

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Euclid of Virginia, Inc.,) Docket No. RCRA-3-2002-0303
)
Respondent)

ORDER ON DISCOVERY

The United States Environmental Protection Agency (“EPA”) has filed a Motion For Complete Prehearing Exchange And Motion For Discovery. Euclid of Virginia, Inc. (“Euclid”), essentially opposes this motion. As set forth below, EPA’s motion is *granted in part* and *denied in part*.

A. Witnesses and Exhibits

1. EPA seeks a more detailed narrative of the expected testimony of Koo L. Yuen and Leon Buckner. Subsequent to EPA’s request, respondent provided an expanded narrative of the expected testimony of these witnesses. This Tribunal finds that this expanded narrative cures any defects that previously may have existed. Accordingly, EPA’s request for a more detailed narrative of Yuen and Buckner is moot.

2. EPA seeks a more detailed narrative of the expected testimony of Theodore Beck.¹ EPA’s request is denied. The specific information requested by EPA, as well as the basis for its request, are unclear. Moreover, although succinct, respondent’s summary of Beck’s expected testimony is adequate for EPA to prepare for hearing.

3. EPA seeks a more detailed narrative of the expected testimony of Dean Hicks. EPA’s request is denied. Euclid has adequately described the expected testimony of this witness as follows: “Dean Hicks, precision tank tester for Independent Petroleum will testify as to the tank testing protocols and tank tightness systems and other pollution control equipment at each site.” Resp. PHE at 1.

4. EPA seeks a more detailed narrative of Edward Davis, a “CPA” expected to be called as an expert witness by respondent, to the extent that Davis will testify “that the financial test for self-insurance is met by three trusts as guarantors.” Mot. at 10. EPA’s request is granted and respondent is directed to provide this information within 10 days of the date of this order.

¹ EPA identifies this witness as Thomas Beck.

5. EPA requests that respondent identify any “representatives” that it will call to testify in this matter from the State of Maryland, the Commonwealth of Virginia, and the District of Columbia. EPA’s request is granted and Euclid is directed to identify any such witnesses within 10 days from the date of this order.

6. EPA requests that Euclid specifically identify the exhibits which it will introduce into evidence in this case. In that regard, Euclid states, “Respondent may introduce thousands of pages of exhibits into evidence.” Resp. PHE at 2. Euclid generally identifies these exhibits as involving “recent compliance with release detection requirements for all sites as required by 40 CFR § 280.45; maintenance records as required [by] 40 CFR § 280.34(c); and records related to financial assurance mechanisms as required by 40 CFR § 280.111.” Resp. PHE at 3. EPA’s request for specific exhibit identification is granted. Euclid shall identify each exhibit which it intends to introduce into evidence, and provide EPA with a copy of such exhibit, within 15 days of the date of this order.

B. Interrogatories

EPA requests permission to propound to Euclid four interrogatories, with various subsets. Respondent’s sole objection is that pursuant to 40 C.F.R. 280.45, it need only retain documents for a one-year period. Resp. at 2. Whether or not respondent’s description of Section 280.45’s provisions is correct is beside the point. It appears that the interrogatories propounded by complainant request relevant information of some probative value to the issues to be resolved in this case. Indeed, Euclid does not argue otherwise. All things considered, EPA’s request to propound certain interrogatories meets the discovery requirements of 40 C.F.R. 22.19(e)(1) and is therefore granted. Euclid shall provide answers to these interrogatories within 20 days of the date of this order.

Carl C. Charneski
Administrative Law Judge

Issued: November 19, 2003
Washington, D.C.