

4/10/91

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
SPINKS INDUSTRIES, INC.,) DOCKET NO. RCRA-VI-708-H
)
RESPONDENT)
)

Proceeding pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928. Respondent is found in violation of sections 3005 and 3010 of RCRA, and in violation of certain interim status standards of Title 31 of the Texas Administrative Code Section 335 and 40 C.F.R. Part 265.

APPEARANCES:

For Complainant: Pat Y. Spillman, Jr.
Assistant Regional Counsel
Office of Regional Counsel (6C-WT)
United States Environmental
Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-2120 or (FTS) 255-2120

For Respondent: No appearance was made on behalf
of Respondent.

ACCELERATED DECISION AND ORDERIntroduction

This proceeding was commenced under Section 3008 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6928, by the issuance of a complaint, compliance order, and notice of opportunity for hearing ("complaint") by Region 6 of the United States Environmental Protection Agency (EPA) to Spinks Industries, Inc. ("respondent") on May 11, 1987. The complaint was amended on June 1, 1987. The amended complaint (complaint) alleges fifteen (15) counts regarding violations of RCRA and the Texas Administrative Code (TAC), and the regulations and standards issued under these statutes, which are specifically set out below. Respondent, in its answer, denied or claimed to have no knowledge of each and every material factual allegation in the complaint.

FINDINGS OF FACTS

The following facts in this proceeding are uncontested:

1. Respondent is a business entity incorporated under the laws of the State of Texas which conducted a business at Farm Road 1187 East, Oak Grove Airport, Fort Worth, Texas.
2. Respondent owned and operated a helicopter components manufacturing business from 1964 to 1986 which occupied several warehouse structures in which it was engaged in cadmium and chrome plating operations and painting of metal components.

3. Respondent's cadmium and chromium plating operations and the cleaning of painting equipment generated spent solvents which are listed hazardous wastes under 40 C.F.R. § 261.31 with the following EPA hazardous waste numbers: F005 and F006.
4. As part of its operation, respondent routed waste rinsewater, which contained the above listed hazardous waste, from the plating operations into two subgrade cylindrical tanks in which the rinsewater was treated and stored. From these tanks, the rinsewater was pumped to a surface impoundment for disposal through evaporation.
5. Respondent is storing spent methyl ethyl ketone in drums located in a drum storage area at the facility.
6. Respondent submitted a Notification of Hazardous Waste Activity on August 14, 1986 stating that it generated the following listed hazardous waste: F003, F007, and F008. The Notification did not state that respondent treated, stored, or disposed (sometimes TSD) of hazardous waste. Respondent did not obtain an EPA identification number before TSD of hazardous waste at its facility.
7. Respondent has not submitted a Part A or Part B permit application, pursuant to section 3005 of RCRA, to the EPA.
8. Respondent's facility was inspected by the Texas Water Commission (TWC) on October 17, 1985 and on February 28, 1986.
9. Reports written concerning the October 17, 1985 and February 28, 1986 inspections document the following violations by respondent:

- a. Failure to develop and follow a written waste analysis plan required by 31 TAC § 335.114.
- b. Failure to have a fence around the container storage area and failure to have warning signs around its hazardous waste management facility as required by 31 TAC § 335.115.
- c. Failure to develop a written inspection log, plan, or schedule as required by TAC § 335.116.
- d. Failure to develop a personnel training program as required by 31 TAC § 335.117.
- e. Failure to implement preparedness and prevention measures as required by 31 TAC § 335.137.
- f. Failure to develop contingency plans and emergency procedures required by 31 TAC §§ 335.151 -.157.
- g. Failure to develop a written operating record as required by 31 TAC §§ 335.171 - .177.
- h. Failure to have a closure plan for its facility as required by 31 TAC §§ 335.211 - .220.
- i. Failure to have a closure cost estimate as required by 31 TAC § 335.233.
- j. Failure to obtain financial assurance documentation for closure, sudden liability, and nonsudden liability as required by 31 TAC § 335.233.
- k. Failure to implement a ground water monitoring system for the surface impoundment as required by 31 TAC §§ 335.191 -.195.

