

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	
Euclid of Virginia, Inc.)	
4225 Connecticut Avenue)	RCRA (3008) Appeal No. 06-05
Washington, D.C. 20008)	
)	
RESPONDENT)	

RESPONSE TO MOTION TO REOPEN

On September 7, 2007, Respondent Euclid of Virginia, Inc. filed with the Environmental Appeals Board (the “EAB” or the “Board”) a Motion to Reopen the Proceedings Below for the Purpose of Receiving Newly-Discovered Evidence, seeking to reopen the proceedings to allow the evaluation of allegedly newly-discovered evidence. This Motion, however, is filed in the wrong forum, is untimely, seeks to introduce evidence which is not new, and which is not materially relevant to this proceeding. The Motion should therefore be dismissed or denied.

Pursuant to Section 22.28(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. § 22.28(a), a motion to reopen the hearing must be made *to the Presiding Officer* and filed *with the Regional Hearing Clerk*, and must be filed *no later than 20 days after service of the initial decision*. Respondent’s Motion fails to meet even one of these three requirements. Respondent’s Motion was addressed to the Board instead of to the Presiding Officer, was filed with the Clerk of the Board, instead of with the Regional Hearing Clerk, and was filed nearly 10 months after service of the corrected Initial Decision on November 14, 2006.

Moreover, the purported “new” evidence proffered by Respondent consists of a “Statement of Basis” for the cleanup of a petroleum release occurring from a site located on the border between Maryland and the District of Columbia (the “Chillum Site”). The release from the Chillum Site has been the subject of extensive news coverage for years, and the factual information contained in the Statement of Basis has been previously available for public review upon request. Since at least January, 2002, a repository of documents for public inspection has been established at the Lamond Riggs Library in Washington, D.C., containing numerous documents, including, but not limited to, the Preliminary Environmental Assessment, dated February, 1990; the Extended Environmental Assessment, dated January, 1991; the Remedial System Design & Specifications, dated February, 1993; and the Interim Corrective Action Plan, dated May, 2002. Respondent has not claimed that it made any effort whatsoever to obtain information about the cleanup at the Chillum Site or at any other location in Maryland or the District of Columbia prior to seeing the newspaper article contained in Respondent’s Motion.

Further, the relevance of the evidence proffered by Respondent to the case at bar is at best extremely marginal. Respondent’s claims that the Statement of Basis is evidence that only five of the many residences affected by the release at the Chillum Site were determined to have sustained a “major” impact. Whether or not this is a valid characterization of the Statement of Basis, it is difficult to see how this fact would indicate, as Respondent claims, that Respondent’s violations in the case at bar did not pose a major risk of harm to human health, the environment and/or the regulatory program. If anything, the Statement of Basis demonstrates that a release of

petroleum from an UST may in fact pose a major risk to the environment requiring an extensive cleanup effort.

Respondent's arguments with regard to the Chillum Site also ignore the results of numerous other release investigations of other sites in Maryland and the District of Columbia, many of which found even greater health and environmental risks than at the Chillum Site. Respondent also neglects to mention that it has previously *stipulated* to the facts and conclusions contained in two detailed reports from EPA experts discussing the relative risks posed by potential releases at the locations at issue in this matter. *See* Stipulation 5.

For the forgoing reasons, Respondent's Motion should be dismissed as untimely and not in accordance with the procedural requirements for such a motion, or, in the alternative, should be denied on the merits.

Respectfully submitted,

Date

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Office of Civil Enforcement

CERTIFICATE OF SERVICE

I hereby certify that on the date below I served the original and copies of the attached Response to Motion to Reopen as follows:

Original via Federal Express, copy
via CDX Electronic Submission:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Copy via Hand Delivery:

Lydia Guy, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region III

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Date

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