

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
RESOLVE MANUFACTURING, INC.,) Docket No. II RCRA-86-0215
)
Respondent)

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: June 22, 1987

APPEARANCES:

For Complainant:

Flaire Hope Mills, Legal Advisor
Waste & Toxic Substances Branch
Office of Regional Counsel
U. S. Environmental Protection
Agency
Region II
26 Federal Plaza, Room 430
New York, New York 10278

For Respondent:

James Alaimo
President
Resolve Manufacturing, Inc.
100 Harmon Avenue
Falcover, New York 14733

Introduction:

This proceeding was initiated under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, by issuance of a complaint on June 30, 1986 charging respondent, Resolve Manufacturing, Inc. (respondent), with violations of RCRA and regulations promulgated thereunder. An answer to the complaint was served on August 13, 1986. An amended complaint was filed on November 3, 1986, and an answer to same was served on November 21, 1986. The answers, in substance, denied the allegations in the complaints, contested the amount of penalty sought, and requested a hearing. The complaint and amended complaint charged respondent with the failure to submit Part B of the permit application in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.10(e). Stated broadly, the alleged violations concerned such deficiencies as respondent's waste analysis plan, closure plan and cost estimates, process description, contingency plans and personnel training. A civil penalty in the amount of \$9,500 was sought by complainant, in addition to a compliance order requiring corrective action by respondent within a specified time.

FINDINGS OF FACT

Respondent owns and operates a facility located on 100 Harmon Avenue, Falconer, New York 14733. Respondent is a "person" as

that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and in 40 C.F.R. § 260.10. By notification dated November 10, '1980, respondent informed complainant (sometimes EPA) that it conducts activities at the facility involving "hazardous wastes," as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and in 40 C.F.R. § 261.3. Respondent requested a permit to conduct its hazardous waste activities.

The regulations, 40 C.F.R. § 270.10(e)(1), require the owner or operator of an existing hazardous waste management (HWM) facility to submit Part A of a permit application to the Regional Administrator no later than six months after the date of publication of the regulations which first required them to comply with the standards set forth in 40 C.F.R. Part 265. Regulations which require respondent to submit an application were published on May 19, 1980. Respondent was, therefore, required to submit Part A of a permit application by November 19, 1980. Respondent complied with this. Also, 40 C.F.R. § 270.10(e)(4) commands that, at any time after the promulgation of Phase II, the owner and operator of an existing HWM facility may be required to submit Part B of the permit application by a specified date at least six months from the date of the EPA's request for same.

By letter dated October 20, 1983, complainant requested the submittal of respondent's Part B by April 23, 1984, which respondent submitted on April 13, 1984. In a communication of

September 25, 1984, complainant issued to respondent a Notice of Deficiency (NOD) which contained a detailed description of the areas where respondent's Part B application was deficient or incomplete. The NOD established a new date of November 16, 1984 for the submission of a complete Part B application.

Respondent submitted revisions to its Part B application on November 30, 1984. Complainant issued respondent a second NOD on June 28, 1985 which again set out with specificity those parts of the revised Part B application which were defective or not complete. The second NOD set a date of July 8, 1985 for the submittal of a revised Part B application.

In a telephone conversation on June 28, 1985, between F. Langone, of the EPA, and Thomas McLeod, Operations Manager of respondent, the latter requested an extension of the July 8, 1985 deadline for submittal of the Part B. An extension until July 22, 1985 was granted. On July 19, 1985, respondent submitted further revisions to its Part B application.

Complainant issued a third NOD on October 2, 1985 pointing out those parts in respondent's recent submission which were lacking. This third NOD, in pertinent part, reminded respondent that it agreed to submit a complete and approvable response by September 30, 1985. No such response was forthcoming, however. Respondent again attempted to furnish the required Part B information but the submission was found wanting. Complainant issued

a fourth NOD which incorporated deficiencies with respect to both federal and state hazardous waste programs. This was included as an attachment to the original complaint.

Following the issuance of the complaint, the matter was assigned to the below Administrative Law Judge (ALJ) on September 5, 1986. By order dated September 12, 1986, the parties, failing settlement, were directed to exchange certain prehearing information consisting of witness lists, documentary evidence and arguments supporting their respective cases no later than November 12, 1986. By oral motion, on November 7, 1986, respondent's counsel sought and received from the ALJ an extension of the prehearing exchange deadline until December 30, 1986. This extension was confirmed in a communication of November 7, 1986 from respondent's counsel.

