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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

November 7, 1991

MEMORANDUM

SUBJECT: Concurrence on 7003 Order for Shell Pipe Line
Corporation of Niobrara County, Wyoming

FROM: Bruce Diamond, Director, Office of Waste
Program Enforcement

TO: Robert Duprey, Director, Hazardous Waste
Management Division, Region VIII

In the matter of Shell Pipe Line Corporation, I concur on your use of Section 7003 to compel the company to clean up the spilled oil.

The use of Section 7003 to compel clean-up of an oil spill is a proper use of the RCRA statute. Spilling meets the definition of disposal and spilled material generally qualifies as a solid waste. For this reason, the spill is potentially subject to RCRA §7003 authority (40 CFR 260.10 and 40 CFR 261.2), regardless of whether or not it may meet the definition of a characteristic hazardous waste, e.g., TC for benzene.

The New York State Petition addresses the question of how benzene contaminated petroleum waste must be managed during remediation. If the petition is approved by the Agency, it will only affect the final management and disposal of such waste, not the Agency's ability to use Section 7003 to obtain clean-up in cases of imminent and substantial endangerment.

In the future, you might also consider using the authority of the Oil Pollution Act (OPA) to compel clean-up. This Act, which amends the Clean Water Act, may soon be available for Regions to use in enforcement actions requiring clean-up of oil spills. Among other things, the OPA allows an enforcement action to be taken against a facility that discharges oil or hazardous substances into

or upon navigable waters of the United States, adjoining shorelines, into or upon the waters of the contiguous zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States [Federal Water Pollution Control Act §311 (c)]. This authority may apply to spills like the Shell Pipe Line incident. In the FINDINGS OF FACT (Section IV) of the proposed §7003 Order for the Shell spill, paragraph E states that portions of land on which are located "navigable waters" were saturated by the spilled oil. Presumably, the oil went into or upon the navigable waters or onto adjoining shorelines. Also, Shell Pipe Line Corporation meets the definition of a facility as described in the OPA §1001 (9) "facility" and is liable for removal costs and damages as described in §1002 (a) of the same Act. The advantage of the OPA is that should a facility fail to comply with an administrative order for removal, the facility may be subject to a penalty up to three (3) times the cost incurred by the Oil Spill Liability Trust Fund [Federal Water Pollution Control Act 5311 (b)(7)(B)(ii)].

Previously, EPA could not order a company to clean-up under the Clean Water Act §311. Only the President had that authority [Federal Water Pollution Control Act §311 (c) and (e)]. On October 18, 1991 the President delegated his authority to the Administrator of EPA and the Secretary of Transportation. The Agency is presently working on delegating this authority to the Regional Administrators.

If you have any further questions regarding the Oil Pollution Act, please contact Cecilia Smith of my office at FTS 260-9811.

cc: Matt Hale
Stephen Heare