

ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF: §
§
GEOLOGISTICS AMERICAS, INC., §
§
LAREDO, TEXAS §
§
EPA ID NO. TXDR000036830 §
§
RESPONDENT. §

Docket No. RCRA-06-2003-0922

RECEIVED
SEP 24 2004
REGIONAL OFFICE
DALLAS, TEXAS

RESPONDENT GEOLOGISTICS AMERICAS, INC.'S
CONSENT MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO 40 C.F.R. § 22.19(e)

Pursuant to § 22.19(e) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules of Practice"), 40 C.F.R. §§ 22.1-22.32, respondent GeoLogistics Americas, Inc. ("GeoLogistics") hereby moves for additional discovery in this proceeding. Specifically, respondent GeoLogistics seeks an Order for (1) the depositions of Integrated Trade Systems, Inc. ("ITS"), the Texas Commission on Environmental Quality ("TCEQ") and the Environmental Protection Agency ("EPA") pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure; (2) the depositions of three former employees of GeoLogistics; and (3) the production of documents by ITS and TCEQ. The above-described discovery requests are attached hereto. Respondent GeoLogistics also requests the issuance of subpoenas in connection with the discovery sought from ITS, TCEQ and the three former employees of GeoLogistics.

Counsel for EPA has advised GeoLogistics that the EPA has no objection to the discovery requested in this motion.

BACKGROUND

GeoLogistics is an international freight forwarder engaged in the business of arranging for the transportation of industrial and commercial freight into and out of the United States by land, sea and air. In connection with its freight forwarding services, GeoLogistics provides temporary warehousing for freight in transit. GeoLogistics' warehouses, including the Laredo warehouse at issue in this proceeding, have a policy of refusing to accept or store hazardous waste materials.

This case involves the storage of spent platforming catalyst imported by ITS from Mexico for the purpose of reclaiming precious metals. The spent catalyst was apparently briefly stored in a warehouse in Texas, transported to a reclamation facility in California, transported to another reclamation facility in Louisiana, and briefly stored in a warehouse in New Orleans before it was moved to GeoLogistics' warehouse in May 2000. GeoLogistics was not involved in the importation, transportation or storage of the spent catalyst before it was delivered to GeoLogistics' warehouse. GeoLogistics was not informed by ITS that the spent catalyst was hazardous waste, that the spent catalyst had been rejected by two reclamation facilities for ignitability, or that ITS had contacted EPA about the spent catalyst. When it arrived at GeoLogistics' warehouse, the spent catalyst was not manifested or labeled as hazardous waste, and the shipping documentation did not indicate that the spent catalyst was hazardous waste.

During the first three to four months the spent catalyst was stored in GeoLogistics' warehouse, ITS apparently had extensive communications with EPA and TCEQ about the spent catalyst. ITS and EPA/TCEQ analyzed samples of the spent catalyst taken in June 2000 and determined that the spent catalyst came within the definition of hazardous waste. GeoLogistics was

not informed by ITS, EPA or TCEQ that the spent catalyst was suspected of being hazardous waste or of the results of the hazardous waste analysis until August 2000.

When GeoLogistics was finally informed that the spent catalyst was considered a hazardous waste, GeoLogistics requested that ITS immediately remove the spent catalyst from GeoLogistics' warehouse. GeoLogistics was informed that the spent catalyst could not be moved, and that EPA/TCEQ required that the spent catalyst remain where it was until it was exported back to Mexico which was expected to occur in a short period of time. As a result of unforeseen delays, however, the spent catalyst remained in GeoLogistics' warehouse until it was exported back to Mexico in February 2001. This proceeding arises in connection with the assessment of penalties against GeoLogistics for failure to notify EPA of hazardous waste activity, obtain an EPA ID number, perform a hazardous waste analysis, and for storage of hazardous waste without a permit.

The requested discovery will not unreasonably delay this proceeding, nor unreasonably burden EPA. The proposed discovery can be completed within the procedural schedule established in this proceeding, which requires prehearing stipulations to be completed by November 12, 2004, and the hearing to commence on December 6, 2004. Respondent anticipates that the requested depositions will be short and that the requests for production of documents seek a limited number of documents.

The requested discovery seeks information that is most reasonably obtained from other parties. Indeed, GeoLogistics was not involved in the importation or prior movements of the spent catalyst, nor was GeoLogistics privy to communications between and among EPA, TCEQ and ITS relating to the spent catalyst. In addition, to the extent GeoLogistics' employees did have communications with ITS, TCEQ or EPA, those employees are not longer employed by

GeoLogistics, and GeoLogistics has no means of obtaining that information except through the requested discovery.

The proposed discovery seeks evidence relating to the above-described facts, which are relevant and material to both issues of liability and the relief sought. For example, facts relating to the importation of the spent catalyst, the chain of custody of the spent catalyst before it was received by GeoLogistics, and the manner in which the spent catalyst came to be stored in GeoLogistics' warehouse are relevant to GeoLogistics' regulatory status and obligations as a generator under RCRA. See Complainant's Prehearing Exchange at 2 (alleging violations of 40 C.F.R. Part 262). Similarly, the state of knowledge of GeoLogistics regarding the hazardous nature of the spent catalyst, communications between and among GeoLogistics, EPA, CEQ and ITS, and the activities of others regarding the management of the spent catalyst after its importation from Mexico are relevant to the appropriateness of the penalties sought against GeoLogistics, taking into account GeoLogistics' relative culpability, efforts to comply, and degree of willfulness, as well as the fairness, consistency and deterrent effect of the proposed penalties.

The information sought through deposition discovery cannot reasonably be obtained through alternative methods such as interrogatories or review of documents. Moreover, given GeoLogistics' lack of access to this information through alternative means, there is a substantial reason to believe that relevant and probative evidence will not be preserved for presentation in GeoLogistics' defense by a witness at the hearing.

GeoLogistics also respectfully asks for the issuance of subpoenas in support of the requested discovery from ITS, TCEQ and GeoLogistics' former employees. As set forth more fully above,

such subpoenas are necessary to obtain relevant and material evidence relating to both issues of liability and the penalties sought.

Respectfully submitted,



Edward D. Greenberg
David K. Monroe
GALLAND KHARASCH GREENBERG
FELLMAN & SWIRSKY, P.C.
1054 Thirty-First Street, NW
Washington, DC 20007-4492
Telephone: 202/342-5200
Facsimile: 202/342-5219

Attorneys for Respondant
GEOLOGISTICS AMERICAS, INC.

DATE: September 20, 2004