

6-2200-8607-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Administrative
Penalty Order Issued to Spectrum
Siding Corporation and Steven
Kariniemi, Individually

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

A hearing in this matter commenced on March 22, 1994, in St. Paul, before Allan W. Klein, Administrative Law Judge. The hearing proceeded only briefly, was recessed, and resumed on March 31. The hearing concluded on March 31, at which time the record closed.

Appearing on behalf of the Staff of the Minnesota Pollution Control Agency was Keith Moheban, Assistant Attorney General, 520 Lafayette Road, Suite 200, St. Paul, Minnesota 55155-4199.

Appearing on behalf of Respondents Spectrum Siding Corporation and Steven Kariniemi, individually, was Steven Kariniemi, c/o Cedarlok, 62 Hamel Road, Hamel, Minnesota 55340.

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Keith Moheban, Assistant Attorney General, 520 Lafayette Road, Suite 200, St. Paul, Minnesota 55155-4199 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Should the Administrative Penalty Order, imposing a nonforgivable penalty of \$10,000 and a requirement for corrective action, be affirmed?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Prior Activities of Steve Kariniemi

1. On May 9, 1986, Laura Roberts, a Senior Environmentalist for the Hennepin County Department of Environment and Energy paid a site visit to

Preferred Paint, at 700 Hamel Road, in Hamel. Preferred Paint was a painting contractor, specializing in commercial buildings. Kariniemi was the primary person at the company. He had started it when he was 18 years old, and had operated it for 14 years. On May 14, she sent a letter to Steve Kariniemi at that address (Ex. 26) detailing a number of actions which he was to accomplish. Among them was labeling requirements for containers used for hazardous waste storage; compliance with Hennepin County licensing requirements; minimum standards for outdoor storage of hazardous waste, including shading from direct sunlight, storage on a curbed, impermeable surface; protection from inadvertent damage from vehicles and equipment; and a requirement that he clean up certain contaminated areas containing bluish-grey paint residues. Ex. 26.

2. On October 22, 1987, Roberts paid a site visit to Pro-Finish Corporation, located at 15300 - 28th Avenue North, in Plymouth. Pro-Finish was in the business of prepainting siding, before it was used on a house. The President of the firm was Steve Kariniemi. She determined that Pro-Finish was a small quantity generator of hazardous wastes, and directed them to take certain actions. Included in the actions were labeling of hazardous waste drums, and a requirement that they immediately ship waste accumulated for more than 180 days. Ex. 27. In a letter of October 28, she outlined these requirements. She received no reply, so on December 28, 1987, she sent a certified letter (Ex. 28) requiring Pro-Finish to respond to the original letter and update its licensing. Ex. 28. Again receiving no response, she visited Pro-Finish on February 9, 1988 to determine if any of the requirements had been met. They had not. Ex. 30.

3. On February 12, 1988, Roberts issued two Citations to Pro-Finish. The first was for a failure to label hazardous waste drums and the second was for an over-accumulation of hazardous waste. Ex. 30. On March 2, 1988, Kariniemi replied, indicating that Pro-Finish was generating approximately 50 gallons of hazardous waste per month, but that some of the drums currently at the Plymouth site had been moved from the Hamel site in July of 1987. Kariniemi indicated that Pro-Finish did not have the funds available to dispose of the waste properly, the cost of which had been estimated to be \$4,000 to \$5,000. He asked for an extension to April 29, 1988, to determine whether some of the waste could be used as solvents.

4. On June 16, 1988, Roberts went to the Plymouth Avenue location after having learned that Pro-Finish had moved from Plymouth to Buffalo. At the Plymouth location, Roberts observed 40 full 55-gallon drums, labeled "Hazardous Waste" and with "Flammable" stickers. She determined that the drums had been left behind by Pro-Finish when it moved to Buffalo. It was later determined

that these drums did, in fact, contain hazardous waste, but that was only after a landlord paid for an analysis in 1993. See, Finding 36.

