UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
National-Standard Company,	)	Docket Nos. V-W-83-R-063 & V-W-83-R-064
	)	
Respondent	)	

Opinion and Order on Motion for An Accelerated Decision

Under date of February 7, 1984, Complainant filed a motion for an accelerated decision pursuant to Rule 22.20 (40 CFR 22.20), contending that there was no genuine issue of material fact as to the great majority of violations alleged in the complaint and that it was entitled to judgment as a matter of law. Specifically, (Violation No. 1) it was alleged that on or after November 19, 1980, Respondent stored hazardous waste without a permit and without having achieved interim status in violation of § 3005(a) of the Resource, Conservation and Recovery Act (RCRA) (Dockets R-063 and R-064). In support of this allegation, Complainant asserts that Respondent has admitted that it did not file Part A Permit Application by November 19, 1980, that Part A of the permit application was not filed until November 16, 1982, and that sometime after the beginning of 1982, it may have stored hazardous waste onsite without having achieved interim status, citing Par. 6 of the answers. It is further asserted that as a matter of law a facility can only obtain interim

status through timely compliance with the requirements of § 3005(e) and because Respondent did not timely file a Part A Permit Application, it did not and cannot qualify for interim status. Complainant explains that facilities which file a late notification of hazardous waste activity or Part A permit application may be granted permission by the Regional Administrator to operate as if they had achieved interim status, but that such permission will only be granted, if the facility operates in compliance with all applicable interim status standards and regulations.

Responding, National-Standard says that it is a generator of hazardous wastes produced by electroplating operations at its City Complex Plant[1/] and that when the RCRA regulations became effective on November 19, 1980, National-Standard implemented waste disposal procedures to insure the timely, off-site disposal of all its hazardous wastes within the 90-day period specified by 40 CFR 262.34 (Response to Complainant's Motion For an Accelerated Decision, filed March 14, 1984, at 1, 2). National-Standard further says that it will demonstrate at the hearing that all hazardous wastes routinely generated have been consistently removed within 90 days after wastes began to accumulate and that from November 1980 to date, it has complied with regulations requiring hazardous waste to be moved off-site within 90 days.

National-Standard asserts that it had no intention of becoming a treatment, storage or disposal (TSD) facility in November 1980, or at any time until it filed a Part A Permit Application in November 1982, and that in general, its

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1/ Although the caption of Complainant's motion refers only to Docket No. V-W-83-R-064 (Lake Street Facility) it has submitted a proposed accelerated decision and interlocutory order applicable to Docket No. V-W-83-R-063 (North Eighth Street or City Complex Facility) as well and it is assumed the motion applies to both dockets and facilities. It is noted that Respondent has referred, apparently mistakenly, to the facilities under both dockets as "City Complex Plant."

hazardous waste handling practices were in compliance with RCRA regulations and that it did not require interim status. Respondent acknowledges, however, that there may have been a few instances during upset conditions in 1982 in which it could be determined that interim status was required had the instances been foreseen or intended. With the possible exception of these upset operating conditions described in National-Standard's prehearing exchange,2/ it is alleged that the City Complex Plant has never been and will never be a storage facility.

Regarding particular wastes generated at the City Complex Plant, National-Standard refers to its responses, filed December 9, 1983 and January 23, 1984, to an order directing it to identify the wastes upon which its admission that it was a generator of hazardous waste was based (Response to Motion at 3). In the first of the mentioned responses, National-Standard identified wastes generated at both facilities as follows: Hazardous Waste No. F006 - wastewater treatment sludges from electroplating operations; Hazardous Waste No. K062 - spent pickle liquor from steel finishing operations and Hazardous Waste No.

2/ National-Standard described the holding portion of the wastewater treatment system as consisting of one structure, a combined raw wastewater and sludge holding facility constructed of reinforced concrete and including associated pumps and piping (Response To Request For Prehearing Exchange, City Complex Plant, filed October 7, 1983 at 1). The holding facility is allegedly only used, and designed only to be used, when there is an operational problem, which prevents the plant from processing the wastewater as it flows directly from manufacturing operations or prevents the sludge from being dewatered. It is alleged that during the winter of 1981-82 unanticipated mechanical problems with the treatment plant in conjunction with the unusually severe winter weather caused a backup of both sludge and process wastewater that were temporarily diverted into the holding facility. The condition apparently lasted for several months, the plant accumulating wastewater it was unable to process until the spring of 1982. Accidental releases of liquid wastes and mechanical problems with the dewatering system assertedly led to diversions to, and accumulations of wastewater in, the holding facility at the Lake Street Plant, which apparently lasted from the fall of 1981 to the summer of 1982.

