



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Mail Code 1900L

August 14, 2001

IN THE MATTER OF)	
)	
EUCLID OF VIRGINIA, INC.)	Docket Nos. RCRA-3-2001-5001 &
CLOVERLY AUTO CARE, a/k/a)	RCRA-3-2001-5002
CLOVERLY CITGO)	
)	
AND)	
)	
CLARK AUTOMOTIVE SERVICES, INC.)	
CLOVERLY AUTO CARE a/k/a)	
CLOVERLY CITGO)	

ORDER DENYING MOTION TO DISMISS, GRANTING MOTION
TO CONSOLIDATE AND REQUIRING INITIAL OR SUPPLEMENTAL
PREHEARING EXCHANGES

By separate complaints, filed March 7, 2001, the Associate Director for Enforcement, Waste and Chemicals Management Division, U.S. EPA Region 3, charged Respondents, Euclid of Virginia, Inc, Cloverly Auto Care, a/k/a Cloverly Citgo (facility), Docket No. RCRA -3-2001-5001, and Clark Automotive Services, Inc., Cloverly Auto Care, a/k/a Cloverly Citgo, Docket No RCRA-2001-3-5002, with violations of RCRA §§ 6991-6991i and the State of Maryland's underground storage tank (UST) program. The complaints alleged, among other things, that Euclid of Virginia, Inc. (Euclid) is a corporation incorporated in the District of Columbia, that Clark Automotive Services, Inc. is a corporation incorporated in the State of Maryland, that the State of Maryland has been granted final authorization to administer a state

UST program in lieu of the federal program and that from September 15, 1995, until at least July 13, 1999, Euclid was the owner and Clark Automotive Services, Inc. (Clark) was the operator of a gasoline service station, known variously as Cloverly Auto Care, Cloverly Citgo and/or Cloverly Exxon located at 1501 New Hampshire, N.E., Silver Spring, Maryland. The complaints further alleged that the station included three USTs or UST systems which were in use and which from September 15, 1995, until at least February 26, 1999, contained regulated petroleum substances as defined in the Code of Maryland Regulations (“COMAR”) and that at the time of an inspection on September 16, 1998, Respondents failed to maintain certain records regarding, inter alia, corrosion analysis, UST system repair, and compliance with release detection as required by COMAR and failed to install overfill protection equipment. Complainant did not claim any specific penalty, but asserted that it would do so after an exchange of information had occurred.

Respondent Euclid through counsel filed a timely answer, Docket No. RCRA-3-2001-5001, denying the alleged violations and requesting a hearing. The parties in that proceeding have submitted prehearing exchange information in accordance with an order of the ALJ. Complainant’s prehearing exchange reflects that it is now claiming a total penalty of \$9,519.66, while Respondent’s prehearing indicates that it has expended substantial sums in remediating the site and paid a penalty to the Maryland DOE.

Under date of July 6, 2001, Respondent filed a motion to dismiss Clark Automotive Services, Inc., as a party, referencing Docket Nos. RCRA-3-2001-5001/02, alleging that Clark merely rented a repair bay on-site and had no involvement whatsoever in the dispensing of petroleum products therefrom. Alternatively, Respondent requested that the cases be

consolidated, alleging that the complaint served on Euclid did not reference Clark and that, to this date, counsel, who also represents Euclid, has not received a copy of any complaint against Clark. By virtue of its limited involvement at the site, Clark denied any responsibility and liability for environmental claims of any nature.

Complainant responded to the motion under date of July 12, 2001, pointing out that a representative of Clark acknowledged receipt of the complaint (Docket No. RCRA-3-2001-5002) on March 9, 2001, that Clark had not filed an answer to date and that, because the motion to dismiss was not filed with the Regional Hearing Clerk, the motion was not properly before the ALJ. The response asserted that the factual allegations in the motion should be decided at a hearing and that, until an answer was filed, the motion to consolidate was premature.