5. On June 17, Roberts wrote to Steve Kariniemi at Route 6, Box 334, Buffalo, informing him of her observations from the prior day, and ordering him to prove to her how much of the paint and thinner in the 40 drums left at Plymouth "is reusable and therefore not hazardous waste". She further directed him to store, label and dispose of any identified hazardous waste in compliance with the rules. Roberts also ordered Pro-Finish to contact the Hennepin County Violations Bureau to deal with the outstanding Citation.

6. On July 15, 1988, Steve Kariniemi negotiated a plea agreement with Assistant County Attorney Joyce Miyamoto. It was agreed that Pro-Finish would plead guilty and pay a fine of \$150 for the failure to label, while the Citation for over-accumulation would be dismissed. That was based upon a representation by Kariniemi to Miyamoto that the MPCA and the Hennepin County Department of Environment and Energy agreed with his position that he generated no hazardous waste because the waste at issue is recycled and reused. On July 26, 1988, Miyamoto wrote to Kariniemi, indicating that when she attempted to verify his representations, Roberts informed her that Pro-Finish's letter did not meet the requirements of her administrative orders. For reasons unknown, the matter was ultimately resolved by the payment of the \$150 amount.

7. On July 15, 1988, Paul Kariniemi, Steve's brother, supplied Roberts with some background on the 40 drums at Plymouth. He indicated the 40 drums had been left in Plymouth because the trucking firm that moved the company to Buffalo was concerned about moving the drums legally. Kariniemi also supplied statements from Pro-Finish's suppliers stating that no toxic substance had been used in the products supplied to Pro-Finish, and that Pro-Finish did not add any toxic substances. Paul Kariniemi indicated that Pro-Finish would attend to the 40 drums. On July 19, Roberts replied to Kariniemi, indicating that he was still out of compliance with the Orders until better proof was provided.

8. On June 30, 1988, Mark Gerlach and Sherryl Livingston of the MPCA inspected the Pro-Finish site in Buffalo. In a letter dated August 4 to Paul Kariniemi, Gerlach discussed a number of possible compliance problems, most of which depended upon whether or not materials stored in Buffalo were hazardous waste or not. He ordered Pro-Finish to provide an independent laboratory analysis of certain stripping tank sludge. He indicated that certain other dirtied paint thinner would not be considered waste if it would be used for paint thinning or blending, but if it were not so used, then it must be manifested as a hazardous waste. Gerlach cautioned that any reusable dirtied paint thinner or leftover paint should be used in a reasonable time frame and not allowed to accumulate. Although Gerlach had left certain EPA forms with Pro-Finish when he had visited on June 30, he directed Pro-Finish not to send them in to the EPA until it was determined whether or not Pro-Finish was, in fact, a generator of hazardous waste. Finally, Gerlach discussed the 40 drums left behind at Plymouth, and indicated that drums which did not contain hazardous waste could be moved to Buffalo at any time, but that drums containing hazardous waste must be transported, manifested and disposed of pursuant to appropriate rules. He urged Kariniemi to respond within 30 days of the letter. Ex. 25.

9. On October 14, 1988, Steve Kariniemi submitted a EPA Notification of Hazardous Waste Activity form, identifying Pro-Finish (at Buffalo) as a

generator of less than 1,000 kg/mo. of wastes which were hazardous because they were ignitable. Ex. 6.

10. On November 14, 1988, Steve Kariniemi wrote to Mark Gerlach, indicating that 23 drums had been "regenerated" into usable paint but that 5 of them needed further regeneration before they could be used. He indicated that he expected 23 drums to be modified and usable by January 1. He indicated that Pro-Finish was "quite happy with our regeneration efforts to date", and invited Gerlach to visit the Buffalo site. Kariniemi estimated

that two to four drums would end up being of questionable use, but that he was going to research possibilities. Ex. B.