D002 - spent caustic from steel finishing operations. In the second of the mentioned responses, National-Standard added Hazardous Waste No. F001 - spent halogenated solvents to the list of hazardous waste generated under Docket R-064, City Complex Plant. Although it is not altogether clear, this was apparently intended to refer to the Lake Street Plant, because in its answer to the amended complaint under Docket R-064, National-Standard admitted that on December 14, 1982, a small amount of spent chlorinated degreasing solvent was stored in containers at the Lake Street Plant for a period not exceeding 90 days. National-Standard alleged that less than three drums of solvent per month are purchased for use at the City Complex Plant and that any spent solvent is stored at the Lake Street Plant prior to shipment off-site.3/

In terms of volume, National-Standard says that the largest quantity of waste generated is wastewater treatment sludge, Hazardous Waste No. F006. It asserts that after the wastewater is fully processed by the treatment plant, the sludge is collected in a container and disposed of off-site within 90 days of the date accumulation begins. This sludge is assertedly the only hazardous waste routinely generated by the collection, treatment or discharge of Respondent's industrial wastewater. Under normal operating conditions, National-Standard says that the raw wastewater, an assertedly non-hazardous waste, from the manufacturing plant passes directly to the treatment plant. As indicated in the prehearing exchange, during upsets in operations of the manufacturing plant or in the wastewater treatment system, raw wastewater

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3/ Unless the facilities are contiguous within the meaning of "on-site" as defined in 40 CFR 260.10, generation of wastes at one site and storage of the wastes at another site would not qualify Respondent for the 90-day or less accumulation exception specified in 40 CFR 262.34. See also the definition of "individual generation site," 40 CFR 260.10. National-Standard states, however, that all spent solvent stored at the Lake Street Plant was shipped off-site to be reclaimed pursuant to 40 CFR 261.6.

can be routed to the combined raw wastewater and sludge holding facility. If the raw wastewater remains in the holding facility for a lengthy period, some solids will drop to the bottom of the holding facility. National-Standard asserts that in general these solids do not meet the definition of a waste, which is hazardous by characteristic (40 CFR 261, Subpart C), but that on occasion the solids may slightly exceed EP toxicity levels for one or two compounds.

National-Standard points out that Hazardous Waste No. F006 is defined in 40 CFR 261.31 as "wastewater treatment sludges from electroplating operations" and that a "sludge" is defined in 40 CFR 260.10 in pertinent part as "any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant." Because the solids in the above mentioned holding facility have not yet been routed through the wastewater treatment plant, National-Standard contends they are not sludges generated from the wastewater treatment plant.4/ Inasmuch as neither the raw wastewater nor the solids are listed wastes under 40 CFR 261, Subpart D, and are not hazardous by characteristic according to 40 CFR 261, Subpart C, National-Standard asserts that the raw wastewater and solids are not hazardous wastes under RCRA and therefore, the combined raw wastewater and sludge holding

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4/ Inasmuch as 40 CFR 261.3(b) and (1) state that a waste listed in Subpart D becomes a hazardous waste when it first meets the listing description set forth in Subpart D, this contention appears to be technically accurate. It may well be questioned, however, whether the holding facility is not, in fact, part of the treatment plant. See Paragraph 10 of the answers and the definitions of "treatment" and "wastewater treatment unit" at 40 CFR 260.10. If the holding facility is part of the treatment plant or works, any solids settling out would seem to become a "sludge" at that point, with the consequence that National-Standard would be entitled to the 90-day or less accumulation time specified in 40 CFR 262.34 only if the holding facility is a container or tank as defined in 40 CFR 260.10. Moreover, if the wastewater or the solids therein at anytime exceeded EP toxicity levels, it would be a hazardous waste at that time.

facility is not subject to regulation under RCRA.5/ The only possible exception, according to Respondent, is that if, after an upset condition, the solids remained in the holding facility for an extended period and they exceeded an EP toxicity characteristic level. It is emphasized that the holding facility is only used in case of an upset condition and the solids are highly unlikely to be hazardous by characteristic.

According to National-Standard, a parallel situation exists with regard to malfunctions in the wastewater treatment plant. Material is allegedly placed in the holding facility only under upset conditions, usually a breakdown in the dewatering operation, the final step in wastewater treatment. It is only after the dewatering operation is completed and the remaining material is containerized for off-site disposal, that it allegedly meets the definition of Hazardous Waste No. F006, i.e., becomes a wastewater treatment sludge generated from electroplating operations. For the future, National-Standard states that it wants interim status for the raw wastewater and sludge holding facility in the event waste in the facility may be a hazardous waste by characteristic due to unanticipated upset conditions.

