

Commissioner, Indiana Department of Environmental Management
November 6, 1996 Commissioner's Order
MEADOWS METAL PRODUCTS, INC.
1997 OEA 030, OEA CAUSE NO.: 96-W-E-1663

Official Short Cite Name:	Meadows Metal Products, 1997 OEA 030
OEA Cause No.:	96-W-E-1663
Topics/Keywords:	motion for summary judgment 11 USCA § 362(b)(4) 11 USCA § 362(b)(5) Bankruptcy staying civil penalty
Presiding ELJ:	Lori Kyle Endris
Party Representatives:	Scott R. Storms, Esq. for IDEM Donald S. Edwards, Esq. for Respondent
Order Issued:	8-Aug-97
Index Category:	Enforcement
Further Case Activity:	

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AUG 08 1997



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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Chief Administrative Law Judge

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STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)

COMMISSIONER, INDIANA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT)

CAUSE NO. 96-W-E-1663

Complainant,)

V.)

MEADOWS METAL PRODUCTS, INC.)

Respondent.)

**FINAL ORDER GRANTING
IDEM'S MOTION FOR SUMMARY JUDGMENT**

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This constitutes notice that on November 6, 1996, the Commissioner of the Indiana Department of Environmental Management issued a Commissioner's Order. On November 26, 1996, Meadows Metal Products, Inc. (Meadows Metal), by counsel, filed a Request for Review of Order. Thereafter, on April 7, 1997, the Environmental Law Judge ordered all dispositional

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motions to be filed on or before May 15, 1997, all responses to be filed on or before June 15, 1997, and all replies to be filed on or before June 30, 1997. On May 13, 1997, the IDEM, by counsel, filed a Motion for Summary Judgment. On May 15, 1997, Meadows Metal, by counsel, filed a Suggestion of Bankruptcy. On June 2, 1997, the IDEM, by counsel, filed a Response to Respondent's Suggestion of Bankruptcy. To date, Meadows Metal has neither filed dispositional motions nor responses to the IDEM's Motion for Summary Judgment.

The Environmental Law Judge considered the Motion, the Suggestion, and the Response, and hereby finds the following:

Findings of Fact and Conclusions of Law:

1. The Office of Environmental Adjudication has jurisdiction over decisions of the Commissioner of the IDEM and the parties to this controversy pursuant to Ind.Code §4-21.5-7.
2. This is a Final Order issued pursuant to Ind.Code §4-21.5-3-27. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.
3. Ind.Code §4-21.5-3-23(b) provides in pertinent part that "[t]he judgment [on a motion for summary judgment] shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law."

The Indiana Supreme Court has held that "[a] summary judgment is proper only where there is no genuine issue about any material fact and the moving party is entitled to judgment as a matter of law. [citations omitted] Any doubt about the existence of a factual issue should be resolved against the movant, with all properly asserted facts and reasonable inferences construed in favor of the nonmovant." Schrader v. Eli Lilly and Co., 639 N.E.2d. 258, 261 (Ind. 1994).

4. The IDEM issued a Notice and Order of the Commissioner (CO) to Meadows Metal on November 6, 1996. Meadows Metal received the CO on November 9, 1996 and submitted an appeal to the OEA on November 26, 1996.
5. On May 8, 1997, the IDEM submitted a Notice of Filing to the OEA and advised that the IDEM served a Request for Admissions on the Respondent on April 1, 1997, and that Meadows Metal failed to respond to the request by the May 1, 1997 due date. Pursuant to Trial Rule 36 of the Indiana Rules of Trial Procedure, the matters set forth in a request for admissions are deemed admitted by operation of law if the party to whom the request is made does not respond within the designated time period. Ind.R.Tr.Proc. 36(a); *see also*, Pathman Const. Co., ETC. V. Drum-Co. Engin., 402 N.E.2d 1,5 (Ind.App. 1980).

6. As the IDEM's Request for Admissions have been deemed admitted by operation of law, and Meadows Metal has failed to respond to the IDEM's Motion for Summary Judgment, there is no genuine issue of material fact regarding any matter contained in the CO issued by the commissioner of IDEM on November 6, 1996.

7. On May 15, 1997, Counsel for Meadows Metal entered his appearance "for the limited purpose of providing notice to the Indiana Office of Environmental Adjudication that the respondent filed a chapter 11 proceeding on February 28, 1997 which is now [pending in the U.S. Bankruptcy Court." Meadows Metal's Suggestion of Bankruptcy motion accompanied the appearance.

8. Meadows Metal contends that the IDEM is a scheduled creditor and "[t]hat all actions taken by the Indiana Department of Environmental Management in this cause since February 28, 1997, without prior approval of the bankruptcy court are VOID as a matter of law...."

11 USCA § 362(b)(4) provides:

The filing of a petition under section 301, 302, or 303 of this title, or any application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay---

...

(4) Under subsection (a)(1) of this section, of the commencement or continuation or an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power....

The House Report provides insight to and clarifies the meaning of 11 USCA § 362(b)(4):

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.

H.R. Rep. No. 95-595, at 343 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6299.

Thus, the automatic stay provisions as outlined in 11 USCA § 362(b)(4) do not operate to stay this Cause, 96-W-E-1663.

9. With respect to the determination of the amount of civil penalty, 11 USCA § 362(b)(5)

provides:

(5) Under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

The House Report likewise provides insight to and clarifies the meaning of 11 USCA § 362(b)(5):

Paragraph (5) makes clear that the exception extends to permit an injunction and enforcement of an injunction, and to permit the entry of a money judgement, but does not extend to permit enforcement of a money judgement.

H.R. Rep. No. 95-595, at 343 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6299. The United States Bankruptcy Court has provided further clarification with respect to section 362(b)(5). In In Re Colon¹, 102 B.R. 421, 427 (Bankr. E.D. PA 1989), the Court discussed the meaning of "money judgment" involving governmental creditors:

Section 362(b), as a matter of important congressional policy, permits a governmental agency to enforce its health, safety and police powers by obtaining an injunction, declaratory relief and even fines and monetary damages. However, as noted in subsection 362(b)(5), the enforcement, as opposed to the entry, of the fine or other monetary damage is prohibited by the automatic stay. (citations omitted).

Thus, the IDEM may enforce the Order portion of its CO; however, it may not enforce the civil penalty or the additional penalties contained within the CO. Id. at 428 *citing Illinois v. Electrical Utilities*, 41 B.R. 874, 877 (E.D.Ill.1984)(Congress allows governmental units to get money judgments in pursuit of their police power, but forces them to wait in line like all other creditors to get the judgment enforced).

Final Order

¹*See also, In Re Lenz Oil Service, Inc.*, 65 B.R. 292, 294 (Bankr. N.D. IL, E.D. 1986), where the Court held, "[n]ot every order which requires the expenditure of money, is a 'money judgment,' ...If courts were to find that any order which required the expenditure of money is a 'money judgment' as per § 362(b)(5) 'then the exception to § 362 for government police action ...would be narrowed into virtual nonexistence....[A]lmost everything costs something. An injunction which does not compel some expenditure or loss of monies may often be an effective nullity."

The IDEM's Motion for Summary Judgment is hereby GRANTED, and the Commissioner's Order issued November 6, 1996 is hereby UPHeld.

You are further notified that pursuant to the provisions of P.L §41-1995, amending Ind.Code §4-21.5-7, which became effective July 1, 1995, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to judicial review consistent with the applicable provisions of Ind.Code §4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 8th day of August, 1997.

Lori Kyle Endris
Environmental Law Judge

cc: Matthew C. Reuff, Assistant Commissioner
Office of Water Management

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