UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	RCRA Docket No. 82-H-035
	)	
CONSERVATION CHEMICAL COMPANY,	)	
	)	
Respondent	)	

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1. Resource Conservation and Recovery Act - Civil Penalty - Intent is not an element of an offense for which a civil penalty is provided under 42 USCA 6928, subsections (c) and (g), and contention that Respondent was unaware of the character of hazardous waste by it handled and stored is not defensive but, instead, evidences a failure of Respondent to perform its duty of making a determination required by applicable regulations.

2. Resource Conservation and Recovery Act - Civil Penalty - In determining the reasonableness of a civil penalty, such determination must take into account the seriousness of the violation and any good-faith efforts on the part of the violator to comply with applicable requirements of the Act and regulations promulgated pursuant thereto (42 USCA 6928[c]).

3. Resource Conservation and Recovery Act - Seriousness of Violation - In determining the seriousness of a violation under the Act, the Administrator should take into account the potential for, rather than actual, harm or injury demonstrated by the record evidence.

4. Resource Conservation and Recovery Act - Identification of Character of Waste - The standards established by the regulations promulgated pursuant to the Act (Parts 260 through 265 of 40 CFR) require that the generator of or the person or persons otherwise handling hazardous waste determine the character of the waste handled either by determining if it is listed as a hazardous waste in Subparts C and D of 40 CFR Part 261, by testing or by applying knowledge of the character of same in light of the materials or process utilized (40 CFR 262.11; 40 CFR 265.13[a][1]).

5. Resource Conservation and Recovery Act - Administrative Law - Remedial Legislation - The Act, remedial in nature, is entitled to broad interpretation and to be strictly construed so that its public intent and purposes (protection of the public) may be fully effectuated.

6. Resource Conservation and Recovery Act - Determination of Penalty - The use of a penalty policy in determining an appropriate civil penalty, where same is widely distributed, though not formally adopted by the Agency, is proper, where the rationale of the document accurately reflects the intent of the Act and accords with expressed Agency policy.

7. Resource Conservation and Recovery Act - Civil Penalty - On the premise that the assessment of a civil penalty should equitably provide a deterrent to further violations of regulatory requirements and at the same time offset any unfair competitive advantage, it is proper to consider the annual gross receipts and the size of Respondent's business where said consideration is pursuant to a penalty policy which is widely distributed so as to facilitate a uniform application of the premise so considered.

Appearance for Respondent:

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Kansas City, Missouri 64105

Appearance for Complainant:

Daniel J. Sheil, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
324 East 11th Street
Kansas City, Missouri 64106

INITIAL DECISION
by
Administrative Law Judge
Marvin E. Jones

On September 24, 1982, subject three-count Complaint and Compliance Order was filed and directed to the Respondent by the United States Environmental Protection Agency (hereinafter EPA or Complainant), Region VII, pursuant to Section 3008(a)(1) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (hereinafter RCRA or the Act) of 1976, as amended, 42 USC 6902 et seq., and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, etc, 40 CFR, Part 22.

Said Complaint charges, first, that Respondent used a new storage process for the storage of hazardous waste, numbered F007 in 40 CFR 261,31, without submitting a revised Part A application as required by 40 CFR 122.23(c)(3); that 40 CFR 122.24 provides that said Part A application must include, along with other information, "a description of the processes to be used for

treating, storing and disposing of hazardous waste" and that Respondent there listed storage of said F007 in tank or tanks with a design capacity of 80,000 gallons; however, an inspection of Respondent's facility on August 10, 1982, revealed that said waste was also being stored in 22 55-gallon containers. For said violation, EPA proposes a civil penalty of $500.

Said Complaint charges, in Count 2, that, based on said inspection August 10, 1982, revealing that a vertical storage tank, containing hazardous waste numbered F007 (40 CFR 261.31), was leaking in five places at shell seams, and at a manhole gasket, Respondent violated 40 CFR 265.31 which provides, in pertinent part:

> "Facilities must be maintained... to minimize the possibility of... any unplanned sudden or non-sudden release of hazardous waste or hazardous waste contents to air, soil or surface water which could threaten human health or the environment."