Complainant points out that in its Part A Permit Application for each facility, Respondent indicated that Hazardous Waste No. F006 in an estimated annual amount of 50,000 gallons was stored at the City Complex Plant and an estimated annual amount of 250,000 gallons was stored at the Lake Street

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5/ Response at 4, 5. The comment at 40 CFR 261.4(2) points out that the exclusion therein [from the definition of solid waste] for, inter alia, industrial wastewater discharges that are point source discharges subject to regulation under § 402 of the Clean Water Act, as amended, does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by wastewater treatment.

Plant. Each application also indicated that the waste was stored in a surface impoundment. In its answers to the complaints, National-Standard admitted that it stored wastewater treatment sludges from electroplating operations in containers. Responding to the motion, National-Standard says that it will demonstrate at the hearing that it simply misidentified the holding facility and that under the RCRA definition, the holding facility is in fact a tank.6/ Complainant contends that Respondent is bound by the designation in its permit applications, contending that changes in operating procedures can only be made through submission of a revised Part A Permit Application, citing 40 CFR 270.71.

Turning specifically to Violation No. 1, National-Standard says that it is a question of fact whether interim status was necessary for the storage of any hazardous waste at the City Complex Plant since November 19, 1980 (Response at 7). National-Standard emphasizes the use of the word "may" in its answer as to the storage of hazardous waste on-site for more than 90 days without having achieved interim status and states that "may" was carefully chosen to reflect the fact that the need for interim status depended upon unusual circumstances which may or may not have occurred and which may or may not occur in the future. Thus, Respondent contends that a factual determination must be made as to whether any hazardous waste was stored on-site for more than 90 days without interim status having been achieved.

6/ Although "facility" is in the singular, National-Standard's response to Complainant's Request for Admissions indicates this contention is applicable to both facilities. In view of the fact the raw wastewater holding facility at Lake Street appears to have been referred to as a "hypalon lagoon," this position seems difficult to support. It is also noted that inspection reports for both facilities refer to "concrete impoundments."

According to National-Standard, resolution of the mentioned factual issue will require the taking of evidence as to whether the combined raw wastewater and sludge holding facility held material defined as hazardous in 40 CFR Part 261 since November 19, 1980; whether the combined raw wastewater and sludge holding facility is a surface impoundment as defined in 40 CFR 260.10 and whether any routinely generated hazardous wastes were kept on-site for more than 90 days after accumulation began. Regarding the first of these issues, Respondent contends that any waste materials accumulated in the facility are not listed hazardous wastes, nor are they hazardous by characteristic, except possibly during upset conditions of extended duration. Regarding the second issue, National-Standard says it incorrectly identified the storage facility as a surface impoundment in the Part A Permit Application and that it will show at the hearing the facility is properly identified as a tank. Concerning the last issue, National-Standard asserts that the answer is clearly no, because from November 19, 1980, through the present it consistently removed all hazardous waste routinely generated at the plant within 90 days of the date accumulation began. According to Respondent, these factual questions preclude summary judgment.

Discussion

It is clear that if Respondent had fully complied with 40 CFR 262.34, i.e., storing hazardous waste in containers or tanks for 90 days or less while fully complying with the four provisos in 262.34(a), the Part A Permit Applications would have been timely, provided they were filed within 30 days

of the time the 90-day storage period was first exceeded.7/ It has, however, been determined, infra at 13, that National-Standard is not entitled to the benefits of 40 CFR 262.34(a), absent compliance with the four provisos therein.8/ As indicated hereinafter, Respondent has admitted non-compliance with certain of these provisos such as labeling the containers and marking thereon the beginning date of accumulation of hazardous waste. Accordingly, it must be concluded that Complainant is correct in contending that interim status was not achieved because the Part A Permit Applications were not timely filed.

