4/26/94

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
LEAL PETROLEUM CORPORATION	)	EPCRA Docket No. VI-512S
	)	
Respondent	)	

ORDER DISMISSING COMPLAINT

This is a proceeding under the Emergency Planning and Community Right-to-Know Act ("EPCRA"), section 325(c), 42 U.S.C. 11045(c), for the assessment of civil penalties for alleged violation of the Act. The Complaint, issued on April 29, 1991, alleges that Respondent, Leal Petroleum Corporation, Nixon, Texas, failed to report a toxic chemical processed by it in the calendar years 1987 and 1988. A penalty of $17,000, was requested. Service of the complaint was made upon Francis G. Hester, Registered Agent, in San Antonio, Texas.

A letter dated June 4, 1991, in response to the Complaint, was received from one Alvaro R. Leal, who signed as "CEO LPC." Mr. Leal did not deny that Respondent had not reported the processing of a toxic chemical for 1987 and 1988, as alleged in the complaint. He explained, however, that Respondent had understood that inspections of Respondent by the Texas Air and Water Board were also for the U.S. EPA, and Respondent did not know about its obligation to Report to the EPA until it was told by an EPA inspector in 1990, that a Form R had to be submitted. The letter had no corporate

letterhead, and the address shown was an address in San Antonio, Texas.

A letter dated June 3, 1991, in reference to the complaint was also received from Texas United Refining Corporation, Nixon, Texas. This letter was written by one F. G. Hester, as Executive Vice President of Texas United Refining Corporation. Mr. Hester stated that Texas United Refining Corporation had signed a contract with Leal Petroleum for the "lease purchase" of the facilities at Nixon. The letter referred to discussions the writer had with the EPA Region 6 about Texas United Refining not being liable under the complaint. It was also stated that a copy of the purchase contract was being sent to the EPA.

A second letter from Mr. Leal dated August 12, 1991, was also sent to the EPA. In this letter, Mr. Leal explained in greater detail why Respondent had acted in good faith and he objected to the imposition of a penalty. Mr. Leal also stated that Respondent no longer operated the refinery. No hearing was specifically requested.

The Region treated this second letter as an answer and, pursuant to 40 C.F.R. 22.21(a), forwarded the case to the Chief Administrative Law Judge for assignment of a presiding officer. Former Chief Judge Frazier assigned the case to himself and sent a letter to the parties dated October 24, 1991, requesting a report on the status of settlement, or, if the case could not be settled, the prehearing exchange of evidence and witnesses and other information requested by him by January 6, 1992.

On December 17, 1991, Complainant filed a motion to deem the allegations of the complaint admitted and for an accelerated decision in favor of Complainant. Service was made upon Respondent by certified mail directed to Respondent and its Registered Agent at their respective San Antonio addresses. This motion was followed by another motion on December 23, 1991, to postpone the prehearing exchange until the motion for an accelerated decision had been ruled upon. This motion was also made by certified mail directed to Respondent and its Registered Agent at their respective San Antonio addresses. The basis for this second motion was that Complainant had been unable to reach Respondent by telephone, the telephone number Complainant had for Respondent having been disconnected and there being no current listing for Respondent with Directory Assistance. Complainant also presented proof that Respondent could not effect service by certified mail.

Former Chief Judge Frazier by order dated February 25, 1992, reassigned the case to me. Having received no reply to complainant's motions, I sent a letter to the parties on May 14, 1992, pointing out that no service of the motion had been made upon Respondent at its Nixon, Texas, address, although there was evidence that Respondent or a successor may still be doing business there. I also requested further information about Complainant's efforts to serve the papers.

Complainant responded by a status report sent on May 28, 1992. Complainant reported that it had mailed the motion to various addresses, including the Nixon, Texas, address, and that I would be

advised as soon as Complainant received the return receipt cards or the returned packages.

No further word was heard either from Complainant or Respondent. Accordingly, on March 22, 1994, I issued an order directing Complaint to show cause why the case should not be dismissed without prejudice. The order was mailed to Respondent at all addresses shown for Respondent on the record including the Nixon address and a Houston, Texas, address.

On March 31, 1994, Complainant replied to the motion by stating that Respondent had acknowledged receipt on May 22, 1992, of the motion for an accelerated decision mailed to it at that time at its Nixon address. A copy of the return receipt signed by some person (signature illegible) as "agent" was enclosed.

In the meantime copies of my order of March 22, 1994, mailed to Respondent were returned. The envelope of the one mailed to the Nixon address bore the notation "out of business." The copy mailed to the Houston address bore the notation "undeliverable as addressed - forwarding order expired." [1]

It seems clear from the prior proceedings in this matter summarized above, that Respondent has either gone out of business or at least can no longer be found. The return receipt showing delivery of papers on May 22, 1992, is not proof to the contrary. There is no evidence that the person signing the receipt had authority to accept service for Respondent. Indeed, there is really

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[1] The copies mailed to Respondent at its San Antonio addresses were not returned, but prior efforts to serve Respondent at these addresses had proved fruitless.

no evidence that Respondent was doing business at the Nixon address in 1992, when the papers were delivered. Apparently, Region 6 has no information in its files indicating the contrary.[2]

There has not been shown to be to be any legal issue involved in this matter which requires consideration. Respondent does not appear to have questioned that it failed to report as alleged in the complaint. It would seem to be an unnecessary expenditure of time and money to proceed and determine a penalty and issue an order for the payment thereof upon a Respondent which is no longer in existence or which cannot be found. Instead, the better course of action appears to be to dismiss the complaint without prejudice, leaving it open for the EPA to proceed again when Respondent, or a successor which could be held be liable, is found.

Accordingly, the complaint in this matter is dismissed without prejudice.

Gerald Harwood
Gerald Harwood
Senior Administrative Law Judge

Dated: April 26, 1994

[2] It is recognized that under 40 C.F.R. 372.22 and 372.25, a report for any year is to be filed only if the facility meets certain criteria and only if a toxic chemical is processed in excess of a threshold quantity. Consequently, the absence of any reports by Respondent for years subsequent to 1988, would not necessarily be indicative of whether Respondent was still in business.

In the Matter of Leal Petroleum Corporation, Respondent
EPCRA Docket No. VI-512S

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Dismissing Complaint**, dated April 26, 1994, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA
1445 Ross Avenue
Dallas, TX 75202-2733

Copy by Regular Mail to:

Attorney for Complainant:

Jan Gerro, Esquire
Assistant Regional Counsel
U.S. EPA
1445 Ross Avenue
Dallas, TX 75202-2733

Attorney for Respondent:

Alvaro R. Leal, CEO
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San Antonio, TX 78201-9137

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Nixon, TX 78140

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Suite 175 W
San Antonio, TX 78213

Alvaro R. Leal, CEO
Leal Petroleum Corp.
16800 Imperial Valley Dr.
Houston, TX 77060

Maria Whiting
Maria Whiting
Legal Staff Assistant

Dated: April 26, 1994