

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Industrial Chemicals ) Docket No. CWA-02-99-3803  
Corporation )  
 )  
Respondent )

INITIAL DECISION

Pursuant to the Clean Water Act §311(b) (6) (B) (ii), 33 U.S.C. §1321(b) (6) (B) (ii), the Respondent, Industrial Chemicals Corporation, is assessed a civil penalty of \$11,475 for failing to properly prepare, implement, and amend its Spill Prevention Control and Countermeasure Plan for its chemical manufacturing facility, as required by the Oil Pollution Prevention regulations found in 40 CFR Part 112.

By: Andrew S. Pearlstein, Administrative Law Judge  
Dated: September 22, 2000

Appearances:

For Complainant: Lourdes del Carmen Rodriguez, Esq.  
Assistant Regional Counsel  
U.S. EPA Region 2  
San Juan, Puerto Rico

For Respondent: Bernard V. Baus, President  
Industrial Chemicals Corporation  
Penuelas, Puerto Rico

Proceedings

The Region 2 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") filed an administrative Complaint dated June 22, 1999, against the Industrial Chemicals Corporation (the "Respondent" or "ICC"), of Penuelas, Puerto Rico. The Complaint charged that Respondent had committed violations of the Oil Pollution Prevention regulations, promulgated under the authority of the Clean Water Act ("CWA") at its chemical manufacturing facility in Penuelas. Specifically, the Complaint charged that ICC had failed to properly prepare a Spill

Prevention Control and Countermeasure Plan ("SPCC plan") for its facility; had failed to properly implement its SPCC plan; and had failed to amend its SPCC plan upon a material change in the facility's design or operation. Respectively, these charges allege violations of the Oil Pollution Prevention regulations at 40 CFR §§112.7, 112.3(b), and 112.5(a). The Region seeks assessment of a civil penalty of \$15,500 against ICC for these violations.

The Respondent filed its Answer to the Complaint on July 16, 1999. In its Answer, ICC stated it was willing to conform its SPCC plan to the Region's requirements. ICC also disputed most of the particular items listed in the Complaint (Attachment B) purporting to show that Respondent was not properly implementing its SPCC plan. Respondent also pointed out that it has an effective drainage system at its facility to prevent the discharge of oil or other pollutants to the adjacent Carribean Sea. ICC therefore requested a hearing on the Complaint.

The hearing in this matter convened before Administrative Law Judge ("ALJ") Andrew S. Pearlstein on April 11, 2000, in San Juan, Puerto Rico. The Region produced three witnesses, and the Respondent produced one witness. The record of the hearing consists of a stenographic transcript of 159 pages, and 18 numbered exhibits received into evidence. The parties and ALJ undertook a visit to the site of the ICC facility on April 12, 2000. Following the hearing, the parties submitted written closing briefs and reply briefs. The record of the hearing closed on July 13, 2000, upon the ALJ's receipt of the parties' reply briefs.

### Findings of Fact

1. The Respondent, Industrial Chemicals Corporation, or "ICC," is a corporation organized under the laws of the Commonwealth of Puerto Rico. Since 1978 ICC has owned and operated a chemical manufacturing facility located on the south coast of the island of Puerto Rico, on Rural Route #127, near the town of Penuelas (the "facility"). The ICC facility produces primarily sulfuric acid, as well as other inorganic chemicals, including aluminum sulfate and ammonia, for commercial sale and use. Bernard V. Baus, Ph.D., a chemical engineer, is the President of ICC. His son, James R. Baus, is Vice-President. ICC has approximately 38 employees and gross sales of approximately \$3,000,000 per year. (Exs. 15, 16;

Tr. 120-121) .<sup>1</sup>

2. ICC uses about 10,000 gallons of diesel oil annually to operate a boiler and sulfur burner during start-up of sulfur processing operations, and to fuel five maintenance vehicles. ICC also uses smaller quantities of lubricating and hydraulic oils for maintaining equipment and vehicles. The facility has a total oil storage capacity of 24,620 gallons. There are three above-ground storage tanks for diesel fuel (2500 gallons); used oil (5000 gallons); and #6 fuel oil (16,900 gallons). ICC also stores two 55-gallon drums of motor oil, and one such drum each of hydraulic and transmission oil. (Exs. 3, 17[p.4]).

