

In the Matter of: )  
)  
B & K Petroleum Corporation )  
d/b/a Infinite Oil ) Docket No. RCRA-07-2010-0020  
3824 Hamilton Street )  
Omaha, Nebraska 68131 )  
Respondent )

**Order on Complainant’s Motion for Default Order**

Background and Procedural History

Complainant, the Director, Air and Waste Management Division, Region 7, initiated this proceeding on April 2, 2010, by issuance of a complaint (“initial complaint”) alleging violations of provisions of the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, specifically Subtitle I, 42 U.S.C. §§ 6991-6991i<sup>1</sup>, regulations promulgated by the Environmental Protection Agency (“EPA”) thereunder, and authorized regulations of the State of Nebraska.<sup>2</sup> The complaint was issued pursuant to section 9006 of RCRA, 42 U.S.C. § 6991e, and this proceeding is governed by EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The complaint was served on Respondent’s registered agent on April 21, 2010. On June 13, 2011, Complainant filed and served a Motion for Default Order as to Liability and Penalty (“initial motion”).

In response to a ruling which I issued on February 23, 2012, on a motion for default order in a related proceeding, B & A Petroleum Corp., RCRA-07-2010-0019, Complainant filed a First Amended Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing in this proceeding on April 30, 2012 (“amended complaint”). On June 27, 2012, Complainant filed a Second Motion for Default Order as to Liability and Penalty (“amended motion”), which is the motion addressed in this order.

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<sup>1</sup> The Solid Waste Disposal Act is commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended, and will be referenced herein as “RCRA”.

<sup>2</sup> The state of Nebraska was granted final authorization to administer a state UST program in lieu of the Federal UST program, effective September 18, 2002. Through this authorization, the Nebraska program and implementing regulations (Title 159 of the Nebraska Administrative Code – “159 Neb. Admin. Code”) are enforceable requirements of Subtitle I of RCRA, and are enforceable by EPA pursuant to section 9006 of RCRA, 42 U.S.C. § 6991e.

### Discussion

The initial complaint alleged seventeen counts of violation of RCRA and the statutes and regulations cited above. The amended complaint, while substantially expanding the factual allegations within several of the counts, alleges sixteen counts of violation.<sup>3</sup> Both the initial complaint and the amended complaint seek a total proposed penalty of \$141,360, although there appears to be no discussion in the record of the basis for seeking the same total penalty in the amended complaint as in the initial complaint, in light of the reduction, in the amended, complaint, in counts of alleged violations.

A review of Complainant's amended motion for default order and associated documents provides even less clarity. The memorandum in support of the amended motion states, in the prefatory section, that the penalty sought is \$127,976. However, paragraph 13 of that same document states that Complainant is seeking a total penalty of \$162,522. The declaration accompanying the memorandum (Exhibit 3) states, in paragraph 4, that the penalty sought is \$127,976. Further, paragraph 16 of the memorandum states that the amount proposed in the amended complaint is the amount requested in the motion, even though neither of the amounts specified in the memorandum reflect the amount proposed in the amended complaint (\$143,360).

Based on the significant discrepancies in the record with respect to both the liability I am asked to find, and the penalty I am asked to assess, I am unable to further review, much less grant, Complainant's amended motion for default order as to liability and penalty.

### Conclusion

Based on the foregoing, Complainant's amended motion is hereby denied.

So ORDERED, this 5<sup>th</sup> day of July, 2012.



Robert L. Patrick  
Regional Judicial Officer  
Region 7

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<sup>3</sup> The amended complaint erroneously references, in ¶100, 17 counts ("Counts I through XVII"), but the complaint only addresses 16 counts.

IN THE MATTER OF b & k Petroleum Corporation d/b/a Infinite Oil, Respondent  
Docket No. RCRA-07-2010-0020

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Raymond C. Bosch  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Mail to:

Mohammed Ali  
215 North Prospect Avenue  
Streamwood, Illinois 60107

Dated: 7/5/12



Kathy Robinson  
Hearing Clerk, Region 7