UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of	)	
	)	
Best Plate, Inc.,	)	Docket No. RCRA-VI-434-H
	)	
Respondent	)	

Resource Conservation and Recovery Act - Rules of Practice - Accelerated Decision - Although it appeared that the parties had reached an agreement on the violations, an appropriate penalty and the payment thereof, an unopposed motion for an accelerated decision was granted in order to terminate the proceeding and place Respondent under a compliance order.

Appearance for Respondent: James B. Blackburn, Jr., Esq.
5619 Morningside
Houston, Texas 77005

Appearance for Complainant: Lucinda S. Watson, Esq.
Office of Regional Counsel
U.S. EPA, Region VI
1201 Elm Street
Dallas, Texas 75270

Accelerated Decision

This proceeding under § 3008 of the Solid Waste Disposal Act, as amended (RCRA) (42 U.S.C. § 6928) was commenced on June 29, 1984, by the issuance of a Compliance Order and Notice of Opportunity for Hearing

by the Director of Air and Waste Management Division, U.S. EPA, Region VI, Dallas, Texas, charging Respondent, Best Plate, Inc., with violations of the Act and regulations and corresponding sections of the Texas Administrative Code.1/ A penalty of $100,000 was proposed to be assessed against Respondent. Respondent answered, denying the alleged violations and requesting a hearing.

1/ Section 3008 provides in pertinent part:

Sec. 3008(a) Compliance Orders.

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person is in violaton of any requirement of this subtitle, the Administrator may issue an order requiring compliance immediately or within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

* * * *

(c) Requirements of Compliance Orders -- Any order issued under this section may include a suspension or revocation of a permit issued under this subtitle, and shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

* * * * *

(g) Civil Penalty -- Any person who violates any requirement of this subtitle shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

In April of 1985, the parties, through counsel, entered into a stipulation under which Respondent admitted the alleged violations and agreed to a penalty of $69,000 to be paid over a three-year period.[2/] Notwithstanding this stipulation, counsel for Respondent maintained that Respondent's ability to pay the penalty remained in issue (letter, dated April 8, 1985). After a review of financial information submitted by Respondent, Complainant offered a settlement of a total penalty of $60,000 to be paid over a five-year period with $6,000 to be paid in the first and second years and $16,000 to be paid in each of the remaining three years (letter, dated September 12, 1985). By letter, dated September 23, 1985, Respondent accepted the settlement with the proviso that the first payment would be due on March 31, 1986 and subsequent payments would be due on March 31 of each succeeding year. The reason for this proviso was stated to be heavy expenses in connection with clean-up of the site.

Under date of October 3, 1985, counsel for Complainant submitted a motion for an accelerated decision, alleging that there are no material issues of fact or law outstanding and that it would be in the best interest of the public to resolve this matter through an accelerated decision. A proposed compliance order was enclosed with the motion. No issue was taken with the mentioned proviso as to payment of the penalty and it is not clear why this matter could not be resolved through a consent agreement. Respondent has not replied to the motion.

2/ The stipulation provides that a penalty of $69,000 is appropriate based, inter alia, on financial data in Complainant's Exhibit 6, which are Respondent's federal income tax returns for 1981, 1982 and 1983.

Based on the stipulation and exhibits referred to therein, I find that the following facts are established:

1. On or about November 19, 1980, and all relevant times thereafter, Respondent conducted a business of electroplating at its facility at 1095 South Interstate 45, Hutchins, Dallas County, Texas.

2. Respondent is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and in Article 4477-1, Vernons Annotated Texas Statutes (VATS), Texas Solid Waste Disposal Act (SWDA) and 31 Texas Administrative Code (TAC) 335.1.

3. Respondent is a generator, owner and operator of a hazardous waste management facility used for the treatment, storage, and disposal of hazardous waste in accordance with the definitions of these terms under Section 1004 of RCRA, 42 U.S.C. § 6903, and 40 CFR § 260.10.