Spectrum Siding Corporation

11. On March 14, 1990, Steve Kariniemi submitted a EPA Notification of Hazardous Waste Activity form in the name of Spectrum Siding Corporation, Route 6, Box 334, in Buffalo. He identified himself as the contact person. He indicated that less than 1,000 kg/mo. of hazardous waste was involved, and that it was ignitable. Ex. 7.

12. On December 12, 1990, Mark Gerlach filled out a complaint report regarding Spectrum Siding at Buffalo. The report indicates that the company had changed its product from oil-based coating to latex coating, so it could not longer rework and reuse its old stockpile of leftover paint, solvents, etc., which Gerlach estimated to be between 40 and 50 drums. Secondly, Gerlach indicated that the company had contacted the Agency's Water Quality Division about disposing of certain wash waters and were told that the wash waters could not be disposed of in a septic system. Gerlach urged that the company be reinspected to ensure proper disposal of the hazardous waste drums, and to ensure that the wash waters were not going to septic systems. Ex. 2.

13. On June 28, 1991, Spectrum Siding was visited by MPCA Inspector Don Berger. He met Steve Kariniemi briefly at the front door (Kariniemi was going out to lunch), and Kariniemi introduced him to another employee, Ken Schwindel who would accompany Berger on the inspection. Schwindel confirmed that the company had switched from oil-based paints to water-based latex paints. The inspection revealed a pipe that carried wash water from the inside of the building through the north wall of the building, where it emptied onto the ground. The MSDS sheets for the water-based paint indicated that the paints were non-hazardous. Schwindel told Berger how the wash process worked, and Berger concluded it was likely that the wash water was not hazardous. However, he told Schwindel it had to be evaluated to be sure.

14. On the northwest side of the building, Berger observed many 55-gallon drums standing together, closely packed, out in the middle of an overgrown area. The drums were standing upright, in the direct sunlight, and directly on the soil. The drums were in roughly four rows of eight drums per row. Although Berger miscounted and thought there were 41 drums, he later agreed there were 30-35 at most. Five of the drums had been punctured by machinery at a level consistent with a forklift fork, and their contents had leaked onto the ground. Schwindel told Berger that the drums contained waste paint sludge and old solvent, which had come from a company called Pro-Finish. The drums had

initially been stored inside, but Kariniemi directed Schwindel to take them outside during the fall of 1990.

15. The temperature at the time of the inspection was approximately 89 degrees. One drum was "hissing" at the bunghole, releasing gas to the atmosphere.

16. The drums were stored with inadequate aisle space. Therefore, it was impossible to view the drums in the middle of the group. It was impossible therefore, to inspect them.

17. None of the drums were labeled with hazardous waste labels, although some had product labels on them. However, some of the product labels were obscured by paint which had dripped down the side of the drums. These drums and their setting, can be seen in Exhibits 4A-4F, which were photographs taken during the June 28, 1991 inspection.

18. The inspection also revealed two drums inside the building which were unlabeled, but which Schwindel indicated contained still usable oil-based paint. One was approximately 25% full, while the other was 50% full. There were also six drums which appeared to be full and were labeled as caustic soda. In a storeroom, Berger also noted a cardboard box of generic, preprinted "HAZARDOUS WASTE" labels, some of which had been filled in with the name "Pro-Finish".

19. Berger concluded his inspection by leaving Schwindel a variety of fact sheets for Schwindel to give to Kariniemi. Berger also asked Schwindel to have Kariniemi call him immediately on July 1 regarding the storage and disposal of the drums which were stored outside.

20. Berger completed an inspection checklist of his visit, indicating among other matters, that the company had over-accumulated waste on site, that it had improperly labeled the 41 [later determined to be 30-35] drums, that the drums were improperly stored, that aisle space was inadequate, that the labels and markings were not visible, that they were not stored above a curbed impermeable surface, and that as ignitable wastes, they were not shaded from direct sunlight. He also noted that there had been no arrangements made with local authorities for emergencies. Ex. 3.