For said alleged violation, EPA proposes that a civil penalty of $10,000 be assessed.

In Count 3, subject Complaint charges violations of 40 CFR 265.14 in that Respondent's facility is not equipped with the means to prevent and to minimize the possibility for unknowing and unauthorized entry of persons or livestock onto the active portion of said facility (which contains hazardous waste which would injure same) in that no 24-hour surveillance system is provided, said active portion is not completely surrounded by an artificial or natural barrier and warning signs with the legend "Danger - Unauthorized Personnel Keep Out" are not posted at each entrance to said area. For failure to provide said security as aforesaid, it is proposed that a civil penalty of $2,000 be assessed against Respondent.

The Compliance Order requires removal of all 55-gallon drums containing said hazardous waste and the ensurance that said containers and contents are handled in accordance with the Act. It further orders that the hazardous waste stored in the ten-foot-six-inch diameter vertical tank be removed therefrom and handled in accordance with requirements of the Act; and that, within 60 days from and after September 24, 1982 (the date of subject Complaint and Order), Respondent comply with the security provisions of said 40 CFR 265.14. Respondent is further ordered to submit documentation to EPA of its Compliance, within five days after meeting the said requirements of the Compliance Order.

An adjudicatory hearing was held and the case submitted on April 12, 1983, in Room 415-B, 324 East 11th Street, in Kansas City, Missouri.

On consideration of the evidence in the record, along with the Proposed Findings, Briefs and Arguments of the Parties, I make the following

FINDINGS OF FACT

1. At all times relevant to this proceeding, Respondent has owned and operated a hazardous waste storage facility located at 8900 Front Street, Kansas City, Missouri, hereinafter "the facility" (TR 91; TR 8).

2. On or about August 18, 1980, Respondent filed a Notification of Hazardous Waste Activity, EPA Form 8700-12 (6-80) (the "Notification form) with respect to the facility (Complainant [C], Exhibit 6).

3. On said notification form, Respondent indicated that it treated, stored and/or disposed of hazardous waste (C, Exhibit 6).

4. Respondent indicated on said notification form that it handles waste identified in 40 CFR 261.31 as F007 from non-specific sources, i.e., spent cyanide plating bath solutions from electroplating operations (C, Exhibit 6).

5. Respondent indicated on said notification form that it handles wastes identified in 40 CFR Part 261.32 as K062 from specific sources, i.e., spent pickle liquor from steel finishing operations (C, Exhibit 6).

6. Respondent indicated on said notification form that it handles non-listed hazardous wastes which are corrosive and toxic (C, Exhibit 6).

7. The facility was assigned EPA I.D. number MOD000829705.

8. On or about November 19, 1980, Respondent filed the forms constituting a Part A permit application for the facility. Said forms are a General Form (EPA Form 3510-1) and Hazardous Waste Permit Application (EPA Form 3510-3) (C, Exhibit 5).

9. Respondent reported in said Part A permit application that it stored 80,000 gallons of hazardous wastes in tanks and that 360 tons of F007 hazardous wastes (spent cyanide plating bath) were handled (stored) per year (C, Exhibit 5).

10. Craig Smith, EPA Environmental Engineer, testified, at the Adjudicatory Hearing held April 12, 1983, that he and other EPA representatives conducted an inspection at the facility on August 10 and 11, 1982 (TR 8).

11. Said inspection revealed that hazardous wastes were being stored in above-ground storage tanks and 55-gallon drums (TR 12; C Exhibits 1, 3, 7, 8, 9).

12. The material in the above-ground storage tanks was aqueous electroplating solution containing cyanide (F007 wastes) (TR 12).

13. The material in the drums was calcium nitrate sludge which had been mixed with spent cyanide plating solutions (F007 wastes) (TR 13; TR 121).

14. Respondent had not reported storage of any hazardous wastes in drums in its Part A permit application (C, Exhibit 5; TR 122).

