

4/22/99

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
U.S. DEPARTMENT OF THE ARMY,) Docket No. RCRA-III-9006-054
Walter Reed Army Medical Center)
Forest Glen Annex)
)
Respondent)

ORDER GRANTING MOTION FOR ORAL ARGUMENT

This proceeding was initiated by a Complaint filed on June 30, 1998, pursuant to Section 9006 of the Resource Conservation and Recovery Act. The Complaint alleged violations involving underground storage tanks (USTs) at Respondent's facility at 6800 Georgia Avenue, N.W. Washington D.C. The Complaint was amended by Order dated December 28, 1998. In its Answer to the initial Complaint and the Amended Complaint, Respondent set forth several Affirmative Defenses and requested dismissal of this proceeding. On February 22, 1999, Complainant submitted a Motion for Accelerated Decision as to both liability and penalty, on the basis that Respondent admitted every material allegation of fact in this matter and that the affirmative defenses are meritless. Respondent opposed the Motion for Accelerated Decision on March 11, 1999, to which Complainant replied on March 26, 1999.

Additionally on that date, Complainant filed a Motion for Oral Argument on the Motion to Dismiss and Motion for Accelerated Decision. Complainant points out that Respondent has challenged EPA's authority to impose penalties on another Federal agency for violations of UST regulations and the Administrative Law Judge's authority to adjudicate some of the issues raised in this proceeding. Complainant asserts that these issues go to the heart of the EPA's UST enforcement program and that it is necessary and desirable that these issues be adjudicated only after a full airing of all relevant arguments and authorities. Complainant stated in its Motion for Oral Argument that counsel for Respondent objected to the Motion being granted. However, Respondent has not filed a written response to the Motion for Oral Argument within the time permitted in the Rules of Practice for responding to motions. *See*, 40 C.F.R. §§ 22.16(b), 22.07(c)(ten days from service of the motion plus five days where it was served by mail). Thus, there is no substantive opposition upon which to rule.

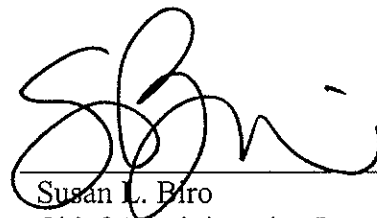
The Rules of Practice provide that "Oral argument on motions will be permitted where the Presiding Officer . . . considers it necessary or desirable." 40 C.F.R. § 22.16(c). Respondent has not provided any rationale for its challenge to Complainant's assertion that oral argument is

necessary and desirable.

Accordingly, the Motion for Oral Argument is hereby **GRANTED**.

The Oral Argument in this matter will be held beginning at **1:00 p.m.** on Tuesday, **May 18, 1999**, at 1099 14th Street N.W., Washington D.C., in Court Room number 5600 (East Tower). The Regional Hearing Clerk is directed to retain a stenographic reporter. For security reasons, the parties are directed each to submit, on or before Tuesday, **May 11, 1999**, a list of counsel and guests who will be attending the oral argument.¹

If either party has good cause for not being able to participate in the oral argument as scheduled it shall notify the undersigned at the earliest possible moment.



Susan L. Biro
Chief Administrative Law Judge

Dated: April 22, 1999
Washington, D.C.

¹ Additionally, for security reasons, all persons attending the oral argument must bring with them picture identification.

In the Matter of Walter Reed Army Medical Center, 6800 Georgia Avenue, N.W., Washington, DC & Walter Reed Army Medical Center, Forest Glen Annex, Respondent
Docket nos. RCRA-III-9006-052 & RCRA-III-9006-054

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion for Oral Argument**, dated April 22, 1999, was sent this day in the following manner to the addressees listed below:

Original by Regular Mail to:

Lydia A. Guy
Regional Hearing Clerk
US EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

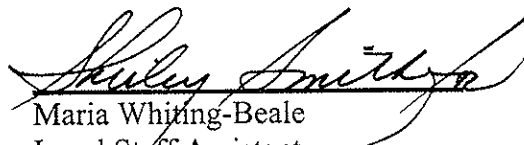
Copy by Regular Mail to:

Attorney for Complainant:

Bernadette M. Rappold, Esquire
Assistant Regional Counsel
US EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Attorney for Respondent:

H. Ashby Dyke, Esquire
Office of the Center Judge Advocate
Walter reed Army Medical Center
6800 Georgia Avenue, N.W.
Washington, D.C. 20307-5000


Maria Whiting-Beale
Legal Staff Assistant

Dated: April 22, 1999