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RCRA Permit Appeal Fact Sheet

1989

FACILITY: American Cyanamid Company (American Cyanamid)
Kalamazoo, Michigan
MID 005 360 680
RCRA Appeal No. 89-8

PETITIONER: American Cyanamid

PETITION FILED: February 14, 1989

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are not justified
- Definition of solid waste management unit

Summary of Petition:

In January 1989, Region 5 issued a final permit to American Cyanamid's Polymer Products Division facility in Kalamazoo, Michigan. American Cyanamid contests two conditions which relate corrective action requirements to process areas at the facility.

- **RFI Conditions are not Justified.** American Cyanamid objects to the designation of the Old Sulphuric Acid Plant Area as a SWMU subject to further investigations. First, the petitioner contends that the area was a process area rather than a waste management area. In addition, the petitioner notes the Region's own admission that there have been no detectable releases of hazardous waste or constituents from this area.
- **Definition of Solid Waste Management Unit.** American Cyanamid objects to the condition which includes its "entire" Kalamazoo Polymer Products Division plant in the permit. The petitioner contends that such references will automatically lead to the inclusion of manufacturing process areas as solid waste management units (SWMUs), thus defining the entire facility as a SWMU. The petitioner cites the Congressional record, D.C. Circuit Court rulings, and EPA regulatory guidance, stating that these sources have consistently interpreted RCRA Section 3004(u) as applying to individual SWMUs, and have never purported to define an entire active manufacturing facility, without regard to waste management activities therein, as the entity subject to RCRA corrective action.

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

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In the Matter of:	)	
	)	
American Cyanamid Company	)	RCRA Appeal No. 89-8
(Kalamazoo, Michigan)	)	
	)	
RCRA Permit No. MID 005 360 680	)	
	)	

REMAND ORDER

American Cyanamid Company ("American Cyanamid") seeks review of the federal portion of a RCRA permit jointly issued by U.S. EPA Region V and the Michigan Department of Natural Resources for American Cyanamid's Polymer Products Division facility in Kalamazoo, Michigan. The federal portion of the permit requires corrective action pursuant to the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). ^{1/} Specifically, American Cyanamid seeks review of two permit sections that, in its view, require a RCRA Facility Investigation ("RFI") for the "entire plant" (permit section IV.A) and designate the Old Sulfuric Acid Plant Area as a solid waste management unit (permit section IV.B). As requested by the Agency's Chief Judicial Officer, Region V has submitted a response to the petition and relevant portions of the administrative record, defending the permit as written. ^{2/}

Under the rules that govern this proceeding, a RCRA permit determination ordinarily will not be reviewed unless it is based

^{1/} The non-HSWA portion of the permit was issued by Michigan, an authorized state under RCRA §3006(b), 42 U.S.C. §6926(b).

^{2/} American Cyanamid also filed a reply to the Region's response pursuant to leave granted by the Chief Judicial Officer.

on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. See 40 CFR §124.19; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to §124.19 states that "this power of review should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level * * *." Id. The burden of demonstrating that review is warranted is on the petitioner. See 40 CFR §124.19. For the reasons set forth below, I conclude that American Cyanamid has met this burden for permit section IV.A, but not for permit section IV.B.

PERMIT SECTION IV.A

The RFI is one of the steps in a complete corrective action program.^{3/} The RFI required by section IV.A of American Cyanamid's permit is divided into three successive phases.^{4/} Phase I of the RFI requires American Cyanamid to prepare an

^{3/} Generally, corrective action consists of several steps. The first step is usually the RCRA Facility Assessment, during which the Agency attempts to identify actual and potential releases from solid waste management units. The next step is the RFI, during which the permittee assesses the identified releases by characterizing their nature, extent, and rate of migration. Next, the permittee identifies appropriate remedial measures during the Corrective Measures Study. Once the permitting authority selects the appropriate remedial measure, the permittee must implement the selected corrective measure. See 55 Fed. Reg. 30,801-30,802 (July 27, 1990); Office of Solid Waste and Emergency Response ("OSWER"), National RCRA Corrective Action Strategy, pp.9-15 (1986) (hereinafter "1986 Corrective Action Strategy").

^{4/} The body of the permit itself does not detail the requirements of the different phases of the RFI. Instead, these requirements are detailed in the Corrective Action Plan ("CAP") provided in Attachment II to the permit.