15. At the time of said inspection, the vertical above-ground storage tank, designated by Respondent as Tank No. 3, was in use for storage of hazardous wastes, i.e., spent cyanide plating solutions (F007) (TR 21; TR 123; C Exhibits 1, 3, 5, 6, 8 and 9).

16. Expert Witness R.C. Jordan, Pressure Vessel Engineer, inspected said "Tank No. 3" on August 10, 1982, and found wetness, indicating existing active leaks at that time around patches, pads and in the area of the manway (a circular object on the side of said tank) (TR 58-59).

17. Tank No. 3 was known by Respondent to have leaked in the past (TR 122).

18. The facility is regularly manned on a regular eight-hours-per-day, five-days-per-week basis (TR 28-29).

19. While there was a fence around a portion of their storage area, it did not completely surround the active storage area (TR 28), and it was observed that not all hazardous wastes stored on-site were located within the confines of the fenced area (TR 30).

20. The facility did not have a 24-hour T.V. monitoring system, and there were no locking gates at the facility to limit access to the site, the only lockable gate being some mile and a half from the facility (TR 29; TR 127 and TR 132).

21. The Missouri and Blue Rivers are, at their closest positions respectively, at least 1,000 to 1,100 feet from the active storage area; some of the land between the Missouri and Blue Rivers and the facility is partially wooded and undeveloped; other land in that area is used for agricultural purposes (TR 128-129).

22. On the date of the hearing, Respondent had not ceased storing hazardous wastes in drums and had not filed a revised Part A application (TR 121).

23. Conservation Chemical Company's gross revenues for the year 1981 were $1,153,903.00 (TR 111).

24. Respondent's president testified (TR 117) that, before being placed in the 55-gallon drums, the calcium nitrate sludge had been stored in other storage tanks; that it was believed by Respondent, when said sludge was so placed, that said storage tanks were completely clean when, in fact, said tanks contained traces of cyanides. For this reason, the sludge in the 55-gallon drums contained traces of cyanide.

25. The 55-gallon drums were basically in good condition, had lids on them, and appeared to be sound. However, said drums were not labeled and were "clustered together" so that access for inspection of each and all of said drums was not afforded (TR 37).

26. Said 55-gallon drums were stored on a dock, accessible from the open grounds behind subject facility. A large horizontal tank was also observed outside the "storage area" which was partially fenced (TR 30).

27. A watershed area at said facility was observed that drains to a sump. The area southeast and outside said watershed area drains to a soybean field (TR 31; C Exhibit 1, page 14).

28. The facility manager, Mr. Royster, advised witness Craig Smith, at the time of said inspection, that said drums contained calcium nitrate sludge contaminated with cyanide (TR 35).

29. The storage tank on the site identified as tank No. 3 had been acquired by Respondent in the mid-1970's and was originally used by it for storage of surplus lime slurry (TR 98-99).

30. While tank No. 3 was being used for lime storage, leaks developed in the tank; leakage of lime from said tank resulted in stains on its side which are visible in photographs, C Exhibit 3 and Respondent (R) Exhibit 3 (TR 99-100).

31. Said leaks were repaired prior to the use of said tank for storage of cyanide as early as March, 1981 (TR 123; TR 41-43).

32. Tank No. 3 is made of steel (TR 60).

33. Cyanide is a caustic (TR 94).

34. The reaction of cyanide with steel, if any, would be minimal (TR 63, TR 94).

35. During the inspection, EPA discovered moist areas on tank No. 3 (TR 39; TR 58).

36. The moisture on tank No. 3 resulted from pinhole leaks in weld areas on the tank where the said repairs had previously been made (TR 94).

37. Any liquid escaping from tank No. 3 would flow into a steel sump located on the site (TR 95).

38. Materials collected in the sump are tested for the presence of hazardous chemicals before being removed from the sump and, if any cyanide is present in the sump area, the cyanide is neutralized with calcium hypochloride before being pumped out of the sump (TR 95; TR 97).

39. A series of photographs, taken by Respondent on January 25, 1983 (R Exhibit 3), and a drawing (R Exhibit 4, dated February 28, 1983), reflect that stenciled warnings on tanks, and warning signs (TR 106), were placed by Respondent following the dates of inspection (TR 118).