Complainant's contention that National-Standard is bound by the designation of the holding facility as a surface impoundment in the Part A Permit Application is not accepted. There can be little doubt that a firm which has mistakenly submitted a Part A Permit Application may withdraw the same and no reason is apparent why mistakes in the preparation of portions of the application may not similarly be treated. The provision of the

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7/ See 40 CFR 270.10(e) (1983) and the regulation interpretation memorandum (RIM), 46 FR No. 237, December 10, 1981, at 60446, which indicate that a generator, who has been accumulating hazardous waste in accordance with 40 CFR 262.34 and who begins to store the waste for more than 90 days may qualify for interim status as a storage facility, if the storage area was in existence on or before November 19, 1980 (the waste accumulated is the same before and after November 19, 1980); the owner or operator complied with § 3010(a) of RCRA, i.e., submitted a notification of hazardous waste activity on or before August 17, 1980; and the Part A Permit Application was submitted within 30 days of the date the waste first becomes subject to Parts 265 or 266. The 30-day filing period is triggered when the storage period exceeds 90 days.

8/ National-Standard's other option, once the 90-day period was exceeded, was to petition the Regional Administrator pursuant to 40 CFR 262.34(b) for an extension of the 90-day holding period. Respondent has conceded that it did not do this (Answers to Request for Admissions at 8 and 10).

regulations (40 CFR 270.72) relied upon by Complainant is applicable to changes in hazardous wastes not previously identified,9/ increases in design capacity and changes in processes for treatment, storage or disposal of hazardous waste. Respondent insists that no changes in the function of the holding facility have been made since the Part A Permit Application was filed and if this is true, 40 CFR 270.72 would seem to be inapplicable. Respondent will be allowed to demonstrate, if it can, that what was characterized as a surface impoundment is a tank as defined in 40 CFR 260.10.

Regarding the burden of proof, Complainant ordinarily has the burden of demonstrating the violations alleged in the complaint by a preponderance of the evidence (40 CFR 22.24). It has been determined that National-Standard is not entitled to the exemption in 40 CFR 262.34 from the requirements for interim status. It does not follow, however, that even if Respondent was entitled to the exemption in 262.34, Complainant must show the particular wastes with regard to which and the times when the 90-day storage period were exceeded. This is because 40 CFR 262.34 exemption is in the nature of an affirmative defense. This being so, Respondent having admitted that it is a generator of hazardous waste and its operations being a matter peculiarly within its knowledge, it is appropriate that Respondent demonstrate its entitlement to the mentioned exception from the requirement for interim status.

9/ Although National-Standard has admitted that Hazardous Waste No. F001, spent halogenated solvents, was not identified as a hazardous waste in the Part A Application for the Lake Street Plant (answer to amended complaint), there is no indication that this waste has any connection or association with the holding facility at issue here.

The motion for an accelerated decision as to Violation No. 1 will be granted. Respondent will be permitted to fully explain its operations in mitigation.

2. On December 14, 1982, Respondent stored hazardous waste in containers and tanks, which wastes were not identified in the company's Part A Permit Application, nor which (sic) [were] the wastes stored in compliance with the requirements of 40 CFR 262.34, in violation of the Act and regulations.

Complainant takes the position that noncompliance with any of the four provisos in 40 CFR 262.34(a) immediately triggers the requirement for interim status (Motion at 3, 4). It points out that National-Standard admits that it stored spent pickle liquor (Hazardous Waste No. K062) on-site in tanks that were not labeled "Hazardous Waste" and that it also stored spent degreasing solvent (Hazardous Waste No. F001) on-site in containers that were not so labeled, nor were the containers marked with the beginning dates of accumulation, citing the answer to the amended complaint. Complainant asserts that National-Standard has also admitted that it failed to comply with the requirements of Subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures) of 40 CFR 265 and the Personnel Training requirements of 40 CFR 265.16.10/

10/ Paragraphs 12 through 15 of Respondent's Response To Complainant's First Request For Admissions.

National-Standard cites the first sentence of 40 CFR 262.34(b) providing in part: "(a) generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility * *" and argues that interim status is only required when hazardous waste is stored for a period in excess of 90 days (Response at 12). Respondent alleges that, in fact, hazardous waste was not stored for more than 90 days after the beginning date of accumulation. National-Standard says that the "90-day rule" was promulgated in recognition of the fact that most hazardous wastes are shipped off-site for disposal within 90 days of the date of generation (45 FR 12730, February 26, 1980) and argues that as long as this requirement is met, the purpose of the rule, protection against the effects of long-term storage, is being served. National-Standard postulates a situation where hazardous waste is placed in a container or tank, but through human error the label "Hazardous Waste" is not placed thereon until 24 hours later or the beginning date of accumulation is not immediately placed on the container or tank. Under Complainant's interpretation, the facility would no longer be only a generator, but would immediately be transformed into a storage facility and a violator of interim status regulations. National-Standard contends that such a result could not have been envisaged by the regulations and that as long as the waste is removed within 90 days, protection of the environment is not enhanced by requiring interim status. It argues that failure to properly label containers and tanks is at most a generator violation rather than an interim status violation.