"Environmental Monitoring Report" containing a description of current conditions at the facility, the characteristics of the waste and areas where wastes have been placed, collected or removed, and an identification of any past releases. If the Phase I RFI demonstrates the existence of an actual or suspected release of hazardous waste or hazardous constituents from a solid waste management unit ("SWMU"), the permit requires American Cyanamid to proceed to the next phase of the RFI, which requires assessment and characterization of the release[s]. If the second phase of the RFI shows that a release requiring remediation has occurred, the permit requires American Cyanamid to develop a corrective measures study pursuant to the third and final phase of the RFI.^{5/} The body of the permit requires this RFI under the heading "IV. Corrective Action Requirements A. Entire Plant."

American Cyanamid argues that section IV.A should be deleted from the permit on the ground that it requires Phase I of the RFI to address the "entire plant," which in American Cyanamid's view includes process areas. Because RCRA §3004(u) applies only to

^{5/} The Region argues that because the second and third phases of the RFI (provided for in permit sections IV.A.2 and IV.A.3) might never be imposed, they are not permit "conditions" which can be appealed. I disagree. Under the regulations establishing permit review, American Cyanamid does not have the right to wait until the application or implementation of a permit condition before seeking review of that condition. Instead, 40 CFR §124.9(a) provides that any condition of a permit may be challenged by a petition for review filed within 30 days of the final permit decision. Permit conditions whose application are contingent upon future events are nonetheless permit terms within the scope of §124.19(a).

SWMUs, ^{6/} American Cyanamid contends that permit section IV.A essentially treats the plant's process areas as SWMUs, and that this implicit designation of process areas as SWMUs is contrary to the meaning and intent of RCRA §3004(u). In other words, American Cyanamid reads the permit as requiring it to investigate and provide information about all of its process areas under the Phase I RFI requirement, and consequently American Cyanamid argues that the scope of the Phase I RFI is overbroad because it applies to areas for which corrective action should not be required. ^{7/} While I am not persuaded by American Cyanamid's specific legal arguments, I agree with its general concern that the Phase I RFI requirement may apply to areas for which corrective action may not be necessary.

American Cyanamid's interpretation of the permit language, i.e., that the "entire plant" including process areas is subject to the Phase I RFI requirement, is baseless. The permit language requiring the Phase I RFI for the "entire plant" must be read in

^{6/} Section 3004(u) provides that permits issued after November 8, 1984

shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter.

42 U.S.C. §6924(u).

^{7/} American Cyanamid does not request review of the substantive information required by the Phase I RFI report or in any other way assert that the Region is not entitled to the type of information sought by the Phase I RFI. Instead, American Cyanamid is concerned only with the areas subject to this reporting requirement.

conjunction with Attachment II to the permit, which contains the Corrective Action Plan ("CAP") detailing the requirements of the different phases of the RFI. The CAP explicitly provides that all phases of the RFI apply only to "all Solid Waste Management Units * * * at the facility." ^{2/} There is nothing in the permit (or the CAP) to suggest that the term "SWMU" as used in the CAP includes process areas. American Cyanamid simply failed to read the "entire plant" language in its proper context, which makes clear that the RFI to be conducted at the "entire plant" is to be limited to SWMUs.

The other arguments American Cyanamid makes to support its contention are also unconvincing. For example, American Cyanamid suggests that all areas associated with process areas are absolutely beyond the reach of the corrective action authority conferred by §3004(u). While it is true that §3004(u) authorizes corrective action only for releases from SWMUs, SWMUs include "certain areas associated with production processes at facilities which have been contaminated as a result of routine [and] systematic * * * releases of [hazardous] wastes, or hazardous constituents." ^{2/} Thus, areas contaminated as a result of

^{2/} See CAP, Attachment II to permit, p.3.