40. Respondent moved the contents of said tank No. 3 into another tank in August, 1982 (TR 115; TR 139), and in October, 1982, all pumpable liquids were removed from Respondent's said facility (TR 115; R Exhibit 5).

41. Access to the site is obtained via a road along the levee ("the levee road") which forms the western border of the site, and the entrance to the private portion of the levee road is equipped with a gate which can be locked (TR 101).

42. The Kansas City, Missouri, Police Department has requested that the gate to the entrance of the levee road remain unlocked so that the Police Department can patrol the levee road, and the Missouri Department of Natural Resources has requested that the gate to the entrance of the levee road remain unlocked so that it can have access for any inspections of the site it may choose to make (TR 101).

43. The Kansas City, Missouri, Police Department patrols the levee road, including the portion of the road adjoining the site, as does Mobay Chemical Company (TR. 101; TR 102).

CONCLUSIONS OF LAW

1. The mixture of calcium nitrate sludge with the listed F007 hazardous waste is itself a hazardous waste regulated by §3005 of RCRA.

2. Respondent violated 40 CFR §122.23(c)(3) by adding a new storage process without filing an amended Part A permit application.

3. Respondent violated 40 CFR §265.31 by failing to maintain and operate its facility to minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

4. Respondent violated 40 CFR §265.14 by failing to equip the facility, as provided in said section, to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility.

5. Intent is not an element of offenses for which a civil penalty is provided under Section 3008(g) of the Act, 42 USCA §6928(g).

Discussion

The instant record leaves no doubt that Respondent is answerable for the violations charged. In Count 1 of the Complaint, it is alleged that Respondent stored subject hazardous waste in 22 55-gallon drums (a new storage process) "without submitting a revised Part A permit application prior to such a change, (along with a justification explaining the need for the change)," as required by 40 CFR 122.23(c)(3). Said allegation is unquestioned, but Respondent states that it was "not aware" that the calcium nitrate (sludge) had been contaminated with cyanide; that had it realized the sludge was a hazardous waste, it would have simply "amended its Part A or put sludge into tanks...". In either instance, it is the duty of Respondent to determine if same is a hazardous waste (40 CFR 262.11). Further, intent is not an element of the violation charged for which a civil penalty in the amount of $500 is sought.1/ Respondent further argues that "absolutely no harm or threat of harm to human health or the environment" resulted from said unauthorized storage. Actually, the record shows that the drums were "clustered together", limiting access for inspection concerning the condition of individual drums. Said drums were not labeled. While the importance of the proper identification of hazardous waste is emphasized in the application stage, it is essential to the proper storage (as well as in the handling and treatment) of hazardous waste that the continuous identification and location of all such hazardous waste be a matter of record, and any handling or storage

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1/ See 42 USCA §6928, subsection (g), which provides that "Any person who violates any requirement of this subchapter shall be liable...for a civil penalty..." Compare subsection (d), Criminal Penalties; the word "knowingly" imports the necessity for proof of intent before a fine is exacted.

that leaves such data to conjecture is improper and violates the intent of the Act. Such recordkeeping and labeling exist for the benefit and protection of the unknowing person or persons who might encounter or have occasion to handle the same. They are not helped by the knowledge of those who frequent the location of the waste and are aware of the character of the hazarous waste there situated.

In the premises, I find that a potential for harm has been demonstrated by the unauthorized storage of said hazardous waste and that a civil penalty for such violation should be assessed.

