

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

D.B. Grugin Oil Co., Inc.,

Docket No. RCRA-UST-KY-93-007

Respondent

ORDER DENYING COMPLAINANT'S MOTION

FOR ACCELERATED DECISION

By motion dated May 22, 1996, complainant, United States Environmental Protection Agency (EPA), moved for an accelerated decision in the above-captioned case for an alleged violation of Section 9003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6991b and 40 C.F.R. Sections 280.40(c), 280.41(a) and 280.41(b)2. Complainant asserted that such motion be granted as no genuine issue of material fact exists and therefore Complainant is entitled to judgment as a matter of law.

On July 8, 1996, respondent, D.B. Grugin Oil Co., Inc., filed a brief in response to complainant's motion for accelerated decision asserting, inter alia, that there remains genuine issues of material fact concerning the amount of civil penalty which may be assessed and that complainant is not entitled to judgment as a matter of law.

In support of its brief, respondent filed an affidavit of Donald B. Grugin, President of respondent, and various other documents, including federal income tax statements which speak to such issues to be considered in mitigation of the proposed civil penalty amount, such as the respondent's inability to pay, which failed to be considered in calculation of the proposed penalty. By reply dated August 7, 1996, Complainant responded to the issues presented in respondent's brief of July 8, 1996.

On February 18, 1997, this case was reassigned to the undersigned administrative law judge. Upon review of the merits of this case and the

complexity of the issues raised by the parties, there remains matters that need to be resolved at formal hearing. Complainant's Motion for Accelerated Decision is therefore DENIED.

By separate orders issued this same date, the case will be SET FOR HEARING and the parties will be directed to file their pre-hearing exchange materials. Given the extreme duration of the processing of this proceeding, the undersigned notifies the parties that short of extraordinary circumstances NO EXTENSIONS OF TIME WILL BE GRANTED for the filing of the pre-hearing exchange.

Stephen J. McGuire
Administrative Law Judge

Dated: February 27, 1997
Washington, D.C.

IN THE MATTER OF D.B. GRUGIN OIL CO., INC. Respondent

Docket No. RCRA-UST-KY-93-007

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Complainant's Motion for Accelerated Decision, dated February 27, 1997, was sent in the following manner to the addresses listed below:

Original by Pouch Mail to:

Julia P. Mooney
Regional Hearing Clerk
Environmental Protection
Agency, Region 4
Atlanta Federal Center
100 Alabama St., SW
Atlanta, GA 30303

Copy by Certified Mail,
Return Receipt Requested to:

Counsel for Complainant:

Maria Judith Ramos, Esquire
Assistant Regional Counsel
Environmental Protection
Agency, Region 4
Atlanta Federal Center
100 Alabama St., SW
Atlanta, GA 30303

Counsel for Respondent:

Dennis J. Conniff, Esquire
Brown, Todd & Heyburn
3200 Providian Center
Louisville, KY 40202-3363

Aurora M. Jennin
Legal Staff Assistant
Office of Administrative
Law Judges
Environmental Protection Agency
Washington, DC 20460

Dated: February 27, 1997
Washington, DC