3. The ICC facility is located immediately adjacent to the shoreline of the Carribean Sea, and a tributary to the Sea, the Tallaboa River. In late 1997, the Region received reports from representatives of the U.S. Fish and Wildlife Service of a sticky and discolored substance along the shoreline adjacent to the ICC facility. This prompted the Region to undertake an inspection of the ICC facility on December 20, 1997. (Tr. 43-46).

4. The Region's inspector, Angel Rodriguez, conducted the inspection for compliance with the SPCC plan requirements of the CWA, as well as for compliance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Mr. Rodriguez first examined ICC's SPCC plan, which was dated December 1994. Then, accompanied by Dr. Baus and Mr. James Baus, he conducted a field inspection of the facility. Mr. Rodriguez found a number of alleged violations during his inspection concerning ICC's SPCC plan's preparation and implementation. After the inspection he discussed his findings with Dr. and Mr. Baus, and sent them a copy of his inspection report. The Region later, on February 13, 1998, sent ICC a letter, or notice of noncompliance, itemizing the violations found during the inspection. The letter directed ICC to provide a schedule to implement compliance, and noted that failure to comply would subject Respondent to civil penalties. (Exs. 1, 5; Tr. 16-30, 69).

5. With respect to the CERCLA inspection, Mr. Rodriguez had the Region's technical contractor conduct an extensive sampling and analysis program to detect levels of organic and inorganic chemicals, pesticides, metals, and oil and grease on the ICC site.

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<sup>1</sup> References to the exhibits ("Ex. ") and stenographic transcript pages ("Tr.") are representative only, and not intended to be exhaustive.

As a result of this analysis, the Region determined that further action under CERCLA was not necessary. The results did detect oil and grease at several locations on the ICC facility site. (Ex. 4; Tr. 34-39, 47-50, 56).

6. With respect to ICC's SPCC plan, Mr. Rodriguez found 11 alleged violations of the regulations in 40 CFR Part 112, particularly the guidelines for implementation of an SPCC plan found in §112.7(e). Generally, he found that the December 1994 plan ICC had at that time was inadequate in its descriptions of facility conditions and measures to store oil and prevent the discharge of oil into the environment. For example, Mr. Rodriguez found that the plan did not adequately describe drainage on the site; oil transfer procedures; secondary containment structures around the above-ground tanks; and inspection and record-keeping procedures. A complete list of the alleged SPCC plan violations, with citations to the relevant regulations, is found in Attachment A to this Initial Decision.' (Exs. 1, 2, 5; Tr. 16-30).

7. Mr. Rodriguez also found 13 conditions in his field inspection of the facility which he determined to be violations of the implementation requirements for an SPCC plan. These largely corresponded with the alleged inadequacies in the plan itself. For example, the inspector observed that ICC's secondary containment structures did not appear to be sufficiently large or impervious to contain spilled oil; drainage valves were not maintained in a closed position; spilled oil had not been cleaned up; and there were no records of inspections of oil storage and transfer equipment. A complete list of the alleged field implementation violations, with citations to the relevant regulations, is found in Attachment B to this Initial Decision.<sup>3</sup> (Exs. 1, 5; Tr. 16-30).

8. Dr. Baus, on behalf of ICC, responded to the inspection and

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<sup>2</sup> Attachments A and B actually document the alleged violations found after a second inspection of the ICC site by the Region's Christopher Jiminez, which were then attached to the Complaint. Respondent had not changed its SPCC plan between the two inspections. Hence, Attachment A indicates 10 of the 11 violations found by Mr. Rodriguez in his December 1997 inspection, with the exception of failure to amend the plan to reflect current facility operations [40 CFR §112.5(a)]. That was stated as a separate allegation in the Complaint.

<sup>3</sup> Attachment B documents the alleged violations as found in the September 1998 inspection of the ICC site by Christopher Jiminez. These are largely the same as those noted by Mr. Rodriguez in his earlier inspection.

notice of noncompliance in 3 letters to the Region - 2 dated January 7, 1998 and one March 5, 1998. In this correspondence, Dr. Baus explained ICC's existing drainage system, listed a schedule of steps ICC intended to take to correct deficiencies, and disputed some of the alleged violations found by the Region. ICC also requested the Region's assistance in preparing a revised SPCC plan. (Exs. 3, 8, 9).