^{2/} 1986 Corrective Action Strategy, p.4. See also 55 Fed. Reg. at 30,874 (to be codified at 40 CFR §264.501) (defining SWMUs as including "any area at a facility at which solid wastes have been routinely and systematically released"); In re LCP Chemicals-North Carolina, Inc., RCRA Appeal No. 90-4, p.2 n.2 (Feb. 14, 1991); In re Amerada Hess Corp., RCRA Appeal No. 88-10, p.3 n.4 (Aug. 15, 1989). In contrast, leakage from product storage and other types of releases associated with production processes are
(continued...)

releases from process areas are SWMUs subject to corrective action if the releases were routine and systematic in nature. "[I]t is not the process unit per se that is the SWMU in such situations, but the area used for the routine and systematic discharge of solid waste." In re BFGoodrich Co., RCRA Appeal No. 89-29, pp. 4-5 n.6 (Dec. 19, 1990).

In addition, American Cyanamid argues that by requiring the RFI for the "entire plant," the Region implicitly designated the entire plant as a SWMU because §3004(u) applies only to SWMUs.^{10/} This argument also lacks merit. RCRA §3004(u), which requires corrective action for releases from SWMUs, is not the only source of authority for requiring corrective action. For example, the RCRA omnibus provision, §3005(c)(3),^{11/} authorizes corrective action to address releases from non-SWMU areas when necessary to protect human health and the environment.^{12/} Because RCRA permits may require corrective action for non-SWMU areas, the mere requirement of corrective action does not necessarily compel the

^{9/} (...continued)
not considered SWMUs unless those releases were routine and systematic. 55 Fed Reg. at 30,809.

^{10/} According to American Cyanamid, the entire plant cannot properly be designated as a SWMU because SWMUs include only the discernable units within a facility.

^{11/} See 42 U.S.C. §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.").

^{12/} See In re LCP Chemicals-North Carolina, Inc., pp.3-4; In re American Cyanamid Co., RCRA Permit Appeal No. 88-22, p.2 (Oct. 31, 1989); In re Amerada Hess Corp., p.4.

conclusion that the area subject to corrective action has been designated as a SWMU.

Despite these unconvincing arguments, however, I agree with American Cyanamid's basic contention that by requiring a Phase I RFI for the "entire plant," the Region has applied the Phase I RFI requirement to areas for which corrective action may not be necessary. As explained below, section IV.A of the permit is defective because it is not tailored to the site-specific conditions present at this facility.

EPA guidance documents emphasize the importance of tailoring RCRA corrective action requirements to site-specific conditions in order to avoid imposing unnecessary or inappropriate burdens upon the permittee.^{13/} The corrective action process has been developed "to assure that [the corrective] actions taken are commensurate with the problem presented." 55 Fed. Reg. 30,801 (July 27, 1990). Accordingly, each stage of the process, beginning with the RCRA Facility Assessment ("RFA"), serves as a "screen" that allows only those SWMUs that the Agency has found to be a potential environmental problem to go forward to the next stage, while eliminating from further consideration those found not to be a current concern. Id. The purpose of the RFA is to

^{13/} Many requirements contained in the Phase I RFI appear to come directly from OSWER, RCRA Corrective Action Plan (Interim Final) (June 1988) (OSWER Directive 9902.3). This document plainly advises permit writers that the contents of the model corrective action plan must be "modified [or] enhanced * * * based on site-specific situations" and that the RCRA Facility Assessment should provide the information necessary to make these modifications. Id. at p.1.

allow the permitting authority to determine whether a SWMU has released or is likely to release a hazardous waste or constituent. The permit writer uses the information gathered in the RFA to develop the scope of the investigatory work to be completed by the permittee in the next step of the corrective action process, the RFI. ^{14/} Typically, the RFI focuses on the specific SWMUs identified in the RFA. ^{15/}

In this case, an RFA was conducted and completed between May and August 1987. An examination of the permit as written strongly suggests that the Region failed to consider the RFA determinations and other site-specific conditions when drafting permit section IV.A, contrary to the Agency's guidance for the implementation of corrective action. For example, ten SWMUs were identified during the RFA, and the RFA concludes that four of the ten specifically required "no further action" at that time. ^{16/} Nevertheless, the Phase I RFI inexplicably applies to these four SWMUs because, by its terms, it applies to all SWMUs at the

^{14/} 55 Fed. Reg. at 30,810; 52 Fed. Reg. 45,789 (Dec. 1, 1987); OSWER, Interim Final RCRA Facility Investigation (RFI) Guidance, Vol.1, pp.xix and 1-4 (May 1989) (OSWER Directive 9502.00-6D) (hereinafter "1989 RFI Guidance"); OSWER, RCRA Facility Assessment Guidance, p.1-2 (Oct. 1986) (OSWER Directive 9502.00-5); 1986 Corrective Action Strategy, p.9.

