UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D 20460

OFFICE OF
THE ADMINISTRATOR

IN RE	)	
	)	RCRA-III-116
QUAKER STATE OIL REFINING	)	
	)	ACCELERATED DECISION
Respondent	)	

This matter was instituted by the issuance of the Complaint and Compliance Order on September 28, 1984. Following attempts to settle and the exchange of the pre-hearing information, the parties advised that they had prepared a stipulation of relevant facts and wished to submit the question of liability to the Court on briefs pursuant to 40 CFR § 22.20. If liability is found, a hearing on the question of the amount of the penalty would be held later. The above-mentioned stipulation is attached hereto as Exhibit A and is incorporated herein as findings of fact.

The Complaint assessed penalties for four (4) violations, but in its brief, the Agency advised that is was not pursuing the violation concerning storing a hazardous waste not identified in Respondent's initial Part A application, to wit: slop oil emulsion solids (waste # K049). The Agency's position on this violation apparently stems from the fact that the revised Part A application filed by the Respondent, relative to this waste, was misplaced by the Agency and did not reach the specific office which deals with such matters.

materials, some new capacity must also be added and thus subsection (b) would always apply. If this were so, then such prior approval should have been included in subsection (a). Since it was not, the intent of the regulations obviously was not to require prior approval for the storage of a new hazardous waste (see Respondent's initial brief at pp. 5 and 6). This argument is not valid. One can easily envision situations where new wastes are to be handled which involve no increase in storage or treatment capacity. For example, a metal plater who chooses to change from a cadmium to a nickle process. He must file a revised Part A application, but since this change involves no capacity increases, prior approval is not required. Another analogy is where the operator of an incinerator decides to accept a new waste which is compatible with his existing equipment. He must notify under § 270.72(a), but since no increase in capacity is involved, no prior approval is required.

The regulations do not define "processes", but reading all of § 270.72 together one sees that increasing storage capacity is an increase in the capacity of a process. See § 270.72(c) which states that "changes in the processes for the treatment, storage, or disposal of hazardous waste..." need prior approval. (Emphasis supplied.) Clearly, the definition of "processes", as used in the RCRA regualtions, is substantially broader than that which is traditionally used in other environmental applications.

Accordingly, I am of the opinion that the Respondent did violate 40 CFR § 270.72(b) by not getting prior approval when it increased its storage capacity for K049.

The next violation cited has to do with the Respondent's failure to amend its closure plan within 60 days of the submission of the revised Part A application in contravention of 40 CFR § 265.112(b). That subsection states that:

> "The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure of the facility. The plan must be amended within 60 days of the changes."

It is admitted that no revision to the closure plan was made by the Respondent until some 256 days after the change and then only when advised to do so by state officials.

The Respondent argues that no revision was necessary since its original closure plan adequately dealt with K049. The language in the original plan to which Respondent refers is as follows:

> "All slop oil emulsion solids which are generated during closure of the facility will be disposed of off-site at an EPA-approved disposal site."

As they say in West Virginia, "That dog won't hunt!" As the Agency correctly points out, it is the storage facility itself, i.e., the tanks, which must be addressed in the closure plan. The disposition of their contents is another matter. Clearly, the above-quoted language utterly fails to discuss how the tanks will be handled during closure.

I am, therefore, of the opinion that the Respondent violated 40 CFR § 270.72(b) by failing to amend its closure plan.

The last violation in issue here involves the failure of the Respondent to submit a closure plan to the Agency for review and public comment prior to transferring K049 from three tanks to three other tanks in contravention of 40 CFR § 265.112(c).

This issue can be re-stated as follows: Did the transfer of K049 from three tanks to three other tanks constitute "partial closure" thus triggering the requirements of the above-cited regulation? I think not. In its revised Part A application, the Respondent identified six tanks as constituting its storage facility for K049. When an inspection revealed a valve on one of the three tanks then being used to store the waste had a hair line crack which caused a small leak, the Respondent transferred the contents of that tank along with two others, to three of the other tanks. Why the contents of three tanks were transferred rather than only that from the leaking tank is not explained. The three old tanks were cleaned and the rinse material was also placed in the new tanks. The three "old" tanks remain on the Respondent's premises for future use.

