

COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
NO CASE NUMBER OR OTHER IDENTIFIER LISTED  
NIMET INDUSTRIES, INC., PERMIT H-11918  
1996 OEA 017, OEA CAUSE NO.: 95-S-J-1374

<b>Official Short Cite Name:</b>	Nimet Industries, 1996 OEA 017
<b>OEA Cause No.:</b>	95-S-J-1374
<b>Topics/Keywords:</b>	summary judgment 329 IAC 3.1-7-11 329 IAC 3.1-7-11 329 IAC 3.1-6-1 329 IAC 3.1-1-7(a) IC 13-7-11-2(b) IC 13-7-8.5-7 40 CFR 261.31(a) 40 CFR 262.11 40 CFR 265.17(a) methyl ethyl ketone (MEK) hazardous waste manifest hazardous waste label hazardous waste determination spent wipe
<b>Presiding ELJ:</b>	Wayne E. Penrod
<b>Party Representatives:</b>	Elizabeth A. Zlatos, Esq. for IDeM Guinn P. Doyle, Esq. for Respondent
<b>Order Issued:</b>	13-Aug-96
<b>Index Category:</b>	hazardous waste - enforcement
<b>Further Case Activity:</b>	

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AUG 13 1996



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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Chief Administrative Law Judge

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STATE OF INDIANA )
) SS:
COUNTY OF MARION )

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF )
)
COMMISSIONER OF THE DEPARTMENT )
OF ENVIRONMENTAL MANAGEMENT )
Complainant, )
vs. )
NIMET INDUSTRIES, INC. )
Respondent. )

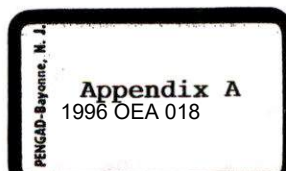
CAUSE NO. 95-S-J-1374

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

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On December 19, 1995, Respondent Nimet Industries, Inc. (Nimet), by counsel, filed a



Motion for Summary Judgment. On December 20, 1995, Complainant Commissioner of the Department of Environmental Management (IDEM), by counsel, filed a Motion for Summary Judgment. Thereafter, on January 12, 1996, Nimet, by counsel, filed a Brief in Opposition to the Commissioner of the Indiana Department of Environmental Management's Motion for Summary Judgment. On January 17, 1996, IDEM, by counsel, filed a Response to Respondent's Motion for Summary Judgment.

The Administrative Law Judge having considered the parties respective Motions for Summary Judgment, their Memorandums and Evidence in support thereof, now makes the following Findings of Fact, Conclusions of Law and Order:

#### FINDINGS OF FACT

1. On April 7, 1994 a representative of the Indiana Department of Environmental Management ("IDEM") conducted an inspection at Nimet Industries, Inc.'s ("Nimet") place of business located at 2420 North Foundation Drive, South Bend, Indiana.
2. IDEM's inspection found that Nimet:
  - (i) was managing industrial wipers or wipes ("wipes") used with methyl ethyl ketone to clean body oil from aluminum parts as solid waste rather than a hazardous waste as set forth in the Order, Paragraph 4(a)(b)(c)(d) and (e);
  - (ii) had not filled out Indiana Hazardous Waste Manifest INA 0499390 as required by 329 I.A.C. §3.1-7-11, as set forth in the Order, Paragraph 4(f);

(iii) had not labeled a drum of nitric acid solution with the words "hazardous waste" and an accumulation date as set forth in the Order, Paragraph 4(g);

(iv) had not labeled a 5-gallon bucket of methyl ethyl ketone with the words "hazardous waste" or some other identifying descriptor, as set forth in the Order, Paragraph 4(h); and

(v) had not posted a "No Smoking" sign in its less than ninety day hazardous waste accumulation area as set forth in the Order, Paragraph 4(i).

3. Based on the results of the inspection, the IDEM issued a Notice of Violation to Nimet dated August 29, 1994. The parties were unable to negotiate a settlement of the matter and the Commissioner of the IDEM issued an Order ("Order") to Nimet dated August 31, 1995.

4. Nimet timely filed a Petition for Review of the Order on September 21, 1995.

5. Nimet uses industrial wipes dampened with methyl ethyl ketone ("MEK") to clean body oils from aluminum parts prior to coating. Once a Nimet employee determined that the wipe collected too much body oil to be effective at removing body oils from parts, the wipe was discarded. The discarded wipes contain body oils and residual amounts of MEK.

6. Nimet concluded, pursuant to 40 C.F.R. 262.11 (1992), that the discarded wipes were not a hazardous waste and did not manage or dispose of them as a hazardous waste.

7. The Commissioner contends that the residual MEK contained in the wipes is a spent non-

halogenated solvent identified by hazardous waste code F005 as found in 40 C.F.R. 261.31(a) as incorporated by reference by 329 I.A.C 3.1-6-1.

8. The residual MEK on Nimet's discarded wipes is "spent" because its intended use as a cleaner has ceased and the spent MEK is accumulated for disposal.

9. The fact that the spent MEK is contained in Nimet's discarded wipes does not alter the nature or constituents of the MEK.

