

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: SHIELD PRODUCTS, INC.

FAA Order No. 2007-3

Docket No. CP05SO0018
DMS No. FAA-2005-21058¹

Served: March 21, 2007

ORDER DISMISSING APPEAL²

Shield Products, Inc., the respondent in this matter, has appealed from the “Administrative Law Judge’s Order Granting In Part And Denying In Part Motion To Deem Allegations Admitted,” served by Administrative Law Judge (ALJ) Isaac D. Benkin on December 16, 2005.³ In this order, the ALJ deemed Shield Products’ failure to file an answer as an admission of the truth of the allegations in the complaint. As a result, he assessed a civil penalty of \$2,500 against Shield Products, and cancelled the scheduled hearing. Shield Products’ appeal is dismissed because it was filed late, and Shield Products did not demonstrate good cause to excuse the late-filing.

On April 11, 2005, the agency attorney filed the complaint, alleging that Shield Products had violated the Hazardous Materials Regulations (HMR). Specifically,

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation’s Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

² The Administrator’s civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/. In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the website.

³ A copy of the ALJ’s order is attached. (The order is not attached to the electronic versions of this decision nor is it included on the FAA website.)

Complainant alleged that Shield Products had violated 49 C.F.R. §§ 172.702(a), 172.702(d) and 173.1(b), and sought a \$2,500 civil penalty. At the end of the complaint, the agency attorney included a note that stated as follows:

Pursuant to Title 14 CFR Section 13.209(a), you are required to file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service which follows.

Under 14 C.F.R. § 13.209(a), a respondent has 30 days after the service of the complaint to file an answer, or to file a written motion under 14 C.F.R. § 13.208(d) or §§ 13.218(f)(1-4). Section 13.211(e), 14 C.F.R. § 13.211(e) provides parties with an additional 5 days in which to reply to a written document served by mail. Thus, because the complaint is a written document, a respondent has a total of 35 days in which to file an answer to the complaint. In this case, therefore, Shield Products should have filed its answer, or a motion instead of the answer, no later than May 16, 2005. Shield Products, however, filed neither by that date.

According to 14 C.F.R. § 13.209(f), “a person’s failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.” On December 5, 2005, more than six months after the due date for filing the answer had passed, the agency attorney filed a motion to deem the allegations of the complaint admitted. Shield Products did not file a reply to the agency attorney’s motion. In his written order served on December 16, 2005, the ALJ construed Shield Products’ failure to file an answer as an admission of the allegations in the complaint, assessed a \$2,500 civil penalty, and cancelled the scheduled hearing.

Under 14 C.F.R. §§ 13.233(a) and 13.211(e), Shield Products had 15 days from the service date of the ALJ's order to file its notice of appeal. Hence, Shield Products should have filed its notice of appeal no later than December 31, 2005. It failed to do so.

On March 14, 2006, Shield Products sent its Notice of Appeal, as well as its Answer and additional documents, to the National Transportation Safety Board (NTSB). The NTSB returned all the documents to Shield Products, and incorrectly advised Shield Products that the Department of Transportation's Office of Hearings had jurisdiction over this case. Shield Products subsequently sent the notice of appeal and other documents to the Department of Transportation's Office of Hearings. The ALJ returned the document to Shield Products and advised Shield Products to send its notice of appeal, answer and other documents, to the FAA Appellate Docket Clerk.⁴ On March 28, 2006, Shield Products filed its notice of appeal, answer and other documents with the FAA Hearing Docket.

A late-filed notice of appeal is subject to dismissal unless good cause for the lateness is demonstrated. In the Matter of Air St. Thomas, FAA Order No. 1997-29 (October 1, 1997), *reconsideration denied*, FAA Order No. 1998-13 (June 16, 1998). Shield Products has offered no explanation for its failure to file its notice of appeal by December 31, 2005. Consequently, it has failed to demonstrate good cause for the late-filing of its notice of appeal.

⁴ The Rules of Practice no longer refer to a separate FAA Appellate Docket Clerk. The current Section 13.233(a), 14 C.F.R. § 13.233(a), provides that "a party must file the notice of appeal in the FAA Hearing Docket using the appropriate address listed in § 13.210(a)." *See* 70 Fed. Reg. 13345 (March 21, 2005). All documents must be filed with the FAA Hearing Docket clerk. 14 C.F.R. § 13.210(a).

THEREFORE, IT IS ORDERED THAT: Shield Products' appeal is dismissed.⁵

MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON⁶
Manager, Adjudication Branch, AGC-430

⁵ This decision shall be considered an order assessing civil penalty unless Respondent files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for the circuit in which the respondent resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2007). *See* 71 Fed. Reg. 70460 (December 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases).

⁶ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.