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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

IN THE MATTER OF)		
)		
PETRO WEST, INC.)	Docket No.	II-RCRA-95-
0306			
)		
)		
Respondent)		

ORDER

_On January 9, 1998, the undersigned issued an Order Denying Complainant's Motion For Default On Liability And Granting Respondent's Motion To Accept Late-Filed Pre-Hearing Exchange.

Prior to the issuance of said Order, a pre-hearing telephone conference was conducted with the parties. As a result of that teleconference, it was ordered that Respondent file any additional financial records or documents pertaining to its inability to pay argument as part of its amended pre-hearing exchange, no later than January 20, 1998. Complainant's reply was due by February 3, 1998.

By correspondence dated January 15 and 20, 1998, and faxed to the undersigned on those same dates, counsel for Complainant indicated that Respondent had advised him that new financial information was mailed on January 16, 1998. Given the uncertainty of when Complainant will receive the documents mailed in Puerto Rico and the intervening federal holiday, Complainant requested that the deadline for filing its reply be extended to within 2 weeks of Respondent's amended prehearing exchange being filed with the Regional Hearing Clerk. For good cause shown, Complainant's request is **GRANTED.**

Apart from the filings indicated above, no further evidentiary submissions are anticipated in this case. Should either party fail to submit their filings in a timely fashion, the undersigned, absent good cause for such delay, pursuant to Section 22.19(b) of the Rules of Practice, will entertain a motion for preclusion with respect to the untimely submittal.

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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