

II. ISSUES

Based on the appellant's notice of appeal and its statements at the prehearing conference, the issues in this matter appear to be:

Whether the Department of Environmental Conservation (DEC), ANR, required Coca-Cola to undertake certain emergency remedial actions in response to releases of fuel from two underground storage tanks at Coca-Cola's site in East Montpelier, Vermont, and if so, whether a total of \$62,578.22 in costs incurred by Coca-Cola for excavation, transportation, and treatment of 845 tons of contaminated soil should be reimbursed from the state PCF.

Whether the DEC, ANR, required Coca-Cola to subsequently make a site investigation, and if so, whether a total of \$24,985.11 in costs incurred by Coca-Cola for this investigation should be reimbursed from the state PCF.

The appellant requests that the Board reverse the ANR's determinations that it is not eligible for reimbursement for the entire amount of its requests and that it direct the ANR to reimburse it for the balance of eligible costs incurred in emergency cleanup and subsequent investigation.

The ANR contends that the appellant is not eligible for reimbursement for certain costs incurred because (1) its removal and disposal of the petroleum contaminated soils were not performed as part of a corrective action plan approved by the Department of Environmental Conservation (DEC) in accordance with the Reimbursement Package for the PCF and (2) certain costs incurred are not reasonable.

III. WITNESSES AND EXHIBITS

1. At the prehearing conference, the appellant reserved the right to call any and all of the following persons as witnesses: Michael Gallen of Shevenall-Gallen and Associates; and Ed Bryan, Corporate Engineer, Corporate Engineer (retired), Coca-Cola.

In response to the draft Prehearing Conference Report and Order, the appellant informed the Board that several persons might attend the hearing, but it did not indicate whether these persons would appear as witnesses. These persons are: an unnamed representative from McLane, Graf, Raulerson, and Middleton Professional Association; Fred Walker, Chief Financial Officer, Coca-Cola; John

Palermo, Vice President of Operations, Coca-Cola; David Larose, State Manager, Vermont Coca-Cola; and Mark Fisher, **Shevenall-Gallen Associates, Inc.** The appellant is reminded that any person who may be called as a witness must be identified in one or both of the witness lists required to be filed in accordance with the terms of this and any supplemental order.

2. At the time of the prehearing conference, the ANR reserved the right to call any and all of the following persons as witnesses: Mark Coleman, UST Program, **HMMD/ANR**; Linda Wedderspoon, Sites Management Section, **HMMD/ANR**; Charles Schwer, Sites Management Section, **HMMD/ANR**; George Desch, Chief, Sites Management Section, and Acting Director, **HMMD/ANR**. In response to the draft **Pre-hearing Conference Report and Order**, the ANR has added the following staff persons to the list of possible witnesses: Ted **Unkles**, Coordinator, UST Program, **HMMD/ANR**; Peter Marshall, Chief, Management and Prevention Section, **HMMD/ANR**; Richard Spiese, Sites Management Section, **HMMD/ANR**; and William Ahearn, Director, **HMMD**.

3. During the prehearing conference, the appellant and the ANR referred to certain documents: UST Regulations, agency guidelines, reimbursement policies, application forms, etc. In order for the Board to consider these as part of the record, they must be offered as exhibits in accordance with the terms of this and any supplemental order.

IV. STANDARD OF REVIEW

Any hearing on the merits in this appeal shall be conducted as a de novo proceeding, pursuant to 10 V.S.A. § 1933.

V. STIPULATIONS

A great many facts in this proceeding do not appear to be in dispute, especially those that relate to the **chronology** or events set forth in the appellant's supplemental filing of April 18, 1994. Therefore, the ANR is encouraged to review this filing and stipulate to matters not at issue. A statement of stipulated facts should be filed with the Board in accordance with the terms set forth in the Order below.

The parties are also asked to review the documents filed by the appellant on April 18, 1994, offered for the Board's consideration in this appeal. To the extent that the ANR does not object to the admission of any of these documents, it should confer with the appellant and enter into a stipulation regarding their admission. Such stipulation should be filed in accordance with the terms set forth in the Order below.