4. Respondent is a generator and an owner and operator of a facility which stores, treats, or disposes of hazardous industrial solid waste in accordance with the definitions of these terms under the SWDA and 31 TAC 335.42.

5. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified EPA of hazardous waste activity at its facility located at 1095 South Interstate 45, Hutchins, Texas. In its notification, Respondent identified itself as a generator of the following hazardous wastes:

   (a) Toxic characteristic hazardous waste identified at 40 CFR § 261.24(b)

   D007 - Chromium

(b) Corrosive characteristic hazardous waste identified at 40 CFR § 261.22

D002 - Corrosive hazardous waste

6. On or about May 24, 1983, the mentioned facility was inspected by an employee of the Texas Department of Water Resources (TDWR).

7. During the inspection referred to in the preceding finding, it was noted that the Respondent disposed of chrome and nickel rinsate in a ditch along the north section of the facility property.

8. In the notification referred to in finding 5, Respondent failed to inform Complainant that it was treating, storing, and/or disposing of hazardous waste at the above facility and failed to identify all waste streams handled.

9. Respondent failed to submit Part A of its federal hazardous waste permit application to EPA on or before November 19, 1980, and has not done so to date.

10. On or about the date of the inspection, the Respondent was disposing of plating bath sludges, and caustic sludges at the City of Hutchins' landfill. This landfill is not authorized to handle this type of waste.

11. On or about the date of the inspection, the Respondent was shipping Class I hazardous waste consisting of plating bath sludges, and caustic sludges to the City of Hutchins' landfill without a shipping ticket.

12. On or about the date of the inspection, Respondent managed hazardous waste in such a manner as to allow the overflow from the chrome and nickel rinsewater to enter a drainage ditch along the north boundary of the facility. This ditch directs the hazardous waste east, through a subdivision, to the Fin and Feathers Club Lake, which eventually empties into the Trinity River. Respondent also allowed the overflow from the caustic stripping and cleaning baths, EPA hazardous waste code D002, to enter the same drainage ditch.

13. On or about the date of the inspection, Respondent had not made any notation or recording in the county deed records regarding the disposal practices at the above referenced facility.

14. On or about the date of the inspection, Respondent had not submitted an annual report for the on-site storage and disposal of hazardous wastes.

15. On or about the date of the inspection, Respondent had failed to develop and follow a written waste analysis plan.

16. On or about the date of the inspection, Respondent did not have a 24-hour surveillance system, or an artificial or natural barrier completely surrounding the active portion of the facility, with a means to control entry at all times.

17. On or about the date of the inspection, Respondent did not have a sign with the legend, "Danger--Unauthorized Personnel Keep Out," posted at each entrance to the active portion of the facility.

18. On or about the date of the inspection, Respondent did not have an inspection schedule at the above referenced facility.

19. On or about the date of the inspection, Respondent did not have required personnel training documents at the above referenced facility.

20. On or about the date of the inspection, Respondent failed to make proper arrangements with the local authorities.

21. On or about the date of the inspection, Respondent did not have a contingency plan at the above referenced facility.

22. On or about the date of the inspection, Respondent did not have an operating record at the facility.

23. On or about the date of the inspection, Respondent had not submitted required monthly reports containing information such as the method of storage, processing, and disposal for each hazardous waste.

24. On or about the date of the inspection, Respondent did not have a closure plan at the above referenced facility.

25. On or about the date of the inspection, Respondent did not have financial assurance for closure.

26. On or about the date of the inspection, Respondent did not have financial assurance for the sudden accidental occurrences arising from the operation of the facility.

27. On or about the date of the inspection, Respondent was storing and/or disposing of hazardous industrial solid waste on-site without having submitted a Part A Permit Application to the State of Texas.