9. On April 6, 1998, the Region responded to ICC's request for assistance by sending Respondent a letter with several "outreach" attachments intended to help the regulated community come into compliance with SPCC requirements. The Region sent ICC a copy of the Part 112 regulations, a sample SPCC plan, and a brochure describing the SPCC program. On April 20, 1998, Dr. Baus replied with a letter thanking the Region for its assistance, and stating that the materials would help ICC revise its SPCC plan. (Exs. 10, 11; Tr. 82-83, 134).

10. As noted by the Region in its inspection, the ICC facility did not have distinct secondary containment structures around all its oil storage tanks and drums at the time. Rather, the facility had, and still has, a site-wide drainage system designed to capture any spilled oil, as well as rainfall and other chemical substances, in catchment basins that direct the liquid to one of three process sumps. Any oil migrating to the sumps is removed by absorbent materials. Residual liquid in the sumps is pumped to a process water pond on the east side of the site. Any overflow from the sumps or process water pond would enter the "east lake" flood area. Any overflow from the east lake would flow to the adjacent storm water pond, from where it could be pumped back to the process water pond. The outfall from the storm water pond to the Carribean Sea is monitored to prevent the discharge of any oil or any other pollutants. The capacity of the east lake, process and storm water retention ponds is sufficient to retain rainfall amounts of up to one inch in 12 hours. There is no record of any spill of oil or any other chemical substance migrating from the ICC site to the Carribean Sea. (Ex. 8; Tr. 122-125).

11. In spring or summer of 1998, ICC installed a steel dike as a secondary containment structure for its 2500-gallon diesel oil tank. ICC also began work on constructing earthen secondary containment dikes for the used oil and #6 fuel oil tanks; improving the valves, pumps, and drainage system in its process sumps; and constructing secondary containment for fuel vehicle transfer areas. (Ex. 9).

12. The Region's Christopher Jiminez conducted a follow-up SPCC inspection of the ICC facility on September 17, 1998. Mr. Jiminez found that ICC had not amended or changed its SPCC plan since the previous year's inspection. Generally, he determined that the plan did not adequately reflect facility conditions. In his field inspection, Mr. Jiminez did observe that, as noted above, ICC had installed a secondary containment structure around the diesel fuel tank. However, Mr. Jiminez noted many of the same SPCC plan implementation deficiencies that were present at the prior inspection. These included inadequate secondary containment around the used oil and #6 fuel oil tanks and oil drums; oil leaks were not promptly corrected; no catchment basin in the diesel unloading area; and valves not securely locked. A complete list of the particular alleged deficiencies, with citations to the relevant requirements in Part 112, is found in Attachment B to this Initial Decision. (Exs. 6, 7; Tr. 66-78).

13. Hurricane Georges struck Puerto Rico on September 21, 1998.<sup>4</sup> It caused extensive damage throughout the island, including on the ICC facility site. The excessive rainfall delayed ICC's continuing work on complying with the SPCC requirements. On September 30, 1998, Dr. Baus wrote a letter to the Region concerning the damage caused by the hurricane and including a schedule of steps for coming into further compliance with the SPCC requirements. (Ex. 18; Tr. 133).

14. By April 1999, ICC had constructed clay-lined earthen secondary containment berms around its used oil and #6 fuel oil tanks. ICC also improved the catchment basin in the diesel truck loading area, cleaned up oil-stained soils on the site, and instituted inspection and record-keeping procedures. Drums containing motor and lubricating oils were removed for storage in the diesel tank secondary containment area.

15. These facility modifications, and supporting calculations, were incorporated in a new SPCC plan dated July 27, 1999. However, ICC's retained Professional Engineer, Allan R. Nazario, P.E., lost his copy of the plan and then was unavailable to sign and certify it throughout late 1999 and parts of early 2000. He did not sign

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<sup>4</sup>It is evident that Hurricane Georges struck Puerto Rico between the date of Mr. Jiminez' inspection on September 17, 1998 (Ex. 6) and Dr. Baus' letter of September 30, 1998 (Ex. 18). In this decision, I will take official notice, from reference to news reports, that Hurricane Georges first struck Puerto Rico on September 21, 1998.

and certify it until April 14, 2000, three days after the hearing. The SPCC plan was otherwise unchanged from that dated July 27, 1999. (Ex. 17; Tr. 136-137, 143-145)<sup>5</sup>.