21. On July 1, 1991, Berger called Kariniemi to ask him some questions about the inspection. Kariniemi told Berger that Safety-Kleen, a company known to Berger, had evaluated the drums of waste paint and solvent sludge and found them to be approximately 80% mineral spirits and 20% paint sludge. Kariniemi told Berger that Safety-Kleen had quoted a cost of between \$5,000 and \$6,000 for their disposal. Kariniemi denied knowing that any of the drums were punctured and leaking. Kariniemi explained that Pro-Finish was responsible for the waste, but that Pro-Finish no longer existed. Upon questioning, Kariniemi indicated that he was the manager and operator of Pro-Finish. Kariniemi indicated that Spectrum Siding did not have enough money to dispose of the drums at this time, but might have enough by the fall of 1991. Kariniemi also

if Berger was aware of any low interest, or no-interest loans that might be available to help Spectrum to get rid of the drums.

22. On July 11, 1991, Roger D. Bjork, manager of the Regulatory Compliance Section of the Hazardous Waste Division, sent a letter to Kariniemi at Spectrum Siding, indicating that the June 28, 1991 inspection revealed 41 [sic] drums stored outside, some of which had leaked and others which appeared to be under great pressure, and which the Agency viewed to be a serious situation that must be addressed immediately. Kariniemi was directed to move them to a secure area, properly label them, and then make arrangements to have them properly transported and disposed of. The letter closed with a

indication that Mr. Berger would be reinspecting shortly, and that if the tests had not been completed by the time of the reinspection, the State would take further action. This was received by Spectrum on July 12. Ex. 9.

23. On July 31, 1991, Berger and another Agency employee, Darryl Weakly, reinspected the Spectrum facility at Buffalo. All of the drums (there were 33 of them) had been moved inside the building and labeled. Steve Kariniemi told Berger that he was working with a Dave Little of Safety-Kleen, and that Kariniemi was waiting for an updated bid for disposal of the drums.

24. During the July 31 inspection, Berger and Weakly took pictures of the wash water discharge pipe which extended through the side of the building. A photograph (Ex. 11A) shows that the pipe is supported by a can, and that there is substantial paint residue on the ground around it.

25. The drums which had been moved indoors were stacked in a corner of the building, some of them only one layer high, others two layers high. Ex. 10 and 11.

26. On September 16, 1991, Berger contacted Safety-Kleen and inquired about Dave Little and the disposal bid. Berger was told that Little had dropped in to visit the facility in an attempt to generate some business for Safety-Kleen, but that no formal bid had been asked for or prepared. Little merely told Kariniemi what kind of services Safety-Kleen could provide. Safety-Kleen has not been involved in any formal evaluation or other services for any wastes at the Buffalo site. Ex. 37.

27. On October 4, 1991, Berger called Kariniemi and asked him if he had found the bid from Safety-Kleen. Kariniemi claimed to have located it earlier but could not find it just then. Kariniemi did not recall how much the bid was for, and said he would fax it to Berger when he found it again. Kariniemi reiterated that he could not afford to manage the waste at this time, and asserted he was not legally responsible for it, but that he would try to dispose of it properly when he could afford to do so. Ex. 12.

28. On December 17, 1991, the Agency sent a Notice of Violation to Steve Kariniemi at Spectrum Siding. The Notice enumerated 18 violations of Agency rules, plus violations of Minnesota Department of Transportation statutes and rules. The Notice set forth a list of requirements which the company had to meet, including proper storage of all drums containing hazardous waste, commencement of proper management of them, and discontinuance of the discharge of paint wash water to the ground outside the building. The company was also ordered to develop plans for managing its hazardous waste, and to secure a qualified consultant to prepare a work plan to investigate the extent and

nature of soil contamination at the site. The Notice closed with a statement that if the allegations were believed to be incorrect, a response should be provided within ten days. The Notice was received on December 18. Ex. 13.