VI. DISCOVERY

The Board Rules of Procedure do not provide for discovery. However, at the Prehearing Conference, Coca-Cola and ANR agreed to share copies of telephone logs that might shed light on the **sequence** and timing of communications between the two parties.

VII. DISCLOSURES

At the prehearing conference, the current Board members were identified by name (Chair Williams Boyd Davies, Mark **DesMeules**, Stephen Dycus, Ruth Einstein, and Jane Potvin) and their present, and past professional affiliations. Any party seeking additional disclosures shall do so in accordance with the terms set forth in the Order below.

VIII. ORDER

1. The following are parties as of right in this proceeding:
 - a. Coca-Cola, appellant, pursuant to 10 V.S.A. § 1993.
 - b. The Agency of Natural Resources (ANR), pursuant to Rule 22(A)(4) of the Board's Rules of Procedure.
 2. On or before **4:30** p.m., Friday, September 30, 1994, any party objecting to the participation of a Board member in this proceeding, shall file a written objection with the Board. This filing should state the reason(s) for the objection and any facts known to that party which might require the Board member's **recusal**. Failure to file a timely request may be deemed a waiver of objection to the participation of a Board member.
 3. Parties objecting to the appointment by the Board of one or more referees to hear this appeal, pursuant to Rule 4 of the Board's Rules of Procedure, shall file written statements of objection with the Board on or before **4:30** p.m., Friday, September 30, 1994, or the objection will be deemed **waived**.
 4. On or before **4:30** p.m., Friday, October 14, 1994, any **stipulation** of facts shall be filed with the Board.
 5. On or before **4:30** p.m., Friday, October 14, 1994, parties shall file with the Board lists of witnesses and exhibits, all exhibits which are 8 1/2 by 11 inches or smaller which they intend to present at hearing, a summary of each **wit-**
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- ness' testimony, and resumes of all expert witnesses. To the extent that the parties can stipulate to the admission of certain exhibits, they should do so by this deadline.
6. On or before **4:30** p.m., Friday, October 14, 1994, parties shall file legal briefs or memoranda with the Board.
 7. On or before, **4:30** p.m., Friday, October **28**, 1994, parties shall file with the Board supplemental lists of witnesses and exhibits, exhibits, summaries of testimony, and resumes of expert witnesses.
 8. On or before, **4:30** p.m., Friday, October 28, 1994, parties shall file any reply legal briefs or memoranda with the Board.
 9. On or before 4:30 p.m., Monday, November 7, 1994, parties shall file in writing all objections to the testimony and exhibits previously identified, or such objections shall be deemed waived.
 10. No individual may be called as a witness in this matter if he or she has not been identified in a witness list filed in compliance with this Order. All reports and other documents that constitute substantive testimony must be filed with the the sponsoring witness' summary of testimony in accordance with the deadlines set in this Order.
 11. Summaries of testimony may be filed in narrative or letter format. However, each page and each line of testimony shall be numbered.
 12. For exhibits which are larger than 8 1/2 by 11 inches, parties are only required to prefile lists identifying these exhibits, rather than the exhibits themselves. However, oversized exhibits must be made available for inspections and copying by the parties prior to the hearing.
 13. Any hearing scheduled in this matter shall be recorded by electronic sound recording device. Upon the written request of any party, in accordance with Rule 28(C) of the Board's Rules of Procedure, the hearing may be recorded by a qualified stenographer in addition to the Board's electronic sound recording.
 14. Parties in this proceeding shall file an original and five (5) copies of any motions, memoranda, or other filings with the Board, and mail one copy to each of the persons listed on the attached Certificate of Service. A certificate of service indicating delivery to all listed persons by hand or by first
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class mail shall also be filed with the Board and parties.
The Board does not accept filings by FAX.

15. Pursuant to Rule 24(B) of the Board's Rules of Procedure, this Order shall be binding on all persons who have received notice of the prehearing conference, unless there is a timely objection to the Order, or a showing of cause for, or fairness requires, waiver of a requirement of this Order.

Dated at Montpelier, Vermont, t h i s & day of September, 1994.

Water/Resources Board,
