

11/30/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
BECHTEL-MCLAUGHLIN, INC.,) Docket No. V-W-018-92
)
Respondent)

ORDER DENYING MOTION FOR ACCELERATED DECISION

Currently pending is a motion filed by Region V of the U.S. Environmental Protection Agency (Complainant), under Section 22.20 of the EPA Rules of Practice (Rules), 40 C.F.R. § 22.20, requesting that all issues regarding liability in this proceeding be resolved in its favor.

Respondent submitted a memorandum in opposition to Complainant's motion for accelerated decision, taking the position that material issues of fact exist that preclude the entry of an accelerated decision. Respondent also asserts that there is an issue relating to the Paperwork Reduction Act that requires a hearing on the merits.

According to the third affirmative defense in the Answer, p. 6, Respondent avers that it has complied with the regulatory requirements contained in 40 CFR 270 by demonstrating clean closure equivalency. Under Section 270(c)(5) of EPA's Hazardous Waste Permit Program, 40 C.F.R. § 270(c)(5), such a demonstration would mean that Respondent would not need to obtain a post-closure permit. In this cause, Respondent's failure to apply for such a permit is the only violation alleged in the Complaint.

Respondent first submitted a clean closure equivalency

demonstration on March 15, 1991 (Respondent's Prehearing Exchange Statement, Exs. 11 and 14). In a letter dated May 24, 1991, Complainant advised Respondent that, based on a review of the equivalency demonstration, it has determined that previous closure activities are not equivalent to the applicable Federal standards for closure by removal (Complainant's Prehearing Exchange, Ex. E). Comments attached to Complainant's letter criticized the Respondent for: (1) a failure to demonstrate removal of all waste residues; (2) its sampling methodology; and (3) the lack of groundwater monitoring (*id.*; see also Complainant's Memorandum in Support of Motion for Accelerated Decision, pp. 1-2). Letters from Respondent's consultant dated October 11, 1991 and February 19, 1992 indicate that Respondent attempted to answer Complainant's comments. However, Complainant ultimately found Respondent's efforts inadequate and brought the Complaint in this matter.

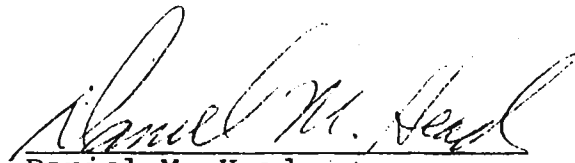
The question on accelerated decision is whether there exists any genuine issue of material fact that would preclude judgment as a matter of law under Section 22.20 of the Rules. In its correspondence with Complainant, Respondent has offered a colorable theory that its closure activities met the criteria for clean closure equivalency.

Therefore, because genuine issues of material fact exist on at least the closure issue, Complainant is not entitled, under Section 22.20 of the Rules, to judgment as a matter of law that Respondent violated the Resource Conservation and Recovery Act as

alleged in the Complaint. Other issues raised by the pleadings will not be decided in a piecemeal fashion, since such an approach would not resolve the question of liability and, therefore, would not expedite the proceeding or shorten the proof needed at hearing, B.J. Carney Industries, Inc., Dkt. No. 1090-09-13-309(g), Order Disposing of Outstanding Motions, issued Jan. 28, 1993, p. 6. Accordingly, Complainant's Motion for Accelerated Decision is denied.

The parties are directed to submit a proposed procedural schedule for this matter by December 29, 1995.

SO ORDERED.


Daniel M. Head
Administrative Law Judge

Dated:

November 30, 1995
Washington, DC

IN THE MATTER BECHTEL-McLAUGHLIN, INC., Respondent
Docket No. V-W-018-92

CERTIFICATE OF SERVICE

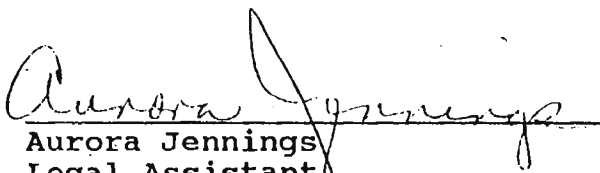
I certify that the foregoing Order Denying Motion for Accelerated Decision, dated November 30, 1995, was sent in the following manner to the addressees listed below:

Original by Regular Mail to: Jodi L. Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, IL 60604

Copy by Certified Mail, Return
Receipt Requested to:

Counsel for Complainant: Nola M. Hicks, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, IL 60604

Counsel for Respondent: Richard D. Panza
Matthew W. Nakon
Wickens, Herzer & Panza
1144 West Erie Avenue
P.O. Box 840
Lorain, Ohio 44052-0840


Aurora Jennings
Legal Assistant
Ofc of Admin Law Judges
U.S. EPA
Washington, DC 20460

Dated: November 30, 1995
Washington, DC