CONCLUSIONS OF LAW

1. Respondent is a "person" as that term is defined in 31 TAC § 335.1 and 40 C.F.R. § 260.10.
2. Respondent operates a "facility" as that term is defined in 31 TAC § 335.1 and 40 C.F.R. § 260.10.
3. The rinsewater generated from plating operations and the spent solvents from the cleaning of painting equipment are "hazardous waste" as that term is defined in 31 TAC § 335.1 and 40 C.F.R. § 261.3.
4. Respondent is a "generator" of hazardous waste as that term is defined in 31 TAC § 335.1 and 40 C.F.R. § 260.10.
5. Respondent is engaged in the "processing" (treatment), "storage," and "disposal" of hazardous waste, as those terms are defined in 40 C.F.R. § 260.10 and 31 TAC § 335.1, by holding and treating plating rinsewaters in its subgrade tanks and by using its surface impoundment as a unit for disposing of rinsewater through evaporation. Respondent is also engaged in the storage of hazardous waste in drums at its facility.
6. The surface impoundment, subgrade tanks, and drum storage area are each "hazardous waste management units" as that term is defined in 31 TAC § 335.1 and 40 C.F.R. § 260.10.
7. Respondent is an "owner" of a hazardous waste management facility which was in operation before November 19, 1980 and is therefore an "owner" of an "existing hazardous waste management facility" as those terms are defined in 31 TAC § 335.1 and 40 C.F.R. § 260.10.

DISCUSSIONCount 1

Complainant's first count in the complaint alleged that respondent filed a late and inadequate notification of its hazardous waste activity to EPA. Such notification is required by section 3010(a) of RCRA, 42 U.S.C. § 6930(a), which requires that within 90 days after promulgation of regulations which list a solid waste as a hazardous waste, the facility must notify the EPA of such activity if it is engaged in TSD of such waste.

Based upon uncontested evidence, it was found that respondent did not file a notification with EPA until August 1986, some six years after its submission to EPA was required under section 3010 of RCRA. The notification submitted by respondent did not state that respondent engaged in TSD of hazardous waste at its facility. It is concluded that respondent violated Count 1 of the complaint by submitting a late and inadequate notification to the EPA.

Count 2

Complainant's second count alleged that respondent violated section 3005 of RCRA, 42 U.S.C. § 6925; 31 TAC § 335.43 by TSD of hazardous waste without a permit and without interim status. A facility obtains interim status by following the procedures set forth in section 3005 of RCRA which require the facility to submit a notification (discussed above), pursuant to section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and also to file a Part A permit application.

Respondent, as concluded above, filed a late and inadequate notification of its hazardous waste activity. Based on the undisputed evidence, it was found that respondent has also failed to submit a Part A permit application to the EPA, and that it never operated the facility under interim status and does not have a permit allowing TSD of hazardous waste at its facility.

Concerning TSD of waste at the facility, respondent stored rinsewater containing hazardous waste in its subgrade tanks. It also pumped this wastewater into its surface impoundment for disposal. Sampling of both of these units, the results of which are not disputed, indicates that the sludge in each of these units is a hazardous waste under 40 C.F.R. Part 261.

It is concluded that respondent violated Count 2 of the complaint by TSD of hazardous waste without a permit and without interim status.

Counts 3 - 15

In Counts 3 - 15, complainant cited 13 violations of the interim status standards for owners and operators of TSD facilities under 31 TAC § 335 and 40 C.F.R. Part 265. These violations were based on the TWC inspections of respondent's facility conducted on October 17, 1985 and February 28, 1986. There is no dispute concerning the existence or nature of these violations.

Based on complainant's memorandum, affidavits, exhibits, and other evidence submitted, none of which is in dispute, it is concluded that respondent is in violation of the following interim status standards and is liable for such violations:

Count 3

31 TAC § 335.114(b); 40 C.F.R. § 265.13(b).

Respondent failed to develop and follow a written waste analysis plan.

Count 4

31 TAC § 335.115; 40 C.F.R. § 265.14.

Respondent failed to maintain adequate security at the facility because it failed to post warning signs at the surface impoundment and the container storage area.

Count 5

31 TAC § 335.116(b) and (d); 40 C.F.R. § 265.15(b) and (d).

Respondent failed to develop and follow a general inspection schedule and failed to maintain an inspection log at its facility.

Count 6

31 TAC 335.117; 40 C.F.R. § 265.16.

Respondent failed to develop a personnel training program and did not maintain the required personnel training documents at its facility.

Count 7

31 TAC § 335.137; 40 C.F.R. § 265.37.

Respondent failed to make the required arrangements with local authorities, hospitals, and emergency parties.

