UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Redfield Company,	)	Docket No. RCRA (3008) VIII-83-6
	)	
Respondent	)	

Resource Conservation and Recovery Act - Seriousness of Violation - Actual or Potential Harm - Conduct of Violator - Penalty Policy - Where under all the circumstances it appeared that damage (potential harm) and conduct of violator could properly be classified as minor on matrix in penalty policy considered applicable to a statutory violation (lack of a permit or interim status), penalty so determined was held to be reasonable and would be imposed inasmuch as Respondent's stringent financial circumstances are not a factor over which it lacked control within meaning of penalty policy. Purpose of penalty is to deter further violations and it was determined penalty imposed was adequate for that purpose.

Appearance for Respondent:

Norton F. Tennille, Jr.
Attorney at Law
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Denver, Colorado

Appearance for Complainant:

Susan E. Manganiello
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Region VIII
Denver, Colorado

Initial Decision

This is a proceeding under § 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6928, 1980 Supp.).1/ The proceeding was commenced by the issuance on January 18, 1983, by the Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Region VIII, Denver, Colorado, of a complaint charging Respondent, Redfield Company, with the storage of hazardous waste, specifically 1,1,1-trichloroethane, without a permit or having achieved interim status in violation of § 3005 of the Act (42 U.S.C. 6925) and 40 CFR 262.34. It was alleged, inter alia, that at the time of an inspection on October 21, 1982, Respondent did not have a fire extinguisher in its accumulation area as required by 40 CFR 265.32. Respondent was ordered, inter alia, to immediately comply with all of the requirements applicable to generators of hazardous waste in 40 CFR Part 262, specifically having a contingency plan, preparedness and prevention measures, inspections and training requirements, to ship off-site to an approved hazardous waste management facility all drums containing hazardous waste, furnishing copies of the manifests to EPA or to apply for a storage permit in accordance with 40 CFR Parts 122 and 264 within 60 days and until the permit is issued, to store no hazardous waste at the site. A penalty of $13,000 was proposed to be assessed against Respondent.

1/ Section 3008(c) of the Act (42 U.S.C. 6928(c)) provides:

> "(c) Requirements of Compliance Orders--Any order issued under this section may include a suspension or revocation of a permit issued under this subtitle, and shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements."

By letter, dated February 7, 1983, Respondent's Operations Manager stated that Redfield could not deny having 15 barrels of chlorothene VG that were at worst 1.5 months out (over) the 90-day requirement, but asserted that it had a contingency plan and had [timely] disposed of all hazardous waste in the past. Redfield asserted that it was contesting the count (allegation) relating to the lack of a fire extinguisher inasmuch as chlorothene VG was not a flammable liquid.2/ Its primary reason, however, for requesting a formal hearing was to contest the appropriateness of the penalty, because Respondent was allegedly operating on a day-to-day, month-to-month financial situation and imposition of a penalty of the magnitude proposed could lead to its demise.

Respondent subsequently employed counsel, who filed a formal answer on its behalf on February 28, 1983, and pursuant to motion, an amended answer under date of April 19, 1983. The primary change made by the amended answer is the assertion that Respondent qualifies for the small quantity generator exemption set forth in 40 CFR 261.5.

Under date of August 30, 1983, counsel for the parties entered into a stipulation of facts, agreeing that the sole issue to be decided by the ALJ was the appropriate penalty. Briefs of the parties were submitted under date of September 9, 1983, and oral argument was held on September 30, 1983.

Based on the stipulation and the briefs and arguments of the parties, I find that the following facts are established:3/

2/ In its submission of April 21, 1983, constituting its part of the prehearing exchange directed by the ALJ, Complainant asserted that it was willing to stipulate that the waste in question, 1,1,1-trichloroethane, was not flammable and that accordingly Respondent was not required to have a fire extinguisher in the waste storage area.

3/ Any facts in the stipulation not recited herein are considered unnecessary to the decision.

Findings of Fact

1. Respondent, Redfield Company, is a division of a corporation known as the Brown Group (formerly the Brown Shoe Company), and is engaged in the manufacture of aluminum scopes for rifles at a facility located at 5800 East Jewell Avenue, Denver, Colorado.

