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BEFORE THE STATE OF WASHINGTON
STATE OF WASHINGTON

COASTAL TANK CLEANING, Appellant, v. State of Washington DEPARTMENT OF ECOLOGY, Respondent.	PCHB No. 90-61 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter concluded on January 17, 1991, with the filing of proposed Findings of Fact, Conclusions of Law and Order.

On October 15-16, 1990 the Pollution Control Hearings Board held a hearing on Coastal Tank Cleaning, Inc.'s appeal of the State of Washington Department of Ecology's (Ecology) issuance of Notice of Disposition of Penalty No. DE 89-N252 ($40,000). Violations of Chapt. 173-303 WAC in the handling of dangerous wastes at 13749 Midvale Ave. No., in Seattle, were alleged.

Board Members present were: Judith A. Bendor, chair and presiding, Harold S. Zimmerman and Annette McGee. Appellant Coastal Tank was represented by Attorney Stan Webert. Respondent Ecology was represented by Assistant Attorney General Lucy E. Phillips. Court reporter Cheri Davidson took the proceedings on October 15, and court reporter Lisa Alger on October 16. Both were affiliated with Gene S. Barker and Associates (Olympia).

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was made. From the foregoing, the Board conferred, found and concluded that the $40,000 penalty should be affirmed, and announced the results to the parties the week following the October hearing. The Board directed the prevailing party, Ecology, to prepare a proposed opinion, which was filed on January 17, 1991 and served.

The Board now issues this written decision affirming the Board's oral ruling:

FINDINGS OF FACT

I

Coastal Tank, at all times relevant to this proceeding, was a business in Washington. The company has 20 to 30 employees. Jack Jackson has been the President since at least 1980, and is the majority owner. Tom and Gary Smith operated the company's facility at 13749 Midvale Ave. No., in Seattle. Tom Smith has been the manager for five years. Both are non-majority owners in the company.

Jack A. Jackson also owns another company, Coastal Coating, which leased a building adjacent to Coastal Tank's Midvale facility. Coastal Coating does marine and industrial sandblasting and painting.

Mr. Jackson is also a 50% owner of Petroleum Reclaiming Services, Inc., in Tacoma. Tom and Gary Smith each own 25% of Petroleum Reclaiming.

II

The Department of Ecology is a state agency authorized to enforce the state's dangerous waste law and regulations. Chapt. 70.105 RCW and Chapt. 173-303 WAC.

III

In 1980 Coastal Tank filed with the U.S. Enviromental Protection Agency the company's first EPA Notification of Hazardous Waste Activity form. The company identified its activity as transportation only. It did not identify itself as a generator. It listed the Midvale address as its installation.

In 1985 the company filed its first Notification of Dangerous Waste Activities form with Ecology, again only identifying itself as a transporter. Tom Smith was listed as the manager and contact person.

Coastal Tank does not have a permit to be a dangerous waste Treatment, Storage, Disposal facility (TSD).

IV

Coastal Tank cleans fuel and petroleum transport barges, stationary storage tanks, and ship fuel tanks. (The company also on occasion cleans tanks which contain caustic sodium hydroxide, magnesium sulfide and other materials.) Coastal Tank removes the residual fuel first. Then the company cleans the tank, removing tank scale which also contains fuel or other petroleum products. The company washes the tank and removes this rinse water. The company's

job supervisor determines where to send any material removed from the tank.

V

Coastal Tank has at least 6 trucks. In 1988 it transported residual fuel removed from tanks to the Petroleum Reclaiming facility in Tacoma for recycling and resale. Coastal Tank transported the tank scale material and other residuals removed during the cleaning phase to its Midvale site. Coastal Tank also transported waste for other dangerous waste generators.

In 1988 the company did not individually test the material transported to Midvale. Instead, a general profile had apparently been developed before 1988, from which the company concluded the material was not a regulated substance. The company did not prepare dangerous waste manifests for transporting or receiving the material that was found at the Midvale site in February 1989.

VI

In December 1988 Coastal Tank began to move its administrative operations. No additional materials were brought to the Midvale site after this month and all the materials subsequently found on site had been there for at least 1 1/2 months. Both Coastal Tank and Coastal Coating personnel moved drums from inside the building jointly used by the two companies, into the Midvale yard. The drums contained waste paint, thinner, methyl ethyl ketone and other flammable materials.

There were no manifests for this material.

VII

The Coastal Tank facility at 13749 Midvale Avenue, Seattle, is on the west side of the street. The neighborhood is mixed. Along the west side are commercial establishments, including bars, motels, and other businesses. Across the street are three to four duplexes and other residences.

In February 1989 the site was only fenced on two sides. There was no fence between the site and Midvale Avenue. Between the site and a tavern there was only a one and a half foot log barrier which could be easily crossed. There were no warning signs posted.