Discussion

The language of the first sentence of 40 CFR 262.34(a), which provides in part that "(a) generator may accumulate hazardous waste on-site for 90 days or less without a permit and without having interim status provided that * *" the four provisos are complied with,[11/] supports Complainant's interpretation. Although the first sentence of 40 CFR 262.34(b), cited by Respondent, supports its view of the importance of the waste being accumulated for 90 days or less, this is not inconsistent with Complainant's interpretation of 262.34(a), because the cited sentence was written on the assumption compliance with the provisos of 262.34(a) had been achieved. The preamble to the May 19, 1980 regulations (45 FR No. 98, at 33141) indicates the Agency's belief that there was little difference between accumulation of hazardous waste for shipment off-site and storage so far as potential damage to human health and the environment is concerned and that the same standards, i.e., Subparts C & D of 40 CFR 265 and personnel training requirements of 40 CFR 265.16, for protection of human health and

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11/ The four provisos in 40 CFR 262.34(a) are as follows:

"(1) The waste is placed in containers and the generator complies with Subpart I of 40 CFR Part 265, or the waste is placed in tanks and the generator complies with Subpart J of 40 CFR Part 265 except § 265.193;

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste;" and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265 and with § 265.16."

the environment should apply.12/ It is concluded that Complainant's motion as to this issue is well taken and will be granted.

3. On December 14, 1982, Respondent did not have a written waste analysis plan at the facility, in violation of 40 CFR 265.13(b).

Citing Paragraphs 17 through 21 of Respondent's Response to Complainant's First Request For Admissions, Complainant states in effect that National-Standard has admitted this violation. In the mentioned paragraph, National-Standard admitted that it had not developed a written waste analysis plan

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12/ The cited preamble (45 FR at 33141) provides in part:

> "The proposed rule which appeared in the Federal Register December 18, 1978 indicated that the Agency was seeking comments regarding the desirability of requiring contingency plans for generators who accumulated hazardous waste. The preamble to the February 26, Part 262 regulations also indicated that the Agency was considering the inclusion of such provisions for generators who accumulated hazardous waste on-site. This amendment requires that such generators comply not only with the Contingency Plan and Emergency Procedures of 40 CFR Part 265, Subpart D but also with the Preparedness and Prevention requirements of 40 CFR Part 265 Subpart C and the personnel training requirements of § 265.16.
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> These plans and procedures are required of owners or operators of treatment, storage, or disposal facilities, and the Agency believes that there is little difference between accumulation of hazardous waste for shipment off-site and storage so far as potential damage to human health and the environment is concerned. Therefore, the same standards for protection of human health and the environment should apply. (The February 26 preamble and the Background Document discuss the rationale for the accumulation provisions in more detail.)
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> Similarly, the rationale for requiring all the Part 265, Subpart J requirements for generators who accumulate hazardous waste on-site for 90 days or less (without obtaining a permit) and for requiring certain standards for managing containers and personnel training is based on the belief that less stringent standards could jeopardize human health and the environment."

for its wastewater treatment sludges describing parameters for analysis, test methods for each parameter, sampling methods or frequency of re-analysis. Respondent alleged, however, both it and Chemical Waste Management, Inc. had frequently tested the wastewater treatment sludge and that these tests listed parameters for analysis. Respondent admitted that such plans were not maintained at either facility. National-Standard admitted in part and denied in part the assertion that on or after November 19, 1980, it did not obtain a detailed chemical or physical analysis of a representative sample of hazardous wastes, other than wastewater treatment sludges, before the wastes were stored on site. National-Standard alleges that it obtained a detailed analysis of HCL acid and applied knowledge of the hazard characteristics of some of the other wastes in light of the materials or processes used to determine if the wastes were hazardous. It alleges that this knowledge included all information which must be known to store the waste properly, citing 40 CFR 265.13(a)(1).

Responding to the motion, National-Standard says that this is an alleged violation of interim status regulations and contends that it is a generator of hazardous waste which accumulates waste on-site for less than 90 days before shipment off-site for disposal (Response at 14). Respondent alleges that Complainant has failed to show that interim status was required and what wastes were to be included in the waste analysis plan. Assuming arguendo, that interim status regulations are applicable, National-Standard asserts that it was in partial compliance with 40 CFR 265.13(b), pointing out that it routinely tested sludge and HCL acid. Respondent contends

that it is a question of fact whether its activities were sufficient for compliance with 40 CFR 265.13(b) and asserts that it will demonstrate at the hearing that waste analysis procedures implemented were sufficient to determine proper handling and disposal practices for the types of wastes produced. It alleges that these procedures would not have been significantly different had a written plan been available on December 14, 1982.

