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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Triangle Resource Industries,	)	Docket No. RCRA-III-083
	)	
Respondent	)	

Resource Conservation and Recovery Act -- Failure to Submit Timely Response to Notice of Deficiency. Where Notice of Deficiency requires a response on a day certain and prior thereto Respondent notifies EPA of negotiations which will result in the imminent acquisition of Respondent by another corporation which intends to upgrade and enhance compliance requirements for the handling of hazardous waste, request for extension of time to file response to Notice of Deficiency should have been granted.

Appearances:

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INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), Sec. 3008, 42 U.S.C. 6928 (Supp. IV, 1980), for assessment of a civil penalty for alleged violation of a requirement of the Act, and for an order directing compliance with that requirement. The proceeding was instituted by a Complaint and Compliance Order against Respondent Triangle Resource Industries (TRI), filed by the Environmental Protection Agency (Complainant), on July 25, 1983. The Complaint alleges that Respondent is a corporation which, during the time frame of the Complaint, owned and operated a business on Whiskey Bottom Road in Laurel, Maryland. This business included the storage of materials listed or identified as hazardous waste under Section 3001 of RCRA.

The Complaint charges that Respondent violated the Act by failing to submit, in a timely manner, the information required by the April 19, 1983, Notice of Deficiency and, therefore, has not submitted a Complete Part B to Complainant in violation of 40 CFR 270.10.

Complainant has proposed a civil penalty in amount of $2,500.00 for failure to submit a timely Part B.

Respondent submitted to EPA, in a timely manner, a Notification of Hazardous Waste Activity and a Part A Permit Application for this facility and was assigned an EPA I.D. No. MDD 980554653. EPA sent

Respondent a letter of July 28, 1981, acknowledging that Respondent appeared to qualify for interim status as defined in Section 3005 of the Act. (EPA Exhibit 1, paragraphs 1, 2, 4, 5 & 6).

On August 18, 1982, EPA sent Respondent a letter requesting its Part B Permit Application. A due date of February 18, 1983, was specified. Respondent's submittal was sent to EPA on the due date. On April 19, 1983, EPA sent Respondent a Notice of Deficiency (NOD) pursuant to regulation 40 CFR §124.3 detailing Respondent's failure to provide certain of the information required in a Part B by regulation 40 CFR §270.10(d). These deficiencies included information on: chemical and physical analyses, waste analysis plan, container surveillance system, fire control, aisle space, management of ignitable or reactive waste, emergency coordinators and equipment, personnel training, waste inventory, closure, and financial assurances for closure and sudden accidental occurrences. The due date for the response was May 21, 1983, 30 days after receipt. (EPA Exhibit 1, paragraphs 8, 9, & 10; Complainant's Exhibits 1 through 3).

Complainant filed a Motion For Accelerated Decision, Respondent filed Motion in Opposition thereto, and said Motion was denied by Order dated June 14, 1984.

An adjudicatory hearing was held on August 1, 1984, in Washington, D. C.

On consideration of the evidence in the record and the Proposed Findings, Briefs and Arguments of the parties, I make the following.

FINDINGS OF FACT*

1. Triangle Resource Industries (TRI) is a corporation which was doing business in the State of Maryland during the time frame of the Complaint in this matter, August 1980 through September 9, 1983.

2. During the time period in paragraph 1 above, TRI owned and operated a business on Whiskey Bottom Road in Laurel, Maryland.

3. On September 9, 1983, this business was purchased by SCA Chemical Services, Inc.

4. The operation of this business included the storage of materials listed or identified as hazardous waste by the Environmental Protection Agency (EPA) under Section 3001 of the Act, 42 U.S.C. §6921.

5. TRI submitted to EPA, in a timely manner, a Notification of Hazardous Waste Activity (EPA Form 8400-12) and a Part A Permit Application (EPA Forms 3510-1, 3) for the hazardous waste facility and was assigned EPA I.D. No. MDD980554653.

6. On July 28, 1981, EPA sent TRI a letter acknowledging that TRI appeared to qualify for interim status as defined in

* Under date of May 24, 1984, the parties executed a Stipulation of Facts which forms the basis for these findings. The only additional finding is "The formal Complaint was issued July 25, 1983."

Section 3005 of the Act, 42 U.S.C. §6925, and regulation 40 C.F.R. §270.70.

7. EPA promulgated permit standards for hazardous waste storage on January 12, 1981.

8. On August 18, 1982, EPA sent a letter to TRI requesting its Part B Permit Application (Part B) for this facility. A due date of February 18, 1983, was specified, the minimum time frame allowed for submission of the Part B under regulation 40 C.F.R. §270.10(e).