VIII

On February 8, 1989 Norm Peck and Ron Devitt of Ecology inspected the Midvale Site. Mr. Peck had been on-site in the yard about a year earlier and had only seen minor housekeeping problems. During the February 8 and a subsequent February 10, 1989 inspection they saw 150 to 200 unlabeled drums many of which were full and appeared to contain dangerous waste. Many were precariously stacked up to three tiers high and did not have containment around them in case of spills. There was no aisle space. Some drums did not have secure covers, but merely had visqueen over the top. Some of the visqueen had holes in it. A gasoline/volatile substance smell was evident in the air. Three drums were bulging. There was evidence of leakage from some drums.

A drum with zinc chromate, a dangerous waste, was leaking onto the snow and the ground, leaving a bright yellow stain. One drum labeled "gas scale" had no dangerous waste label and there was a light stain beneath it on the ground. There was one drum lying on its side with highly caustic material in it, a pH of 14. Such material is a dangerous waste. The drum had a hole in its side that appeared to have been made with an ax, and a dispenser stuck in the hole. There were gaps between the dispenser and the sides of the hole, allowing evaporation into the atmosphere.

IX

The inspectors were very concerned about the situation. A call was made to the Seattle Fire Department. Lieutenant Ronald Mondragon arrived at about 1:30 pm. The Lieutenant is trained in dealing with dangerous waste. At about the same time, responding to Ecology's call, Gary Smith arrived. They all toured the facility.

The Lieutenant considered the situation a very serious threat to public safety. He rated it a 9 on a 10 point scale. He required the area be immediately fenced to exclude the public and warning signs posted. There were numerous fire code violations.

We find that there was a threat to public health and the environment.

X

On February 10, 1989, Mr. Peck and Mr. Devitt did a follow-up inspection with Ecology hazardous waste inspector David Lundstrom. Both Gary and Tom Smith accompanied them, along with a consultant with

Envirotech Systems, Inc. They saw 12 pallets of 55-gallon drums on a flatbed truck. Some of the drums were labeled "flammable", some "corrosive". Few drums had content labels and none had dangerous waste labels. Coastal Tank said the fire marshall had ordered the drums removed from the site, and they were being taken to Petroleum Reclaiming in Tacoma. Coastal Tank did not have any manifests for these drums for transport, generation or storage. Coastal Tank admitted these drums contained scale from fuel tank cleaning the Company had done. The drums had been on-site for at least 1 1/2 months.

There was sandblast grit on the ground in several areas. There were also dark, oily stains on the ground.

XI

One hundred and seventy-three of these drums were subsequently transported off-site in several shipments. On March 11, 1989, one hundred and eleven 55-gallon drums (85,000 pounds) were manifested as dangerous waste due to flammability. Either Tom Smith or Gary Smith signed manifests certifying the contents to be dangerous wastes. This dangerous waste was shipped to Envirosafe Services, Inc., in Idaho for disposal. Prior to Coastal Tanks bringing the drums to Midvale, Coastal Tank had not tested them. A flammability test costs $25 to $30 per drum.

On March 13, 1989, 36 drums of non-regulated waste were sent to Petroleum Reclaiming for recovery of oil in the scale.

Ecology gave emergency authorization to have 26 drums transported to Crosby and Overton prior to designation, for storage and characterization. The drums were sent March 13, 1989. As was the case for the other drums, Coastal Tank had had no manifests for the contents. The drums had all been on-site for at least 1 1/2 months.

Crosby and Overton characterized these drums, determining that 23 contained dangerous waste. Ecology received the dangerous waste profile sheets on June 20, 1989. Three drums contained recyclable material. On September 1 and 5, 1989 Crosby and Overton manifested the 23 drums as dangerous waste, which Coastal Tank signed as the generator. Ecology received the manifests on October 16, 1989.

XII

In April 1989 Coastal Tank through Tom Smith submitted to Ecology a 1988 Generator Annual Dangerous Waste Report. In this report he certified that the company had accumulated 85,350 pounds of "steel scale from tank cleaning contaminated with trace gasoline and diesel. The company listed the material as dangerous waste, D0001. It was written on the form: "Material accumulated during 1988 but not yet disposed of." Exh. R-3.

XIII

On November 30, 1989 Ecology issued Order No. DE 89-251 and Order and Penalty No. DE 89-N252 ($40,000) to Coastal Tank. The Penalty Order listed violations of WAC 173-303-: -250(1) and (2) for transporting without a manifest; -240(5) and -950(1) for failing to dispose of dangerous waste within the required time; -400, and by reference -805, and -950(2) for operating a dangerous waste storage facility without a permit; and -145 for failure to report, contain and clean up spills. Coastal Tank applied for mitigation which Ecology denied on February 26, 1990. Coastal Tank filed an appeal of Penalty Order No. DE 89-N252 with the Pollution Control Hearings Board on March 23, 1990. This became PCHB No. 90-61. No appeal of Order No. DE 89-251 was filed.