28. Complainant has notified the State of Texas of the mentioned findings pursuant to § 3008(a)(2) of the Act.

29. Based on the seriousness of the violations and Respondent's ability to pay, an appropriate penalty is the sum of $60,000, payable over a five-year period, with the first payment of $6,000 due on or before March 31, 1986, a second payment of $6,000 due on or before March 31, 1987 and payments of $16,000 due on or before March 31 of the three succeeding years.

Conclusions

1. Complainant, having given the notice required by § 3008(a)(2) of the Act, is entitled pursuant to §§ 3004, 3005, 3006 and 30010 of the Act to maintain this action for violations of the Act, regulations issued thereunder (40 CFR Part 260, et seq.) the SDWA and the Texas Administrative Code.

2. Respondent, having failed to notify Complainant that it was treating, storing and/or disposing of hazardous waste, having failed to identify all hazardous waste streams handled at its facility and having failed to submit Part A Hazardous Waste Permit Application on or before November 19, 1980, has violated RCRA § 3010(a) (42 U.S.C. § 6930(a)) and 40 CFR § 270.10(e).

3. By disposing of plating bath and caustic sludges at the City of Hutchins' landfill, which is not authorized to handle these wastes, Respondent has violated 40 CFR § 262.12(c) and 31 TAC 335.2(b).

4. By shipping plating bath and caustic sludges to the City of Hutchins' landfill without a manifest or shipping ticket, Respondent has violated 40 CFR 262.20 and 31 TAC 335.10(a).

5. By managing hazardous, industrial solid waste in such a manner as to cause the discharge of such waste or the imminent threat of such discharge into or adjacent to waters of the State of Texas, Respondent has violated 40 CFR § 265.31 and 31 TAC 335.4(1).

6. By failing to record in the land records of the county where the disposal took place a notation that the property had been used for hazardous waste disposal, Respondent violated 40 CFR § 265.120 and 31 TAC 335.5.

7. By failing to submit an annual report of the on-site disposal of hazardous waste, Respondent violated 31 TAC 335.71.

8. By failing to develop and maintain at the facility a written waste analysis plan, Respondent violated 40 CFR 265.13 and 31 TAC 335.114(a).

9. By failing to maintain a 24-hour surveillance system or an artificial or natural barrier completely surrounding the active portion of the facility, with a means to control entry at all times and by failing to have a sign with the legend: "Danger--Unauthorized Personnel Keep Out" posted at each entrance to the active portion of the facility, Respondent violated 40 CFR 265.114(a) and (c) and 31 TAC 335.115(a) and 115(c).

10. By failing to have an inspection schedule and failing to maintain personnel training documents at the facility, Respondent violated 40 CFR 265.15(b) and 265.16(d) and 31 TAC 335.116(b) and 335.117(d).

11. By failing to make arrangements with local police, fire and emergency response teams as to the layout of the facility, types of wastes handled, etc., Respondent violated 40 CFR § 265.37(a) and 31 TAC 335. 137.

12. By failing to have a contingency plan and failing to develop and maintain an operating record, Respondent violated 40 CFR § 265.51 and 265.73 and 31 TAC 335.154 and 335.173(a).

13. By failing to submit monthly reports of information as to the method of storing, processing and disposing of each hazardous waste, Respondent has violated 31 TAC 335.175(a).

14. By failing to have a closure plan at its facility, to demonstrate financial assurance for closure and financial assurance for sudden and accidental occurrences arising from the operation of the facility, Respondent violated 40 CFR § 265.112, 265.143 and 265.147 and 31 TAC 335.213(a) and 335.233.

15. By failing to submit a permit application for the storage treatment or disposal of any hazardous, industrial solid waste, Respondent violated 31 TAC 335.2(a).

16. The attached Compliance Order is appropriate and will be issued.

17. Respondent is liable for a penalty in the amount of $60,000, payable as specified in finding 29.

Order[3/]

Respondent shall comply with the attached Compliance Order. Respondent shall make payments as specified in finding 29 by mailing cashier's or certified check payable to the Treasurer of the United States to:

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

Dated this 22nd day of October 1985.