Decision

It has been determined above that interim status standards are applicable and Respondent has admitted it did not have a written waste analysis plan at either facility on December 14, 1982. Accordingly, Complainant is entitled to judgment on this issue. Respondent may, of course, show in mitigation that it was in substantial compliance with the requirements of 265.13 and that the violation is only technical.

4. On December 14, 1982, Respondent did not post warning signs with the legend "Danger - Unauthorized Personnel Keep Out" at each entrance to the active portion of the facility, in violation of 40 CFR 265.14.

Complainant contends that National-Standard has admitted this violation, citing Paragraphs 22 and 23 of the answers to its request for admissions. Respondent points out, however, that it has admitted only that warning signs were not posted at the "active portion of the facility" (Response at 16). It asserts that it must be given the opportunity to show that the exemption

of 40 CFR 265.14(a)(1) and (2) apply[13/] or alternatively, that the placement and wording of its signs, substantially comply with the regulation. Respondent also says that it is a question of fact whether the HCL storage area is an "active portion" of the facility for which warning signs were required.

Discussion

National-Standard has shown that there are sufficient disputed factual questions so as to preclude summary judgment on this issue. Complainant's motion in this respect will be denied.

5. As of December 14, 1982, Respondent had not kept an inspection log or summary sheet of inspections of monitoring equipment, security and operating and structural equipment, in violation of 40 CFR 265.15.

Complainant says that Respondent has admitted this violation, citing Paragraph 24 of the answers to its request for admissions (Paragraph 23,

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13/ The exemption referred to (40 CFR 265.14) is as follows:

"(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."

City Complex Plant). Respondent denies that it has admitted this violation, stating that it has only admitted to the fact that inspection logs or summary sheets were not available on December 14, 1982 (Response at 17, 18). Regarding National-Standard's assertion that it maintained an operating log for the wastewater treatment plant, Complainant states that inasmuch as Respondent admits that there are other hazardous waste management areas, including the HCL storage area, a log for the wastewater treatment plant only does not satisfy the requirements of 40 CFR 265.15. National-Standard denies that it has admitted that any portion of the City Complex Plant is a storage facility within the meaning of 40 CFR Part 265 and argues that in order to prevail, Complainant must demonstrate and define one storage area, which was required to have interim status. Assuming that interim status was necessary, Respondent contends that it is a question of fact as to whether the operating log was sufficient to comply with 40 CFR 265.15.

Discussion

Paragraph 23 of Complainant's request for admissions, City Complex Plant) (Paragraph 24, Lake Street Plant) reads as follows: "As of December 14, 1982, National-Standard had not recorded inspections of monitoring equipment, safety and emergency equipment, security devices and operating and structural equipment in an inspection log or summary." Respondent answered: "Admits, further answering that National-Standard keeps on operating log for the wastewater treatment plant." Accordingly, contrary to Respondent's statement that it has only admitted that inspection logs or summary sheets were not available on December 14, 1982, it has, in fact, admitted that as of that date such inspections were not recorded in an inspection log or summary. It

may well be, however, that the operating log for the wastewater treatment plant contains a record of such inspections, in which case there could be substantial compliance with 40 CFR 265.15(d). As to the argument that Complainant must prove that interim status regulations were applicable and that some areas of the plant were storage facilities, National-Standard's contention that it was entitled to the 90-day accumulation time of 40 CFR 262.34 has previously been rejected. In view thereof, and in view of its admissions that it stored wastewater treatment sludges from electroplating operations and spent halogenated solvents in containers[14/] and pickle liquor (HCL acid) in tanks, the conclusion that the facilities are storage facilities subject to interim status standards is inescapable. It follows that Complainant's motion in this respect should be granted.

6. As of December 14, 1982, Respondent did not have a personnel training program nor documention required by the regulations, in violation of 40 CFR 265.16.

Once again Complainant affirms and Respondent denies that it has admitted this violation. The contention that the violation has been admitted is based upon the answers to Nos. 13, 14 and 15 of Complainant's request for admissions. These provide as follows:

> 13. As of December 14, 1982, National-Standard Company, had not fully implemented a personnel training program at the Eighth Street facility that was designed to ensure that facility personnel are able to respond effectively

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14/ In accordance with 40 CFR 261.6(b), Respondent could store for 90 days or less a listed waste intended for recycling without a permit or interim status. See, however, note 3, supra, as to generation of the waste at one facility and storage at another facility.

to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems and that was directed by a person trained in hazardous waste management procedures.

