UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

88 MAY 5 P12: 33

In the Matter of

SLIMFORD MANUFACTURING COMPANY, INC. : Docket No. 85-24-R

Respondent :

Resource Conservation and Recovery Act: 40 CFR §261.3, §261.20, §261.30, §261.31: Certain spent non-halogenated solvents that have the characteristic of ignitability are hazardous wastes irrespective of their listings as F003 and F005 hazardous wastes at 40 CFR §261.31; therefore, the allegations in the complaint regarding storage of hazardous waste were not dependent upon the 40 CFR §261.31 listings of F003 and F005, when they were challenged on the the basis that respondent's wastes were not hazardous wastes when the complaint issued, owing to a "loophole" in the listings.

Resource Conservation and Recovery Act: Section 3008(a), 40 U.S.C. §6928(a): A civil penalty of $12,000 is appropriate for violations of the statute and regulations where respondent's employee attended courses sponsored by the State environmental affairs office, and took other steps in a demonstration of good faith.

Alvin R. Lenoir, United States Environmental Protection Agency, 345 Courtland Street, N. E., Atlanta, Georgia 30365 for the complainant.

Huey D. McInish, Post Office Box 1665, Dothan, Alabama, 36302, for the respondent.

Before: J. F. Greene, Administrative Law Judge

Decided April 29, 1988

This matter arises under 42 U.S.C. §6928(a)(1), Section 3008(a)(1) of the Resource Conservation and Recovery Act (RCRA). The complaint herein charges respon- Slimfold Manufacturing Company with failure to notify the U. S. Environmental Protection Agency, pursuant to 42 U.S.C. §6930(a), Section 3010(a) of RCRA, that hazardous wastes were being treated, stored, or disposed of at its Dothan, Alabama, facility 1/, and with failure to submit a "Part A" hazardous waste permit application on or before November 19, 1980, in violation of 42 U.S.C. §6925(e) [Section 3005(e) of RCRA] and 40 CFR 270.10(e). 2/, 3/ Also charged in the complaint are numerous violations of Sub-

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1/ Section 3010(a) provides, inter alia, that

> (N)ot later than ninety days after promulgation of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this subtitle, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator . . . a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. . . .

2/ Unless otherwise noted, all references herein to the Code of Federal Regulations are to the July 1, 1985, edition.

3/ Section 3005(e), 42 USC 6925(e), provides, inter alia, that

> (A)ny person who (A) owns or operates a facility required to have a permit under this section which facility (i) was in existence on November 19, 1980, [and] (B) has complied with the requirements of Section 3010(a) and (C) has made an application for a permit under this section shall be treated as having been issued such permit until until such time as final administrative disposition of such application is made unless . . . final administrative disposition . . . has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application . . . .

40 CFR §270.10(e) provides, in pertinent part, that:

> Owners and operators of existing hazardous waste management facilities must submit Part A of their permit application to the Regional Admiinistrator no later than (i) six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR Parts 265 or 266, or (ii) thirty days after the date they first become subject to the standards set forth in 40 CFR Parts 265 or 266, whichever first occurs.

part I, 40 CFR Part 265, the "Use and Management of (hazardous waste) Containers," which apply whether respondent is a generator or a storage facility, including failure to close containers of hazardous waste, failure to mark them with the date on which accumulation of waste began, failure to label the containers with the words "Hazardous Waste," failure to maintain adequate aisle space, failure to equip the storage area with internal communications and an alarm system, and failure to prepare a contingency plan. For these alleged violations, complainant proposes a civil penalty of $25,000 and a compliance order which requires respondent to "achieve complete compliance" with standards applicable to generators of hazardous waste (40 CFR Part 262), with standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264), and to submit Parts A and B of a permit application (40 CFR §270, Subpart B), or, in the alternative, to cease storage of hazardous wastes for longer than 90 days. 4/

In its answer respondent admitted the allegation that it is a generator of hazardous waste, but denied that it was operating a hazardous waste storage facility and denied that a Part A permit application had to be filed. 5/ Later, it was stipulated that respondent is both a generator of hazardous waste and an owner or operator of a hazardous waste management facility as that term is defined at Section 1004(7) of

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4/ 40 CFR §262.34(a) provides that a generator of hazardous waste may accumulate such waste on site for 90 days or less without a permit or without having interim status [see Section 3005(e) of RCRA, 42 U.S.C. 6925(e)] if a variety of conditions set forth in that section and in Subpart I, 40 CFR Part 265, are met. 40 CFR 262.34(b) provides that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264 and 265, as well as to the permit requirements of 40 CFR Part 270.

5/ See 40 CFR §270.10(e), set out in note 2/, supra.

the Act, 42 U.S.C. §6903(7). 6/ At trial, however, respondent argued that the wastes in question, F003 and F005, 7/ did not become hazardous wastes until the December 31, 1985, amendments to the 40 CFR §261.31 list of hazardous wastes. 8/, 9/ As for deficiencies in the use and management of containers allegedly revealed by the inspections conducted by the U.S. EPA and the Alabama Department of Environmental Management (ADEM), respondent asserted in its answer that all were corrected quickly, well before the complaint in this matter issued. The principal issue remaining for determination is the amount of the penalty to be assessed.

6/ See 40 CFR §260.10, "management" or hazardous waste management" is the systematic control of the collection, storage, and transportation, among other activities, of hazardous waste.