The testimony of expert witness, R.C. Jordan, a Pressure Vessel Engineer, indicates, on the basis of "wetness" found on a vertical tank, identified and referred to herein as tank No. 3, that said tank, containing aqueous electroplating solution containing cyanide, was leaking and that he detected active leaks around patches and pads and in the area of the manway (see Finding 16). As pointed out by Complainant, citing 40 CFR 261.23(a)(5), a cyanide waste is reactive, and when exposed to pH conditions between 2 and 12.5, toxic gases, vapors or fumes are generated, presenting danger of harm to human health or the environment. The potential for such harm is even more apparent when the lack of security precautions about subject facility is considered. Respondent stresses that said waste drains to the sump, where, after testing, it can be neutralized by appropriate treatment. However, it is obvious that a hazard exists while said waste is on the tank and at all times until it reaches the sump, if not thereafter. On this record, access of persons and livestock (or wild animals) is not prevented as shown by proof directed to Count III. As alleged in Count III of the Complaint, Respondent failed to provide proper site security in violation of 40 CFR 265.14, which provides, in pertinent part, as follows:

"265.14 a. The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless:

"(1) Physical contact with the waste, structures, or equipment with the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and

"(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this part.

"b. Unless exempt under paragraphs (a)(1) and (a)(2) of this section, a facility must have:

"(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards of facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

"(2)(i) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

"(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility" (emphasis supplied).

Subject hazardous waste (listed as F007,reactive and toxic, 40 CFR 261.31) obviously presents a potential hazard for injury to unknowing or unauthorized persons or livestock who might enter onto the active portion of the facility. The regulation provides alternate means of effectively controlling access, none of which were utilized by Respondent. The facility had neither a a 24-hour surveillance system nor a 24-hour surveillance by guards or facility personnel. Facility personnel were present at the facility no more than the eight hours required by their employment, therefore they were not utilized, then or on the week-end, to monitor or control entry to the active portion of said facility. The informal understanding with Mobay Chemical Company that they would patrol the levee road deading into subject facility falls short of providing continuous monitoring and control of entry. It is admitted that the

entrance was not locked; rather, on this record, the only means of controlling entry was, at most, a "farm gate" - actually a moveable segment of the wire fence. Even this means of control was not observed by EPA employees making the inspection on August 10-11, 1983. Complainant rightly points out that the gate at the entrance to the levee road (approximately 1 1/2 miles from the facility) which can be locked, but which is not locked at the request of the City of Kansas City, Missouri, is clearly not a "locked entrance" such as to satisfy the security requirements of said section 265.14(b)(2)(ii).

It is further clear on this record that the Missouri and Blue Rivers, in conjunction with the "non-continuous" fence, does not completely surround the active portion of the facility, as agricultural land, including a soy bean field, and a partially wooded tract, are located between the Missouri and Blue Rivers and the subject facility. It is clear that Respondent does not deny the violation charged but now offers excuses for its non-compliance which are neither mitigating nor defensive, as said regulations are intended to be strictly applied. There is no evidence that any difficulty of compliance was communicated to the Agency prior to the hearing in an effort to arrive at an acceptable means of meeting the regulatory requirements. As a means must be found to adequately secure the facility against unknowing and unauthorized entry, any effort to that end at any earlier date would have worked to the benefit of Respondent and the public at large.

Respondent's argument seeking to minimize the hazards found by subject inspection demonstrates vividly its arrogant disregard of the Act and the Regulations promulgated thereto. It submits, in effect, that since no actual harm is shown by this record, that its efforts, though falling short of statutory requirements, should be sufficient.

We are here concerned with violations creating a potential for such harm, and consideration of remedial legislation, which, for the public's protection, requires elimination of such hazards. It was encumbent on Respondent to know the condition of all containers used, both as to "cleanliness" and "fitness", to contain the material to be stored. 40 CFR 265.13(a) (Part 265, Subpart B - General Facility Standards)2/ provides that "before an owner or operator (stores) hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. "At a minimum, ... analysis must contain all the information which must be known to (store)...the waste in accordance with the requirements..."

Section 265.13(b) requires that Respondent develop and follow a written waste analysis plan which "describes the procedures which...will... comply with paragraph (a)..." The regulatory requirements prescribe in detail the duties with which the Respondent - and all handlers of hazardous waste - must comply. Said procedures and the regulatory provisions involved follow the intent and purpose of Congressional legislation, remedial in nature, and thus entitled to broad interpretation so that its public intent and purposes (protection of the public) may be fully effectuated (Cattlemen's Inv. Co. v. Fears, 343 F2d 1248, 1251 [1972], citing Tcherepin v. Knight, 389 US 332, 88 S.Ct 548 [1967]). The inquiry from the instant record is not whether injury resulted from said violations, but, rather, whether said violations of Respondent created a condition with a potential for harm to members of the public and the environment.

