

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of)	
)	
Central Bus Co., Inc.,)	
Estate of Salvatore DiPaolo, Sr.,)	Docket No. RCRA-02-2003-7501
and Salvatore DiPaolo, Jr.)	
)	
Respondents)	

ADDENDUM TO DEFAULT ORDER

In a Default Order issued on April 27, 2004, Respondents were found to have violated the Resource Conservation and Recovery Act (“RCRA”) and its implementing regulations for owners and operators of underground storage tanks (“USTs”) in 40 C.F.R. Part 280, as alleged in Counts I and II of the Complaint. Specifically, the Court found that Respondents (1) failed to provide a method or combination or methods of release detection for two UST systems from April 15, 1998 though April 15, 2003, in violation of 40 C.F.R. § 280.40(a); and (2) failed to ensure that the two UST systems complied with the performance standards in Section 280.20, the upgrading requirements in Section 280.21(b)-(d), or the closure requirements in Subpart G from December 22, 1998 though April 15, 2003, in violation of 40 C.F.R. § 280.21. A civil penalty in the amount of \$80,317 was assessed against Respondents for these violations. *See* Default Order, April 27, 2004.

On May 5, 2004, Complainant filed a “Motion for Clarification And/Or Supplementation of Default Order Of April 27, 2004 To Incorporate Requested Injunctive Relief” (“Motion”), which sought to supplement the Default Order with a Compliance Order as set forth in the Complaint and Complainant’s Motion for Default Order. In its Motion, Complainant notes that Section 9006 of RCRA, 42 U.S.C. § 6991e, explicitly authorizes injunctive relief where violations of the UST regulations have occurred, and observes that default orders requiring injunctive relief have been issued in several administrative enforcement cases under RCRA. *See In the Matter of George Atkinson, d/b/a George’s British Petroleum*, Docket No. RCRA-9006-VIII-97-02, 1998 EPA ALJ LEXIS 122 (ALJ, Oct. 26, 1998); *In the Matter of Joe Mortibou*, Docket No. RCRA-UST-1092-12-01-9006, 1995 EPA ALJ LEXIS 1 (ALJ, Apr. 27, 1995); *In the Matter of G.S. Service Corp.*, Docket No. V-W-90-R-07, 1993 EPA ALJ LEXIS 287 (ALJ, Dec. 30, 1993); *In the Matter of Dworkin Electroplaters, Inc.*, Docket No. RCRA-III-187, 1992 EPA ALJ LEXIS 441 (ALJ, Dec. 31, 1992); *In the Matter of Cirtek Maryland, Inc.*, Docket No.

RCRA-III-177, 1992 EPA ALJ LEXIS 308 (ALJ, Mar. 30, 1992). Furthermore, Complainant maintains that, in accordance with 40 C.F.R. § 22.17(c), the proposed injunctive relief is not inconsistent with the record of this proceeding or RCRA.

Pursuant to Section 22.27(a) of the Rules of Practice, an Initial Decision issued by the Court may contain, “if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action.” 40 C.F.R. § 22.27(a).¹ Although the Rules of Practice are not as explicit regarding the issuance of injunctive relief in a default order, Section 22.17(c) states that “[w]hen the [Court] finds that default has occurred,...[t]he relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c); *see also* 40 C.F.R. § 22.37(b) (“A complaint may contain a compliance order issued under...section 9006(a)...[of RCRA]. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15”). In addition to the cases cited by Complainant in its Motion, the Environmental Appeals Board has upheld the compliance order portion of a default order issued by an ALJ under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *In re Rybond, Inc.*, 6 E.A.D. 614, 642 n. 38 (EAB 1996).

In its proposed compliance order, Complainant seeks to ensure that Respondents comply with (1) all applicable release detection requirements for UST systems set forth at 40 C.F.R. Part 280, Subpart D; (2) the design, construction, and installation standards in 40 C.F.R. §§ 280.21-22 or, in the alternative, cease operation of and close all UST systems in accordance with 40 C.F.R. §§ 280.70-74; and (3) all other applicable requirements of 40 C.F.R. Part 280.² As noted above, the Court has already determined that Respondents have violated the UST requirements as alleged in the Complaint. Accordingly, the Court finds that the injunctive relief proposed in the Complaint is consistent with the record in this proceeding and RCRA, and hereby issues this Addendum to incorporate the Compliance Order into the April 27, 2004 Default Order.

COMPLIANCE ORDER

Respondent is hereby ORDERED, pursuant to the authority in Section 9006 of RCRA, 42 U.S.C. § 6991e, Sections 22.27(a) and 22.37(b) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.27(a) and 22.37(b), and based on the foregoing determination of violations, to comply with the following requirements by the date this Order becomes final (i.e., the effective date) under 40

¹ As noted by Complainant, Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the issuance of compliance orders where violations of UST requirements have occurred.

²Although, as framed by EPA in its requested order, it would seek compliance with *some* aspects of the UST requirements, even if the Respondent opted to close the USTs, the Court interprets this as inartful pleading and assumes that, if the Respondent opts for closure, none of the other sought-after compliance orders would apply.

C.F.R. § 22.27(c):

1. Respondents shall, within ten (10) days after the effective date of this Order, comply with all applicable release detection requirements set forth at 40 C.F.R. Part 280, Subpart D for all UST systems owned and/or operated by Respondents at Respondents' facility.
2. Respondents shall, within ten (10) days after the effective date of this Order, comply with all applicable requirements of 40 C.F.R. §§ 280.20-21 for all UST systems at Respondents' facility.
3. Respondents shall, within ten (10) days after the effective date of this Order, comply with all other applicable requirements of 40 C.F.R. Part 280 for all UST systems owned and/or operated by Respondents at the facility.
4. In the alternative to Requirements 1 through 3, next above, Respondent may immediately cease operation of and permanently close all UST systems in accordance with the requirements specified under 40 C.F.R. §§ 280.70-74.
5. Respondents shall submit all documents required to be submitted to EPA to:

David Bernstein, Enforcement Officer
Division of Enforcement and Compliance Assistance
Water Compliance Branch
290 Broadway, 20th Floor
New York, NY 10007

6. Pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), failure to comply with any requirements of this Order shall subject the Respondents to liability for a civil penalty of up to twenty-seven thousand, five hundred dollars (\$27,500) for each day of continued noncompliance with the deadlines contained in this Order.

So ordered.

William B. Moran
United States Administrative Law Judge

Dated: May 24, 2004
Washington, D.C.