29. On January 10, 1992, Berger called Kariniemi regarding the Notice Violation. Kariniemi said he had not studied it fully, but that he had questions about some of the alleged violations. He further indicated that he was too busy to talk to Berger at that time, but that they could talk later that week or the next week. Ex. 14.

30. On January 21, 1992, Kariniemi responded to the items listed in the Notice of Violation. His response was divided into two sections. One was from the standpoint of Pro-Finish Corporation, the other from the standpoint of Spectrum Siding Corporation. Basically, the response indicates that the drums have been moved inside, and were labeled as of July 31, 1991. Drums with holes punched in them had been repackaged. All drums were now being inspected weekly. Kariniemi, speaking for Pro-Finish, went on to indicate that all of Pro-Finish's assets were seized by a bank on February 9, 1989, and that Pro-Finish had no money to dispose of the waste. He asserted that Pro-Finish had gotten the waste reclassified as reusable solvent and had been blending it back into the painting operation prior to Pro-Finish's closing. He indicated that Kariniemi had lost everything but his personal belongings in the failure of Pro-Finish, and had substantial tax and bank liens against him, which had been classified as uncollectible. Kariniemi indicated that he had gotten a quote for the waste disposal around March of 1990 for approximately \$7,000 from an undisclosed waste disposal firm. He further indicated that he had asked Safety-Kleen for a quote but had never gotten a written one. On the day of this letter (January 21, 1992), Kariniemi again contacted Safety-Kleen for a quote. Kariniemi pled hardship for his inability to dispose of the waste and requested advice from the agency. Speaking on behalf of Spectrum Siding, Kariniemi identified himself as the emergency coordinator. He stated that Pro-Finish never generated hazardous waste at the Buffalo site (it had been brought from Plymouth). Kariniemi indicated that if the latex paint wasn't hazardous waste, he could not see how the wash water could be hazardous as it was 99 percent water. He indicates having contacted the Buffalo and Rockford Treatment Plant managers, one of which declined to accept the wash water, while the other requested a safety data sheet for review. Kariniemi indicated that when Pro-Finish moved from Plymouth, the trucker refused to haul the waste because of licensing. The waste was left there. The landlord said he was going to dispose of it and bill Pro-Finish for the expense, but when he found out what the cost would be, he called Pro-Finish and pleaded for Pro-Finish to take it. Kariniemi indicated that he (Kariniemi) then called the EPA, and was told that if it could be used to blend back into the painting process it would not be considered hazardous waste, and could be transported in Pro-Finish's truck. That was what happened: it was moved to Buffalo and used for blending prior to the process switching from oil-based to latex. Kariniemi indicated that his ability to properly manage the waste depended on funding from outside sources, which was not yet available. Ex. 16.

31. On February 4, 1992, Kariniemi called Berger, and indicated that he had located a laboratory analysis sheet in his files for the waste paint/solvent sludge which had been stored in the drums. The evaluation was from Ashland Chemical. Kariniemi said that he had contacted Safety-Kleen to ask if Safety-Kleen would accept the Ashland evaluation for purposes of

disposal, but was told that Safety-Kleen would not: that they wanted to do their own evaluation, at a substantial cost. Kariniemi indicated that he could not afford to dispose of the material. Berger responded that Kariniemi should send in a copy of the disposal bids and some proposal for the agency consider, such as, for example, shipping a few barrels each month over time. Kariniemi agreed to get something in the mail "soon". Ex. 17. Nothing was received.

32. During the spring and summer of 1992, Berger made a number of telephone inquiries regarding the status of the drums and Kariniemi's plans for disposal. Kariniemi consistently indicated that he had no money to pay for disposal.