2/ Section 262.11 places the same duty on a "generator" of waste.

The principle that must be applied in recognition of the intent of Congress in enacting subject remedial legislation is that stated in Wickard v. Filburn, 317 US 111, 63 S.Ct. 82:

> "Any failure to apply adequate sanctions where the Act is violated will, in effect, invite violations in increasing numbers, which could ultimately frustrate, if not defeat, the scheme of regulation contemplated by the Act..."

CIVIL PENALTY

In determining the appropriateness of the civil penalties proposed in subject Complaint, Section 3008(c) provides that I should take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Section 3008(g) provides that:

> "Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall constitute a separate violation."

Complainant has proposed penalties using the proposed RCRA penalty policy (C Exhibit 4: Memorandum dated September 24, 1981, with Attachments) asserting that this policy follows the Act, in that seriousness of the violation, and good faith efforts by Respondent to comply with applicable requirements, are considered. The policy thus focuses on both the violation and the violator. This policy has been used as a guide in assessing penlaties in other RCRA proceedings,3/ where application of the policy is discussed. In this guidance, all violations are classified into three categories. Class I violations are those that pose direct or immediate harm, or potential for harm, to public health or the environment.

3/ In the matter of Koppers Co., Inc, RCRA-III-81-012 (June 21, 1983), page 8, citing decisions in the matters of Cellofilm Corp., II RCRA-81-0114, (August 5, 1982), and City Industries, Inc., RCRA 81-6-OSE-C (January 14, 1983).

Class II violations involve non-compliance with specific requirements mandated by the statute itself and for which implementing regulations are not required; and Class III violations are procedural or reporting violations. The proposed total penalty herein was arrived at after consulting the matrices (C Exhibit 4, Attachments C and D) to the July 7, 1981, guidance (I.D., Attachment B). The penalty for Count I (adding a storage process not reported in Respondent's Part A application) is a Class II violation (TR 71). The $500 penalty proposed was determined by using the matrix (Attachment D, C Exhibit 4) and selected from the $100 to $5000 range for moderate violations. 40 CFR 22.27(b) provides that I shall not assess a penalty different from that recommended in the Complaint except where specific reasons exist for such change. The amount of $500 for the violation, described by Count I and apparent on this record, I find to be appropriate. On the date of the adjudicatory hearing, Respondent had not ceased storing waste in unlabeled drums and had not filed a revised Part A application (Finding 22).

I agree that the violation described in Count II of the Complaint and involving leaks in tank No. 3 is a Class I violation. Complainant points out that Respondent had made an effort to patch known leaks in said tank (Finding 17) after a reported loss of approximately 30 gallons (TR 47) of cyanide waste (TR 46) from the tank. After the persistent active pinhole leaks (Finding 16) were pointed out to Respondent, his remedial efforts in removing the contents of tank No. 3 to another container of good condition were not immediate (C Exhibit 9; TR 139); and Respondent's general compliance with Part 265, Subpart I (Use and Management of Containers) and Subpart J (Tanks), at times prior to the inspection, was little better

than perfunctory. Complainant proposed a penalty of $10,000 for said violation (based on said Attachment C), finding Respondent's non-compliance to be major and the hazard substantial. The proposed guidelines also express an intention to provide equitable deterrence to all Respondents on the premise that the purpose of a civil penalty is to provide a deterrent and to offset any unfair competitive advantage. To facilitate the proposal in principle, a general "target penalty" is established with downward adjustments for smaller business "Categories." Respondent's revenues for 1981 of $1,150,000 (C Exhibit 4, page 4) would place it in Category II, resulting in a downward adjustment to 60% of the target penalty. I have considered also the location and comparative remoteness of Respondent's facility and the remedial action taken with respect to tank No. 3 during August, 1982, and find that $6,000 is an appropriate penalty to be assessed for subject Count II of the Complaint.