16. ICC realized an economic benefit of \$3375 due to its delayed compliance with the SPCC regulations. This amount includes interest, and annualized construction and maintenance costs for the period of non-compliance of 16 months, from December 1997 until April 1999. (Tr. 109-110).

### Discussion

#### - Liability

The Complaint in this proceeding charges the Respondent with failing to prepare a proper SPCC plan, failing to amend the plan, and failing to implement the SPCC plan. The charges have both general and specific components. ICC's alleged failure to prepare and amend a proper SPCC plan generally overrides the specific allegations of failure to implement the plan. It is not necessary to make definitive findings on all the specific allegations of failure to implement the plan listed in Attachment B to this decision in order to find the Respondent liable for the charge of failing to properly prepare its SPCC plan. The charges of failure to prepare the plan and failure to implement it are factually interrelated and interdependent. Thus, conceptually, and for the purpose of assessing an appropriate civil penalty, the allegations in the Complaint will essentially be viewed as a single unified charge that ICC did not prepare and implement its SPCC plan as required by 40 CFR Part 112.

The requirement to prepare an SPCC plan applies, among others, to owners and operators of non-transportation-related onshore facilities that consume oil and oil products, "which, due to their location, could reasonably be expected to discharge oil in harmful quantities . . . into or upon the navigable waters of the United States or adjoining shorelines." 40 CFR §112.1(b). Facilities

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<sup>5</sup> Respondent submitted a copy of the signed title page of the new SPCC plan on April 14, 2000, three days after the hearing, stating the plan admitted as Exhibit 17 was otherwise unchanged. In a scheduling order dated May 2, 2000, the ALJ gave the parties an opportunity to object to this finding or otherwise address it during the briefing period. The Region did not object or contest the factual finding that the SPCC plan, Exhibit 17, remained unchanged except for the P.E. certification.

subject to the SPCC plan requirements must further have a storage capacity of at least 1320 gallons, or one container with a capacity of at least 660 gallons. 40 CFR §112.1(d) (2) (ii). The Respondent does not dispute that it is subject to the SPCC plan requirements under these criteria. The ICC facility's location immediately adjacent to the Caribbean Sea is highly environmentally sensitive. Any discharge of oil would reasonably be expected to cause harmful effects in the coastal ecosystem and the navigable waters of the United States. (See Finding of Fact or "FF" #3). It is also not disputed that the ICC facility has an oil storage capacity of approximately 25,000 gallons, well in excess of the 1320-gallon minimum threshold. (FF #2).

At the time of the Region's inspection of the ICC facility, in December 1997, ICC had an SPCC plan dated December 1994 (Ex. 2). The record shows that the plan was out of date, and did not adequately describe the facility as required by 40 CFR §112.3(b) and §112.7. The plan was not, however, useless. It did address the facility's overall drainage system, oil tank storage capacity, tank truck unloading procedures, and inspections. However, as a comparison with ICC's new SPCC plan (Ex. 17) shows, the 1994 plan did not generally discuss these topics in sufficient detail.

One of the key themes of the SPCC plan requirements is that the plan demonstrate that the facility has adequate secondary containment structures to retain any oil spilled from the tanks or unloading areas on site. See 40 CFR §112.7(e)(1) (iii, iv) ; §112.7(e) (2) (ii) ; and §112.7(e) (4) (ii). The 1994 plan simply did not state that the facility had secondary containment with sufficient capacity and imperviousness to retain spilled oil from its tanks or unloading areas on site. (FF #6). ICC did not install secondary containment structures around its tanks and take other measures required by the SPCC regulations until after the Region's inspections. (FF #11, 14).

ICC contended that its site-wide drainage system of sumps, catchment basins, and ponds, would act to prevent the discharge of oil pollutants into the waters adjacent to the site. While the record shows that this system is useful and effective in generally preventing pollutants from leaving the site, ICC did not demonstrate that it is a fully effective substitute for secondary containment structures around the individual oil tanks. The testimony of the Region's inspectors, Messrs. Rodriguez and Jiminez, explained that such structures are required under the regulations to provide the necessary margin of safety (See Tr. 76-

78). Thus, ICC's failure to have such secondary containment in place at the time of the inspections constitutes a failure to implement the SPCC plan requirements of Part 112.

