

1/25/89

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

SILAK COMPANY
ALTON, IOWA;

INTERCHEM, INC.
SALT LAKE CITY, UTAH;

DE NOVA INDUSTRIES, INC.
ALTON, IOWA,

AND

JACK ODOM AND VIRGEAN ODOM
CHEROKEE, IOWA,

RESPONDENTS

DOCKET # RCRA-VII-88-H-0022

ALL: 48

FINAL ORDER ISSUED UPON DEFAULT

INITIAL DECISION

On November 3, 1988, Complainant filed its Motion for Default Order and, in support of its said Motion, states that:

1. On June 30, 1988, a Complaint, Compliance Order and Notice of Opportunity for Hearing was issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 USC 6928(a)(1) and (g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (sic), 40 CFR Part 22.

2. Said Complaint, Compliance Order and Notice of Opportunity for Hearing was received by Respondents Jack Odom, Virgean Odom and DeNova Industries ("DeNova") on July 6, 1988, as evidenced by Return Receipts signed and dated by Respondents, or their respective authorized representative, submitted with said Motion as Exhibit "A".

3. Said Complaint, Compliance Order and Notice of Opportunity for Hearing assessed a civil penalty of \$28,800, and Respondents were ordered, pursuant to the Compliance Order, aforesaid, to pay said penalty for violations of

Sections 3002, 3004 and 3005 of RCRA (42 USC §6922, 6924 and 6925) and regulations promulgated pursuant thereto and found at 40 CFR §265.112(d)(4), 265.143, 265.147 and 262.11.

4. 42 USC §6928(b) provides that a Compliance Order issued under said Section 6928(a)(1) shall become final unless, no later than thirty (30) days after said Order is served, the person or persons named therein request a hearing. 40 CFR 22.17 provides that said parties Respondent may be found in Default . . . after Motion, upon failure to file a timely Answer to the Complaint and that said Default constitutes, for purposes of the pending action, an admission of all the facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Said rule and statute further provide that the penalty proposed in the Complaint, viz., \$28,800, shall become due and payable without further proceedings sixty (60) days after a Final Order issued upon Default (42 USC 6928(b); 40 CFR 22.17(a)).

5. Said Complaint alleges that, at the time said Complaint was filed, Respondent DeNova Industries, Inc., was the "operator" of subject hazardous waste facility and that Jack Odom and Virgean Odom were "owners" of portions of said facility and that said penalty amount has been determined in accordance with the statutory standards and the RCRA Civil Penalty Policy and, thus, based upon the seriousness of subject violations, the threat of harm to public health or the environment and the efforts of the Respondents to comply with subject applicable requirements.

6. Respondents DeNova, Jack Odom and Virgean Odom have failed and refused, as of November 3, 1988, to file an Answer to the said Complaint and Compliance Order aforesaid; nor have they at any time moved or requested an extension of the time in which to file an Answer, even when informed they were in Default.

For the cause herein appearing, I find that the allegations in subject Complaint should be and are hereby adopted as my FINDINGS OF FACT.

CONCLUSIONS OF LAW

1. Respondents DeNova and Jack Odom and Virgean Odom admit that they violated said Act and regulations promulgated pursuant thereto in the following particulars:

a. Failed to submit a complete Closure Plan for subject facility (prior to its closure);

b. Failed at all pertinent times to provide financial assurances for closure of and liability coverage for subject facility in Alton, Iowa, and

c. Failed to determine whether solid wastes generated at subject facility were hazardous wastes.

2. The Return Receipts filed and attached to said Motion for Default as Exhibit "A" are evidence of proper Service of Process, pursuant to 40 CFR 22.05(b), on July 6, 1988.

3. Respondents failed to file a timely Answer to said June 30, 1988, Complaint, Compliance Order and Notice, pursuant to 40 CFR Part 22 and are in Default, thereby admitting all of the facts alleged in subject Complaint and waiving their respective right to a hearing on such factual allegations.

4. The Respondents DeNova and Jack Odom and Virgean Odom are jointly and severally liable for the penalty proposed, viz., \$28,800, which shall become due and payable without further proceeding within sixty (60) days from and after the date of this Final Order Issued Upon Default.

ORDER

Based upon the record and upon considerations of the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, I find that Complainant's Motion for Default Order should be and it is hereby granted. Respondents DeNova, Jack Odom and Virgean Odom are hereby ORDERED:

1. To establish and maintain financial assurance for closure of the hazardous waste storage areas and liability insurance coverage for sudden accidental occurrences at subject Alton, Iowa, facility in accordance with 40 CFR 265.143 and 265.147(a);

2. To implement the EPA approved Closure Plan in accordance with the schedule contained therein upon receipt by them, and

3. To pay, within sixty (60) days from the date hereof, a civil penalty in the sum of \$28,000. Payment shall be by Certified or Cashier's Check made payable to the U.S. Treasury and mailed to:

Regional Hearing Clerk
U.S. EPA, Region VII
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

At the time of submittal, a copy of said check shall be sent to:

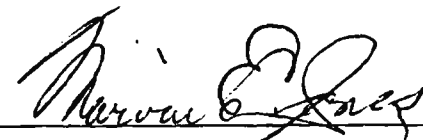
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA, Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101.

4. The above required information in Paragraphs 1 and 2 shall be submitted to:

E. Jane Kloeckner, Esquire
Assistant Regional Counsel
U.S. EPA, Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101.

SO ORDERED.

Dated: January 25, 1989



Marvin E. Jones
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the Original of the foregoing FINAL ORDER ISSUED UPON DEFAULT was hand-carried to Ms. Linda McKenzie, Regional Hearing Clerk, Office of Regional Counsel, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; that a True and Correct Copy was delivered in the same manner and to the same address to Counsel for Complainant, E. Jane Kloeckner, Esquire, and that True and Correct Copies were forwarded via Certified Mail, Return Receipt Requested, to Counsel for Respondents and Respondents:

Gregory Schiller, Esquire
Shuminsky, Shuminsky & Molstad
224 Davidson Building
Sioux City, Iowa 51101;

Mr. Ron Detloff
Director & Registered Agent for
DeNova Industries, Inc.
Route #4, Box 49
LeMars, Iowa 51031;

Mr. Ron Detloff
Director & Registered Agent for
DeNova Industries, Inc.
101 Tenth Street
Post Office Box 231
Alton, Iowa 51003;

William Forker, Esquire
Attorney at Law
232 Davidson Building
Sioux City, Iowa 51101;

Donald H. Molstad, Esquire
316 East 6th Street
Storm Lake, Iowa 50588;

Jack and Virgean Odom
414 Indian Street
Cherokee, Iowa 51012;

Stephen J. Blaser, Esquire
BLASER & SORENSEN, Chtd.
Attorneys at Law
265 N.W. Main
Post Office Box 1047
Blackfoot, Idaho 83221;

Mr. Bruce A. Crary
614 Pierce Street
Post Office Box 27
Sioux City, Iowa 51102, and

Mr. Rocky Bloskas
Director or Officer of
Silak, InterChem & DeNova
Industries, Inc.
2522 14th Avenue
Greeley, Colorado 80631.

all such Service effected this 25th day of January, 1989.



Mary Lou Clifton
Secretary to Marvin E. Jones, ALJ