UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

IN THE MATTER OF:	)	
	)	RESOURCE CONSERVATION AND RECOVERY ACT
CITY INDUSTRIES, INC.	)	
3920 FORSYTH ROAD	)	SECTION 3008(a)(1)
ORLANDO, FLORIDA 32807	)	42 U.S.C. §6928(a)(1)
	)	
EPA ID NO. FLD055945653	)	DOCKET NO. 83-160-R-KMC

DEFAULT ORDER

Preliminary Statement

This is a proceeding under Section 3008 of the Solid Waste disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6928, instituted by a complaint filed by the Regional Administrator, Region IV, United States Environmental Protection Agency, which was served upon Respondent, City Industries, Inc., on May 23, 1983. Respondent filed an answer on July 1, 1983. The matter was referred to the undersigned by Order of Designation on July 11, 1983. On September 8, 1983, Respondent filed a Motion to Dismiss. By Order dated October 4, 1983, the undersigned granted the Motion to Dismiss. On October 20, 1983, Complainant filed a Motion for Remand to Administrative Law Judge for Reconsideration of Initial Decision. On January 25, 1984, Charles A. Perry filed a Motion to Withdraw as Counsel for the Respondent. On April 2, 1984 the Judicial Officer granted the Motion to Withdraw and Denied the Motion to Remand for Reconsideration. On April 10, 1984 the Judicial Officer issued a Notice of Intent to Review the Initial

Decision. On April 12, 1984, Complainant appealed the Administrative Law Judge's Initial Initial Decision. By Order dated November 21, 1984, the Initial Decision was reversed and remanded to the Administrative Law Judge.

The Adminstrative Law Judge by letter dated November 28, 1984 directed a prehearing exchange between the parties by January 9, 1985. As part of this prehearing exchange, the parties were required to submit a list of witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony and copies of all documents and exhibits intended to be introduced into evidence, as well as views as to the place of the hearing with the basis for such views. The Complainant fully responded to the requirements of this prehearing exchange, but the Respondent made no response. The prehearing exchange letter also required that, by January 23, 1985, the parties reply to statements or allegations of the other contained in the responses to the prehearing exchange letter due on January 9, 1985. The Respondent made no reply to this requirement.

On March 15, 1985, the Complainant filed a Motion for Default Judgment, which was served upon the Respondent on March 21, 1985. Respondent did not respond to such motion.

Through the documents and exhibits sumitted for the prehearing exchange on January 9, 1985, the Complainant has established a prima facie case against the Respondent, that

is, that the Respondent has failed to submit to EPA a complete and adequate Part B RCRA permit application within the time specified by Complainant in violation of Sections 3004 and 3005 of RCRA, 42 U.S.C. §§6924 and 6925, and 40 CFR §270.10 (c)(4) and (5). Said documents and exhibits are hereby incorporated into and made a part of the record of this proceeding. By reason of the foregoing, Respondent is hereby found to be in default pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent.

Findings of Fact

1. The Respondent owns and operates a hazardous waste treatment and storage facility in Orlando, Florida. The Respondent complied with the requirements for achieving interim status under Section 3005(e) of RCRA, 42 U.S.C. §6925(e), and 40 CFR §270.10(e).

2. On January 12, 1981, EPA promulgated facility standards for storage facilities such as the Respondent's under 40 CFR Part 264, 46 Fed. Reg. 2802 (January 12, 1981). This authorized EPA to issue permits to certain new and existing storage facilities.

3. On February 16, 1982, EPA requested the Respondent to submit Part B of its permit application by August 16, 1982.

At the Respondent's request, this was later extended three weeks to September 6, 1982. The initial version of the Part B application was not received until September 8, 1982. Upon completion of the initial review of the Part B application, EPA found it substantially inadequate and incomplete.