9. On February 18, 1983, TRI submitted its Part B to EPA.

10. On April 19, 1983, EPA sent to TRI a Notice of Deficiency (NOD) pursuant to regulation 40 C.F.R. §124.3(c) detailing TRI's failure to provide certain of the information required in a Part B by regulation 40 C.F.R. §270.10(d). A due date for response of May 19, 1983, was specified.

11. Shortly before the May 19, 1983, deadline, TRI contacted EPA and requested an indefinite delay in the processing of its Permit Application. The reason given was the probable acquisition of the facility by SCA Chemical Services which, if the acquisition were completed, intended to submit a response to the NOD.

12. EPA requested that TRI submit the materials it had prepared in response to the NOD and put its request for a delay in writing.

13. TRI submitted its written request for an indefinite delay by letter to EPA dated May 19, 1983. TRI did not at that time submit any material requested in the NOD.

14. TRI, in a letter to EPA dated June 17, 1983, stated that it assumed that the indefinite delay had been approved since EPA had not responded to the May 19, 1983, letter.

15. EPA, in a letter to TRI dated June 29, 1983, stated that it would not grant the request for an indefinite delay and that failure to submit the information could subject TRI to an enforcement action.

16. During a July 7, 1983, meeting, TRI stated that it could submit the requested information within 60 days and requested an extension of that amount of time.

17. At that meeting, EPA told TRI to submit the information as quickly as possible. EPA did not approve or deny the extension request.

18. On July 7, 1983, TRI submitted to EPA, pursuant to regulation 40 C.F.R. §270.71(d), a revised Part A Permit Application indicating the planned change in ownership of the facility.

19. Complaint was issued July 25, 1983.

20. On October 4, 1983, TRI submitted to EPA its response to the NOD to complete its Part B.

21. From October 4, 1983, until the date the State of Maryland received authority to issue RCRA storage permits in lieu of EPA, November 23, 1983, EPA initiated no formal review or action on TRI's Part B Permit Application.

22. TRI's Part B Permit Application has been under review by the State of Maryland since it received authority to issue RCRA Storage Permits in lieu of EPA on November 23, 1983.

23. As of this date, neither the State of Maryland nor EPA has issued in Maryland a final RCRA Permit based upon a Part B Permit Application.

Respondent states that an attempt was made to contact EPA by telephone during the week of May 9, 1983, and EPA's records reflect an initial attempt on May 17, 1983. Two conversations did occur on May 19, 1983. Respondent requested an indefinite delay in the processing of its application due to its probable acquisition by SCA Chemical Services (SCA). During the conversations, Respondent was requested to provide the following: a written request for the delay, the name and address of the contact person at SCA, the projected date of acquisition, copies of any documents concerning similar

delay requests to other EPA Regions and all of the documents and information it had prepared in response to the NOD. Respondent's reply was a two paragraph letter which requested a delay and provided a projected date of acquisition concerning other regions and, more importantly, did not provide any reply to the NOD. (EPA Exhibit 1, paragraphs 12 & 13; Transcript pp. 41, 16-21, 24, 28-29; Complainant's Exhibit 6).

Given Respondent's reply, EPA initiated its procedure for dealing with unresponsive parties, i.e., to refer the matter to the enforcement section. Before any formal response action was taken by EPA, Respondent sent a letter to EPA dated June 17, 1983. The letter stated that Respondent assumed that the delay was granted since EPA had not replied to the contrary. EPA responded to that letter by a telephone call on June 27, 1983, and a letter dated June 29, 1983. Respondent was informed by both means that the delay was not granted, that Respondent's reply was due, and that enforcement action by EPA was possible. (Transcript pp. 23-25; Complainant's Exhibits 7 & 8; EPA Exhibit 1, paragraphs 14 & 15).

EPA and Respondent met on July 7, 1983, to discuss the submission of the required information. During the meeting, Respondent submitted a revised Part A Permit Application indicating SCA as the proposed new owner and requested 60 days to submit the information. Respondent was told to submit it as quickly as

possible and that it was possible that a Complaint would be issued (EPA Exhibit 1, paragraphs 16, 17 & 18; Transcript p. 66).

On July 25, 1983, EPA issued a Complaint, Compliance Order and Notice of Opportunity for Hearing charging Respondent with failure to submit a complete Part B Permit Application due to its failure to respond to the NOD. Respondent was ordered to submit the required information within 60 days of receipt of the Complaint. On October 4, 1983, the deadline set in the Complaint, Respondent submitted its response to the NOD (EPA Exhibit 1, paragraph 19, Transcript pp. 61-62).

