

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Delco Corporation) Docket No. CAA-II-97-0102
 and)
TGR Corporation)
)
 Respondents)

ORDER TO SHOW CAUSE

EPA filed the complaint in this proceeding on January 7, 1997, under authority of section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), against two respondents, Delco Corporation (Delco) and TGR Corporation (TGR). According to the complaint, Delco is the owner of the Laurel Inn in Mount Laurel, New Jersey (the facility), TGR was the operator of a renovation activity at the facility, and Delco contracted with TGR to dismantle asbestos-containing pipe covering and spray-on fireproofing material from the restaurant of the facility.

The complaint alleges two counts of violating the National Emission Standard for Asbestos, 40 CFR Part 61, Subpart M. Count one asserts that the respondents failed to seal all regulated asbestos containing material (RACM) in leak tight containers, while wet, as required by 40 CFR 150(a)(1)(iii). Count II asserts that the respondents failed to adequately wet RACM that had been stripped and to ensure that the material remained wet, as required by 40 CFR 145(c)(6)(i). For these violations, EPA proposes a \$30,000.00 penalty.

Delco filed an answer, on January 28, 1997, in which it admitted that "Respondent" performed work at the facility, admitted that it had a contract with TGR, and denied that it was either the owner or the operator of the facility. Delco stated that a fire at the facility immediately prior to the alleged inspection may have resulted in the destruction, casualty or other incident which caused the inspector's observations and asserted that a technical default of a regulatory provision caused by such an

"act of god" does not justify assessing a penalty. Delco also challenged Complainant's conclusions regarding ability to pay and other aspects of the penalty calculation. TGR did not file an answer.

A respondent must file an answer within 20 days after service of the complaint if it intends to contest material facts upon which the complaint is based, challenge the amount of proposed penalty, or contend that it is entitled to judgment as a matter of law. 40 CFR § 22.15(a). Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation. 40 CFR § 22.15(d). Because TGR failed to file an answer, all material facts alleged in the complaint may be deemed admitted by TGR and an accelerated decision may be warranted. 40 CFR § 22.20.

Therefore, TGR will be ordered to show cause why it should not be found in violation of the act and why the penalty, as proposed in the complaint, should not be assessed against it.

ORDER

1. TGR is ordered to show cause, no later than **June 30, 1997**, why it should not be found in violation of the act and why the penalty, as proposed in the complaint, should not be assessed against it, as discussed more fully above.

2. Complainant and Delco may file, no later than **July 21, 1997**, a pleading responding to this order, as well as to any response submitted by TGR.

Charles E. Bullock

Administrative Law Judge

Dated: June 4, 1997
Washington, D.C.

IN THE MATTER OF DELCO CORPORATION and TGR CORPORATION,
Respondents,

Docket No. CAA-II-97-0102

Certificate of Service

I certify that the foregoing Order, dated June 3, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, NY 10007-1866

Copy by Regular Mail to:

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Respondent:

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(TGR Corporation) President
TGR Corporation
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Marion Walzel

Legal Staff Assistant

Dated: June 4, 1997