7/ 40 CFR §261.31 provides that F003 is the industry and EPA hazardous waste number assigned to spent non-halogenated solvents xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone and methanol, and the still bottoms from the recovery of these solvents. The hazard code for F003 materials, i. e. the basis for their listing as hazardous waste, is "I", which indicates that they have the "characteristic of ignitability," 40 CFR §261.21 and §261.30(b). See also 40 CFR §261.11.

F005 is the hazardous waste number assigned to spent non-halogenated solvents toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine, and to the still bottoms from the recovery of these solvents. The hazard codes assigned to F005 materials are "I" and "T", which indicate that they have the characteristics of ignitability and toxicity, 40 CFR §261.21 and §261.30(b).

Respondent's waste is generated from paints and painting materials, RX 3, p. 3.

8/ The effective date of this amendment was January 30, 1986. The complaint was issued on August 9, 1985.

9/ This pretrial argument, in the nature of a motion to dismiss, was rejected on the ground that the waste in question, spent non-halogenated solvents generated by respondent's painting materials, had been determined to be hazardous because of their characteristic of ignitability, 40 CFR §261.21, §261.30, independent of the F003 and F005 lists of non-halogenated solvents at 40 CFR §261.31. The allegations of the complaint regarding hazardous wastes were thus not dependent upon the F003 and F005 listings. See also 50 FR 53315-53317, December 31, 1985. Nothing in the record of this proceeding sugests that this ruling should be reconsidered. It is noted also that an analysis of the materials provided to respondent before the complaint issued shows the flashpoint to be below 140°, RX 3, p. 3.

The record discloses that the hazardous wastes generated at respondent's plant as spent solvents were used to flush paint systems (paint guns and paint lines), such as when colors are changed or the lines cleaned, TR 46, 54. These waste solvents had had accumulated in drums, between 130 and 186 of them, TR 37, 22, 52, a the rate of about two drums per month, TR 51, at the back of the the property over a period of at least two years, perhaps longer, TR 51. At some point, respondent decided to find out whether the spent solvents had commercial value, TR 54-55, and at about the same time, it sent its paint manager (or finishing superintendent), TR 54, to a course sponsored by Auburn University and ADEM. Respondent then became aware that it was not in compliance with applicable statutes and regulations. An application for an identification number was sought from ADEM in September, 1984. The number was received in February, 1985, and on April 24, 1985, respondent's facility was inspected. Respondent showed the inspectors "everything," and cooperated with them, TR 56. Thereafter, it quickly moved to clean up its site, and, by the time of the second inspection on June 27, 1985, the site was essentially "clean," except for some minor clerical matters, TR 75. Under all these circumstances, and in view of the fact that apparently there was no spillage from the drums, and that they were in a location seldom frequented by the public, TR 50, 78, it is concluded that respondent should pay a civil penalty of $12,000 for the violations alleged in the complaint. It is noted further that respondent has no prior history of violations, that respondent did report, as required, that it is a generator and did disclose the nature of its waste. It is noted also that respondent did not intend to be a storage facility and did not realize that it was in fact a storer because of the accumulation of waste in the drums for a period in excess of ninety days, TR 65, and it is noted that, because respondent did take steps to obtain an identification number, it was on the list to be inspected only a short time afterward. However, it is also noted that the violations could, in different circumstances, led to serious consequences.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a "person," as is defined at Section 1004(15) of the Act, 42 U.S.C. §6903(15). Its facility at Dothan, Alabama, generates hazardous waste, as defined at 40 CFR §261.3, §261.20, having the characteristic of ignitability, 40 CFR §261.21, in the form of spent non-halogenated solvents from paints and painting materials. Respondent is an owner or operator of a "hazardous waste management" facility, RCRA Section 1004(7), 42 U.S.C. §6903(7), at which hazardous wastes are stored, 42 U.S.C. §6903(33).

2. Respondent was in violation of Subpart I, 40 CFR Part 265, the "Use and Management of (hazardous waste) Containers," and of Subpart D, 40 CFR §265, at the time of the April, 24, 1985, inspection of its facility by the Alabama Department of Environmental Management and the U. S. Environmental Protection Agency, as charged in the complaint herein.

3. Respondent quickly corrected all of the container and use and contingency plan violations found during the inspection of its facility before the complaint issued. Respondent took numerous other steps to comply with the Act and the regulations promulgated thereunder, after becoming aware that it had not fully complied. All except minor clerical matters had been remedied by the time of the June 27, 1985, return visit, TR 24, 75. Nevertheless, respondent should have been aware of the requirements of the Act and the regulations, and should have been in compliance in a timely manner. Respondent became aware of its obligations after an employee attended a course sponsored by the Alabama Department of Environmental Management and Auburn University.

3. A civil penalty of $12,000 is reasonable and appropriate under the circumstances shown on this record, taking into account the seriousness of the violations and good faith efforts to comply with applicable requirements.

ORDER

It is therefore ORDERED that respondent shall pay a civil penalty of $12,000 in connection with violations found herein, pursuant to RCRA Section 3008(a)(1), 42 U.S.C. §6928(a)(1). Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the

final order by submitting a certified or cashier's check payable to the United States Environmental Protection Agency, Region 4, (Regional Hearing Clerk), Post Office Box 100142, Atlanta, Georgia 30384.

J. F. GREENE
Administrative Law Judge

Washington, D. C.
April 29, 1988