Under date of July 16, 2001, Clark, through counsel, filed an answer (Docket No. RCRA-3-2001-5002), denying the allegations of the complaint, alleging, inter alia, that Clark merely rented auto repair bays at the site and had nothing to do with the sale of gasoline, the dispensing of other petroleum products or any connection with the USTs at the facility identified in the complaint. Respondent denied any duties or obligations under the statute and regulations alleged in the complaint and requested a hearing. Simultaneously, Clark filed what was designated "Respondent's Prehearing Report", Docket No. RCRA-3-2001-5002, which asserted, inter alia, that respondent Clark was renting auto repair bays at the facility and did not [own or operate] underground tanks or dispense petroleum products from the site, that Respondent did not maintain overfill protection and that financial statements for the Respondent for the facility would be provided, if the motion to dismiss is denied.

Discussion

The complaints cite COMAR § 26.10.02.04.(B)(37) which provides that “operator” means “ a person in control of, or having responsibility for, the daily or periodic operation, or the repair, maintenance, closure, testing, or installation, of the UST system”.¹ Obviously, whether Clark was in control of or had responsibility for the daily or periodic operation or repair of any of the UST systems at the facility identified in the complaints involves factual questions. This being so and the motion to dismiss Clark as a party not being supported by affidavits, the motion to dismiss must and will be denied.

It appearing that these proceedings involve activities or ownership interests by separate parties at a single facility and thus common issues of law and fact; that consolidation, if it does not simplify, will at the very least expedite consideration of the issues and that the rights of the parties will not be adversely affected by consolidation, these proceedings will be consolidated pursuant to Consolidated Rule 22.12(a) (40 C.F.R. Part 22).

The attention of the parties is invited to the letter-order, dated May 17, 2001, issued in Docket No. RCRA-3-2001-5001, which required the parties to exchange specified prehearing information, e.g., copies of documents or exhibits proposed to be offered in evidence at a hearing, witness lists and summaries of expected testimony. The same requirement is applicable here and, in addition, the parties are directed to describe the current status of the facility, i.e., is it operating in compliance with UST regulations and has remedial work been satisfactorily completed. In addition, Respondent is directed to provide a copy, if written, of the lease or leases for the auto repair bays at the facility.

¹. The federal regulation, 40 C.F.R. § 260.10, provides simply that “*operator* means the person responsible for the overall operation of a facility.”

Order

1. The motion to dismiss by Clark Automotive Services, Inc is denied.
2. These proceedings, Docket No. RCRA-3-2001-5001 and Docket No. RCRA-3-2001-5002, are consolidated pursuant to Rule 22.12(a).
3. The parties shall furnish prehearing information or supplement information previously furnished as specified above on or before September 14, 2001.

Dated this _15th_____ day of August 2001.

Spencer T. Nissen
Administrative Law Judge

In the Matter of Euclid of Virginia, Inc., Cloverly Auto Care, a/k/a Cloverly Citgo & Clark Automotive Services, Inc., Cloverly Auto Care, a/k/a Cloverly Citgo
Respondents
Docket Nos. RCRA-3-2001-5001 & RCRA-3-2001-5002

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Denying Motion to Dismiss, Granting Motion to Consolidate and Requiring Initial or Supplemental Prehearing Exchanges**, dated August 14, 2001, was sent this day in the following manner to the addressees listed below:

Original + 1 copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk
U.S. EPA - Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by Certified Mail Return Receipt to:

Rodney Travis Carter, Esq.,
Senior Assistant Regional Counsel (3RC30)
U.S. EPA - Reg. III
1650 Arch Street
Philadelphia, PA 19103-2029

Thomas F. DeCaro, Jr., Esq.,
DeCaro & Howell, P.C.
14406 Old Mill Road, Suite 201
Upper Marlboro, MD 20772-3029

Rachele D. Jackson
Legal Staff Assistant

Dated: August 14, 2001