2. In the process of cleaning the scopes which it manufactures, Respondent has used chlorothene VG and has generated small quantities of waste solvent containing 1,1,1-trichloroethane, which is listed as a hazardous waste, No. F001, in 40 CFR 261.31. During the period covered by the complaint (1982), waste solvent containing 1,1,1-trichloroethane was generated in a steel wash tank used for cleaning metal parts.4/

3. The steel wash tank referred to in the preceding finding is located indoors, but not in an enclosed area. Waste solvent from the tank was transferred to 55-gallon sealed drums which are moved by fork-lift truck a short distance within the factory to an outside loading dock and from there to an accumulation area on a fenced, paved lot approximately 50 yards from the building.

4. The sealed 55-gallon drums of waste remained at this accumulation area until they were removed by Oil and Solvent Process Company, EPA Identification No. COD980591184.

5. Pursuant to § 3010 of the Act (42 U.S.C. 6930), Respondent filed a Notification of Hazardous Waste Activity with EPA on August 14, 1980. Respondent has not submitted Part A Permit Application in accordance with § 3005 of the Act (42 U.S.C. 62925) and thus has not achieved interim status in accordance with that section.

4/ Redfield alleges that chlorothene VG and the wash tank are no longer used for this purpose and that it no longer generates wastes containing 1,1,1-trichloroethane.

6. During the period covered by the complaint, Redfield was generating hazardous waste at a rate of less than 1,000 kg. per month and would have been able to qualify for the small quantity generator exemption pursuant to 40 CFR 261.5, had it been aware of that exemption.

7. By letter to EPA, dated April 21, 1983, Redfield's Operations Manager stated that it had complied with 40 CFR 262.11 (tested the waste it generates to determine if it was hazardous) and that it generated less than 1,000 kilograms of hazardous wastes per month and did not at any time store or accumulate hazardous waste in excess of 1,000 kilograms. It was further stated that all hazardous wastes generated by Redfield are removed by Chemical Waste Management to a facility having interim status or by Oil and Solvent Process Company, a facility having interim status and that legitimately recycles these wastes. Redfield asserted that it met all of the requirements of a small quantity generator specified in 40 CFR 261.5. In a letter, dated May 6, 1983, the RCRA Project Officer for EPA, Region VIII agreed that from the information furnished, it appeared that Redfield qualified as a small quantity generator. The letter noted, however, that the determination of its status was Respondent's responsibility.

8. On October 21, 1982, representatives of EPA conducted an inspection of Respondent's facility. The inspection disclosed that Redfield had stored 15 55-gallon drums of waste containing 1,1,1-trichloroethane for a period in excess of 90 days (the period allowed by 40 CFR 262.34 for accumulation of hazardous waste without a permit), and had stored 1,1,1-trichloroethane in six drums, which did not bear required hazardous waste warning labels or accumulation dates.

9. The inspection also disclosed that although Redfield had administered safety training to its employees, it had failed to document the incidence of individual training and had otherwise failed to satisfy the RCRA personnel training recordkeeping requirements set forth in 40 CFR 265.16. Moreover, although applicable preparedness and prevention measures appeared to have been complied with inside the building, the inspection revealed that Respondent had not maintained a hazardous waste contingency plan at the site as required by 40 CFR 265.53.

10. Spent solvent containing 1,1,1-trichloroethane is neither ignitable, corrosive nor reactive. It is not an acute hazardous waste nor does it exhibit characteristics of EP toxicity.

11. The substance 1,1,1-trichloroethane is moderately toxic to aquatic life, and simulated studies have suggested that it may be slightly mutagenic and can cause mammalian cell transformation.

12. The water solubility of 1,1,1-trichloroethane is 950 mg/l. Thus the solvent exhibits a significant tendency for migration when mixed with water. The chemical 1,1,1-trichloroethane vaporizes rapidly and tends to evaporate when spilled.

13. During the period covered by the complaint, Redfield employees are and were instructed to treat any spills of 1,1,1-trichloroethane with "Floor-day," a sawdust-like material. After use, the "Floor-dry" is disposed of by placement in sealed 55-gallon drums.

14. On December 7, 1982, Respondent removed the 15 55-gallon drums of waste solvent which had been inadvertently stored at its facility for a period in excess of 90 days. A copy of the manifest issued by Oil and Solvent

Process Company on December 7, 1982,[5] evidencing this shipment was furnished to EPA on February 8, 1983.