Respondent argues that the question of whether any penalty should be assessed against it lies in the application of the facts which are the basis for stipulations 11-15, inclusive.

Elizabeth Morgan, the Environmental Compliance Officer for Respondent, testified that within the May 1983 time frame, TRI was in the process of being acquired by SCA Chemical Services. As a consequence of the acquisition, SCA had undertaken an intensive review of the TRI facility and permits and had not finally determined the specific program which SCA would adopt for this facility at Laurel, Maryland. Ms. Morgan, therefore, requested a delay for the submission of additional information.* She had requested such a delay shortly before

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* While it is not clear that Complainant was aware during these negotiations of the fact that TRI had also requested an extension of time from Revion IV for a similar facility in that region, in fact, such a request had been granted.

May 19th, but memorialized the request by writing to Complainant on that date. No response to that request was provided by EPA Region III and a subsequent letter was sent by Respondent dated June 17, 1983, indicating that the Respondent assumed that the delay had been approved.

It took Region III a month and ten days to respond to the written request for a postponement and Region III indicated on June 29th that it would not grant an indefinite delay.

On July 7, 1983, the parties met at Complainant's Region III offices. The request for the extension was renewed but EPA did not approve or deny the extension request at that time. At that meeting, however, Respondent submitted a revised Part A permit application, indicating the change in ownership of the facility from TRI to SCA Chemical Services. Respondent argues that Complainant was put on formal notice at that time that the change in ownership was in the process of being completed. Furthermore, Complainant was also aware that SCA had substantial resources to provide for more sophisticated improvements to the facility than those contemplated by TRI. This is evidenced by the submission of the two exhibits by Respondent during the hearing process. Respondent's Exhibits 1 and 2, the blueprints, which are dated July 13, 1983, indicate an extensive effort at secondary containment; more sophisticated than that originally set forth in the initial application.

And further, during the same period of time, in late Summer 1983, the State of Maryland was in the process of obtaining delegation of the RCRA program. The "permitting" authority was delegated on November 23, 1983. Prior to the time of delegation, Complainant took no steps to process the subject permit application and there was sufficient reason for EPA not to have processed the permit. Example, provisions regarding the program delegation to the states, contained in 40 CFR, Part 271, indicate that once complete delegation is finalized, the State agency assumes primacy with respect to all permit applications and processing. 40 CFR §271.8(b)(6) provides for the prompt transfer from EPA to the State of pending permit applications and subsection (10) requires the State Director to ensure that all prior permits are consistent with those issued after final delegation has been achieved. Given the status of program delegation to the State of Maryland, it would appear that unless EPA had issued a final Part B permit approval, all interim efforts would have been duplicated by Maryland in order to effectuate its permit processing procedures.

Complainant contends that the purpose of the civil penalty was to maintain the integrity of its program. While that assertion is conclusionary in nature, it is fair to say that sufficient reason existed in this case for EPA to have acted responsibly, to have responded directly and timely to the extension request in light of

the planned delegation to the State of Maryland. Given the fact that no permits or approvals were issued by either Region III or Maryland, the extension requested by Respondent did not affect the efficiency in the permit processing. Neither the processing, nor the ultimate approval has been delayed in this case. Instead of the submission and resubmission of modified plans, there is one clear set of permit submittals and hopefully there has been a lack of duplication of the processing effort.

On the other hand, EPA's actions show a delay in their initial request and a consistent delay and indefiniteness in their handling of the request for a postponement. Their actions are especially troublesome in light of the imminent delegation of the program to Maryland and the submission of the revised Part A on July 7th, showing a change in ownership to SCA Chemical Services.

Under the circumstances of this case as described in Respondent's argument, supra, it appears to the Court that at every step of the permitting procedures Respondent was acting in good faith and attempting to comply with the requirements set by Complainant. Nothing was gained by Complainant in denying the extension of time to allow TRI and SCA to complete their negotiations for the sale of TRI. By dismissing this Complaint, the regulatory scheme in the Part B permitting process is not impacted but rather clarified to the extent that variations from the scheme when facts, as here are present, will avoid

unnecessary duplication of work and the more expeditious and orderly processing of applications.

It is ordered that the Complaint herein is dismissed, with prejudice.

Edward B. Finch
Chief Administrative Law Judge

Dated: September 27, 1984