Answer: National-Standard admits in part, denies in part, further answering states that as of December 14, 1982 it had a personnel training program at the Eighth Street facility. This program was directed by Richard Moessner, who was trained in hazardous waste management procedures. This training program was directed to the operators of the wastewater treatment plant. These operators were trained to respond to emergency problems at the wastewater treatment plant.

14. As of December 14, 1982, all personnel at the Eighth Street facility had not completed a training program in hazardous waste management procedures relevant to the positions in which they were employed.

Answer: Admits, further answering that National-Standard had an on-the-job training program for personnel at the wastewater treatment plant.

15. On December 14, 1982, National-Standard Company did not have personnel training records at the Eighth Street facility which documented job titles and job descriptions for each position at the Eighth Street facility related to hazardous waste management; and the type and amount of introductory and continuous hazardous waste management training given to each person filling that position.

Answer: Admits, further answering that the wastewater treatment plant technicians had been given an introductory course in hazardous waste management.

National-Standard asserts that at most it has admitted partial non-compliance with some regulations and that at the hearing it intends to introduce evidence regarding the status of its personnel training programs.

Discussion

Having admitted, inter alia, that on December 14, 1982, it did not have personnel training records at either facility documenting job titles and job descriptions for each position relating to hazardous waste management and the type and amount of introductory and continuous waste management training given to each person filling that position as required by 40 CFR 265.16(d), it is clear that this violation has been admitted. National-Standard may, of course, introduce in mitigation evidence of training actually given even though required documentation is lacking.

7. As of December 14, 1982, Respondent did not have a contingency plan for the facility meeting the requirements of 40 CFR 265.52, in violation of the regulations.

8. As of December 14, 1982, Respondent did not make arrangements with the local authorities to familiarize them with the Hazardous Waste handled at the facility and the associated hazards in violation of 40 CFR 265.37.

In its answer to request for admissions No. 12, National-Standard admitted that as of December 14, 1982, it had not prepared a written contingency plan at either facility specifically addressing action to be taken in response to any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the environment as required by 40 CFR 265.52 and 53. It also admitted, answers to Paragraph 11 of the request for admissions, that as of December 14, 1982, it had not made arrangements with state or local fire departments, police departments, local hospitals or emergency response teams to familiarize them with the hazardous wastes handled at the facility and associated hazards as required by 40 CFR 265.37.

Discussion

Complainant is clearly entitled to judgment on this issue. Respondent may show in mitigation that the plants' physicians and nurses were familiar with HCL acid and were prepared to respond in case of emergency. Further, National-Standard may demonstrate that operators of the wastewater treatment plants were prepared to respond to any emergencies at those facilities.

9. As of December 14, 1982, Respondent did not maintain an operating record at the facility, in violation of 40 CFR 265.73 and 265.74.

Complainant says that Respondent has admitted that it did not maintain an operating record at the facility, citing the answer to Paragraph 25 of its request for admissions. Paragraph 24 of the cited requests (Paragraph 25, Lake Street Plant) alleged that as of December 14, 1982, National-Standard had not maintained a written operating record describing, at minimum: the

location and quantity of hazardous waste at the facility; records and results of waste analysis; records and results of inspections, monitoring, testing and analytical data from a groundwater monitoring program established in accordance with 40 CFR 265.90; and closure cost estimates. Respondent's answer was to admit and to allege that it had maintained records and results of the waste analyses of the wastewater treatment sludge and HCL acid and results of monitoring, testing and analytical data from a groundwater monitoring program approved by the State of Michigan. Specifically answering Request for Admissions No. 25, City Complex Plant (no comparable paragraph exists in requests for admissions for the Lake Street Plant), which alleged that as of December 14, 1982, an operating record of the Eighth Street facility was not available for inspection by representatives of EPA, Respondent answered "admits," but alleged that records and results of analyses of wastewater treatment sludge and HCL acid were available.

Responding to the motion, National-Standard says that if interim status standards were applicable, then in all probability it was in partial compliance with regulations requiring an operating record (Response at 21). It states that at the hearing, it will present evidence regarding the records it did keep and that they were the equivalent.

Discussion

Complaint is entitled to judgment on this issue. National-Standard is entitled to show in mitigation the extent to which it complied with the requirement for an operating record.