15. At the time of the EPA inspection on October 21, 1982, Redfield had adopted contingency plan measures to ensure that its employees would respond swiftly and appropriately to minimize hazards to human health or the environment due to fires, explosions, or any sudden or non-sudden release of hazardous waste or the constituents thereof to air, soil or surface water. At that time, however, Respondent did not have a single document identified as a contingency plan. Prior to receipt of a notice of possible violations (January 1983), Respondent had implemented its contingency plan in a single document, which is now posted throughout its facility. Copies of this contingency plan were submitted to EPA on February 8, 1983.

16. Soon or shortly after the RCRA compliance inspection, Redfield installed a fire extinguisher at the location where drummed 1,1,1-trichloroethane waste is collected. EPA now agrees that 1,1,1-trichloroethane is not ignitable and that Respondent was not required to install a fire extinguisher in that area.

17. After the October 21, 1982, inspection and prior to receipt of the notice of possible violations, Redfield designated a single employee, Bob Bernacchi, as the person responsible for implementation, supervision and review of Respondent's contingency plan and hazardous waste management program in order to facilitate compliance with the law and consistent adherence to its hazardous waste disposal policies.

5/ The manifest reflects that the actual pick up date for the shipment was December 10, 1982.

18. As previously indicated, in January 1983 (precise date not stated or determinable), EPA issued to Respondent a notice of possible violations of Subtitle C of RCRA. The notice alleged, inter alia, that at the time of an inspection on October 21, 1982, Redfield was storing approximately 15 drums of hazardous waste (No. F001 in 40 CFR 261.31) for longer than 90 days without having a permit or interim status, that it did not have a contingency plan as specified in Subpart D of 40 CFR 265 and did not have required personnel training [or documentation thereof] as required by 40 CFR 265.16. The notice alleged that these conditions had existed since the time of an earlier inspection on May 26, 1981.

19. The inspection of May 26, 1981, revealed that Redfield was storing approximately 18 55-gallon drums of a listed hazardous waste without having accumulation dates on the drums as required by 40 CFR 262.34(a)(2) and without having a written contingency plan as required by 40 CFR 265.51. Redfield was notified of these deficiences by letter, dated August 3, 1981, and requested to correct the same and provide written confirmation of the corrections. The letter informed Redfield that if it expected to store in excess of 1,000 kilograms of hazardous waste for more than 90 days, it would be necessary for it to submit RCRA Part A Permit Application and comply with the requirements of 40 CFR Part 265. Redfield did not respond to this letter nor to a followup letter, dated October 13, 1981.

20. The recession has had a severe impact on Redfield's sales and earnings and the number of its employees. Redfield reported a pre-tax net profit in 1981, a substantial pre-tax loss in 1982 and anticipates a loss in 1983. During the period to and including October 11, 1983, the

number of its salaried and hourly employees declined by 48 percent.[6] Data supporting these findings are contained in Appendix A.[7]

21. Because of the austerity measures, including reduction in the number of employees, instituted to alleviate Respondent's deteriorating financial situation, there was a substantial turnover in the employees responsible for its hazardous waste management and disposal program (four individuals having that responsibility) in the months immediately preceding the EPA inspection of October 21, 1982.

Conclusions

1. Redfield Company's action in storing hazardous waste, specifically 1,1,1-trichloroethane (Hazardous Waste No. F001, 40 CFR 261.31), in quantities greater than 1,000 kilograms for a period in excess of the 90 days allowed by 40 CFR 262.34 without having been granted an extension of said period and without a permit or having achieved interim status was a violation of § 3005 of the Act (42 U.S.C. 6925).
2. In accordance with § 3008(c) of the Act (note 1, supra), Redfield is liable for a civil penalty.

Discussion

In calculating the amount of the proposed penalty, Complainant utilized the draft penalty policy "A Framework For Development of a Penalty Policy For Resource Conservation and Recovery Act (RCRA)" (December 31, 1980), by Policy

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6/ Latest sales, earnings and employment data for 1983 are contained in a letter from Redfield's counsel, dated October 11, 1983.

7/ Although Respondent has made no claim that financial and employment data are confidential, Appendix A will be released to the public only after Respondent has been given an opportunity to object. See § 3007(b) of the Act, 42 U.S.C. 6927 and 40 CFR § 2.305(g) and § 2.301(g)(3).

