

9/19/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

| | | |
|-----------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| 1833 NOSTRAND AVENUE CORPORATION, |) | Docket Nos.: |
| et al. |) | [UST] II-RCRA-93-0205 |
| |) | et al. |
| |) | |
| |) | |
| Respondents. |) | |

Order Denying Motion for Reconsideration

Complainant has moved for reconsideration of my order of August 10, 1995, denying Complainant's motion for a partial accelerated decision and compliance order. Complainant asserts that I either overlooked or misapprehended the facts with respect to the allegation in Count 3 of the complaint against the Penn & Flat service station located at 1144 Atlantic Ave. Count 3 alleges that Respondent failed to meet the temporary closure requirements for the UST systems located at that facility.¹

The facts show that Respondent in May 1992 reported the service station as closed.² Mr. John Hansen, an EPA employee, in an affidavit has stated that he inspected the station on July 8, 1992, and that the gasoline pumps were inoperative, the nozzles had been removed from the pumps, the glass was broken and the sides

¹ Complainant's Exhibit 1a.

² Complainant's Exhibit 4a.

were smashed in. He further reported that two of the UST fill holes were open and all others were easily opened.³ Respondent in a further statement to the EPA in September 1992, reported that no gasoline has been sold at the station since October 31, 1991.⁴ Respondent denied, however, that any USTs were temporarily closed between December 22, 1988, and July 31, 1992.⁵ It was in the latter part of this period that Mr. Hansen had visited the facility. Respondent, nevertheless, has not specifically controverted Mr. Hansen's statement of what he saw.

The regulation states that when a UST system is temporarily closed for three months or more, owners and operators must leave vent lines open and functioning and cap and secure all other lines, pumps, manways, and ancillary equipment.⁶

The papers indicate that there is some misunderstanding between the parties as to what constitutes "temporary closure" of a UST system. Perhaps that is because the term does not appear to be specifically defined in the regulations. Since Respondent does question generally the credibility of Mr. Hansen's affidavit, Respondent should not be denied the opportunity to cross-examine Mr. Hansen on what he actually saw before any determination is made

³Complainant's Exhibit 9, ¶22.

⁴ Complainant's Exhibit 6a.

⁵ Complainant's Exhibit 4a.

⁶ 40 C.F.R. §280.70(b).

as to whether there was non-compliance with the temporary closure requirements.

Complainant's motion for reconsideration is denied.

Gerald Harwood

Gerald Harwood
Senior Administrative Law Judge

Dated: September 19, 1995

IN THE MATTER OF 1833 NOSTRAND AVENUE CORPORATION, et al.,
Respondents
Docket Nos. [UST] II RCRA-93-0205, et al.

Certificate of Service

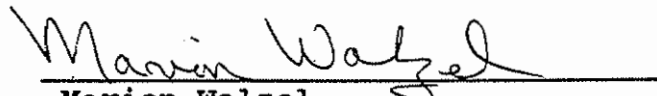
I certify that the foregoing Order, dated September 19, 1995, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to: Ms. Karen Maples
Regional Hearing Clerk
U.S. EPA, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Copy by Regular Mail to:

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Attorney for Respondent: Carl S. Levine, Esquire
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Roslyn, New York 11576



Marion Walzel
Legal Staff Assistant

Dated: September 20, 1995