UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D 20460

OFFICE OF
THE ADMINISTRATOR

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

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

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

## Discussion of Violations

The first violation alleged cites the Respondent with increasing its design capacity without first receiving approval therefor from the Regional Administrator, in violation of 40 CFR § 270.72(b).

As described in the stipulation, due to an industry slump, the Respondent shut down its refinery in November of 1982 and decided that this would be a good time to clean out its tanks. This exercise generated a larger amount of K049 than usual and the Respondent was forced to increase its storage capacity of the material since it could not dispose of it within the 90-day exemption period allowed by the regulations. The misplaced revised application advised the Agency of this fact and not only added K049 as a stored waste, but also indicated that it was increasing its storage capacity form 20,000 gallons to 50,000 gallons.

The Agency takes the position that such activity violates 40 CFR § 270.72(b) which requires that no such increase be instituted without prior approval of the Regional Administrator. The Respondent argues that its activities in regard to K049 are governed by § 270.72(a) which only required that a facility file a revised application and no prior approval is required by that subsection. The Respondent points out that the provisions of § 270.72(b) only applies to "increases in the design capacity of processes used at the facility" and that its actions in this matter did not involved any increases in the capacity of processes used at the facility. Respondent further argues that if the Agency's position is correct than any time a new waste is added to a facility's list of handled

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Conclusion

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

ORDER

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

DATED: July 11, 1985

Thomas B. Yost
Administrative Law Judge

CERTIFICATION OF SERVICE

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

Sandra A. Beck
Secretary to Judge Yost

Honorable Thomas B. Yost
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