Planning and Evaluation, Inc. (Memorandum Brief at 2). Although this penalty policy has not been formally adopted by EPA, it has been utilized as a guide in initial decisions assessing penalties under the Act.8/ Moreover, Respondent agrees that this policy, hereinafter Penalty Policy, is an appropriate frame of reference for determination of the applicable penalty, if any.

The Penalty Policy utilizes a matrix system under which seriousness of the violation is determined by two factors, damage and conduct, which are classified as major, moderate or minor. Complainant determined that storage of hazardous waste without a permit, a statutory violation, was a Class II violation where the maximum penalty for a single violation is $6,500 in circumstances where potential damage is moderate and conduct is determined to be major (Penalty Policy at 27). Complainant considered the conduct factor, deviation from the regulations, to be major based on Respondent's lack of a permit and lack of required contingency and personnel training plans. The potential for environmental damage was determined to be moderate based on the fact that EPA Background Documents for Listing Hazardous Waste indicate that 1,1,1-trichloroethane is moderately toxic to aquatic life, that in vitro studies have indicated that it is slightly mutagenic with or without activation and can cause mammalian cell transformation and that the solubility of 1,1,1-trichloroethane in water is quite high (950 mg/l), indicating a strong tendency for migration. The presence of six drums of waste solvent containing 1,1,1-trichloroethane without required hazardous waste labels or accumulation dates was considered to increase the likelihood of improper disposal. Application of these determinations resulted in a penalty of $6,500,

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8/ See, e.g., Cellofilm Corporation, Docket No. II RCRA-81-0114, August 5, 1982, American Ecological Recycle Research Corporation and Donald K. Gums, Docket No. RCRA-VIII-82-4, July 1, 1983. See also Koppers Company, Inc., Docket No. RCRA-III-012, June 21, 1983, appeal pending.

which was doubled to $13,000, because an inspection of Redfield's facility in 1981 revealed essentially the same violations, Redfield had not replied to warning letters and was considered to have done little or nothing to comply with the regulations.

Respondent contends that the amount of the penalty is grossly excessive, entirely disproportionate to the violations charged, contrary to EPA's policy of national uniformity in penalty assessment, and fundamentally unfair to a small company which is suffering severe economic hardship (Brief at 2). Because Redfield at all times qualified for the small quantity generator exemption, it argues that EPA should not have pursued this penalty proceeding. Respondent further argues that if any penalty is to be imposed, it should be in the range of $100 to $1,650 (both conduct and potential damage minor on the matrix for Class II violations), should not exceed $875, the midpoint of the range, and should be suspended.

In support of these arguments, Respondent points out (Brief at 13) that the conduct factor is concerned with the extent to which the violative action renders inoperative the regulation violated (Penalty Policy at 35). It asserts that in the instant case none of the relevant regulations was rendered inoperative. Redfield emphasizes that Complainant has withdrawn the charge relating to the absence of a fire extinguisher in the waste collection area, that the inspection disclosed applicable preparedness and prevention measures appeared to have been complied with inside the building, but that Respondent had failed to document this fact in a written contingency plan as required by 40 CFR 265.53, and that, although safety training had been administered to its employees, Respondent had failed to document that fact and to otherwise comply

with personnel training and recordkeeping requirements of 40 CFR 265.16. See finding 9. Regarding the lack of a contingency plan, Redfield argues that the minor nature of this violation is even more apparent when it is recognized that the only contingency it was required to guard against was a leak or spill enroute to, or at, the outside accumulation area, for which the appropriate remedy was absorption of the spill by application of "Floor-dry" and placement of the used "Floor-dry" in a sealed drum. Redfield asserts that its conduct posed no danger to the health or safety of its employees and emphasizes that by virtue of its exempt status as a small quantity generator, it is presently not required to have a contingency plan or to maintain records of the training of its employees. Accordingly, it argues that neither of these technical violations can or should be deemed to be of major importance.

Regarding the storage of waste in excess of 90 days, Respondent points out that the 90-day time limit is not applicable to small quantity generators provided they do not accumulate more than 1,000 kilograms of waste at one time. Redfield contends that the fact the 90-day limit was exceeded was due to inadverence during a period of managerial turnover and at a time when it was substantially reducing its workforce. It says that once the problem was called to its attention, the waste was promptly manifested and transported to an approved hazardous waste treatment and disposal facility. It argues that under these circumstances, classification of the conduct factor as major is clearly inappropriate.