^{15/} 55 Fed. Reg. at 30,802; 1989 RFI Guidance, pp.xix and 1-6; 1986 Corrective Action Strategy, p.11.

This procedure is also embodied in the recently proposed Subpart S regulations. In the preamble to these regulations, the Agency recognized that due to limited resources, investigations must be focused on plausible concerns. See 55 Fed. Reg. at 30,803, 30,804, and 30,810.

^{16/} See Region's Response, Exhibit IX.

facility. In addition, the permit specifically lists several SWMUs identified during the RFA for which the corrective action process begins at the Phase II RFI level, ^{17/} presumably because a Phase I RFI for these SWMUs was unnecessary. Yet, the Phase I RFI, which applies to all SWMUs at the facility, does not exclude these SWMUs from the Phase I RFI requirement's coverage.

The conclusion reached here that the "entire plant" language in the permit is not sufficiently site-specific, even as limited by the "all SWMU" language in the CAP, is based on the total absence of any information in the record before me to support a determination that a Phase I RFI is warranted for all SWMUs at the plant. ^{18/} Indeed, the RFA suggests otherwise. Although the Region need not inexorably adhere to RFA determinations, nothing in the record before me explains why Region V elected to reject the determinations in the RFA. ^{19/}

^{17/} See permit section IV.B.

^{18/} The record before me, provided by the Region, consists of: the public notice of Michigan's intent to issue a RCRA permit to American Cyanamid; the fact sheet prepared by the Michigan Department of Natural Resources and Region V; a transcript of the public hearing on the draft permit; American Cyanamid's comments on the HSWA portion of the draft permit; Region V's responses to American Cyanamid's comments on the HSWA portion of the draft permit; the final HSWA portion of the permit; Attachments II, III and IV to the final HSWA permit; the preliminary review report of the RFA; a report of the visual site inspection portion of the RFA; and a memorandum from Region V summarizing the corrective action suggested by the RFA.

^{19/} The Region asserts that the RFA in this case was incomplete, therefore justifying the necessity for a Phase I RFI for the "entire plant." I am not persuaded that the RFA was as incomplete as the Region suggests. The record contains detailed reports from both the preliminary review and the visual site

(continued...)

It is possible that there may be other materials in the record that, for whatever reason, were not submitted by the Region in this appeal, and that support the Region's determina-

^{19/}(...continued)

inspection, which were completed one year prior to the issuance of the draft permit. Even if the RFA was incomplete, the corrective action requirements in the permit should generally be consistent with any conclusions set forth in even a partial RFA. See 55 Fed. Reg. at 30,804. Although corrective action is a phased process, and although many details of the ultimate corrective measures often cannot be specified at the time of permit issuance because of the need for further investigation, the permit must still contain some minimum measure of site-specificity to avoid imposing unnecessary requirements on the permittee.

The Region is properly concerned that not all SWMUs may be identified during the RFA, and argues that this concern justifies the requirement of a Phase I RFI for the "entire plant." This concern exists in every RCRA permit case, and is typically addressed by a permit condition requiring the permittee to provide detailed information about new SWMUs or releases not identified at the time of permit issuance. See, e.g., permit section IV.H. This concern alone, however does not justify the lack of site-specificity in the Phase I RFI requirement. There is nothing in the record before me demonstrating that the concern in this case is greater than that in any other case such that the Region may require the permittee to complete a Phase I RFI for all SWMUs at the facility. In addition, there is no nexus between the expressed concern and the permit condition at issue. As written, the Phase I RFI requirement does not direct American Cyanamid to identify SWMUs that were not identified during the RFA, or to verify the existence of a suspected SWMU.

