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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
B & R Oil Company, Inc.,) [UST] Docket No. RUST-007-91
)
Respondent)

ORDER DENYING MOTION FOR ACCELERATED DECISION
AND DIRECTING THE PARTIES TO SUBMIT RESPONSES

The U.S. Environmental Protection Agency ("EPA") seeks accelerated decision against B & R Oil Company, Inc. ("B & R Oil"), for four violations of Subchapter IX (Regulation of Underground Storage Tanks) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991 *et seq.* EPA seeks accelerated decision solely on the issue of liability. As explained below, upon consideration of the entire record, including EPA's motion and B & R Oil's opposition, it is determined that the arguments advanced by the parties can be measured properly only against the background of facts developed at a hearing. Accordingly, EPA's motion for accelerated decision is denied.¹

B & R Oil is a petroleum marketing firm that owns and/or operates 160 underground storage tanks in the State of Indiana. Answer, ¶ 1. All four violations at issue in this case involve respondent's alleged failure to comply with the financial responsibility provisions contained in 40 C.F.R. Part 280. Specifically, EPA asserts that B & R Oil violated Section 9003 of RCRA, 42 U.S.C. § 6991b, as a result of each of the following: (1) failure to demonstrate financial responsibility by October 26, 1989, as required by 40 C.F.R. 280.91(b); (2) failure to demonstrate per-occurrence and annual aggregate coverages of insurance as required by 40 C.F.R. 280.93; (3) failure to use an approved mechanism or combination of mechanisms to demonstrate financial responsibility as required by 40 C.F.R. 280.94; and (4) failure to provide copies of the financial assurance mechanisms and certification that the mechanisms were in compliance with Section 280.94, as required by 40 C.F.R. 280.107.

Of particular interest in this case is a letter dated November 12, 1991, from B & R Oil counsel to EPA counsel discussing these four alleged violations.² Stating that EPA erred in assessing a penalty for Counts Two and Three, counsel for respondent asserted that

¹ EPA may renew the legal arguments raised in its motion for accelerated decision when it files its post-hearing brief.

² This letter is attached to respondent's Prehearing Exchange.

40 C.F.R. 280.91(b), 280.93 and 280.94 are "complementary regulations" which "are to be construed as a whole, and have little meaning when considered separately." Ltr. at 7. Both parties are directed to file with this court a statement of position regarding this argument, with appropriate legal citation, no later than June 3, 1996. In that regard, the parties may find Blockburger v. United States, 284 U.S. 299, 304 (1932) and In the Matter of Holmquist Grain & Lumber Co., FIFRA Appeal No. 88-3 (EAB, April 25, 1985), instructive.

Carl C. Charneski
Carl C. Charneski
Administrative Law Judge

Issued: *March 25, 1996*
Washington, D.C.

IN THE MATTER OF B & R OIL COMPANY, INC., Respondent
[UST] Docket No. RUST 007-91

Certificate of Service

I certify that the foregoing Order Denying Motion for Accelerated Decision and Directing the Parties to Submit Responses, dated 3/25/96, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
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Copy by Regular Mail to:

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Dated:

March 25, 1996