

4/2/96

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
RECYCLING SCIENCES CENTER, ) Docket No. V-W-006-93  
 )  
Respondent )

ORDER DENYING CROSS-MOTIONS FOR ACCELERATED DECISION

This case arises under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, and it involves numerous alleged violations of the interim status standards appearing at 40 C.F.R. Part 265. The U.S. Environmental Protection Agency ("EPA") and Recycling Sciences International, Inc. ("RSI"), have filed cross-motions for partial accelerated decision in this matter. EPA seeks accelerated decision as to liability only. It does not seek accelerated decision as to the proposed penalty. Moreover, as to the issue of liability, EPA does not seek judgment with respect to paragraph 16a(vi) of its amended complaint. EPA Mot. at 2.<sup>1</sup> RSI, in turn, seeks accelerated decision with respect to all of the alleged violations listed in paragraphs 16 and 17 of the amended complaint.

Given the complexity of the legal and factual issues involved in this case, particularly as to whether the respondent is subject to the Part 265 interim status standards, it is determined that accelerated decision is not appropriate. A hearing on the merits is necessary to resolve the genuine issues of fact and law that are presented in this matter.<sup>2</sup> Moreover, as noted above, even if accelerated decision were granted with respect to EPA's motion, a hearing nonetheless would be required for the assessment of a penalty as well as for resolution of the violation alleged in paragraph 16a(vi).

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<sup>1</sup> Subsequent to the filing of the amended complaint, EPA's motions to dismiss paragraphs 16h(iv), 16h(v), and 16i were granted.

<sup>2</sup> See Roberts v. Browing, 610 F.2d 528, 536 (8th Cir. 1979)(even if judge believes that summary judgment is technically proper, sound judicial policy and the exercise of judicial discretion permit a denial of such a motion for the case to be developed fully at trial). See also, U.S. Coast Guard, Docket No. RCRA 1094-07-05-3008(a) (Order, November 21, 1995), at 4 (Order denying motion for partial accelerated decision citing Roberts v. Browing; *supra*, noting that a hearing was necessary to resolve "the troubling questions of fact and law" presented).

Accordingly, the motions for partial accelerated decision filed by EPA and RSI are denied.

*Carl C. Charneski*

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Carl C. Charneski  
Administrative Law Judge

Issued: *April 2, 1996*  
Washington, D.C.

IN THE MATTER OF RECYLCING SCIENCES CENTER, Respondent  
Docket No. V-W-006-93

Certificate of Service

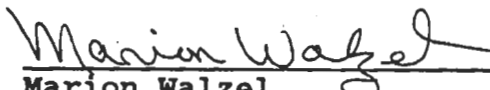
I certify that the foregoing Order Denying Cross-Motions for Accelerated Decision, dated April 2, 1996, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Ms. Jodi Swanson-Wilson  
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Marion Walzel  
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Dated: April 2, 1996