Based Penalty

(a) History of non-compliance - Cirtek has been previously cited in writing for storing approximately eighty-nine drums of hazardous waste onsite without labels. Cirtek's improper waste management practices have not been adequately deterred by prior notice of violations. Based on this factor an upward adjustment of 25% or \$250.00 is justified, providing an adjusted per-day penalty of \$1,250.00.

3. Economic Benefit

The penalty was not adjusted by this factor.

4. Total Penalty For Count II: \$1,250.00

Count III - Lack of containment system**1. Gravity-Based Penalty****(a) Potential for Harm - MAJOR**

To safeguard human health and the environment against hazardous waste spills, RCRA mandates that containers of hazardous waste be stored in areas that have containment systems. By not providing a secondary containment area for its drums of hazardous waste, Cirtek created a major potential for harm to the environment and to the health of its employees.

Storage of containers of hazardous waste without a secondary containment system has a substantial adverse effect on the purposes and procedures for implementing the RCRA program.

(b) Extent of deviation - MAJOR

Cirtek substantially deviated from the applicable requirements by storing a waste in an area lacking a secondary containment system.

(c) Using the RCPP matrix, EPA chose a gravity-based/per-day penalty of \$22,500.00, representing the midpoint of the penalty range for a violation presenting "major potential for harm/major extent of deviation."

2. Adjustments to Gravity-Based Penalty

(a) History of non-compliance - Cirtek has been previously cited in writing for storing approximately eighty-nine drums of hazardous waste onsite in an area lacking a containment system. Cirtek's improper waste management practices have not been adequately deterred by prior notices of violation. Based on this factor an upward adjustment of 25% or \$5,625.00 is justified, providing an adjusted per-day penalty of \$28,125.00.

(b) Negligence - Cirtek has been negligent with respect to providing a secondary containment system for its hazardous waste drum storage area. Cirtek was notified twice within four months (from February 1988 to June 1988) that it was required to have a secondary containment system in which to store its hazardous waste. On February 21, 1989, after Cirtek finally built the containment area, it continued to store waste outside of the area. Based on these factors a further upward adjustment of 25% or \$5,625.00 is justified, providing an adjusted per-day penalty of \$33,750.00.

3. Economic Benefit

The penalty was not adjusted by this factor.

4. Total Penalty For Count III: \$33,750.00

Count IV - Lack of personnel training

1. Gravity-Based Penalty

- (a) Potential for Harm - **MINOR**

Cirtek has no personnel training program in place. This requirement is important to protect the workers on a day-to-day basis and is essential in the case of an emergency. Cirtek's failure to provide personnel training placed its workers, and consequently, the environment at a minor potential for harm.

- (b) Extent of Deviation - **MODERATE**

Failure to provide employees with formal personnel training is a significant deviation from the RCRA requirements for personnel training.

- (c) Using the RCPP matrix, EPA chose a gravity-based/per-day penalty of \$1,000.00, representing the midpoint of the penalty range for a violation presenting "minor potential for harm/moderate extent of deviation from requirement."

2. Adjustments to Gravity-Based Penalty

No adjustments were made to the penalty for Count IV.

3. Economic Benefit

The penalty was not adjusted by this factor.

4. Total Penalty For Count IV: \$1,000.00

Count V - Failure to inspect

1. Gravity-Based Penalty

- (a) Potential for Harm - **MODERATE**

Cirtek has an obligation to inspect its containers of hazardous waste to ensure they are maintained in good condition and are not leaking. Cirtek's failure to inspect its drums of hazardous waste posed a moderate potential for harm to human health and the environment because releases from the containers could have gone undetected. Early detection of a release is critical to effective clean-up efforts.

(b) **Extent of Deviation - MODERATE**

Failure to inspect containment areas on a weekly basis constitutes substantial noncompliance with the RCRA requirement that areas where containers are stored be inspected at least weekly.

(c) Using the RCPP matrix, EPA chose a gravity-based/per-day penalty of \$6,500.00, representing the midpoint of the penalty range for a violation presenting "moderate potential for harm/moderate extent of deviation from requirement."

2. **Adjustments to Gravity-Based Penalty**

No adjustments were made to the penalty for Count V.

3. **Economic Benefit**

The penalty was not adjusted by this factor.

4. **Total Penalty For Count V: \$6,500.00**

Count VI - LDR determination

1. **Gravity Based Penalty**

(a) **Potential for Harm - MODERATE**

Cirtek did not use waste analyses or knowledge of its F002 and F005 wastes to determine that the waste was restricted from land disposal. The facility receiving the waste knew that the waste was F002 and F005, however, it did not know whether the waste had already met its LDR treatment standard or not. Cirtek created a significant potential for harm because it enabled the receiving facility to land dispose of a waste which did not meet its treatment standards. Cirtek's actions had a significant adverse effect on the statutory and regulatory purposes for implementing the RCRA program.

(b) **Extent of Deviation - MAJOR**

Failure to determine that a waste is restricted from land disposal reflects substantial noncompliance with the RCRA requirements.

(c) Using the RCPP matrix and considering the seriousness of the violation, EPA chose a gravity-based/per-day penalty of \$10,450.00, representing a figure slightly higher than the midpoint of the penalty range for a violation presenting "moderate potential for harm/major extent of deviation."

2. Adjustments to Gravity-Based Penalty

No adjustments were made to the penalty for Count VI.

3. Economic Benefit

The penalty was not adjusted by this factor.

4. Total Penalty for Count VI: \$10,450.00

TOTAL PENALTY: \$69,472.00

9. Respondent filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 5, 1990, Case Number 90-5-2795-SD, in the United States Bankruptcy Court for the District of Maryland.