By letter of December 6, 1986, counsel for respondent advised the ALJ that he was no longer representing the respondent, and that all further communication should be directed to James Alaimo, President of respondent. This was followed. Complainant filed its prehearing exchange materials before the required date of December 30, 1986. Respondent never served its prehearing exchange. In a letter dated January 16, 1987 a Richard D. Yellen, Esquire, appeared for the first and only time in the proceeding. In significant part, this curious communication stated that the attorney was not representing the respondent, but his understanding

was that "no one will be appearing in response to the complaint against Resolve Manufacturing, Inc."

Respondent failed to respond to the ALJ's order of January 21, 1987 to show cause why a default order pursuant to 40 C.F.R. § 22.17 should not be taken against it for failure to submit its prehearing exchange within the time frames required by previous orders. On April 2, 1987, an order was issued directing complainant to submit, by May 7, 1987, a draft of a proposed order on default against respondent for review, possible revision and signature by the ALJ. This deadline was extended subsequently to June 1, 1987. Complainant submitted same and a memorandum in support on June 1, 1987. Respondent had 20 days under 40 C.F.R. § 22.17 to reply to the order of April 2, 1987, but it failed to do so.

CONCLUSIONS OF LAW

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, complainant has the authority to institute enforcement proceedings concerning violations of federal and equivalent state hazardous waste regulations in those states that receive EPA approval of their HWM programs pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Respondent's answers to the complaints do not raise any questions which could support a decision that complainant has failed to establish a prima facie case, or justify the dismissal of the complaint.

An examination of the prehearing exchange documents submitted by complainant buttress the allegations in the complaint that respondent failed to furnish a complete Part B application notwithstanding four opportunities presented to it. Complainant has established a prima facie case to support the allegation in the complaints that respondent has violated Section 3005 of RCRA, 42 U.S.C. 6925, 40 C.F.R. § 270.10(e). Respondent's failure to comply with the prehearing order, and its failure to show good cause amounts to a default and constitute 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 Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 2701.10(e).

THE PENALTY

The penalty proposed in the complaint is \$9,500. It is recognized that RCRA 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 3006(a)(3) of RCRA, 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 RCRA, 42 U.S.C. § 6928(a)(3), that respondent, Resolve Manufacturing, 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 II
Regional Hearing Clerk
P. O. Box 360188M
Pittsburgh, PA 15251

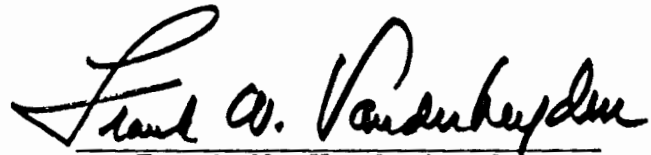
II. The following compliance order is also entered against respondent: Respondent shall within forty five (45) days of the effective date of this order submit to EPA, and to the New York State Department of Environmental Conservation, a Part B permit application for its facility completed in accordance with the EPA Notice of Deficiencies attached to the complaint, and Section 3005 of RCRA, 42 U.S.C. § 6925, or shall cease to treat, store or dispose of hazardous waste and close its facility in accordance

* 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).

with the requirements of Title 6 of the New York Code of Rules and Regulations.

III. Any written submissions required to be made to EPA pursuant to the order, other than the payment of the civil penalty, shall be addressed to:

Chief, Hazardous Waste Compliance
Air and Waste Management Division
U. S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278
Attn: Mr. George Meyer

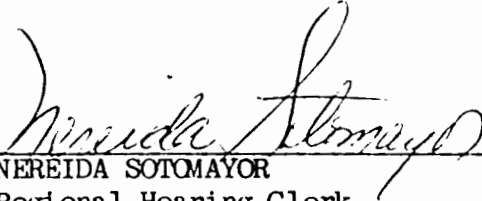


Frank W. Vanderheyden
Administrative Law Judge

Dated this *20th* day of *June* 1987.
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that on June 29, 1987, I mailed the Respondent, James Alaimo, President, Resolve Manufacturing, Inc., 100 Harmon Avenue, Falcover, New York 14733 in the matter of RESOLVE MANUFACTURING, INC. (Docket No. II RCRA-86-0215) a copy of the Initial Decision by Honorable Frank W. Vanderheyden, Administrative Law Judge by Certified Mail. Flaire Hope Mills, Legal Advisor, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278 was delivered a handcarried copy.


NEREIDA SOTOMAYOR
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region II

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