

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
V-1 OIL COMPANY ) Docket No. 10-94-0215-RCRA  
 )  
Respondent )

**ORDER DENYING CROSS MOTIONS  
FOR ACCELERATED DECISION OR DISMISSAL**

The complaint in this proceeding is brought by the U.S. Environmental Protection Agency ("EPA") under Section 9006 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e. The single count in the complaint alleges that the respondent, V-1 Oil Company ("V-1 Oil"), failed to permanently close two underground storage tanks ("USTs"), after twelve months of temporary closure, as required by 40 C.F.R. § 280.70(c). EPA proposes a \$36,674 penalty.

EPA filed a motion for partial accelerated decision regarding liability asserting that V-1 Oil failed to permanently close its USTs. The motion also asserts that V-1 Oil did not properly perform a "change-in-service" to an unregulated substance because it did not clean the tanks by removing all the liquid and accumulated sludge and did not complete a site inspection.

V-1 Oil responded by filing a motion to dismiss or, in the alternative, a motion for accelerated decision. V-1 Oil's motion denied the applicability of 40 C.F.R. § 280.70(c), and any other provision that requires respondent to remove its USTs on the ground that it performed a "change-in-service" in compliance with 40 C.F.R. § 280.71(c).

Both motions are denied because the parties have raised the following factual questions that may impact liability and require a hearing: 1) whether V-1 Oil permanently closed its USTs or properly performed a change-in-service; 2) the amount of petroleum present in the tanks, and the significance thereof; 3)

what steps, if any, that V-1 Oil took to determine whether its USTs were the cause of environmental damage and the significance thereof; 4) whether EPA delegated UST enforcement to the State of Idaho; and 5) whether V-1 Oil reasonably relied on EPA's guidance document "MUSTS For USTS" and whether such reliance provides grounds for equitable estoppel.

Aside from these questions of fact, V-1 Oil's legal argument that the complaint is invalid because EPA cited the incorrect regulatory provision is rejected. EPA alleges facts that, if proven, establish the violation alleged in the complaint--i.e., a failure to permanently close USTs that have been temporarily closed for twelve months, as required by 40 C.F.R. § 280.70(c).<sup>(1)</sup>

Finally, V-1 Oil's argument that it is entitled to a jury trial is rejected. See, *Atlas Roofing Company v. Occupational Safety and Health Review Commission*, 430 U.S. 442, 454 (1977); see also, *In re Condor Land Company*, CWA-404-95-106 (Order Denying Demand for Jury Trial, December 5, 1996).

Carl C. Charneski

Administrative Law Judge

Issued: July 22, 1997

Washington, D.C.

IN THE MATTER OF V-1 OIL COMPANY, Respondent

Docket No. 10-94-0251-RCRA

#### **Certificate of Service**

I certify that the foregoing ORDER, dated July 22 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Ms. Mary Shillcutt

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region 10

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Copy by Regular Mail to:

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Marion Walzel

Legal Staff Assistant

Dated: July 22, 1997

1. Whether the "change-in-service" provisions of 40 C.F.R. 280.71(c) are, as V-1 Oil suggests, also applicable to this case has yet to be determined.