10. As of December 14, 1982, Respondent had not implemented a groundwater monitoring program at the facility, in violation of 40 CFR Subpart F.

Regarding this alleged violation, National-Standard has admitted non-compliance with certain requirements of 40 CFR Subpart F and denied, at least in part, other allegations of non-compliance with those requirements. For example, it has admitted that as of December 14, 1982, it had not installed, operated nor maintained a groundwater monitoring system to monitor the impact of wastewater treatment sludge storage on the quality of groundwater in the uppermost aquifer underlying the Eighth Street Facility (40 CFR 265.90(a)) (answer to Request for Admissions No. 26, City Complex Plant). National-Standard has also admitted that as of December 14, 1982, it had not prepared an outline of a groundwater quality assessment program describing a more comprehensive program for determining whether and to what extent hazardous wastes have entered the groundwater (40 CFR 265.93(a)) (answer to Request for Admissions No. 27, Lake Street Plant). Concerning the allegation that as of December 14, 1982, Respondent had not developed a groundwater sampling and analysis plan identifying sampling and analytical procedures and chain of custody for the Lake Street Facility (Request for Admissions No. 26), National-Standard denied to the extent it had developed a groundwater sampling and analysis plan approved by the State of Michigan.

Decision

As Complainant recognizes, regulations in 40 CFR 265, Subpart F, are applicable to owners or operators of surface impoundments, landfills or landfill treatment facilities. Inasmuch as Complainant's contention that Respondent is conclusively bound by the designation of the wastewater holding facilities as surface impoundments in its Part A Permit Applications

has been rejected, Complainant is not entitled to judgment on this issue and the motion in this respect will be denied.

11. On December 14, 1982, Respondent did not have a written closure plan available at the facility in violation of 40 CFR 265.112.

12. Respondent failed to provide U.S. Environmental Protection Agency with proof of financial responsibility for closure of its facility by July 6, 1982, in violation of 40 CFR 265.143.

Complainant again relies on Respondent's answers to requests for admissions. National-Standard admitted that as of December 14, 1982, it had not developed a written closure plan for the Eighth Street Facility and that as of June 20, 1983, it had not provided the Regional Administrator with proof that financial assurance for closure of the Eighth Street Facility had been established (answers to Request for Admissions Nos. 28 and 31; Nos. 32, 33 and 35, Lake Street Facility). National-Standard defends upon the the ground Complainant has not shown that interim status was required for any portion of the plant or what portion required interim status. Concerning alleged Violation No. 12, Respondent says that as of July 6, 1982, it had not filed its Part A Permit Application or recognized that it may have needed interim status. It points out that it has disputed the contention that interim status was required before July 6, 1982. Respondent alleges that even if interim status was necessary, it will demonstrate that it met the financial responsibility for closure test of 40 CFR 265.143 at all times since July 6, 1982 and that the alleged violation was at most technical.

Decision

It having been previously concluded that interim status was required because of non-compliance with the provisos in 40 CFR 262.34, Complainant is entitled to judgment on this issue. Respondent may, of course, show substantial compliance in mitigation.

13. On December 14, 1982, the southern most surface impoundment was not maintained with at least two feet of freeboard (Lake Street) in violation of 40 CFR 265.222.

In answer to Request for Admissions No. 44, Respondent admitted that on December 14, 1982, the southern most containment structure at the Lake Street Facility did not have at least 60 centimeters (2 feet) of freeboard. National-Standard has denied, however, that this structure is, in fact, a surface impoundment or that the structure is part of a waste management area as defined in 40 CFR 265.91.

Decision

Complainant's contention that Respondent is irrevocably bound by the designation of the holding facilities the Part A Permit Applications as surface impoundments having been previously rejected, Complainant is not entitled to judgment on this issue and its motion in this respect will be denied.

Order

In accordance with the foregoing, Complainant's motion for an accelerated decision is granted in part and denied in part.15/

Dated this 8th day of May 1984.

Spencer T. Nissen
Administrative Law Judge

15/ In view of the rulings herein, the parties may wish to further discuss the possibility of settlement. In any event, a ruling on Repondent's pending motion for discovery will be forthcoming. Immediately thereafter, if the matter is not settled, it is intended that this matter be scheduled for hearing.

CERTIFICATE OF SERVICE

This is to certify that the original of this Opinion and Order on Motion for An Accelerated Decision, dated May 8, 1984, was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to each party in the proceeding as follows:

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May 8, 1984

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