The regulations require that the SPCC plan be "carefully thought-out." 40 CFR §112.7. The, Region's witness, Angel Rodriguez, testified that the SPCC plan should be a "mirror image" of the facility as it actually appears in the field. (Tr. 19). The plan is also required to be prepared within six months of the opening of the facility; and to be fully implemented within one year of beginning operations. 40 CFR §112.3(b). ICC did not amend or change its SPCC plan in any way between the Region's inspections in December 1997 and September 1998. (FF #12). Although Dr. Baus had been communicating with the Region concerning the SPCC plan, the record shows that at the time of the inspections, the plan did not adequately represent field conditions, had not been amended, and was not fully implemented as required by §112.7. ICC's revised plan was not prepared until July 1999 and not certified by a professional engineer until April 2000. (FF #15). Hence, ICC is liable for failing to properly prepare, amend, and implement its SPCC plan, in violation of 40 CFR Part 112, as alleged in the Complaint.

- Civil Penalty

Pursuant to the CWA §311(b) (6), owners or operators of onshore facilities may be assessed a civil penalty of up to \$10,000 per day, up to a maximum of \$125,000 for violations of any of the oil pollution prevention regulations.<sup>6</sup> In determining the amount of a civil penalty under paragraph (6), the Administrator "shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require." CWA §311(b) (8), 33 U.S.C. §1321(b) (8).

In calculating its proposed penalty in this case, the Region followed the guidelines in the "Civil Penalty Policy for Section

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<sup>6</sup>These civil penalty amounts are now increased 10% by the Debt Collection Improvement Act of 1996 ("DCIA," effective January 30, 1977), and pursuant to its implementing regulations at 40 CFR Part 19.

311(b) (3) and Section 311(j) of the Clean Water Act," dated August 1998 (the "Penalty Policy," Ex. 14). The Penalty Policy is intended to provide the EPA litigation staff with guidance in the assessment of penalties for settlement and litigation purposes, consistent with the statutory factors. (Penalty Policy, pp. 1-2). The Penalty Policy is guidance and not-final agency action. The EPA Rules of Practice require the ALJ to explain in the initial decision how the penalty to be assessed corresponds to the penalty criteria in the Act, in this case the CWA, and to provide specific reasons for varying from the amount of the penalty proposed in the Complaint. 40 CFR §22.27(b). In addition, the ALJ "has the discretion either to adopt the rationale of an applicable penalty policy where appropriate or to deviate from it where the circumstances warrant." *In re DIC Americas, Inc.*, 6 EAD 184, 189 (EAB, September 27, 1995). In this Initial Decision, I will generally follow the Penalty Policy guidelines in assessing the civil penalty, but will differ from the Region's calculation in one respect.<sup>7</sup>

The Penalty Policy (p.7) provides a matrix for determining the starting gravity component of the penalty for a violation of the SPCC requirements. I concur with the initial value of \$6000 from the midpoint (with 10% added for the DCIA increase) of the box corresponding to ICC's oil storage capacity and a "moderate" degree of noncompliance. ICC had an SPCC plan and some oil containment and diversion measures in place, but did not have full secondary containment and a fully adequate SPCC plan. I further concur with the addition of 25% to the gravity amount due to the high potential of harm from a discharge from the ICC facility, due to its proximity to the sensitive ecosystem of the Carribean Sea. (Ex. 14, p. 9). This brings the amount to \$7500. The Region then added 8% of that amount for the duration of the violation, calculated as one half of one percent for each month the facility was out of compliance. (Ex. 14, p. 9). The record supports the finding that ICC was not in full compliance for 16 months after the initial inspection, or from September 1997 until April 1999. (See FF ##14, 15). This brings the gravity component of the penalty to \$8100.

The Region next increased the penalty 50% upon a finding that the Respondent was highly culpable, as authorized by the Penalty Policy (Ex. 14, p. 10). The record does not, however, support this increase. While to some extent, the parties were not communicating

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<sup>7</sup>The Region's penalty calculation is found in Exhibit 13.

well after the initial inspection, the overall picture is one of good faith on the part of ICC. Dr. Baus immediately responded to the inspection reports and compliance letters. He made some corrections and attempted to persuade the Region that the oil diversion system he already had in place provided at least the equivalent protection as would the additional secondary containment structures desired by the Region. Ultimately, after Mr. Jiminez' inspection, ICC installed all required additional containment measures as soon as possible after the delay caused by Hurricane Georges. ICC also prepared a completely revised SPCC plan by July 1999. ICC should not be penalized unduly by the delay in having the P.E. certify the plan. This was adequately explained by Dr. Baus. Therefore, I will not add to the gravity component any amount for Respondent's degree of culpability.

