

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)	
)	
Raceway Petroleum, Inc.,)	
Ellada Petroleum, Inc.,)	Docket Nos. RCRA-02-2000-7504
Atlantis Petroleum, Inc.,)	RCRA-02-2000-7505
Nicholas Kambitsis,)	
Hilltop Service, Inc., and)	
Poseidon Petroleum, Inc.)	
)	
Respondents)	

ORDER

The rebuttal phase of this case is set to be heard on July 31 - August 1, 2001. The United States Environmental Protection Agency ("EPA") has identified the scope of its rebuttal case through a listing of proposed witnesses and exhibits. The respondents (collectively referred to as "Raceway") have objected to this witness and exhibit list, arguing that EPA has no right to present a rebuttal case in the first place.

Raceway's request that EPA not be allowed to put on a rebuttal case is *denied*. EPA has listed seven rebuttal witnesses with a summary of the expected testimony of each witness. This expected testimony is rebuttal in nature. See *U.S. v. Tejada*, 956 F.2d 1256, 1266 (2nd Cir. 1992) ("[t]he function of rebuttal evidence is to explain or rebut evidence offered by an opponent"), *cert denied* 113 S.Ct. 124. Allowing EPA to proceed with the rebuttal phase of this case is consistent with Rule 22.4(c) of the Consolidated Rules of Practice, 40 C.F.R. 22.4(c), as well as with Rule 611(a) of the Federal Rules of Evidence.

Carl C. Charneski
Administrative Law Judge

Issued: July 10, 2001
Washington, D.C.