33. On September 10, 1992, Berger re-inspected the Spectrum Siding facility at Buffalo. Kariniemi was the only person present, and he indicated that the plant had shut down, or was about to, and that the business was in process of being purchased by a company called Cedarlok. Kariniemi further indicated that the drums would not be shipped anywhere unless the State wanted to do it. He showed Berger where the drums were kept. They were stacked two high and two deep, with one stack being three deep. There were now 44 drums, but some were only partially full and were unlabeled. Two of the drums had covers, but they were not sealed because the lids not fit properly. Kariniemi said the additional drums contained wastes similar to the rest. They had been discovered among a pile of empty ones that had been stored in another area outside of the building. Kariniemi also indicated that Spectrum Siding was still discharging a small amount of wash water to the ground, but was still trying to work out an agreement with the Rockford Treatment Plant for service of it. Berger informed Kariniemi that the agency was in the process of drafting a Stipulation Agreement, and it was likely that Kariniemi would face a substantial fine. Kariniemi indicated that he didn't have the money to pay the fine or for proper management of the waste. Photographs were taken on that date as well. Ex. 18 and 19.

34. On October 27, 1992, the agency sent the proposed Stipulation Agreement to Kariniemi. The Agreement basically recites many of the facts discussed above, asserts 19 violations of statute or rule, sets forth a schedule of compliance and a proposed schedule of fines for failure to comply with the terms of the agreement. The agreement also provides for the payment of a \$47,980 civil penalty to be paid within 30 days after the effective date of the agreement. The Stipulation was received on October 28, 1992. It was never executed. Ex. 20.

35. Ultimately, the drums were removed from the Buffalo site by the landlord, Rocklin & Severson. One of the principals, a Dick Rocklin, had been in communication with Berger when Spectrum Siding got behind on its rent, because Rocklin was concerned that Spectrum would leave wastes at the site and the wastes would become Rocklin's responsibility. Spectrum Siding was behind in its rent, and was in the process of being evicted, when it left the premises but left the drums behind. Because Rocklin needed to sell or lease the premises again, he had to do something with the wastes. The agency assisted him in having it evaluated, manifesting it properly, and shipping it to Waste Research and Reclamation in Eau Claire, Wisconsin. Ex. 22.

36. On April 9, 1993, Waste Research and Reclamation in Eau Claire analyzed samples of various substances from the Buffalo site. All samples from the drums were determined to be hazardous waste. One sample contained petrodistillate, xylene, and naphtha. It had a flash point of only 81 degrees

Fahrenheit. A second sample contained xylene, petrodistillate, toluene and aliphatics. It had a flash point of less than 70 degrees Fahrenheit. The third sample contained xylene, toluene, aliphatics and MEK. It had a flash point of less than 70 degrees Fahrenheit. Another sample contains xylene and butanol. It had a flash point of 83 degrees Fahrenheit. Another sample had a flash point of 153 degrees, but a PH value of 9. Ex. 22.

37. A total of 29 drums were shipped from the Buffalo site to Eau Claire, Wisconsin on or about May 16, 1993. The total cost to Rocklin & Severson for the 29 drums was \$8,166.55. Ex. 24. This covered sampling, transportation

and disposal. Rockline & Severson is seeking reimbursement from Kariniemi and Spectrum Siding, but has not collected to date.

Procedural History of Administrative Penalty Order and Miscellaneous Matters

38. After the Agency and Kariniemi were unable to negotiate a satisfactory stipulation agreement, the Agency staff met in the forum process to determine the appropriate penalty. This occurred during December of 1993 after the landlord had paid to have the barrels tested, transported and disposed of properly. The factors considered by the forum process are outlined in Exhibit 23, and will not be discussed in detail, because it is specifically found that the proposed \$10,000 penalty and the proposed corrective action are both reasonable under the circumstances. Kariniemi and Spectrum Siding received an economic benefit of \$8,166.55 by failing to analyze, transport, and dispose of the drums in a timely fashion. Given the serious potential for harm and the serious deviation from compliance, as well as Kariniemi's knowledge of culpability, the Administrative Law Judge has no difficulty at all in determining that the \$10,000 fine (which is the maximum fine permissible under this program) is appropriate.

