

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Ritchie Engineering Company, Inc.,) Docket No. CAA-5-2000-019
)
Respondent)

ORDER

The United States Environmental Protection Agency (“EPA”) has filed a motion for accelerated decision in this matter. 40 C.F.R. 22.20. EPA seeks the issuance of an order finding Ritchie Engineering Company, Inc. (“Ritchie Engineering”), liable for two violations of the Clean Air Act. 42 U.S.C. § 7401 *et seq.* In Count 1 of its complaint, EPA charges that Ritchie Engineering failed to observe Administrative Order CAA-ACO-7-2000-0009, issued by EPA to respondent, which required Ritchie Engineering to comply with both Section 608(a) of the Clean Air Act, 42 U.S.C. § 7671g(a), and the National Recycling and Emissions Reduction Rule, codified at 40 C.F.R. Part 82, Subpart F. In Count 2, EPA charges that prior to July 27, 2000, respondent failed to properly label its Refrigerant Recovery System Model R-60 in accordance with the Standards for Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F. Ritchie Engineering did not file a response to EPA’s motion for accelerated decision.

The motion is *denied*. In seeking summary judgment in this matter, EPA substantially relies upon Complainant’s Exhibits 3, 4, 5, 7, 8, 9, 10, 11, 12, 15, 17, and 18. While these documents provide a clear road map as to how EPA intends to prosecute this case, it must be remembered that, at the present time, these documents are proposed exhibits only. In other words, they are not yet a part of the evidentiary record.¹ Indeed, whether the proposed exhibits ever become part of the record here, and the weight to be accorded to them, remains to be seen. In that regard, these proposed exhibits may be rejected at hearing, EPA may decide to not offer them into evidence, or they may be explained away by respondent.

Accordingly, the proposed exhibits relied upon by EPA to support its motion can not properly serve as a basis for an award of summary judgment. This is true even with respect to the proposed exhibits that are correspondence from respondent to EPA regarding the factual

¹ EPA apparently agrees with this delineation of a pre-hearing evidentiary record. In that regard, it states that a moving party is entitled to accelerated decision pursuant to 40 C.F.R. 22.20 when the “pleadings, discovery, and affidavits” show that no genuine issue as to any material facts exists and that it is entitled to judgment as a matter of law. EPA Mem. at 3.

underpinnings of this case. These correspondence, as well as all the other documents cited by EPA, need further examination at hearing, particularly as to what they represent and exactly how they fit into this case.

Aside from these proposed exhibits, EPA also relies upon admissions made by respondent in its answer to the complaint. See Answer, ¶ 2. Contrary to EPA's assertion, however, these admissions do not constitute an acknowledgment of liability by Ritchie Engineering. In fact, a fair reading of respondent's answer is that it denies the allegations of violation contained in EPA's complaint.²

In sum, the record here does not support the granting of EPA's motion for accelerated decision.³

Carl C. Charneski
Administrative Law Judge

Issued: April 19, 2001
Washington, D.C.

² While respondent's admissions as to the allegations contained in ¶¶ 44 and 45 of the complaint seem to be inconsistent with its general denial of having violated the Clean Air Act, it is not quite clear just exactly what the respondent is admitting to regarding this portion of the complaint. See Answer, ¶¶ 2 & 4. Accordingly, this is a factual area that needs to be developed at the hearing.

³ As noted, in its answer, respondent denied the charges of violation. If that still is the case, respondent can raise whatever defenses it has at the hearing; if it no longer is the case (and for this reason respondent chose not to file an opposition to EPA's present motion), the parties should enter into the appropriate stipulations so as to narrow the scope of the hearing.