

In addition, Complainant moves for permission to file a motion for accelerated decision on liability in order to narrow the issues at trial and simplify the hearing. The burden of showing there exists no genuine issue of material fact is on the party moving for summary judgment. Adickes v. Kress, 398 U.S. 144,157 (1970). In considering such a motion, the tribunal must construe the factual record and reasonable inferences therefrom in the light most favorable to the non-moving party. Cone v. Longmont United Hospital Assoc., 14 F. 3rd 526, 528 (10th Cir., 1994).

Upon review of the record in this case, including the applicable regulations contained at 40 CFR Sections 279.42(a); 279.51(a); 279.55; and 279.73(a), the proposed exhibits of record, and correspondence of the parties, the undersigned concludes, construing the evidence most favorable to Respondent, that genuine issues of material fact relating to liability appear to exist. Specifically, Respondent asserts that the oil it allegedly transported, processed and/or sold was not "used oil", but "on specification" oil which was exempt from the notification and regulatory requirements noted above.

Given these arguments and the evidence of record, the undersigned does not encourage the filing of a motion for accelerated decision and would be reticent to grant such motion thereby depriving Respondent the opportunity to develop liability arguments at hearing.

However, should Complainant seek to file such motion, it must do so **no later than February 6, 1998**. Complainant's motion will need to address, with detailed specificity, not only those facts which establish that it is entitled to judgment on liability as a matter of law, but Respondent's argument that the material at issue was not "used oil" as defined in the applicable regulations. Respondent shall have 10 days from receipt of Complainant's motion to file its response. Complainant's rebuttal will be due 10 days after receipt of Respondent's reply. The filing of such motion shall not toll Complainant's deadline to reply to Respondent's amended prehearing exchange.

Stephen J. McGuire
Administrative Law Judge

Date: January 21, 1998
Washington, D.C.

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