The Region also calculated ICC's economic benefit from its delayed compliance with the SPCC regulations, in the amount of \$3375. (FF #16). The Region's witness, Michael Hodanish, testified that the Region employed conservative assumptions regarding Respondent's costs in using the BEN model for this calculation. ICC did not challenge this evidence, and I accept it as the only substantial evidence on this issue. There are no other civil penalty adjustments applicable under the Penalty Policy.

The total civil penalty amount to be assessed is therefore \$11,475. I find that the civil penalty amount of \$11,475 is appropriate in this case. It is commensurate with the seriousness of the violation, the Respondent's degree of culpability, and includes an amount for economic benefit, as required by the CWA §311(b) (8).

#### Conclusions of Law

1. The Respondent, the Industrial Chemicals Corporation, committed a violation of the CWA §311(b) (6) (A) (ii) by failing to fully comply with the regulations concerning the preparation, amendment, and implementation of a SPCC plan set forth in 40 CFR Part 112. More specifically, at the time of the Region's inspections, ICC did not have an SPCC plan prepared as required by 40 CFR §§112.3(b) and 112.7; did not amend it as required by 40 CFR §112.5(a); and did not implement the plan in accord with the requirements of 40 CFR §112.7. The specific regulatory sections violated are listed in Attachments A and B to this Initial Decision.

2. An appropriate civil penalty for this violation, pursuant to the CWA §311(b) (8), is \$11,475.

Order

1. The Respondent, Industrial Chemicals Corporation, is assessed a civil penalty of \$11,475.

2. Pursuant to 40 CFR §22.27(c) and §22.30(a), this Initial Decision shall become the final order of the Agency 45 days after service on the parties unless (1) an appeal to the Environmental Appeals Board is taken from it by any party within 30 days from the date of service provided in the certificate of service accompanying this order, (2) a party moves to reopen the hearing, or (3) the Environmental Appeals Board elects to review this decision on its own initiative.

3. Pursuant to 40 CFR §22.31, payment of the full amount of the civil penalty shall be made within 30 days after this decision becomes a final order by submitting a cashier's or certified check in the amount of \$11,475, payable to the Treasurer, United States of America, and mailed to EPA - Region 2, P. O. Box 360188M, Pittsburgh, PA 15251. Respondent shall also serve copies check on the Regional Hearing Clerk and Complainant. Interest may be collected on overdue payments.



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Andrew S. Pearlstein  
Administrative Law Judge

Dated: September 22, 2000  
Washington, D.C.

ATTACHMENT-A

1. Plan does not follow the sequence of 40 CFR §112.7.  
[40 CFR §112.7]
  2. Plan does not state that plant drainage from undiked areas either flows into ponds, lagoons or catchment basins designed to retain oil and return it to the facility; or, that the final discharge of all in-plant ditches is equipped with a diversion system that could return spilled oil to the plant. [40 CFR §112.7(e) (1) (iii & iv)]
  3. Plan does not address when more than one drainage water treatment unit is used, the transfer between units should be by either natural hydraulic flow or two "lift" pumps with at least one permanently installed. The drainage will prevent oil from reaching navigable waters. [40 CFR 112.7(e) (1) (v)]
  4. Plan does not state that tank construction and materials are compatible with the material stored.  
[40 CFR §112.7(e) (2) (i) ]
  5. Plan does not have wording that secondary containment walls and floors are "sufficiently impervious" to contain spilled oil, and does not describe how secondary containment is sufficiently impervious. [40 CFR §112.7(e) (2) (ii)]
  6. Plan does not indicate that records are kept for drainage of storm water from diked areas [40 CFR §112.7(e)(2)(iii) (D)]
  7. Plan omits discussion of aboveground tank testing methods.  
[40 CFR §112.7(e) (2) (vi) ]
  8. Plan does not indicate that drainage of the loading/unloading area either flows into a catchment basin or a treatment facility designed to handle spills; or, flows into a containment system designed to hold at least the maximum capacity of any single compartment of any tank truck loaded or unloaded at the facility.  
[40 CFR §112.7(e) (4) (ii) & (e) (1) (iii-iv)]
  9. Plan does not indicate that an interlocked warning light or physical barrier system or warning signs are provided to prevent vehicular departure before disconnect of the transfer lines. [40 CFR §112.7(e) (4) (iii)]
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10. Plan does not state that required inspections should follow written procedures and should be maintained as part of the SPCC plan for a period of three years. [40 CFR §112.7(e) (8)]