Turning to the damage criterion, Redfield cites the Penalty Policy at 37,9/ asserts that no actual harm occurred and that both the likelihood of harm and

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9/ The provision relied upon is as follows: "The damage factor consists of two elements: 1) the extent of actual or potential harm that has occurred or could occur as a consequence of the violation; and 2) the likelihood that the subject violation will lead to the potential harm."

the degree of potential harm were low (Brief at 16). It argues that the worst that might have happened is that a drum of waste containing 1,1,1-trichloroethane might have fallen while being transported by forklift truck inside the plant. In that event, employees were trained as to the proper manner of responding to any leakage or spillage. Similarly, if a drum had fallen or leaked while outside, the 1,1,1-trichloroethane assertedly would have quickly evaporated on the fenced, paved lot over which it was moved or stored.

It is concluded that Respondent's arguments to the effect that both the potential damage and the conduct factor deserve to be placed in the minor classification or the penalty matrix must be sustained. Complainant appears to have given no consideration to the fact that 1,1,1-trichloroethane vaporizes rapidly, tending to evaporate if spilled, and that the fenced lot on which the drums were stored was paved, thus making it unlikely that spilled material would, in fact, reach or be mixed with groundwater, streams or other bodies of water. The solubility of 1,1,1-trichloroethane, which gives a strong tendency to migrate when mixed with water, appears to be one of the principal concerns.

Turning to the conduct factor, it is, of course, true that Respondent lacked a permit or interim status for the storage of hazardous waste, lacked a single written contingency plan and had no documented personnel training in the management and handling of hazardous waste and as otherwise required by 40 CFR 265.16. It appears, however, that Redfield at no time generated more than 1,000 kilograms of hazardous waste and would have qualified for the small quantity exemption in 40 CFR 261.5 had it been aware of the exemption. Respondent also appears to be correct that insofar as 1,1,1-trichloroethane

is concerned, the only contingency plan required, apart from filing copies with hospital, public safety and similar authorities, was the manner of dealing with spills or leaks and the record is clear that Respondent was prepared to deal with such contingencies. Likewise, it appears that employees had been given training in the handling and management of hazardous waste, but had failed to document that fact. Accordingly, it is concluded that the conduct factor should also be classified as minor.

The foregoing conclusions reduce the base penalty from $6,500 to $1,650 and make unnecessary extensive discussion of Redfield's argument that the proposed penalty is contrary to EPA's policy of national uniformity in penalty assessment. This argument appears to be based primarily on American Ecological Recycle Research Corporation and Donald K. Gums (note 8, supra) and William L. Gardner, RCRA (3008) VIII-83-7. In the former case, the ALJ reduced the penalty sought by EPA from $25,000 to $8,000 based on considerations of fault, ability to pay and the fact that as a recycler, Respondent was performing a useful function, even though storage of hazardous wastes in leaking drums and drums of poor condition in an unenclosed area was among violations found, which seemingly posed a far greater risk to health and the environment than the violations of which Redfield is charged.10/ The latter case involved the burial without having a permit or interim status of 200 to 300 gallons of waste oil sludge considered to contain toxic amounts of lead. Although a penalty of $10,000 was initially proposed, the penalty was waived and the matter settled based on the expense and effort incurred by the violator in remedying the violation and recognition of his limited financial resources. EPA counsel explained that this result was reached because there was a question as to whether the waste was in fact hazardous and the matter settled without a

10/ It is understood that, while Respondent appealed the ALJ's decision, Complainant did not appeal the reduction in penalty.

penalty, because Respondent agreed to treat the waste as if it were hazardous, and had the waste excavated and disposed of in a proper manner (Tr. 27, 28). It is concluded that the penalty herein imposed is in general accord with the result in the cited cases.