10. Nimet completed Indiana Hazardous Waste Manifest INA 0499390. In completing the manifest, Nimet placed more than one Environmental Protection Agency ("EPA") hazardous waste code in the box on the manifest designated for hazardous waste codes and did not place a hazardous waste handling code in the box on the manifest designated for handling codes as required by 329 I.A.C. 3.1-7-11.

11. A copy of Indiana Hazardous Waste Manifest INA 0499390 was submitted to the IDEM within five business days of February 25, 1991 as required by I.C. 13-7-8.5-7.

12. PL 82-1994, §31 "applies only to a department enforcement action that has as the enforcement action's basis an event or the last of a series of events that the department discovers before July 1, 1994." Subsection (c) of PL 82-1994, §31 states that "[n]otwithstanding IC 13-7-5.5,...a department enforcement action must be commenced by issuing a notice of violation under

IC 13-7-11-2(b) before July 1, 1997."

13. Nimet uses a nitric acid solution to strip nickel from nickel-plated parts. The nitric acid solution is used more than once to remove nickel from nickel-plated parts.
14. A drum of nitric acid solution was held in an area of Nimet's plant designated as a hazardous waste satellite accumulation area.
15. Nimet did not have a "no smoking" sign posted in its less-than-ninety day accumulation area at the time of IDEM's April 4, 1994 inspection.
16. After examination of the opposing affidavits and the inspection report it is unclear whether Nimet and IDEM are referring to the same drum of nitric acid solution and whether the nitric acid contained in such drum was usable or unusable.
17. Nimet uses MEK to strip parts that have been masked with paint.
18. Nimet uses a small, on-site, still to distill the MEK used for paint removal.
19. A 5-gallon bucket of MEK was held in the MEK room at Nimet's facility.
20. After examining the opposing affidavits and the inspection report it is unclear whether the 5-gallon bucket of MEK was "spent" at the time of the April 7, 1994 inspection.

21. Indiana's hazardous waste regulations, applicable to generators storing waste on-site for less than ninety (90) days, do not incorporate 40 C.F.R. § 265.17(a) (1992).

#### CONCLUSIONS OF LAW

1. The Commissioner of IDEM has jurisdiction over Nimet and the subject matter of this action.
2. Pursuant to I.C. 4-21.5-7-3, the Indiana Office of Environmental Adjudication has jurisdiction to hear this matter.
3. Pursuant to I.C. 4-21.5-3-23(b), summary judgment may be rendered immediately if the pleadings, depositions, answers to interrogatories and admissions on file, together with 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 judgment as a matter of law.
4. At the time of the Nimet inspection on April 7, 1994, 329 IAC 3.1-1-7(a) incorporated by reference the 1991 version of the Code of Federal Regulations. It is this version of the Code of Federal Regulations that applies in this case.
5. The residual MEK contained in Nimet's discarded wipes is a spent non-halogenated solvent as described by the F005 listing found at 40 C.F.R. §261.31(a).

6. The residual MEK contained in Nimet's discarded wipes is a listed hazardous waste and must be managed and disposed of in accordance with Indiana's hazardous waste regulations.
7. Nimet did not make a proper hazardous waste determination under 329 I.A.C. 3.1-7-1, which incorporates by reference 40 C.F.R. § 262.11.
8. The statute of limitation contained in I.C. 13-7-5.5-3 does not apply because the discrepancy in Indiana Hazardous Waste Manifest INA 0499390 was discovered by an IDEM representative before July 1, 1994.
9. Nimet is not required to post a "No Smoking" sign in its less than 90 day hazardous waste accumulation area.
10. A genuine issue of material fact exists as to whether the drum of nitric acid solution referred to in the Order of the Commissioner was a D002 hazardous waste.
11. A genuine issue of material fact exists as to whether the 5-gallon bucket of MEK referred to in the Order of the Commissioner was an F005 hazardous waste.



## ORDER

### IT IS THEREFORE ORDERED:

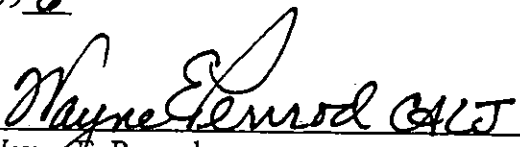
1. That partial summary judgment is hereby GRANTED IDEM on the issues raised by the Order of the Commissioner, Paragraph 4(a)(b)(c)(d)and (e).
2. That partial summary judgment is hereby GRANTED in favor of IDEM on the issue raised by the Order of the Commissioner, Paragraph 4(f).
3. That partial summary judgment is hereby GRANTED in favor of Nimet on the issue raised by the Order of the Commissioner, Paragraph 4(i).
4. That an adjudicatory hearing shall be held to resolve the matters set forth in Order of the Commissioner, Paragraph 4(g) and 4(h) and to resolve the matter of the civil penalty assessment.

You are further notified that pursuant to the provisions of S.E.A 156 (P.L. 41-1995 amending I.C. 4-21.5-7) which became effective on July 1, 1995, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative reviews of decisions of the Commissioner of the Indiana Department of Environmental Management. Paragraphs 1, 2 and 3 constitute a Final Order subject to Judicial Review consistent with the applicable provisions of I.C. 4-21.5.

Pursuant to I.C. 4-21.5-5-5, 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.

Dated this 6<sup>th</sup> day of March, 1996

  
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Wayne E. Penrod  
Chief Administrative Law Judge  
Indiana Office of Environmental Adjudication