May 26, 2000

MEMORANDUM

SUBJECT: Kodak Claim for Manufacturing Process Unit Exemption to the RCRA Subpart BB Air Emissions Requirements

FROM: Elizabeth A. Cotsworth, Director
Office of Solid Waste

TO: George Pavlou, Director
Division of Enforcement and Compliance Assistance
EPA Region II

This memorandum is in response to your inquiry of March 9, 2000, requesting our determination of whether a reactor discharge system at the Eastman Kodak facility in Rochester, New York qualifies for a manufacturing process unit exemption under 40 CFR 261.4(c) of the Resource Conservation and Recovery Act (RCRA).

As described in your memorandum, liquid exiting a reactor unit after a particular chemical reaction is transported by pipe and pump to a manifold. Depending on the nature of the liquid, it is reused, recycled, or sent for off-site disposal as a hazardous waste. Kodak decides prior to the production process what the final destination of the liquid will be, not when it enters the manifold. The Region contends that as long as Kodak makes a determination that the material exiting the reactor is at times a hazardous waste with more than 10% organics, then all pumps and piping used to transport any liquid for more than 300 hours is subject to the subpart BB regulations. Kodak claims, however, that the pumping and pipes between the reactor and manifold are subject to the section 261.4(c) exemption because they carry liquid that will be reused or recycled, in addition to being hazardous waste.

Section 261.4(c) provides an exemption from regulation hazardous waste that is generated in a manufacturing process unit until it exits the unit in which it was generated. In communication with your staff earlier this year, we expressed the opinion

that because the piping system leading from the reactor at times carries hazardous waste, it is not part of the process unit and is therefore subject to RCRA regulation. That opinion was given in response to a question on the applicability of subpart J regulations.

That opinion is consistent with the opinion expressed in a December 19, 1986 letter from Joseph Carra, the Acting Director of the Waste Management Division of OSW to Mr. Hadley Bedbury of Diamond Shamrock Chemicals Company (attached). That letter addressed, among other items, a situation where process transfer equipment that is normally used for production purposes is also used to transfer hazardous waste. The conclusion reached was that A . . . any process transfer equipment, even if normally used for production purposes, that is also used to transfer hazardous waste residue . . . to a hazardous waste storage/treatment tank, would be considered part of hazardous waste tank system and thus subject to the standards for such.@

We have also examined the preamble language for section 261.4(c), the Amanufacturing process unit exemption.@ The section was added in 1980 to provide relief for instances when, for example, the point of hazardous waste generation could be the manufacturing process unit itself. As stated in the preamble (45 Fed. Reg. 72025, October 30, 1980), EPA did not intend to regulate product and raw material storage tanks, transport vehicles and vessels, or manufacturing process units in which hazardous wastes are generated. As we understand the situation at Kodak, the liquid removed from the reactor may be reused or recycled, but it may also be sent directly to hazardous waste storage tanks.

In our opinion, then, the manufacturing process unit exemption in section 261.4(c) does not apply to the pipes and pumps leading from the reactor to the distribution manifold, and those pieces of ancillary equipment are subject to RCRA regulation, including subpart BB. The hazardous waste line, and other pieces of ancillary equipment from the manifold to the hazardous waste storage tank, are subject to subparts J and BB.

Thank you for the opportunity to respond to your inquiry. If you need any additional information, please contact Jeff Gaines at (703) 308-8655.

Attachment

cc: Steve Heare, PSPD
Dale Ruhter, PSPD
Charlotte Mooney, HWID
Lynn Holloway, OECA
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9483.1986(11)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DEC 19 1986

Mr. Hadley Bedbury
Senior Environmental Engineer
Diamond Shamrock Chemicals Company
1149 Ellsworth Drive
Pasadena, Texas 77501

Dear Mr. Bedbury:

Thank you for your letter of August 8, 1986, in which you raised several questions related to the final hazardous waste tank systems rules (51 FR 25422).

Your first question concerned the applicability of the secondary containment requirements to production tanks during periodic cleanouts. 40 CFR 261.4(c) states that "a hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to" the containment regulations "until it exits the unit in which it was generated, . . ., or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials." Thus, if you are able to clean out your process tank within 90 days after production or product storage is stopped, that process tank would not be considered a waste accumulation tank and, therefore, would not be subject to secondary containment standards. The waste removed, however, is subject to the hazardous waste control system if it is determined to be a hazardous waste.

A related question concerns the applicability of the hazardous waste tank system standards to process transfer equipment normally used for production purposes, but also used to transfer hazardous waste residue to either a NPDES wastewater treatment system or an onsite RCRA treatment/storage facility. Assuming it is removed within 90 days after production or product storage is stopped, the hazardous waste generated within product/raw material process tanks does not become subject to the hazardous waste tank system standards until it exits the unit in which it was generated. The tank system standards apply to ancillary equipment used to handle the hazardous waste during transfer from its point of origin to a hazardous waste storage/treatment tank. We consider the point of exit from the process tank to be the introductory point for the hazardous waste into a hazardous waste tank system. Therefore, any process transfer

equipment, even if normally used for production purposes, that is also used to transfer hazardous waste residue during equipment washout/cleanout procedures to a hazardous waste storage/treatment tank, would be considered part of a hazardous waste tank system and thus subject to the standards for such. If the hazardous waste residue is transferred to a wastewater treatment tank that is exempted from the regulations under 264.1(g)(6), the hazardous waste tank regulations now appear to apply to the ancillary equipment. The Agency is considering whether to address this issue in the near future.

Another related question concerns hose lines that are normally used in connection with product storage but are also used as loading/unloading equipment for hazardous waste. During any hazardous waste transfer operation, EPA intends that appropriate controls and practice be provided to prevent the release of hazardous waste to ground water, surface water, or soil should a leak, spill, or other incident occur during the loading/unloading process. Prior to returning hose lines that were used for this purpose to their normal use in product storage, good practice would be to clean the hoses so that all hazardous waste residues are removed or decontaminated.

Another question addresses the applicability of the closed loop recycling exclusion under 40 CFR 261.4 to tanks that are used in the reuse of materials. Given your description of the process, these reused materials that result from the incomplete conversion of raw materials to final products, would not be defined as solid wastes and thus would not be hazardous wastes (see 40 CFR 261.2(e)(1)(iii). Thus, such reused material would not be regulated under RCRA Subtitle C.

Finally, you questioned what effect future interpretation or guidance manuals would have on the acceptability of a certification made by an independent professional engineer prior to the availability of such guidance materials. EPA is developing a technical guidance manual to assist both permit applicants and permit writers in more fully understanding the revised tank system regulations. A notice of the availability of this guidance manual will be published, in the near future, in the Federal Register. A certifying engineer, in making an assessment of a tank system, must take into account all the factors listed in Sections 264.191 and 265.191 (for existing tank systems) and Sections 264.192 and 265.192 (for new tank systems). If a tank system is judged by an independent, qualified, register professional engineer to be appropriate for the storage or treatment of hazardous waste, in accordance with the regulations, that certification should not be affected by guidance materials made available subsequent to the assessment.

If you need further clarification of these responses or if you have any additional questions, please call William Kline at (202) 382-7917.

Sincerely,

Joseph E. Carra
Acting Director
Waste Management Division

cc: Regional Hazardous Waste Branch Chiefs