12/18/92

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
DECORATED PRODUCTS, INC.,	)	**Docket No. CWA-2-I-92-1001**
	)	
Respondent	)	

ORDER GRANTING COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION ON QUESTION OF LIABILITY

The complaint initiating this proceeding was filed on November 26, 1991, by the United States Environmental Protection Agency, Region I (sometimes complainant or EPA). The pleading alleged that Decorated Products, Inc. (respondent) violated certain provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, sometimes referred to as the Clean Water Act (Act). The violations charged in the complaint are set forth as three claims. Claim I alleges that on numerous occasions, since February 15, 1986, respondent introduced into the Westfield publicly owned treatment works (POTW) wastewater discharges from metal finishing operations at its Westfield, Massachusetts facility which were in excess of the maximum daily and monthly average concentrations prescribed in the Metal Finishing Point Source Category pretreatment standards (metal finishing standards). These are contained in 40 C.F.R. § 433.15 for chromium, copper, nickel,

zinc and cyanide; and that such discharges constituted violations under section 307(d) of the Act, 33 U.S.C. § 1317(d).[1]

Claim II alleges that beginning with its January 23, 1985 local discharge permit issued by the City of Westfield pursuant to its EPA approved Industrial Pretreatment Program, and continuing with yearly issued permits, on various occasions, the respondent engaged in violations. It is alleged that respondent discharged wastewater into the Westfield POTW which exceeded the discharge limits in effect for chromium, copper, nickel, zinc, and cyanide; and that such discharges constituted violations under section 307(d) of the Act, 33 U.S.C. § 1317(d).

Claim III alleges that on June 3, 1991, EPA sent respondent, by certified mail, a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, which required the submission of certain information, including the results of weekly analytical testing of its effluent, by a date certain. The respondent's first submission pursuant to the section 308 request was late, and it did not include the results of effluent sampling, and also failed to include complete and accurate answers to all questions posed in the information request. From the date of its first submission under the information request, to the filing of the complaint, respondent has failed to timely submit the results of weekly sampling events as specified in the information request. Complainant alleges that

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[1] This section provides as follows: "After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard."

respondent's failure to provide timely and complete responses to Request for Information constitutes a violation of section 308 of the Act.

For all claims alleged, complainant proposes a penalty of $50,000.00.

Respondent, appearing pro se, filed an answer to the complaint on December 23, 1991, admitting the violations. Pursuant to the February 20, 1992 Notice and Order of the undersigned Administrative Law Judge (ALJ), complainant submitted its Prehearing Exchange on April 2, 1992. Respondent submitted a one-page fax Prehearing Exchange on the same date, consisting of three paragraphs.

On June 3, 1992, an order to show cause was issued to the complainant which required that it demonstrate why a motion for an accelerated decision should not be sought, pursuant to 40 C.F.R. § 22.20(a). On June 19, 1992, the complainant filed a motion and supporting memorandum of law, pursuant to 40 C.F.R. § 22.20(a), for a partial accelerated decision on liability (motion) regarding all claims alleged in the complaint. The grounds for the motion are that no genuine issues of material fact exist with respect to the respondent's liability for any of the violations alleged in the complaint.[2]

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[2] 40 C.F.R. § 22.20(a) provides: "The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists, and a (continued...)

On June 18, 1992, respondent submitted a communication responsive to the ALJ's order of June 3, 1992.[3] On August 3, 1992, the complainant submitted a response to respondent's June 18, 1992 communication which reiterated the grounds for its motion. On August 27, 1992, there was issued an Order Granting Motion for Accelerated Decision on Question of Liability, which order directed complainant to submit a proposed draft of an accelerated decision for review, possible revision, and signature of the ALJ.

When a motion for summary determination is made and supported, a party opposing same may not rest upon mere allegation or denial, but must show, by affidavit or by other evidence subject to consideration by the ALJ, that there is a genuine issue of material fact for determination at the hearing.

In an answer and letter to the ALJ of June 18, 1992, respondent raises certain considerations. The thoughts expressed do not influence the issue of liability. However, they may be taken into consideration in determining the amount of any civil penalty assessed, but do not constitute a bar to liability. The record in this matter demonstrates clearly that there is no genuine issue of a material fact concerning liability. This is buttressed by the respondent admitting the allegations stated in the complaint. It is concluded that respondent has violated §§ 307(d)

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[2](...continued)
party is entitled to judgment as a matter of law, as to all or any part of the proceeding . . . ."

[3] The letter did not reflect that copies of the communication were served upon the Hearing Clerk or the complainant.

and 308 of the Act, 33 U.S.C. §§ 1317(d) and 1318, and the regulations promulgated under 40 C.F.R. Part 433.

ORDER

IT IS ORDERED that:

1. Complainant's motion for an accelerated decision concerning the issue of liability be **GRANTED**.

2. The parties engage in good faith settlement negotiations concerning the amount of penalty in this matter.

3. Complainant shall arrange for a telephone prehearing conference for the purpose of scheduling a hearing date if this matter is not settled by **February 15, 1993.**

Frank W. Vanderheyden

Frank W. Vanderheyden
Administrative Law Judge

Dated December 18, 1992

IN THE MATTER OF DECORATED PRODUCTS, INC., Respondent,
Docket No. CWA-2-I-92-1001

Certificate of Service

I certify that the foregoing Order, dated 12/18/92, was sent this day in the following manner to the below addressees:

Original by Regular Mail to:

Ms. Linda D'Amore
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
J. F. Kennedy Federal Building
Boston, MA 02203-2211

Copy by Regular Mail to:

Attorney for Complainant:

Tanya J. Nunn, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency, Region I
Mail Code RCW
J. F. Kennedy Federal Building
Boston, MA 02203-2211

Respondent:

Mr. Jeffrey W. Glaze
General Manager
Decorated Products, Inc.
One Arch Road, Box 580
Westfield, MA 01086

Marion I. Walzel
Marion I. Walzel
Legal Staff Assistant

Dated: Dec. 21, 1992