Respondent argues that EPA erred in doubling the base penalty for an alleged history of violation and in failing to reduce the penalty for its prompt, voluntary corrective action. It asserts that of the three violations at issue,11/ the only one called to its attention as a result of the 1981 inspection was the lack of a written contingency plan. While literally accurate, this argument ignores the fact that drums of hazardous wastes without accumulation dates were discovered in the 1981 inspection, that this fact was called to Redfield's attention by letter, dated August 3, 1981, and that the letter warned that if Respondent expected to store in excess of 1,000 kilograms of hazardous waste for more than 90 days, it would be necessary for it to submit Part A Permit Application and comply with the requirements of 40 CFR Part 265 (finding 19). It is concluded that this warning letter and the followup letter of October 13, 1981, which failed to elicit a response from Redfield, refute its contention that it acted promptly to remedy the violation. This warning is also sufficient reason to reject Respondent's complaint (Brief at 12) that this proceeding could have been avoided if it had been informed of the requirements for the small quantity exemption. Respondent contends that its financial condition is a circumstance over which it lacked control within the meaning of the penalty

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11/ The three violations apparently include the withdrawn allegation concerning lack of a fire extinguisher in the waste accumulation area.

policy.12/ Circumstances over which the violator lacked control were included as a reason for reducing the amount of the penalty in order to ensure fairness and are intended to cover matters such as violations resulting from actions of third parties, violations resulting from an employees disregard of instructions, etc. That such circumstances are not intended to include financial difficulty is demonstrated by the discussion (Penalty Policy at 18, 46) to the effect that a firm's ability to pay the penalty and continue in business is normally for consideration only where imposition of the penalty would directly lead to the firm's discontinuance of its operations and only where the firm provides vital waste management services or is otherwise of sufficient importance to the local economy.

As indicated previously, application of the minor classification to both the damage and conduct axes of the applicable matrix (Penalty Policy at 27) results in a penalty range of $100 to $1,650. Although the Penalty Policy provides at 32 that normally the midpoint of the range of a cell should be chosen, the highest amount ($1,650) is selected in this instance because Redfield ignored prior warnings of essentially the same violations and because the higher amount is considered necessary to deter future violations. This

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12/ "Ability to Continue in Business

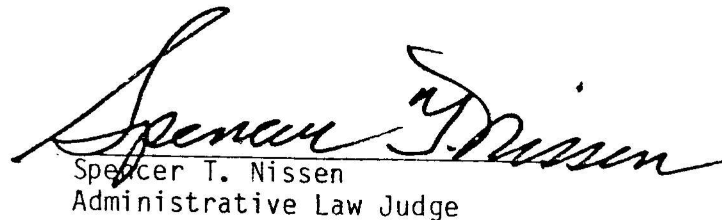
A special adjustment that may be applied in certain cases is related to the noncomplying firm's ability to pay the penalty amount. Under certain circumstances, a penalty that is so large that it would force the noncomplying firm to discontinue operations may be adjusted downward. However, this adjustment should be applied only in cases where the penalty would lead directly to the firm's decision to cease operations. In addition, the circumstances where this adjustment would be applied are limited. First, penalty adjustment may take place when the ceasing of operations by the noncomplying firm would have a substantial impact on the local economy--its employment, tax revenues, etc. Second, the adjustment may be utilized when a region may experience a shortfall in transportation, storage and/or disposal capacity if the violator goes out of business."

amount is determined to be reasonable considering the seriousness of the violation and Redfield's efforts to comply. The prior warnings, however, are considered not to warrant any increase in the penalty so determined.13/

Conclusion14/

Redfield Company, having been found to have violated § 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925) as charged in the complaint, a penalty of $1,650 is assessed against Redfield Company in accordance with § 3008(c) of the Act (42 U.S.C. 6928). The mentioned penalty shall be paid by the submission of a certified or cashier's check payable to the Treasurer of the United States in the amount of $1,650 to the Regional Hearing Clerk within 60 days of the receipt of this order.15/

Dated this 12th day of December 1983.



Spencer T. Nissen
Administrative Law Judge

Enclosure:
Appendix A

13/ It is noted that the PCB Penalty Policy under the Toxic Substances Control Act (15 U.S.C. 2601, et seq.) provides that only a final order is to be considered in determining a firm's history of violations for the purpose of determmining an appropriate penalty (45 FR No. 177, September 10, 1980, at 59773-774).

14/ It appearing that Redfield qualifies for the small quantity generator exemption pursuant to 40 CFR 261.5, affirmance of the compliance order seems unnecessary.

15/ Unless appealed in accordance with 40 CFR 22.30, or unless the Administrator elects sua sponte to review the same as therein provided, this decision will become the final order of the Administrator in accordance with 40 CFR 22.27(c).