



RCRA Permit Appeal Fact Sheet

1988

FACILITY: American Cyanamid Company (American Cyanamid), Santa Rosa Plant
Milton, Florida
FLD 057 231 821
RCRA Appeal No. 88-22

PETITIONER: American Cyanamid

PETITION FILED: October 28, 1988

STATUS OF PETITION: See Permit Appeal Status Report

ISSUE: Definition of solid waste management unit

Summary of Petition:

American Cyanamid contests permit conditions specifying requirements applicable to solid waste management units (SWMUs) identified as requiring a RFI, as those conditions apply to one of six SWMUs at the facility. The basis for American Cyanamid's petition is that this one unit, described as a 700 gallon spill of methyl methacrylate (MMA) in 1982 from a product storage tank, is not a SWMU under the statutory provisions and regulations on which these permit conditions are based.

American Cyanamid contends that the tank is not a SWMU, because: (1) the tank has never been used to store hazardous waste, constituents of a hazardous waste, or any other substance other than raw materials used in the production process at the facility; (2) the tank was never intended for storage, treatment, or disposal of hazardous or non-hazardous waste; and (3) RCRA regulates only hazardous waste and constituents of hazardous wastes. Because the tank is not a SWMU, the petitioner contends that releases from the tank are not subject to corrective action pursuant to Section 3004(u) of RCRA, as amended by HSWA. In addition, American Cyanamid notes that the one-time release was not routine, systematic, and deliberate.

To support its position, American Cyanamid quotes SWMU and release interpretations discussed in the preamble to the 1985 codification rule, the 1986 "National RCRA Corrective Action Strategy," a 1985 memorandum from Jack McGraw, Acting Assistant Administrator to various addressees, and a 1987 decision by the U.S. Court of Appeals for the D.C. Circuit Court.

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
American Cyanamid Company)	RCRA Appeal No. 88-22
(Santa Rosa))	
RCRA Permit No. FLD 057 231 821)	

ORDER DENYING REVIEW

By petition submitted under 40 CFR §124.19, American Cyanamid Company seeks review of a permit issued by Region IV under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. §§6901-6991i (1983 and West Supp. 1988). The permit is for Cyanamid's acrylic fiber facility in Santa Rosa County, Florida, and imposes certain requirements under the 1984 Hazardous and Solid Waste Amendments to RCRA.

The sole issue raised by the petition involves corrective action requirements for a 700-gallon spill of raw material, methyl methacrylate, that occurred within a diked area at the facility in 1982. The permit requires cleanup of the spill under RCRA §3004(u). Cyanamid argues that the spill area is not a solid waste management unit ("SWMU") and thus not subject to corrective action under RCRA §3004(u), which by its terms is limited to releases from SWMUs. ^{1/}

^{1/} See RCRA §3004(u), 42 U.S.C.A. §6924(u) ("a permit issued after November 8, 1984 by the Administrator or a State shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a
(continued...)

Cyanamid is correct that a one-time, accidental spill of raw material does not create a SWMU. See 50 Fed. Reg. 28712-13 (July 15, 1985). ^{2/} Nevertheless, the Agency may require corrective action for releases from non-SWMUs under its RCRA omnibus authority. See RCRA §3005(c)(3), 42 U.S.C.A. §6925(c)(3) ("Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment."). As recently noted in In re Amerada Hess Corp., RCRA Appeal No. 88-10 (August 15, 1989), RCRA authorizes corrective action for a release of hazardous waste from a non-SWMU at an interim status facility. See RCRA §3008(h), 42 U.S.C.A. §6928(h). It is entirely consistent with the terms of the omnibus provision, RCRA's broad remedial purpose, and Agency policy to provide similar protection at permitted facilities where necessary to

^{1/} (...continued)

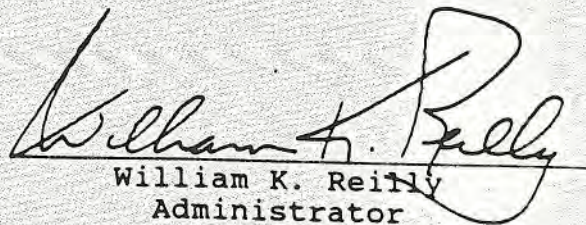
treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit.").

^{2/} The Region's response to the petition focuses primarily on whether the spill area is a "unit," but it fails to explain how a single spill from production processes can create a solid waste management unit. Nor has it persuaded me that Cyanamid is estopped from denying that the spill area is a SWMU simply because Cyanamid has not challenged the designation of a separate spill area (from a broken pipeline) as a SWMU.

protect human health and the environment. See Amerada Hess Corp., supra. ^{3/} Accordingly, review is denied. ^{4/}

So ordered.

Dated: Oct 31, 1989


William K. Reilly
Administrator

^{3/} By its terms, RCRA §3005(c)(3) may be invoked only where necessary to protect human health or the environment. Similarly, the Agency has interpreted RCRA §3004(u) -- the provision relied upon by Region IV -- as requiring corrective action only where necessary to protect human health or the environment. See 50 Fed. Reg. 28713. Cyanamid does not contend on appeal that cleanup of the 1982 spill is unnecessary to protect human health and the environment, but instead disputes only the Agency's legal authority to require such a cleanup. As discussed above, the requisite legal authority resides in the RCRA omnibus provision.

^{4/} Minor revisions to the permit may be necessary to reflect the status of the spill area as a non-SWMU and the applicability of RCRA §3005(c)(3). See, e.g., Permit Conditions II.A.1, II.D.1, II.E.1, II.E.3, II.F.2, II.F.5, and II.G.1.

In its response to Cyanamid's petition, Region IV suggests that a stay of this proceeding might be appropriate pending issuance of comprehensive corrective action rules. As of today, the comprehensive rules have not yet been proposed, and it is expected that the proposal will generate substantial public comment, thereby further delaying final issuance. Accordingly, and in view of the controlling nature of Amerada Hess Corp., supra, this case is ripe for disposition. Today's decision holds only that Region IV may require cleanup of the spill area; it does not address any issues regarding the specific corrective action measures or cleanup levels necessary to protect human health and the environment.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of American Cyanamid Company, RCRA Appeal No. 88-22, were sent to the following in the manner indicated:

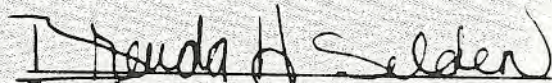
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Dated: NOV 23



Brenda H. Selden, Secretary
to the Chief Judicial Officer