40 CFR § 260.10 defines partial closure as the closure of a discrete part of a facility. As an example, the regulation cites the closure of a trench, a unit operation, a landfill cell, or a pit while other parts of the same facility continue in operation. The failure of the regulation to mention tanks or similar containers is, in my opinion, not a mere oversight but rather a conscious recognition that mobile and secure containers, such as tanks or drums, should be viewed in a different fashion than that accorded trenches, pits or landfills where the hazardous waste is placed in the earth thus providing the substantial likelihood of contamination

of the environment. This is not to say that tanks and similar containers are exempt from closure requirements, rather, I am saying that one must exercise some modicum of common sense and judgement when dealing with them in the regulatory sense.

Under the circumstances of this case, I am of the opinion that the transfer of the waste from one set of tanks to another does not constitute partial closure of the emptied tanks. In this case, such action constituted merely good maintenance practice. The fact that the Respondent revised his Part A application to eliminate the three old tanks from service, at the insistence of a state official does not alter my opinion. It may be that at some time in the future one of the "new" tanks might spring a leak and one of the old tanks be brought back into use. Must a closure plan be filed to commemorate this event? I think not.

I am, therefore, of the opinion that under the facts of this case, and this case only, the act of transferring the contents of a waste from one set of tank(s) to another does not constitute closure of the emptied tanks.

Conclusion

Based upon the preceeding discussion, I find that the Respondent: (1) violated 40 CFR § 265.112(a)(3) by increasing its designed storage capacity without receiving prior approval; and (2) violated 40 CFR § 265.112(b) by failing to amend its closure plan to include provisions for the tank storage facility. I find no violation in regard to the transfer of the contents of the waste K049 from one set of tanks to another without filing a closure plan relative to such action.

ORDER

The parties will have until July 26, 1985 to attempt to settle this matter. Counsel for the Complainant shall file a report on that date which advises the Court as to whether or not the matter has been settled, whether settlement is likely and, if not, suggest dates and places for the holding of the Hearing on the question of the amount of the penalty to be assessed.

DATED: July 11, 1985

Thomas B. Yost
Administrative Law Judge

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, USEPA Region III (service by first class U.S. mail); and that true and correct copies were served on: Martin Harrell, Esquire, U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19106; and Mary Ransford White, Esquire, Quaker State Oil Refining Corp., Post Office Box 989, Oil City, Pennsylvania 16301 (service by certified mail return receipt requested). Dated in Atlanta, Georgia this 11th day of July 1985.

Sandra A. Beck
Secretary to Judge Yost

Honorable Thomas B. Yost
U.S. Environmental Protection Agency
345 Courtland Street
Atlanta, Georgia 30365
881-2681, Comm. 257-2681, FTS

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In Re	)	Docket No. RCRA-III-116
	)	
Quaker State Oil Refining Corp. St. Marys, West Virginia	)	Stipulation of Facts
	)	
Respondent	)	

1. Respondent is a Delaware corporation doing business in the State of West Virginia and is a "person" under Section 2 of Chapter 20, Article E, of the Code of West Virginia (hereinafter referred to as the West Virginia Code and by Section only), Section 1004(15) of the Resource, Conservation and Recovery Act ("the Act"), 42 U.S.C. §6903(15), and regulation 40 C.F.R. §260.10.

2. Respondent owns and operates an oil refinery located at 201 Barkwill Street, St. Marys, West Virginia. Respondent's principal product at this refinery is motor oil.

3. As part of its business, Respondent is an "owner" and "operator" of an "existing hazardous waste management facility" and engages in the "storage" of "hazardous waste" as those terms are defined in 40 C.F.R. §260.10.

4. Respondent submitted to the United States Environmental Protection Agency ("EPA"), in a timely manner, a Notification of Hazardous Waste Activity, as required by Section 3010(a) of the Act, 42 U.S.C. §6930(a). Respondent's Notification stated that the Respondent's facility handled hazardous wastes, including K049, slop oil emulsion solids.

5. Respondent has considered oily wastes accumulated at the bottom of process tanks to be slop oil emulsion solids, a listed hazardous waste. This waste is generated only when process tanks are cleaned and the residue is removed from the bottom of the tanks.

13. The Respondent sent the revised Part A Permit Application by certified mail to the West Virginia Department of Natural Resources (DNR) and the U. S. EPA. The Respondent sent EPA's letter to P. O. Box 1460, Philadelphia, PA, the address established for Part A submissions in 1980. The Respondent received certified mail receipt No. 9333242538, which showed that the Region III EPA mail room received the letter February 16, 1983.

14. The revised Part A Permit Application added K049 to the wastes handled by Respondent's facility and amended the facility drawing to identify the location of 6 new storage tanks. The addition of these tanks raised the facility's total design capacity from 20,000 to 50,000 gallons.