4. On November 18, 1982, EPA requested the resubmission of the Part B application, with correction of the noted deficiencies, on or before January 24, 1983. EPA received the resubmitted Part B application on January 24, 1983. Upon the completion of the second review of the Part B application, EPA found that the application was still substantially incomplete and deficient.

5. On April 1, 1983, EPA requested another resubmission of the Part B application, with the additional information included, on or before April 25, 1983. The Respondent failed to resubmit the Part B application by the required deadline, April 25, 1983, and in fact never resubmitted such document.

6. In the meantime, the Respondent generated correspondence that indicated, on one hand, a desire for more time within which to resubmit the Part B application and, on the other, the expressed intent to cease operations and close the facility in an environmentally acceptable manner. By letter dated April 18, 1983, the company, through Norman Smith, President of Resource Conservation and Recovery of America, Inc., requested an extension from EPA of the April 25, 1983, deadline for resubmission of the Part B application.

By contrast, a letter dated April 28, 1983, from Robert A. Leventhal, counsel for Respondent, to EPA requested a meeting to discuss cessation of operations at the site and "a proper and cost efficient restoration of that site". However, by letter dated May 2, 1983, Arthur Greer, as President of City Industries, Inc., indicated that the Respondent was unable to meet the deadline for submission of the Part B application. By letter dated May 6, 1983, Attorney Robert A. Leventhal requested again a meeting with the United States Attorney and EPA to discuss cessation of operations and "an expeditious and cost efficient cleanup of the above mentioned property." Finally, by letter dated July 15, 1983, Arthur Greer, as President of City Industries, Inc., indicated to the Florida Department of Environmental Regulation that the Respondent was abandoning the site and refusing to meet its closure responsibilities under 40 CFR Part 265, Subpart G, and Part 17-30 of the Florida Administrative Code.

7. Subsequently on July 27, 1984, EPA denied the application for a RCRA permit and terminated the Respondent's interim status.

Conclusions

By reason of the facts set forth in the Findings above, the Respondent failed to submit a complete and adequate Part B RCRA permit application within the time specified by Complainant in violation of Sections 3004 and 3005 of RCRA, 42 U.S.C. §6924 and 6925, and 40 C.F.R. §270.10(c)(4) and (5).

Pursuant to 40 CFR §22.17, the penalty proposed to be assessed in the Complaint, $5,000, shall become due and payable by Respondent, City Industries, Inc., without further proceedings upon the issuance of a this order by default.

ORDER

Pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, a civil penalty of $5,000 is hereby assessed against Respondent, City Industries, Inc., for the violations of the Act found herein.

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order upon Respondent, City Industries, Inc., by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America in such amount.[1]

Dated: April 8, 1985

Thomas B. Yost
Administrative Law Judge

Copies to: Arthur Greer, President
City Industries
and
James L. Zimmerman
Assistant Regional Counsel
U.S. EPA - Region IV

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[1] See §22.30 of the Consolidated Rules of Practice, 40 CFR §22.30 with respect to the effect and consequences of this Default Order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN RE	)	
	)	RCRA# 83-160-R-KMC
CITY INDUSTRIES, INC.	)	
	)	DEFAULT ORDER

CERTIFICATION OF SERVICE

In accordance with 40 C.F.R. §§ 22.17(b) and 22.27, I hereby certify that the original of the foregoing Default Order issued by Honorable Thomas B. Yost was served on the Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, D.C. 20460 (service by certified mail return receipt requested); and that true and correct copies were served on: Arthur Greer, President, City Industries, Inc., 2464 Derbyshire Road, Maitland, Florida 32807 (service by certified mail return receipt requested); and J. Lawrence Zimmerman, Esquire, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365 (service by hand-delivery).

If no appeals are made within 20 days after service of this decision and the Administrator does not elect to review it, then 45 days after receipt this will become the Final Decision of the Agency (40 C.F.R. §§ 22.27(c) and 22.30).

Dated in Atlanta, Georgia this 8th day of April 1985.

Sandra A. Beck
Secretary to Judge Yost