CONCLUSIONS OF LAW

1. The Consolidated Rules at 40 C.F.R. § 22.17(a)(2) provide that a party may be found to be in default "after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer."

2. Pursuant to the July 30, 1990 prehearing order of the Presiding Officer, Respondent was required to have filed its prehearing exchange no later than September 4, 1990.

3. Respondent did not file its prehearing exchange until December 30, 1991, after the filing of Complainant's Motion for Default Order. Respondent violated the Presiding Officer's prehearing order of July 30, 1990 and is, therefore, in default pursuant to 40 C.F.R. § 22.17(a).

4. Said default constitutes an admission by Respondent of all the facts alleged in the Complaint and a waiver of Respondent's right to a hearing regarding the factual allegations therein. In addition, payment of the penalty proposed in the Complaint shall become due and payable by Respondent without further proceedings within sixty (60) days after a final order in this matter is issued. 40 C.F.R. § 22.17(a).

5. Respondent has violated RCRA by storing hazardous waste on-site for greater than 90 days without a permit or interim status in violation of COMAR (Code of Maryland Annotated Regulations) 10.51.03.05E(1) (40 C.F.R. § 262.34(b)); failing to label each container of hazardous waste stored on-site for 90 days or less with the words "Hazardous Waste" in accordance with COMAR 10.51.03.05E(1)(d) (40 C.F.R. § 262.34(a)(3)); storing containers of hazardous waste in an area that was not capable of collecting and holding spills, leaks, and precipitation in accordance with COMAR 10.51.05.09(H) (40 C.F.R. § 264.175(a));

failing to conduct personnel training in accordance with COMAR 10.51.05.02G(1)(a) (40 C.F.R. § 265.16(a)); failing to inspect hazardous waste container areas in accordance with COMAR 10.51.05.09E (40 C.F.R. § 265.174); and failing to determine if its waste was restricted from land disposal in accordance with 40 C.F.R. § 268.7(a).

6. Respondent's filing of a petition for relief under the Bankruptcy Code does not discharge Respondent from any debt owed Complainant (see 11 U.S.C. § 523(a)(7)) or operate as a stay, pursuant to Section 362(a) of the Bankruptcy Code (the "Automatic Stay"), of the continuation of this proceeding and the enforcement any judgments contained in this Default Order, unless such judgments are money judgments. See 11 U.S.C. Section 362(b)(4) and (6).

ORDER

AND NOW, this 30th day of MARCH 1992, under the authority of the Resource Conservation and Recovery Act and the Consolidated Rules, Respondent is found to be in default with respect to the Complaint.

NOW THEREFORE, pursuant to 40 C.F.R. § 22.17(c), Respondent is hereby ordered to pay a civil penalty of sixty nine thousand four hundred and seventy two dollars (\$69,472.00). Such penalty shall become due and payable by Respondent without further proceedings sixty (60) days after this Default Order becomes final, as provided in 40 C.F.R. § 22.17(a). Payment shall be made by forwarding a cashier's or certified check, payable to the United States of America, to EPA Region III, Regional Hearing Clerk, P.O. Box 360515, Pittsburgh, Pennsylvania 15251-6515. At the same time payment is made, a copy of the check shall be mailed to the Regional Hearing Clerk, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FURTHER, Respondent is ordered to:

(a) immediately after this Default Order becomes final, cease the practice of storing hazardous waste at the Facility except in accordance with a permit or interim status or the provisions of COMAR 10.51.03.05E (40 C.F.R. § 262.34(a));

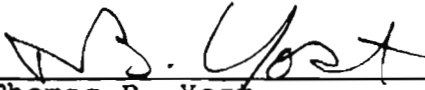
(b) immediately after this Default Order becomes final, and thereafter, comply with the applicable requirements of 40 C.F.R. Section 268.7(a).

This Default Order constitutes an Initial Decision as provided in 40 C.F.R. § 22.17(b). This Default Order shall become final within forty-five (45) after its service upon the parties and without further proceedings unless (1) an appeal to the Administrator is taken from it by any party to the

proceedings, or (2) the Administrator elects sua sponte, to review the initial decision. The procedures for appeal of an Initial Decision are set forth in the Consolidated Rules at 40 C.F.R. § 22.30.

Date

3/30/92



Thomas B. Yost
Administrative Law Judge
U.S. EPA

CERTIFICATION OF SERVICE

I hereby certify that, in accordance with 40 CFR § 22.27(a), I have this date forwarded via certified mail, return-receipt requested, the Original of the foregoing ORDER ON DEFAULT of Honorable Thomas B. Yost, Administrative Law Judge, to Ms. Lydia A. Guy, Regional Hearing Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, and have referred said Regional Hearing Clerk to said Section which further provides that, after preparing and forwarding a copy of said ORDER ON DEFAULT to all parties, she shall forward the original, along with the record of the proceeding to:

Hearing Clerk (A-110)
EPA Headquarters
Washington, D.C. 20460

who shall forward a copy of said ORDER ON DEFAULT to the Administrator.

Dated: 3/31/92



Jo Ann Brown
Secretary, Hon. Thomas B. Yost

REC'D
EPA/HEA
HEA

Certificate of Service

1992 APR 10 PM 1:24

This is to certify that on this 8th day of April, 1992, copies of the Order on Default, in the matter of Cirtex, Maryland, Inc., Docket No. RCRA-III-177 were distributed as follows:

Certified Mail, Return Receipt Requested:

Loretta E. Shapero, Esq.
Whiteford, Taylor & Preston
Suite 1400
7 St. Paul St.
Baltimore, MD 21202-1626

First-Class Mail:

Bessie Hammiel (A-110)
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Hand Delivered:

Clay Monroe, Esq. (3RC32)
Assistant Regional Counsel
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

Date: APR 8 1992


Lydia A. Guy
Regional Hearing Clerk