

GENERAL STATUS OF USEPA MULTIMEDIA INSPECTION (MMI)
BORDEN CHEMICALS AND PLASTICS
OPERATING LIMITED PARTNERSHIP (BCP)

May 23, 1994 Vinyl Institute Meeting

I. Background

- A. MMI was unannounced and conducted in two(2) phases by multiple teams of EPA Region 6 inspectors
 - Phase A March 16-20, 1992
 - Phase B April 20-24, 1992
- B. Phase A included as many as 14 inspectors covering the following media:
 - Air (all programs)
 - Water (NPDES & Lab)
 - RCRA (all programs including groundwater assessment)
 - TSCA (PCB only)
- C. Phase B included as many as 11 inspectors covering the following media:
 - RCRA Sampling (site wide including various water streams, sludges, wastes and groundwater)
 - TSCA (non-PCB)
 - Underground Storage Tanks (UST)
 - Underground Injection Control (UIC)
 - Spill Prevention Control & Counter Measures (SPCC)
 - SARA TRI Reporting
 - CERCLA/SARA Release Reporting
 - Safe Drinking Water (Potable water)
- D. Participation by the State of Louisiana was limited to one RCRA inspector, one UST inspector, and one Health and Hospitals inspector for potable water.

II. Significant Findings

- A. Field Inspection Reports were not made available and had to be obtained through a series of Freedom of Information Act (FOIA) requests.
 - EPA took several months to respond to some of these requests, ignoring the 10 day response requirement.
- B. The three (3) most significant allegations are:
 - Operating the VCR Unit (an anhydrous HCl production unit) as a hazardous waste incinerator and operating several tanks associated with the VCR unit all without interim status or a permit and without adequate secondary containment.
 - Failure to make a hazardous waste determination for the north trench sump (a non-process area storm-water collection point) and operating it without interim status or a permit and other associated RCRA requirements (EPA basis: ONE discrete sample of water contained EDC in low PPM range but above RCRA limits. Only stormwater enters this trench system which is within an area undergoing groundwater remediation pursuant to an agreement between BCP and LDEQ. Groundwater recovery has been

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underway since 1983.)

- Failure to make a hazardous waste determination for mercuric chloride catalyst which EPA alleges is spent and associated allegations of storage without a permit or interim status and illegal export.
- C. USEPA is predisposed with the idea that BCP must conduct a site-wide RFI (RCRA facility inspection) and enter into an EPA directed corrective action program. They are using RCRA 3008(H) as their authoritative basis and are using the potential for MMI penalties to force corrective action (yes, this is more commonly known as extortion).
- D. There are numerous other less significant allegations, many based on ignoring the facts and the fundamental reading of the RCRA Regulations and the act itself.

III. Comments and Current Status

- A. USEPA has not been cooperative and has not been willing to discuss the MMI and the numerous inaccuracies found by BCP in their inspection reports. They seem to have a predetermined course of action regardless of the facts.
- B. USEPA was not inclined to meet with BCP until they referred the MMI to the U.S. Department of Justice (USDOJ) in late 1992-early 1993.
- C. Since the MMI in March-April, 1992, the Agency has met with BCP on only two (2) occasions: April 26-27, 1993 and April 8, 1994.
- D. The USDOJ and USEPA have not formally filed Notice of Penalties nor have they taken formal enforcement action.
- E. EPA made several requests for additional information via RCRA 3007.
- F. Pending allegations and penalties were discussed on April 8, 1994, two (2) years after the MMI. That says a lot about the "urgency" of their allegations and any impact on the environment.
- G. In late April 1994, EPA sent a RCRA 3008(H) "Determination of a Release" to BCP as a round about means of requiring RCRA corrective action regardless of interim or permit status of the facility. BCP has formally requested a meeting but with no response from USEPA.
- H. BCP has decided to take a stand by filing suit on the three (3) most significant allegations in Federal District Court in Baton Rouge, Louisiana on May 5, 1994 (see attached news release).

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BORDEN CHEMICALS and PLASTICSOPERATING LIMITED PARTNERSHIP
BCP Management, Inc., General Partner

News

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May 5, 1994

BCP Seeks Court Aid to Stop EPA From Creating Hazardous Waste

GEISMAR, Louisiana -- Borden Chemicals and Plastics Operating Limited Partnership (BCP) filed suit today against the Administrator of the U.S. Environmental Protection Agency (EPA), asking the U.S. District Court in Baton Rouge for a ruling that materials which are part of a continuous manufacturing process and not discarded are not subject to hazardous waste laws.

EPA has indicated that it intends to regulate as "hazardous waste" materials that are never discarded and thus are not wastes, BCP said. Some of the materials in question are part of a continuous closed-loop processing system. Others are reused later following a recycling process.

Wayne Leonard, BCP's vice president and general manager, said the EPA position could open the door to a wave of inappropriately broad interpretations of regulations on the U.S. chemical industry.

"This is not what Congress intended for our pollution prevention laws," he said.

According to Leonard, "Allowing the EPA position to stand will cripple pollution prevention efforts in the U.S. by making it more feasible to dump toxic chemicals in hazardous waste landfills rather than reuse them."

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It could mean that most, if not all, of the chemical manufacturing processes in the country would have to be regulated as hazardous waste management units, he said.

Leonard noted that EPA's position would penalize companies that have developed environmentally sound programs to eliminate waste.

"We've always acted in the belief that the best way to eliminate hazardous waste is not to create it in the first place," said Leonard. "We have been achieving this by reusing and not discarding these materials."

In one instance, EPA maintains that partially-depleted mercuric chloride catalyst used by BCP in the manufacture of vinyl chloride is hazardous waste even though it is later recycled for reuse. EPA's position is in direct conflict with a ruling by the Louisiana Department of Environmental Quality (DEQ) which said the material is not a waste. DEQ is the EPA's designated authority in Louisiana for administering hazardous waste laws.

"EPA is second-guessing the very agency it chose to administer hazardous waste laws in Louisiana," Leonard said. "How can a company operate when the EPA says actions by its own designated authority have no validity, and penalties can be threatened based on a retroactive change in an official ruling?" he asked.

On another issue, BCP says EPA overstepped its bounds in declaring chemical co-products from a vinyl chloride manufacturing process to be hazardous waste. These co-products are continuously processed through a closed-loop stream and are never discarded, so they never become wastes.

Borden Chemicals and Plastics Operating Limited Partnership is managed by BCP Management, Inc., a wholly-owned subsidiary of Borden, Inc. which owns 2 percent of BCP. Nearly 700 workers are employed at the BCP facility in Geismar.

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