The Region also contends that requiring a Phase I RFI for the "entire plant" is a permissible exercise of its authority under RCRA §3007. See Region's Response, pp.17-24 (citing National Standard Co. v. Adamkus, 685 F. Supp. 1040 (N.D. Ill. 1988), aff'd, 881 F.2d 352 (7th Cir. 1989)). Section 3007 confers broad investigatory powers upon the Agency, providing in part that "any person who generates, stores, treats, transports, disposes of, or otherwise handles * * * hazardous wastes shall, upon request [by the Agency], furnish information relating to such wastes." As a matter of policy, when a §3007 request is made as part of a comprehensive corrective action plan in a permit issued under §3005, the information sought should be relevant to areas properly subject to corrective action under §§3004(u) or 3005(c)(3).

tion (despite the RFA) that corrective action in the form of a Phase I RFI is necessary for all SWMUs at the facility. If this is the case, the most expedient manner of resolving this factual (as opposed to legal) issue is to remand the proceeding to the Region to identify the portions of the administrative record that support a Phase I RFI for all SWMUs at the facility.

If, however, the record before me contains all the relevant information on this issue, a remand is necessary for the Region to tailor the Phase I RFI corrective action requirement imposed by permit section IV.A to site-specific conditions. Specifically, Region V should identify those units subject to the Phase I RFI requirement. This can be easily done, for example, by deleting the words "entire plant" from permit section IV.A and the phrase "all SWMUs" in the CAP, and substituting in their place the names of the SWMUs that, according to the RFA, are of concern. ^{20/} If the Region determines that the permit should apply the Phase I RFI requirement to any non-SWMUs, those areas should likewise be identified with particularity and their inclusion in the permit should be justified on the record. Any deviations from the conclusions in the RFA should also be explained on the record.

^{20/} As written, the Phase I RFI, in part, requires general background information on American Cyanamid's plant, such as a detailed map of the facility and a list of all other permits required for operation. Even in a sufficiently site-specific permit, the Region is entitled to this innocuous information, which is substantially similar to that required in a permit application. See 40 CFR §§270.13 and 270.14.

PERMIT SECTION IV.B

Permit section IV.B details the corrective action requirements for an area designated as the Old Sulfuric Acid Plant Area.^{21/} Specifically, this permit section requires American Cyanamid to complete a Phase II RFI by sampling the soil in the Old Sulfuric Acid Plant Area. American Cyanamid evidently reads this section as an implicit designation of the Old Sulfuric Acid Plant Area as a SWMU under RCRA §3004(u). American Cyanamid objects to the designation of the Old Sulfuric Acid Plant Area as a SWMU, arguing that the area was a process area, not a waste management area, and that there have been no detectable releases of any hazardous wastes or constituents in this area.

In response, the Region argues that permit section IV.B does not designate the Old Sulfuric Acid Plant Area as a SWMU. The Region did, however, designate the Old Sulfuric Acid Plant Area as a SWMU during the RFA^{22/} and refer to this area as a SWMU in its response to comments.^{23/} It is not clear from the record before me whether the Old Sulfuric Acid Plant Area is in fact a SWMU. As discussed above, areas associated with process areas can be SWMUs only if contaminated as a result of routine and systematic releases of hazardous wastes or constituents. On the

^{21/} This section also details the corrective action required for the Waste Water Sump Area. American Cyanamid did not request review of the permit as it pertained to the Waste Water Sump Area.

²² See Region's Response, Exhibit IX.

^{23/} See Region's Response, Exhibit V, p.9.

other hand, a one-time spill of hazardous wastes or constituents does not create a SWMU.^{24/} A visual inspection of the Old Sulfuric Acid Plant Area revealed a "[y]ellow discoloration of surface soils in the immediate vicinity approximately 30 feet wide by 50 feet long * * *." Region's Response, Exhibit V, p.4. Based on this observation, the Region concluded that "[t]his yellow discoloration is an obvious indication of sulfur contamination from the previous sulfuric acid production process." Id. The Region did not make any determination, however, that the discoloration was due to either a one-time spill, or routine and systematic releases.^{25/} Such information is necessary to determine whether the Old Sulfuric Acid Plant Area is a SWMU.

Nevertheless, regardless of whether the Old Sulfuric Acid Plant Area is a SWMU, the corrective action requirement for this area is authorized by RCRA §3005(c)(3). Section 3005(c)(3) authorizes corrective action, such as soil sampling, for non-SWMU areas when necessary to protect human health and the environment. See In re LCP Chemicals-North Carolina, Inc., RCRA Appeal No. 90-4, pp.3-4 (Feb. 14, 1991); In re Amerada Hess Corp., RCRA Appeal No. 88-10, pp.3,5 (Aug. 15, 1989). Although soil sampling from non-SWMU areas cannot routinely be required,

^{24/} Thus, there is no merit to the Region's assertion that the area is a SWMU because it is "storing" solid waste. See Region's Response, p.24. If the waste is in the Old Sulfuric Acid Plant Area as a result of a one-time spill, it is not a SWMU. See 55 Fed. Reg. at 30,809.