ATTACHMENT B

1. Valves or pumps that are used to drain secondary containment areas are not manually operated. [40 CFR §112.7(e) (1) (i & ii) ]
2. Plant drainage from undiked areas does not either flow into a pond, lagoon or catchment basin designed to retain oil, or, have a diversion system that could return spilled oil to the plant. [40 CFR §112.7 (e) (1) (iii & iv)]
3. Secondary containment areas do not appear to be sufficiently impervious to contain spilled oil. [40 CFR §112.7(e) (2) (ii)]
4. The secondary containment capacity for the used oil tank does not appear capable of containing the volume of the tank plus sufficient freeboard to allow for precipitation. The secondary containment capacity for the # 6 fuel oil tank does not appear capable of containing the volume of the largest single tank plus sufficient freeboard to allow for precipitation. [40 CFR §112.7(e) (2) (ii)]
5. The secondary containment drainage valves are not maintained in the closed position. [40 CFR §112.7(e) (2) (iii) (A)]
6. There are no records of periodic inspections of aboveground tanks, including tank supports and foundations. [40 CFR §112.7(e) (2) (vi)]
7. The used oil and the #6 fuel oil tank do not have fail-safe engineered overflow protection. [40 CFR §112.7 (e) (2) (viii) ]
8. Oil leaks have not been promptly corrected. Spilled oil has not been cleaned up. [40 CFR §112.7(e) (2) (x)]
9. There is no secondary containment or catchment basin for portable or mobile oil storage tanks (including drums) to prevent spilled oil from reaching navigable waters. [40 CFR §112.7(e) (2) (xi) ]
10. There are no records of regular inspections of all aboveground valves, pipelines and associated piping hardware. [40 CFR §112.7(e) (3) (iv)]

11. There is no catchment basin, treatment facility or drainage system in the loading/unloading areas able to hold at least the maximum capacity of any tank truck loaded or unloaded in the facility. [40 CFR §112.7(e) (4) (ii)]
12. An interlocked warning light, physical barrier system, or warning signs are not provided in the loading/unloading areas to prevent vehicle departure before disconnect of transfer lines. [40 CFR §112.7(e) (4) (iii)]
13. Valves which permit the outward flow of a tank's contents to the surface are not securely locked in the "closed" position when in non-operating or non-standby status.  
[40 CFR §112.7(e)(9)(ii)]
14. Starter controls for oil pumps in non-operating or non-standby status are not locked in the "off" position or located at a site accessible only to authorized personnel.  
[40 CFR §112.7(e) (9) (iii)]

**IN THE MATTER OF INDUSTRIAL CHEMICALS CORPORATION**, Respondent  
Docket No. CWA-02-99-3803

**Certificate of Service**

I certify that the foregoing Initial Decision, dated September 22, 2000, was sent this day in the following manner to the below addressees.

Electronic copies of Administrative Law Judges' decisions and orders may be obtained on the Internet at:  
<http://www.epa.gov/oalj/orders.htm>

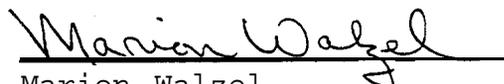
**Certified Mail, Return Receipt Requested:**

Original and Copy to: Ms. Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region II  
290 Broadway, 17th Floor  
New York, NY 10007-1866

Copy to:

Counsel for Complainant: Lourdes del Carmen Rodriguez, Esquire  
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1492 Ponce de Leon Avenue  
San Juan, PR 00907-4127

Respondent: Mr. Bernard V. Baus  
President  
Industrial Chemicals Corp.  
Penuelas, PR 00624

  
Marion Walzel  
Legal Staff Assistant

Dated: September 25, 2000