The penalty proposed in Count III of the Complaint pertains to the lack of site security. Under the matrix, aforesaid, Respondent's non-compliance was considered to be major and actual or potential damage moderate, and, from a range of penalties of $1,000 to $2,500, a penalty of $2,000 was proposed. On consideration of the factors outlined above in consideration of the Count II violations, I find that a penalty of $1,500 should be and it is hereby assessed for said Count III violation.

A total civil penalty in the sum of $8,000 is therefore assessed. I have concluded that the amount assessed will provide sufficient deterrence to further violations by Respondent, and that Respondent will proceed with

an on-going effort to comply with the regulations applicable to its facility. All applicable regulations confirm the primary purpose of the Act, i.e., to properly identify and track hazardous wastes "from cradle to grave"4/ and to handle, treat, store and dispose of same in such manner that all hazards to public health and the environment are averted.

On consideration of the record, the conclusions reached herein and in accordance with the criteria set forth in the Act, I recommend adoption of the following

PROPOSED FINAL ORDER 5/

1. Pursuant to Section 3008(c) of the Act, 42 USC 6928(c), a civil penalty in the total sum of $8000 is hereby assessed against the Respondent, Conservation Chemical Company, Incorporated.

2. Payment of the full amount of the civil penalty assessed shall be made, within 60 days of the Service of the Final Order upon Respondent, by forwarding to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, a Cashier's or Certified Check payable to the United States of America.

4/ 45 FR 12722, February 26, 1980; 45 FR 33066, May 19, 1980, commenting on Subtitle C of the Act (RCRA), 42 USCA 6921 et seq.

5/ 40 CFR 22.27(e) provides that this Initial Decision shall become the Final Order of the Administrator within 45 days after its service upon the parties unless (1) an appeal is taken by a party to the proceedings, or (2) the Administrator elects, sua sponte, to review the Initial Decision.

3. Within the time period specified, it is hereby Ordered that Respondent shall:

(a) Remove from subject facility, within 60 days from the receipt hereof, all 55-gallon drums presently containing hazardous waste, handling said drums and their contents strictly in accordance with the requirements of the Act;

(b) Remove all hazardous waste presently stored in tank No. 3, within seven (7) days from the receipt hereof, handling said waste strictly in accordance with the requirements of the Act; and

(c) Within 60 days from the date hereof, comply with the security provisions of 40 CFR 265.14.

It is further Ordered that Respondent shall provide Notice of Compliance with the terms hereof, with a description of steps taken to achieve compliance, within 5 (five) days of completion to the following:

(a) the Regional Administrator, US EPA, Region VII;

(b) the Regional Hearing Clerk, said Region VII; and

(c) Complainants Counsel of Record.

In the event any of said actions has already been completed, notice of same shall be provided with five (5) days from and after the effective date hereof.

DATED: June 30, 1983

Marvin E. Jones
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 40 CFR 22.27(a), I have this date served upon the Regional Hearing Clerk of Region VII, U.S. Environmental Protection Agency, the Original of the above and foregoing Initial Decision of Marvin E. Jones, Administrative Law Judge, and have referred said Regional Hearing Clerk to said section which further provides that, after preparing and forwarding a copy of said Initial Decision to all parties, she shall forward the Original, along with the record of the proceeding, to the Hearing Clerk, who shall forward a copy of said Initial Decision to the Administrator.

DATE: June 30, 1983

Mary Lou Clifton

Mary Lou Clifton
Secretary to Marvin E. Jones, ADLJ

DATE: June 30, 1983

SUBJECT: Consideration of Potential Recusal of Administrator Concerning Review of Instant Case.

FROM: Marvin E. Jones
Administrative Law Judge

TO: Bessie Hamiell (A-110)
Hearing Clerk
EPA Headquarters

I am this date forwarding my Decision in the matter of Conservation Chemical Company, Docket No. RCRA Dkt. No. 82-H-035

I suggest the category to be designated on the Recusal Form be 4. for the reason that there is no potential recusal issue apparent to the office originating this matter.

EPA Form 1320-6 (Rev. 3-76)