15. The Facilitie's Management Section, Waste Management Branch, Hazardous Waste Management Division of EPA, did not receive Respondent's February 7, 1983, Part A revision. That Section would have processed and acted upon the amended Part A Application had it been received.

16. From the time of the Respondent's submittal of its Part A revision in February, 1983, to the filing of EPA's complaint on September 28, 1984, the parties had no communication concerning the Part A revision or any other aspect of Respondent's hazardous waste activities at the St. Marys facility.

17. The Respondent used the additional tanks to store slop oil emulsion solids at the facility beginning in late 1982 or early 1983.

18. During an inspection November 21, 1983, Richard Mirth, the Respondent's Plant Engineer, and an Inspector with the West Virginia DNR, Division of Water Resources, discovered that a valve on one of the tanks used to store slop oil emulsion solids had leaked. This was reported to Don Stanley, a West Virginia DNR RCRA Inspector.

19. Mr. Stanley inspected the facility on November 23, 1983 and again on December 12, 1983 as part of West Virginia's RCRA Program.

20. During his November 23, 1983 inspection, Mr. Stanley observed that a container holding approximately one gallon of amber liquid was located directly below a four-inch valve one of three tanks marked "Hazardous Waste." He observed that the soil adjacent and under the valve was stained. He did not observe any leakage during the inspection.

21. During his November 23, 1983 inspection, Mr. Stanley was advised of Respondent's intent to transfer the slop oil emulsion solids from 3 tanks marked "Hazardous Waste" to the 3 other tanks also on the premises, and that the tanks would be emptied, rinsed, and the rinse liquids placed with the slop oil emulsion solids. Mr. Stanley voiced his approval of these actions.

22. During his December 12, 1983 inspection, Mr. Stanley asked Richard Mirth, Respondent's Plant Engineer, to have the stained soil sampled and analyzed to determine whether it had been contaminated by the leaking fluid.

23. Mr. Mirth took a soil sample and had it analyzed by IHI Kemron of Williamstown, West Virginia. The analysis showed the chromium content to be 1,000 mg/kg and the lead content to be 49 mg/kg. The extractable level for those substances was less than 0.01 mg/l for chromium and less than 0.05 mg/l for lead, below the E. P. toxicity levels specified in the RCRA regulations. Mr. Mirth provided the laboratory results to Mr. Stanley via telephone and to Robert L. Jelacic of the West Virginia DNR's Hazardous Waste/Ground Water Branch by letter dated February 27, 1984.

24. On December 21, 1983, Mr. Stanley informed Mr. Mirth that Quaker State had failed to amend its closure plan within 60 days of February 7, 1983, the date on which it submitted its revised Part A Permit Application adding the six tanks for the storage of K049 slop oil emulsion solids.

25. Quaker State's closure plan, as it existed prior to the submission of the revised Part A Permit Application on February 7, 1983 contained the statement, "All slop oil emulsion solids which are generated during closure of the facility will be disposed of off-site at an EPA approved disposal site."

26. On December 22, 1983, acting on Mr. Stanley's advice, Respondent amended its closure plan to make specific reference to the addition of the 6 tanks used to store K049 slop oil emulsion solids.

27. Mr. Stanley also advised Respondent that the 3 tanks being removed from immediate service should be deleted from Respondent's revised Part A Permit Application. On March 8, 1984, EPA received a letter from Respondent dated February 27, 1984 removing 3 of the 6 tanks used to store slop oil emulsion solids from the Part A Application.

28. The 3 tanks deleted from the revised Part A Permit Application remain on the facility premises.

29. At no time did Mr. Stanley advise Respondent to submit its closure plan to the EPA.

30. The Regional Administrator, EPA Region III, did not approve the Respondent's increase in design capacity reflected in Quaker State's February 2, 1983, Part A revision since the appropriate Agency employees never received it.

31. Slop oil emulsion solids is a listed hazardous waste pursuant to 40 C.F.R. §261.32. Laboratory analysis of Respondent's slop oil emulsion solids indicates that it does not contain hexavalent chromium and contains a minimum amount of lead.

32. The Respondent did not submit its closure plan to EPA for review and public comment 180 days prior to removing the 3 tanks as part of the regulated facility.

33. Since November, 1982 Respondent has made no change in its operations at the St. Mary's facility that would affect the quantity or types of hazardous wastes generated, handled or stored at that facility.

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