



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Joseph Oh)
)
and) Docket No. RCRA-10-2011-0164
)
Holly Investment, LLC)
) Dated: August 21, 2012
Respondents.)

ORDER ON RESPONDENT’S SUBMISSION DATED AUGUST 17, 2012
AND NOTICE OF DEADLINE SET BY 40 C.F.R. § 22.27(c)

On August 3, 2012, a Default Order and Initial Decision was entered against the Respondents in this matter and served on all parties. On August 20, 2012, the undersigned received a document from Respondents captioned: “Reopen Case and Set Aside Default Order of August 3, 2012.” The document is dated August 17, 2012. In the document, Respondents state that they move “to one, reopen the case . . . and two, move to set aside Default Order [sic] that constitutes an initial decision[.]” Reopen Case and Set Aside Default Order of August 3, 2012 at 1. Respondents then quote language from 40 C.F.R. §§ 22.27 and 22.28, and close the document with the following statement: “Within 15 days Joseph Oh will submit additional information as requested and present good cause to reopen case [sic].” *Id.* at 2.

Under the applicable procedural rules, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”), the Default Order and Initial Decision “shall become a final order 45 days after its service upon the parties” 40 C.F.R. § 22.27(c). In this case, the Default Order and Initial Decision will become final on September 17, 2012. However, a party may prevent a decision from becoming final by, *inter alia*, filing a motion “to reopen the hearing” or a motion “to set aside” a default order. 40 C.F.R. § 22.27(c).

Under the Rules, all motions not made orally on the record at hearing must “[s]tate the grounds therefor, with particularity” and “[b]e accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.” 40 C.F.R. § 22.16(a). Similarly, a motion to reopen a hearing must “state the specific grounds upon which relief is sought.” 40 C.F.R. § 22.28(a). Respondents’ August 17, 2012 document does not provide any factual grounds to support the requested relief, but instead indicates that such grounds will be provided in a later filing. It

therefore does not satisfy the criteria for a motion set forth in 40 C.F.R. § 22.16(a) or 22.28(a), and does not have the legal effects identified in 40 C.F.R. § 22.27(c)(1)–(4).

Accordingly, the relief requested in the Respondents' submission dated August 17, 2012 is hereby **DENIED**. Respondents may renew their request by filing a motion, in accordance with the Rules, to set aside the Default Order and Initial Decision before it becomes final on September 17, 2012.

The parties are hereby notified that, absent an appropriate motion submitted in accordance with the Rules, or an action by the Environmental Appeals Board in this matter, the Default Order and Initial Decision served on August 3, 2012 will become a final order on September 17, 2012.

M. Lisa Buschmann
Administrative Law Judge