

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
NORTHLAND PRODUCTS, INC.,)
)
Respondent)

Docket No. RCRA-V-W-86-R-57

Resource Conservation and Recovery Act. Where respondent failed to comply with order of Administrative Law Judge requiring the exchange of prehearing information, it was found to be in default pursuant to 40 C.F.R. § 22.17, to have admitted violation charged, and assessed full amount of penalty proposed in complaint.

ORDER ON DEFAULT

By: Frank W. Vanderheyden
Administrative Law Judge

Dated: July 8, 1987

APPEARANCES:

For Complainant:

Linda M. Bullen, Esquire
Office of Regional Counsel
U. S. Environmental Protection
Agency
230 South Dearborn Street
Chicago, Illinois 60604

For Respondent:

Jerry A. Malstrom
Registered Agent for Northland
Products, Inc.
4919 N. Beaune Road
Ludington, Michigan 49431

Kraig Malstrom
Northland Products, Inc.
4919 N. Beaune Road
Ludington, Michigan 49431

Introduction

This proceeding was initiated under Section 3008 of the Resources Conservation and Recovery Act (Act), 42 U.S.C. § 6928 by issuance of a complaint on July 17, 1986. It charged Northland Products, Inc. (respondent) with violating certain provisions of 40 C.F.R. Parts 262 and 265, which regulations were promulgated pursuant to Section 3005(a) of the Act, 42 U.S.C. § 6925. The civil penalty proposed in the complaint is \$9,500, plus a compliance order requiring corrective action on the part of respondent. An answer to the complaint was served on August 20, 1986. The undersigned Administrative Law Judge (ALJ) was designated to preside in the subject matter by order of September 17, 1986.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent, a Michigan corporation, owns and operates a facility at 118 South U.S. 131, South Boardman, Michigan, that generates hazardous waste. Its registered agent is Jerry Malstrom of Ludington, Michigan. The waste generated by respondent is acetone, methyl ethyl ketone, and methyl ethyl ketone peroxide. Such waste are listed as U. S. Environmental Protection Agency (U.S. EPA) Hazardous Waste Numbers F003, F005 and U160.

The Michigan Department of Natural Resources (MDNR) conducted compliance inspections at respondent's facility on October 15, 1985 which disclosed violations of applicable State and Federal

regulations. The violations detected, together with the pertinent Federal regulations were failure to:

1. Properly label storage drums and storing waste beyond the prescribed time period. 40 C.F.R. § 262.34.
2. Maintain pertinent personnel records. 40 C.F.R. § 265.16.
3. Have required communication system. 40 C.F.R. § 265.32(a)(b).
4. Establish testing and maintenance procedures for emergency equipment. 40 C.F.R. § 265.33.
5. Maintain adequate aisle space. 40 C.F.R. § 265.35.
6. Have a required contingency plan. 40 C.F.R. § 265.51-265.56.

On October 31, 1985, MDNR sent a letter of warning to respondent apprising it of the violations found during the October 15, 1985 inspection. In a communication of November 19, 1985, respondent informed MDNR of its compliance, or intended compliance, with the aforementioned regulations. A follow-up investigation was conducted by MDNR on December 12, 1985 to determine the extent of corrective action by respondent. A second warning letter followed on December 18, 1985 from MDNR to respondent advising the latter that violations "1, 2, 4 and 6" above were not addressed adequately. In a January 6, 1986 communication, responded stated it had corrected these violations. On March 6, 1986, MDNR informed

respondent that the dispute concerning "2, 4 and 6" above was resolved, but that "1" was not for the reason that respondent was storing 18 drums of waste acetone without a permit or interim status. Thus, respondent remained in violation of 40 C.F.R. § 265.34. Documentation was requested of respondent by April 4, 1986 showing that the accumulated waste was sent off the facility's site for a proper disposal. However, on March 27, 1986, respondent advised MDNR that the acetone in question had been stored for over 180 days and that it was currently being used to clean tools and equipment until a distillation unit could be installed.

By Notice and Order issued September 18, 1986, the parties were directed to engage in prehearing exchanges by November 24, 1986 if the matter were not settled. At the behest of complianant, on November 17, 1986, a 30 day extension was granted by oral order to both parties for the service of the prehearing exchanges. - Complainant's prehearing exchange was received on December 19, 1986. An order was issued on January 14, 1987 granting the motion of respondent's counsel to withdraw from representing respondent. This order also extended the time to respondent until February 13, 1987 to file its prehearing exchange. Respondent's registered agent also received a copy of this January 14, 1987 order. The respondent failed to serve its prehearing exchange by February 13, 1987, or serve a motion for another extension. On April 10, 1987, an order was issued directing respondent to show cause why

an order on default should not be taken against it for failure to serve its prehearing exchange by February 13, 1987. This order was sent to respondent and its registered agent by both certified and first class mail. On May 5, 1987, an order was issued which, in part, directed complainant to submit a draft of a proposed order on default against respondent for review, possible revision and signature. It was served in the same manner as the April 10, 1987 order. Complainant served its draft of the proposed order on default on June 8, 1987.

Pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, complainant has the authority to institute enforcement proceedings concerning violations of regulations promulgated under the Act. The pertinent regulation, 40 C.F.R. § 265.34, provides that a generator, as respondent here, may accumulate hazardous waste on site for 90 days or less without a permit, or without having interim status, under certain conditions. Respondent stored 18 drums of waste acetone without a permit or interim status; it failed to produce documentation that the waste was sent off the facility's site for proper disposal; and respondent further stated it used the acetone, stored for over 180 days, to clean tools and equipment. Such conduct on part of respondent amounted to a clear breach of 40 C.F.R. § 265.34.

An examination of the prehearing documents submitted by complainant supports the allegations in the complaint. Complainant has established a prima facie case to sustain the charges that respondent has violated certain implementing regulations of the Act, with particular reference to 40 C.F.R. § 265.34. Respondent's failure to comply with the prehearing order, and its failure to show good cause for not complying, amounts to a default and constitutes an admission of all facts alleged in the complaint and a waiver of a hearing on the factual allegations. 40 C.F.R. § 22.17(a).

ULTIMATE CONCLUSION

It is concluded that respondent is in violation of 40 C.F.R. § 265.34.

THE PENALTY

The penalty proposed in the complaint is \$9,500. It is recognized that the Act specifies that in assessing a penalty the Administrator shall take into account the seriousness of the violation and any good faith efforts of respondent to comply with applicable requirements. Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). Respondent by its default, however, has waived the right to contest the penalty which shall become due and payable without further proceedings.

ORDER*

IT IS ORDERED, pursuant to Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3), that respondent, Northland Products, Inc., be assessed a civil penalty of \$9,500.

I. Payment of the full amount of the penalty assessed shall be made by forwarding a cashier's or certified check, payable to the Treasurer of the United States, to the following address within sixty (60) days after the final order is issued. 40 C.F.R. § 22.17(a).

EPA - Region V
Regional Hearing Clerk
P. O. Box 70753
Chicago, Illinois 60673

II. This compliance order is also entered. Respondent shall:

A. Immediately upon this order becoming final, cease all storage of any hazardous waste, except such storage as shall be in compliance with the standards for hazardous waste storage facilities.

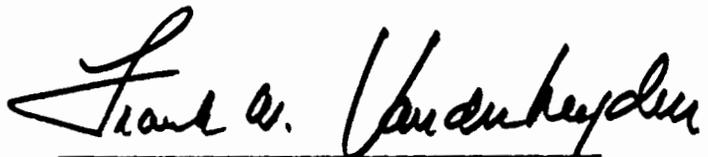
B. Immediately upon this order becoming final, achieve and maintain compliance with the standards applicable to generators of hazardous waste set forth in 40 C.F.R. Part 262.

*Pursuant to 40 C.F.R. § 22.17(b), this order constitutes the initial decision in this matter. Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this decision on his own motion, this decision shall become the final order of the Administrator. 40 C.F.R. § 22.27(c).

C. Within 30 days of this order becoming final, provide documentation that hazardous waste accumulated greater than 90 days have been sent off the facility's site for proper disposal.

D. Notify U.S. EPA in writing upon achieving compliance with this order and any part thereof. This notification shall be submitted no later than the time stipulated above to the U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois, 60604. Attention: Margo R. Dilday, RCRA Enforcement Section. A copy of these documents and all correspondence with U.S. EPA regarding this order shall also be submitted to:

Thomas M. Polasek
District Supervisor, Region II
Hazardous Waste Division
P. O. Box 128
Roscommon, Michigan 48653


Frank W. Vanderheyden
Administrative Law Judge

Dated this *8th* day of *July* 1987.
Washington, D.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

NORTHLAND PRODUCTS, INC.

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DOCKET NO. RCRA-V-W-86-R-57

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CERTIFICATE OF SERVICE

I hereby certify that the Default Order in the above referenced case, and this certificate have been served as shown below:

Default Order and Certificate mailed Certified mail on July 13, 1987 to:

Jerry A. Malstrom
Kraig Malstrom
Registered Agency for Northland
Products, Inc.
4919 N. Beaune Road
Ludington, Michigan, 49431

Certificate and original file mailed Certified mail on July 13, 1987 to:

Bessie Hammel
Regional Hearing Clerk
U.S. Environmental Protection Agency
401 M. Street S.W., A-110
Washington, D.C. 60204

Certificate and Default Order hand delivered July 13, 1987 to:

Linda M. Bullen, Esquire
Assistant Regional Counsel
U.S. Environmental Protection
230 South Dearborn Street
Chicago, Illinois 60604

July 13, 1987

BEVERELY SHORTY

Beverly Shorty
Regional Hearing Clerk