Count 8

31 TAC § 335.152; 40 C.F.R. § 265.51.

Respondent failed to maintain a written contingency plan at its facility and failed to develop and implement a contingency plan.

Count 9

31 TAC § 335.173; 40 C.F.R. § 265.73.

Respondent failed to maintain an operating record containing the information required under 31 TAC § 335.173, 40 C.F.R. § 265.73, at its facility.

Count 10

31 TAC § 335.191; 40 C.F.R. § 265.90.

Respondent failed to implement a ground water monitoring system that could detect the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility.

Count 11

31 TAC § 335.213; 40 C.F.R. § 265.112.

Respondent failed to maintain a written closure plan at its facility. Respondent also failed to submit a closure plan to the executive director of the TWC at least 180 days before the date to begin closure and/or within thirty (30) days after the date on which the owner or operator received the final volume of waste.

Count 12

31 TAC § 335.233; 40 C.F.R. § 265.142(a).

Respondent failed to develop a written cost estimate, in current dollars, of the cost of properly closing the facility at

a point in its lifetime during which closure would be most expensive.

Count 13

31 TAC § 335.233; 40 C.F.R. § 265.143.

Respondent failed to obtain financial assurance for closure through one of the following mechanisms: closure trust fund, surety bond guaranteeing payment into a closure trust fund, closure letter of credit, closure insurance, or financial test and corporate guarantee for closure.

Count 14

31 TAC § 335.112(a)(7) (and its predecessor 31 TAC § 335.233); 40 C.F.R. § 265.147.

Respondent failed to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

Count 15

31 TAC § 335.112(a)(7) (and its predecessor 31 TAC § 335.233); 40 C.F.R. § 265.147(b).

Respondent failed to demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities.

The pertinent regulatory provision, 40 C.F.R. § 22.20, regarding the rendering of an accelerated decision is as follows:

(a) General. The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the

proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding

(b) Effect. (1) If an accelerated decision . . . is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

Complainant filed a motion for partial accelerated decision, pursuant to 40 C.F.R. § 22.20, on December 27, 1990. The motion seeks an accelerated decision on the issue of liability for all counts in the complaint. Complainant also seeks an order directing compliance with the Compliance Order section of the complaint. Pursuant to 40 C.F.R. § 22.16(b), respondent's response to the motion was required to be filed within 10 days after service of such motion, unless additional time is allowed for such response. Respondent has not submitted a response to the motion within the required time frame and has not requested additional time to submit a response. It is concluded that there is no genuine issue of material fact in this matter and complainant is entitled to an accelerated decision concerning liability pursuant to 40 C.F.R. § 22.20.

Subsequently, on March 1, 1991, complainant served an amended motion requesting that the accelerated decision embrace the penalty question, as well as the liability issue, in this proceeding. The motion was supported by documents, including an affidavit which, upon review by the undersigned, supports fully the proposed penalty of \$75,000. No response was forthcoming from respondent concerning

the amended motion. If no response is filed within the designated time for such, a party is deemed to have waived any objection to the granting of the motion. 40 C.F.R. § 22.16(b).

ULTIMATE CONCLUSION

Respondent, Spinks Industries, Inc., is in violation of the provisions of RCRA and the TAC, plus the regulations promulgated under these statutes, as alleged in the counts of the complaint and discussed above.

ORDER*

Pursuant to section 3008 of RCRA, 42 U.S.C. § 6928, the following order is entered against respondent Spinks Industries, Inc.:

- I. A. A civil penalty in the amount of \$75,000 is assessed against respondent Spinks Industries, Inc.
- B. 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).

* An accelerated decision has the same effect as an initial decision. 40 C.F.R. § 22.20(b). Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this decision sua sponte, this Initial Decision shall become the final order of the Administrator. 40 C.F.R. § 22.27 (c).

U.S. EPA
Region 6
Regional Hearing Clerk
P.O. Box 360582M
Pittsburgh, PA 15251

- C. Failure upon part of respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

II. The following Compliance Order is also entered in this proceeding. Respondent shall:

- A. Upon receipt of this order, immediately cease processing (treatment), storage or disposal of hazardous waste.
- B. Submit to EPA and TWC a revised Notification of Hazardous Waste Activity and a RCRA Part A permit application identifying all hazardous waste generation, treatment, storage or disposal activities that have taken place at the facility since November 19, 1980.
- C. Submit to EPA and TWC a closure plan for the hazardous waste management units at the facility. The plan must be designed in accordance with 31 TAC § 335.112(a)(6); 40 C.F.R. §§ 265.110 through 265.115. Within 180 days of EPA and TWC's approval of the closure plan, respondent must complete closure of the hazardous waste management units at the facility. EPA and TWC reserve the right to request a post-closure permit application

and/or plan if contaminant migration from the facility to unsaturated and/or saturated soils is identified.

