

4/23/94

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
Microdot, Inc.,)	Docket No. RCRA-09-93-0002
)	
Respondent)	

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

This proceeding was initiated by the filing of a Complaint by the Director of the Hazardous Waste Management Division, U.S. Environmental Protection Agency, Region IX ("Complainant") on March 23, 1993. The Complaint charges that Microdot, Inc., ("Respondent") is in violation of Sections 3002 and 3004 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6922 and 6924, and the regulations adopted pursuant thereto.

On November 24, 1993, the undersigned issued an order granting Complainant's motion for accelerated decision against Respondent on the issue of liability. That order is now final and no longer subject to judicial review.

By motion filed January 5, 1994, Complainant now seeks the issuance of a default order requiring Respondent to pay a civil penalty of \$93,000 and to undertake certain specified compliance tasks. This order grants that motion.

The chronology of this case follows:

1. On March 23, 1993, Complainant issued to Respondent and filed with the Regional Hearing Clerk a Complaint which alleged that Respondent:
 - a. failed to ship hazardous waste to a Treatment, Storage, or Disposal Facility ("TSD") which was permitted to handle hazardous waste, (manifest number 87439049) in violation of 40 C.F.R. § 262.20(b);
 - b. failed to ship hazardous waste to a TSD which was permitted to handle hazardous waste, (manifest number 88326504) in violation of 40 C.F.R. § 262.20(b);
 - c. failed to ship hazardous waste to a TSD which was permitted to handle hazardous waste, (manifest number 87274871) in violation of 40 C.F.R. § 262.20(b);

action against Respondent was not subject to the stay provision of the U.S. Bankruptcy Code.

11. On November 24, 1993 the undersigned issued an Order Granting Motion for an Accelerated Decision on Respondent's Liability.

12. On December 1, 1993 Complainant submitted its Prehearing Exchange in accordance with the June 16, 1993 Order in this regard. To date, no Prehearing exchange has been submitted by Respondent.

13. On January 5, 1994, Complainant submitted the instant motion for default judgment. Respondent has not answered this motion.

EPA's consolidated rules (40 C.F.R. § 22.17(a)), applying to motions for default, provides in pertinent part:

§ 22.17 Default order.

(a) Default. A party may be found to be in default . . . (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer . . . Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default.

As described above, Complainant has moved for a default, in the manner required by Section 22.17(a), Respondent, has filed nothing since its November 9, 1993 letter. Consequently, Respondent is declared to be in default. Accordingly, the \$93,000 penalty proposed in the complaint is due and payable by Respondent without further proceedings. The explanation and derivation of the \$93,000 penalty is contained in Complainant's Memorandum of Points and Authorities which accompanied its motion for default judgment. That explanation and derivation of the penalty assessment is adopted and incorporated herein by reference.

In its motion for default order, Complainant has requested that Respondent be ordered to complete the following compliance tasks:

1. Cease shipping waste to Mountaineer and Desert Oil and otherwise comply with all terms of Subtitle C of RCRA, 42 U.S.C. §§ 6921 to 6939, and associated regulations;

2. Submit a list of all hazardous wastes generated at Respondent's facility, clearly indicating those wastes that are restricted from land disposal, a copy of the waste analyses data, supporting data, or other documentation used to make the determination for each waste, and an example of the notification and/or certification that will accompany each waste shipment;

3. Submit a written plan to ensure that the violations above are not repeated; and

4. Submit a plan to minimize the volume or toxicity of the hazardous waste generated at the facility.

The above listed compliance tasks, according to Complainant, are minor in scope and are designed to ensure that the violations asserted in the complaint are not repeated. Accordingly, it is this Court's determination that Respondent shall complete the above listed compliance tasks within sixty (60) days from the date of this Order.

Default Order

WHEREFORE, pursuant to the authority of the Resources Conservation and Recovery Act and the Consolidated Rules of Practice, 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default Order is GRANTED. Respondent is ORDERED to comply with all the terms of this Default Order.

Respondent is hereby assessed a civil penalty in the amount of NINETY THREE THOUSAND DOLLARS (\$93,000) and ordered to pay the civil penalty as directed in this default order.

Respondent shall pay the civil penalty in the amount of NINETY THREE THOUSAND DOLLARS (\$93,000) by form 2570-6, Funds Transfer Deposit, through the Federal Reserve Communication System to the account of the U.S. Treasury at the Federal Reserve Bank of New York within sixty (60) days after this default order. At the time payment is made, copies of form 2570-6 shall be sent to:

Regional Hearing Clerk
U.S. EPA - Region IX
75 Hawthorne Street (RC-1)
San Francisco, CA 94105

and


Mark Klaiman, Esq.
Assistant Regional Counsel
U.S. EPA - Region IX
75 Hawthorne Street (RC-3-1)
San Francisco, CA 94501

Within sixty (60) days of this default order, Respondent shall complete the compliance tasks specified herein. All correspondence to Complainant concerning compliance with the above requirements shall be sent to:

Greg Czajkowski, Chief
Compliance Section, H-4-3
Hazardous Waste Management Division
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Pursuant to 40 C.F.R. §22.27(c), this default order shall become final within forty five (45) days after service upon the parties unless it is appealed to the Environmental Appeals Board or the Environmental Appeals Board elects, sua sponte, to review it.

IT IS SO ORDERED



Jon G. Lotis
Acting Chief Administrative Law Judge

Dated: June 23, 1994
Washington, D.C.

IN THE MATTER OF MICRODOT, INC., Respondent
Docket No. RCRA-09-93-0002

CERTIFICATE OF SERVICE

I certify that the foregoing Order Granting Motion For Default Judgment, dated June 23, 1994, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:


Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

**Copy by Certified Mail, Return
Receipt Requested to:**

Counsel for Complainant: Mark Klaiman, Esq.
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Counsel for Respondent: Thomas W. Diamond, Esq.
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Stacy Hyde-Eason
Legal Technician, Office of
Administrative Law Judges
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Dated: June 23, 1994
Washington, D.C.