39. On January 25, 1994, an Administrative Penalty Order was issued to Spectrum Siding Corporation and Steven Kariniemi, individually. On January 27, 1994, Kariniemi responded with a Notice of Contest. On February 17, 1994, a Notice of and Order for Hearing was issued, setting the hearing for March 22, 1994.

Steve Kariniemi, Individually

40. At all times discussed above, Steve Kariniemi was the president and guiding force behind both Pro-Finish and Spectrum Siding. The record does not contain any suggestion that there was any other corporate officer or employee responsible for environmental compliance other than Steve Kariniemi. The vast bulk of the correspondence and telephone contacts with the Agency and the County have been with Steve Kariniemi.

41. At all times relevant hereto, Kariniemi was in a position to influence corporate activities of both Pro-Finish and Spectrum Siding. While he undoubtedly had numerous other responsibilities, environmental compliance was one of them. His inaction, or inadequate actions, directly led to the violations noted above.

42. Kariniemi is currently the president and sole officer of Cedarlok company which is very similar to Spectrum Siding and Pro-Finish. Cedarlok

prepaints siding material to provide a "maintenance-free cedar siding and trim package". Cedarlok has developed a fastening system that allows the siding to be installed without nails. The siding is pre-finished in various colors, which is accomplished by painting with latex paints.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Pollution Control Agency has jurisdiction of the subject matter of this hearing pursuant to Minn. Stat. § 116.072 (1992).

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled. The matter is, therefore, properly before the Administrative Law Judge pursuant to Minn. Stat. § 14.50 (1992).

3. The Agency has the burden of establishing the facts of the violations alleged by a preponderance of the evidence. Minn. Rule pt. 1400.8608.

4. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp. item A, ¶ 4, which incorporates the provisions of Minn. Rule pt. 7045.0292, sub. 1, item E, in that they failed to protect drums in the outside storage area in Buffalo from unauthorized access and inadvertent damage from vehicles or equipment.

5. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp. item A, ¶ 4, which references Minn. Rule pt. 7045.0292, subp. 4, item B, ¶ 1, in that they failed to label 33 drums containing hazardous waste with the words "Hazardous Waste" and a clear description of the contents of the container. Additional drums, discovered during the September 10, 1992 reinspection, were similarly not labeled properly.

6. The Company and Kariniemi have violated Minn. Rule pt. 7045.0219, subp. 5, item A, ¶ 4, which references Minn. Rule pt. 7045.0292, subp. 1, item C, in that they failed to include a start date on the 33 drums of hazardous waste, and additional drums discovered during the September 10, 1992 reinspection.

7. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp. item A, ¶ 4, which references Minn. Rule pt. 7045.0292, subp. 1, item F, in that it failed to provide a curbed, impermeable surface upon which to place liquid hazardous wastes that were being stored outdoors.

8. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp. item A, ¶ 4, which references Minn. Rule pt. 7045.0292, subp. 1, item G, by storing open containers of ignitable paint and solvent waste in places which are not shaded from direct sunlight.

9. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp. item A, ¶ 7, which references Minn. Rule pt. 7045.0626, subp. 5 by failing to

inspect its hazardous waste storage areas on a weekly basis for possible leakage, damage or degradation of containers, or other factors to impede proper management.

10. The Company and Kariniemei violated Minn. Rule pt. 7045.0219, subp. 3, item C, which references Minn. Rule pt. 7045.0292, subp. 3 by failing to request an extension for accumulation beyond the 90-day storage limit, by failing to complete the Agency's permitting procedures applicable to companies accumulating beyond 90 days, and operating a storage facility, all in connection with the 33 drums.

11. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp item A, ¶ 6, which references Minn. Rule pt. 7045.0566 because they stored drums of hazardous waste with inadequate aisle space.

12. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp item B, ¶ 4 by failing to ensure and document that all employees are familiar with proper waste handling and emergency procedures relevant to their responsibilities.

13. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp item B, ¶ 5 by failing to designate an emergency coordinator for the site.

14. The Company and Kariniemi violated Minn. Rule pt. 7045.0219, subp item B, ¶ 3 by failing to post and name and telephone number of the emergency coordinator and the locations of fire extinguishers and spill control materials next to a telephone on the premises.

15. The Company and Kariniemi violated Minn. Rule pt. 7060.0600, subp by discharging latex paint wash water through a pipe in the wall at the Buffalo site directly to the ground outside the building without the approval from the Agency or the Wright County Office of Waste Management.

16. The Company and Kariniemi violated Minn. Rule pt. 7045.0275, subp by failing to immediately notify the Agency that solvent had been released to the environment at the Buffalo site by virtue of the punctured drums.

17. The Company and Kariniemi violated Minn. Rule pt. 7045.0275, subp by failing to recover solvents that were released to the environment as rapidly and as thoroughly as possible.

18. The Company and Kariniemi violated Minn. Rule pt. 7045.0208, subp item B by abandoning drums of hazardous waste at its former business location in Buffalo during the summer of 1993.

19. The Company and Kariniemi violated Minn. Rule pt. 7045.0220 by failing to accurately disclose its hazardous waste activity at the Buffalo site, and by failing to document a management plan for the painting wash water waste.

Based upon the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. That the \$10,000 nonforgivable penalty assessed against Spectrum Siding Corporation and Steven Kariniemi, Individually, in the Administrative Penalty Order dated January 25, 1994, be AFFIRMED.

2. That the corrective action requirement set forth in that Order be AFFIRMED.

Dated this 2nd day of May, 1994.

s/ Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded.

MEMORANDUM

The gist of Kariniemi's defense to the charges was that he was confused and uncertain as to whether the wastes in the drums were hazardous wastes or not. He knew that if he were going to reuse the wastes (by blending them in paint, for example, a process he called "regeneration"), then they would not need to be managed as hazardous wastes. For a period of time back in 1988, there were efforts to recycle the wastes. Exhibit B. But by December of 1991, the process had switched from oil-based paints to latex paints. Ex. 2. The wastes were not reusable in a latex-based process. Once the switch occurred, Kariniemi had no basis for claiming the wastes to be reusable. At that point they should have been managed as hazardous wastes.

The Administrative Law Judge notes that the events constituting the violations occurred at various times during 1991, 1992, and 1993. During that time, the Agency amended its hazardous waste rules. The amendments were published in the State Register on March 23, 1992. The Administrative Law Judge notes that while the substance of the rules was, in each case, continuous from the 1991 version into the new 1992 version, there were numbering changes which do obscure the location of the rules which were violated.

The finding of individual violations and individual liability on the part of Kariniemi, individually, is based upon the factors set forth in a similar APO case, In the Matter of Dougherty, 482 N.W.2d 485 (Minn. App. 1992), reversed. That case involved a company which had, at its peak, many employees. Nonetheless, the court concluded that Dougherty, individually, was liable under the "responsible corporate officer" doctrine. The court concluded, however, that there was insufficient evidence for personal liability under the "personal participation" doctrine. In the instant case, however, the facts are different from Dougherty in that the business operations, both at Pro-Finish and at Spectrum Siding, were much smaller in terms of the number of other employees. When it came to management decisions, particularly at Spectrum Siding, Steve Kariniemi ran a one-man show. He decided to bring the wastes from Pro-Finish and store them at Buffalo, he decided to move them from inside the building to the outdoor storage area, and he made all of the decisions with regard to

hazardous waste management of the drums and the latex wash water. Based upon the responsible corporate officer doctrine, as set forth in Dougherty, as well as the personal participation theory of Morgan v. Eaton's Dude Ranch, 239 N.W.2d 761 (Minn. 1976) and United States v. Conservation Chemical Co., 628 F. Supp. 391 (W.D. Mo. 1985), it is appropriate that he be personally responsible for the penalties.

A.W.K.