^{25/} In contrast, a finding of "routine spillage and splashings" was made for the Waste Water Sump Area. See Region's Response, Exhibit V, p.9.

it is appropriate when necessary to protect human health and the environment. The findings contained in the record meet the threshold of demonstrating this necessity. The record shows that based on the yellow discoloration, the Region concluded that the soil was contaminated with sulfur during the sulfuric acid production process, and therefore it is likely that a hazardous waste or constituent may also have been released into the soil. ^{26/} See Region's Response, Exhibit IX. ^{27/}

American Cyanamid does not contend that the soil sampling requirement is not necessary to protect human health and the environment, other than to argue, unpersuasively, that corrective action is unwarranted because there is no conclusive proof of a detectable release in the area. ^{28/} Instead, American Cyanamid

^{26/} Although these findings served as the Region's basis for requiring corrective action under §3004(u), the Region's finding that corrective action is necessary under §3004(u) also demonstrates that corrective action is necessary for the protection of human health and the environment for the purposes of §3005(c)(3). In re Amerada Hess Corp., p.5 (citing 40 CFR §264.101(a); 50 Fed. Reg. 28,713 (July 15, 1985)).

^{27/} The Region's finding in this regard supports the limited type of corrective action immediately required by the permit (soil sampling), which is intended to detect the presence of a hazardous waste or constituent. Under the permit, if no hazardous waste or constituent is detected, no further action is required. But, if a hazardous waste is detected, further corrective action (Phase III RFI) is required.

^{28/} The RCRA corrective action authority is not limited to known or detected releases, but also extends to likely or suspected releases. This is true under either §3004(u) or §3005(c)(3). See In re Shell Oil Co., RCRA Appeal No. 88-48, p.6, n.6 (Mar. 12, 1990) ("To require an owner/operator to conduct further investigation of a SWMU [pursuant to §3004(u)], the Region need not have conclusive evidence of a release, but instead only evidence of a likely or suspected release."); In re Amerada Hess (continued...)

challenges only the legal authority to require soil sampling. Because the soil sampling requirement is authorized by §3005(c)(3), American Cyanamid has failed to show that this permit condition is clearly erroneous or otherwise warrants review.

CONCLUSION

For the reasons set forth above, review of permit section IV.B is unwarranted, and is therefore denied.

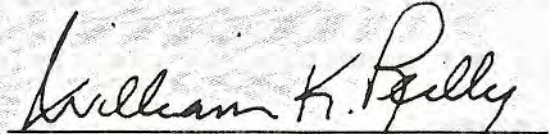
The proceeding is remanded to Region V to 1) identify the portions of the administrative record or supplement the administrative record with materials that justify permit section IV.A as written, or 2) tailor permit section IV.A to the site-specific conditions identified in the RFA. Permit section IV.A and any non-severable conditions (to be determined by the Regional Administrator) shall remain stayed on remand. The Region shall give public notice of this decision under 40 CFR §§124.10

^{28/} (...continued)

Corp., p.4 ("For a permitted facility, the omnibus provision [§3005(c)(3)] may be used to address a suspected release of solid waste, regardless of its source, where necessary to protect human health and the environment."). Consequently, a permit may require soil sampling or other preliminary detection activities necessary to determine whether a suspected or likely release requires further corrective action. In re Amerada Hess Corp., p.5; 52 Fed. Reg. at 45,788-45,789 (permit may require monitoring or modeling for "any media where it finds that a SWMU is likely to release hazardous constituents."). See also 40 CFR §270.14 (d)(3) (authorizing sampling as part of RCRA permit application process).

and 124.19(c). Appeal of the remand decision is not required to exhaust administrative remedies under 40 CFR §124.29(f)(1)(iii).

So ordered.



William K. Reilly
Administrator

Dated: AUG 5 1991

CERTIFICATE OF SERVICE

I hereby certify that copies of the Remand Order in the matter of American Cyanamid Co., RCRA Appeal No. 89-12, were mailed to the following in the manner indicated:

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