- D. Submit to EPA and TWC a written estimate, in current dollars, of the cost of properly closing the hazardous waste management units at respondent's facility in accordance with 31 TAC § 335.112; 40 C.F.R. § 265.142. Additionally, respondent must establish financial assurance for closure of the units in accordance with 31 TAC § 335.112; 40 C.F.R. § 265.143.
- E. Obtain liability coverage for sudden accidental occurrences in one of three ways specified by 40 C.F.R. § 265.147(a)(1), (2), and (3). Submit evidence of liability coverage to TWC and EPA.
- F. Obtain liability coverage for nonsudden accidental occurrences in one of three ways specified by 40 C.F.R. § 265.147(b)(1), (2), and (3). Submit evidence of liability coverage to TWC and EPA.
- G. At a minimum, obtain detailed chemical and physical analyses of representative samples of the hazardous waste at all regulated units in accordance with 31 TAC § 335.112(a)(1); 40 C.F.R. § 265.13(a), and submit a copy of the results of those analyses to TWC and EPA.
- H. At a minimum, comply with the requirements under 31 TAC § 335.112(a)(1); 40 C.F.R. § 265.14(b), to prevent unknowing entry and minimize the possibility of the unauthorized entry of persons or livestock onto the

active portion of the facility. Also post warning signs in accordance with 40 C.F.R. § 265.14(c) at each hazardous waste area and submit documentation of compliance to TWC and EPA.

- I. Submit documentation to TWC and EPA to show compliance with the general inspection requirements of 31 TAC § 335.112(a)(1); 40 C.F.R. § 265.15. Develop and maintain an inspection schedule and logs. Submit the inspection schedule and blank log form to EPA and TWC for approval.
- J. Develop and maintain a personnel training program which meets the requirements of 31 TAC § 335.112(a)(1); 40 C.F.R. § 265.16. Submit this plan to EPA for approval. Submit to EPA and TWC documentation of personnel training in accordance with 31 TAC § 335.112(a)(1); 40 C.F.R. § 265.16.
- K. Make arrangements with local authorities as specified under 31 TAC § 335.112; 40 C.F.R. § 265.37, and submit evidence of compliance to TWC and EPA.
- L. Develop and maintain a contingency plan in accordance with 31 TAC § 335.112; 40 C.F.R. §§ 265.51 and 265.53. Submit a copy of the plan to TWC and EPA for approval.
- M. Develop and follow a written analysis plan which meets the requirements of 31 TAC § 112(a)(1); 40 C.F.R. § 265.13(b). Submit this plan to EPA and TWC for approval.

- N. Develop and maintain an operating record which meets the requirements of 31 TAC § 335.112(a)(4); 40 C.F.R. § 265.73.
- O. Prepare a plan for the implementation of a ground water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility. Submit this plan and a schedule for implementing this plan for approval to EPA and TWC within thirty (30) days after receipt of this order. Begin implementation of this plan, or the plan as modified by EPA, within thirty (30) days after approval. Complete the implementation of the ground water monitoring program according to the schedule approved by EPA.
- P. Prepare a ground water sampling and analysis plan in accordance with 40 C.F.R. § 265.92 and submit this plan to EPA and TWC for approval. Implement this plan, or the plan as modified by EPA, immediately after completion of the ground water monitoring program.
- Q. All original correspondence pursuant to compliance with this accelerated decision and order shall be sent by registered or certified mail, return receipt requested, to the following address:

Regional Hearing Clerk (6C)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Copies of all documentation required by this order shall be sent to the following addressees:

Samuel Coleman, P.E., Chief
Enforcement Section (6H-CT)
RCRA Enforcement Branch
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Executive Director
Texas Waste Commission
1700 North Congress Avenue
Austin, Texas 78701

III. Notwithstanding any other provision of this order, an enforcement action may be brought pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, or other appropriate authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste at the facility represents an imminent and substantial endangerment to human health and the environment.


Frank W. Vanderheyden
Administrative Law Judge

Dated: April 10, 1991