Spencer T. Nissen
Administrative Law Judge

Attachment

3/ In accordance with 40 CFR § 22.20(b) this accelerated decision constitutes an initial decision and unless appealed as provided in 40 CFR § 22.30 or unless the Administrator elects, sua sponte, to review the same as therein provided, will become the final order of the Administrator in accordance with 40 CFR 22.27(c).

ATTACHMENT

COMPLIANCE ORDER

Pursuant to § 3008 of RCRA, 42 U.S.C. § 6928, Respondent is hereby ordered to take the following actions within thirty (30) days of receipt of this Order.

1. Submit proper notification of EPA showing Respondent's status as a storage, treatment, or disposal facility. Indicate all hazardous waste handled at the facility.
2. Submit a completed Federal Part A permit application to EPA in accordance with 40 CFR § 270.10.
3. Immediately stop disposing of hazardous waste at the City of Hutchins' landfill. All hazardous waste is to be disposed of at a permitted disposal facility authorized to handle the waste generated by the facility.
4. In the future, a shipping ticket must be prepared, for the shipment of hazardous waste in accordance with 31 TAC § 335.10(a).
5. Immediately stop placing hazardous waste in the drainage ditch running along the north boundary of the facility. Submit a plan for the testing and removal of all contaminated soils in the ditch or surrounding areas.
6. Make the necessary deed recordation according to 31 TAC §§ 335.5 and 335.220. Submit documentation that the necessary deed notations have been made.
7. Complete and submit an annual report for 1983 in accordance with 31 TAC § 335.71.

8. Develop and submit a waste analysis plan, to be kept at the facility, to comply with 31 TAC § 335.114.

9. Install a 24-hour surveillance system that continuously monitors and controls entry onto the active portion of the facility or install a barrier that completely surrounds the active portion of the facility with a means to control entry at all times. Submit proof of compliance to the State and EPA.

10. Post warning signs, in accordance with 31 TAC § 335.115(c), in sufficient numbers to be seen from any approach to the active portion of the facility.

11. Develop, and maintain at the facility, a written inspection schedule in accordance with 31 TAC § 335.116. Submit a copy of the schedule to the State and EPA.

12. Develop, and document a personnel training program in accordance with 31 TAC § 335.117. Submit proof of compliance to the State and EPA.

13. Make the proper arrangements with local authorities in accordance with 31 TAC § 335.137. Submit documentation of compliance to the State and EPA.

14. Develop and maintain, at the facility, a contingency plan in accordance with 31 TAC § 335.153. Submit a copy of this plan to the State and EPA. Distribute copies of this plan in accordance with 31 TAC § 335.154.

15. Develop and maintain, at the facility, a written operating record in accordance with 31 TAC § 335.173. Submit documentation of compliance to the State and EPA.

16. Complete and maintain, at the facility, a monthly summary in accordance with 31 TAC § 335.175(a). Submit a copy of the most recent monthly summary to the State and EPA.

17. Develop and maintain, at the facility, a closure plan in accordance with 31 TAC § 335.213. Submit a copy of this closure plan to the State and EPA.

18. Develop an itemized closure cost estimate and obtain financial assurance for closure in acordance with 40 CFR § 265.143.

19. Obtain financial assurance for sudden accidental occurrences in accordance with 40 CFR § 265.147(a).

20. Submit documentation to show compliance with all financial assurance requirements.

21. Submit a completed State Permit Application in accordance with 31 TAC § 335.2.

All original correspondence pursuant to compliance with the Order shall be sent by registered mail, return receipt requested, to the following address:

Regional Hearing Clerk
U.S. EPA, Region VI
Interfirst Two Building
1201 Elm Street
Dallas, Texas 75270

Copies of all documentation required by this Order shall be sent to the following address:

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