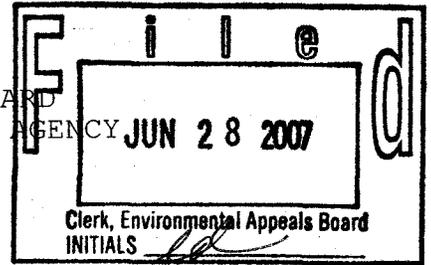


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Euclid of Virginia, Inc.)

Docket No. RCRA-3-2002-0303)

) RCRA (3008) Appeal Nos. 06-05
) & 06-06

ORDER IDENTIFYING ISSUES FOR ORAL ARGUMENT

By order dated May 14, 2007, the Environmental Appeals Board ("Board") rescheduled oral argument in this matter for Thursday, August 9, 2007, at 10:30 a.m. EST in EPA's Administrative Courtroom. In that same order, the Board noted that in light of the number of issues raised by the parties, the Board would likely issue another order asking the parties to focus their presentations at oral argument on certain aspects of their appeals. Accordingly, in their oral presentations, the parties should, in particular, focus on the following issues:¹

1. The Notice Requirement Issue: Elaborate on and/or respond to the arguments Respondent, Euclid of Virginia Inc. ("Euclid"), raises on pages 10-13 of its appellate brief, and explain how, in each party's view, notice within the meaning of RCRA § 9006(a)(2), 42 U.S.C. § 6991e(a)(2), was or was not satisfied in this case.

¹ The parties, however, should be fully prepared to answer questions related to all other aspects of their appeals.

2. The Tank Release Detection Charges: With respect to the tank release detection charges, the parties should focus on the following:

a. Inventory Control: Elaborate on the parties' views of the Administrative Law Judge's ("ALJ") conclusion on pages 18-19 of the Initial Decision that the underground storage tank regulations require that inventory control be performed on a tank-by-tank basis, as opposed to a facility-wide basis.

b. Automatic Tank Gauging:

1. Elaborate on the use of automatic tank gauging ("ATG") as a method of tank release detection;
2. Explain how ATG works as a method of tank release detection and how Euclid did or did not employ ATG at its facilities;
3. Elaborate on the significance of having "passing" results, as concluded by the ALJ on pages 20-21 of the Initial Decision.

- c. The Record Retention Issue: Elaborate on and/or respond to Euclid's arguments on pages 22-26 of its appellate brief that 40 C.F.R. § 280.45(b) requires retention of documents for only one year, and on the ALJ's conclusion on page 14 of the Initial Decision that 40 C.F.R. § 280.45(b) does not preclude finding Euclid liable for five years of tank release detection charges.

3. The Line Leak Detection Charges:

a. Interstitial Monitoring and Count 31:

- i. Elaborate on and/or respond to Euclid's argument on page 48 of its appellate brief that "[i]f sump sensors were not present [at the facility involved in count 31], then there would have been no reason to have tight boots."
- ii. Be prepared to explain the basis for the ALJ's penalty assessment for count 31.

b. Automatic Line Leak Detectors as an Alternate to the Alarm Systems: Elaborate on and/or respond to Euclid's argument on page 44 of its appellate brief

that: "The presence of these devices [referring to automatic line leak detectors] meets the line leak detection requirements even if it is determined that the sump sensors do not meet these requirements."

4. Financial Responsibility: Elaborate on and/or respond to Euclid's argument on page 60 of its appellate brief that "the guarantee among the trusts and Euclid for the cost of remediation of Euclid's sites and the closure of the sites, * * * is not a 'financial guarantee' under the regulations, but a commitment to utilize the resources of the trust to pay for any required remediation of the sites."

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: *June 28, 2007*

By: *Kathie A. Stein*
Kathie A. Stein
Environmental Appeals Judge

² These arguments and issues are identified solely to aid the parties in preparing their presentations and should not be interpreted to suggest that the Board has made any determinations on the merits regarding any of the facts, issues, or legal matters relating to this appeal.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Identifying Issues for Oral Argument in the matter of Euclid of Virginia, Inc., RCRA (3008) Appeal Nos. 06-05 & 06-06, were sent to the following persons in the manner indicated:

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and via facsimile:

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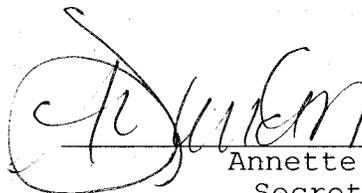
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Dated: JUN 28 2007



Annette Duncan
Secretary