XIV

Any Conclusion of Law deemed to be a finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board makes these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and the subject matter. Chapts. 43.21B and 70.105 RCW.

II

The Department of Ecology has alleged four violations by Coastal Tank:

1. Acceptance of waste for transport without a manifest signed by the generator, and failure to return a signed and dated copy of the manifest to the generator, in violation of WAC 173-303-250(1) and (2);

2. Failure to dispose of waste at a permitted TSD facility within the maximum allowable time for transporters, in violation of WAC 173-303-240(5) and -950(1);

3. Operation of an unpermitted hazardous waste storage facility, in violation of the Interim Status Requirements, WAC 173-303-400 and by reference 40 CFR Part 265, WAC 173-303-805 and WAC 173-303-950(2); and

4. Failure to report, contain and clean up spills and discharges to the environment, in violation of WAC 173-303-145.

III

WAC 173-303-250(1) and (2) require a transporter of dangerous waste to only accept dangerous waste that is properly manifested. In 1988 Coastal Tank transported to its Midvale site at least 85,000 pounds and 23 drums of dangerous waste without any manifests, in clear violation of WAC 173-303-250(1) and (2). These are serious violations. The structure of the dangerous waste law is to track such wastes "from cradle to grave." Manifesting the wastes is an essential element of that tracking system.

Moreover we note that post-inspection Coastal Tank was again getting ready to transport without manifests, 12 pallets of 55 gallon

drums containing dangerous waste.

IV

A transporter of dangerous waste may not accumulate or store such wastes for more than 10 days. WAC 173-303-240(5). If they do so, they are to be licensed for this other activity. Even if not licensed, they still must comply with all the requirements imposed on a TSD (treatment, storage and disposal) facility. Id. Coastal Tank was only permitted as a transporter, yet it stored over 85,000 gallons plus 23 drums of dangerous waste for at least 1 1/2 months. These constitute serious violations. Appellant's sole excuse was they were in the midst of moving and this material was overlooked. Such a casual attitude towards handling dangerous waste cannot be countenanced.

In addition, while storing the waste at Midvale, they failed to comply with an array of requirements for a TSD facility, including aisle space, containment, having containers that are secure, and so forth. Clearly WAC 173-303-240(5) was violated.

V

Coastal Tank has been using the Midvale site since at least 1980 for its dangerous waste activities. Even though Coastal Tank had not applied to be a TSD facility, it nonetheless stored waste beyond the period allowed for a transporter. There is no evidence in this record nor even any assertion by Coastal Tank that it was an authorized

Interim Status facility. We note that this violation of WAC 173-303-400 is another showing that the company was unlawfully operating a storage facility without authority to do so.

VI

WAC 173-303-145 requires any person responsible for the intentional or accidential spill or discharge of a dangerous waste substance to the environment such that public health or the environment is threatened, to report that spill to the appropriate authorities and to take appropriate measures to mitigate damage. WAC 173-303-145. This provision applies regardless of the quantity spilled or discharged. WAC 173-303-145(1). Coastal Tank violated this provision. Zinc chromate and a caustic substance with a pH of 14, both dangerous waste, were leaking onto the ground. Other drums of dangerous waste were leaking. Moreover, some of the drums were covered with visqueen and there was evaporation of dangerous waste into the atmosphere, which also constitutes discharges.

VII

RCW 70.105.080 authorizes penalties of up to $10,000 per day for each violation. Each day that Coastal Tank unlawfully stored dangerous waste on-site beyond the 10 day period allowed a transporter, for example, constitutes a separate violation. Therefore, for the violations of WAC 173-303-240(5) alone, penalties of $350,000 could have been assessed.

The purpose of civil penalties is to promote compliance. At the date of the February 1989 inspections, the company had been

transporting dangerous wastes for at least 8 years. Majority owner, Mr. Jackson, owns at least two other businesses that deal with dangerous wastes. Gary and Tom Smith each own part of another dangerous waste business.

The violations of law were systemic and serious. The owners and operators displayed a casual attitude to the law, violating sections of the regulations that were neither arcane nor esoteric. By operating in this manner, Coastal Tank did not have the expenses that a lawfully-operated facility would have. Clearly Coastal Tank needed an incentive to comply. We conclude the $40,000 penalty was reasonable.

VIII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters this:

ORDER

Notice of Disposition of Penalty Order No. DE 89-N252 for $40,000 is AFFIRMED.

DONE this 4th day of April, 1991.

POLLUTION CONTROL HEARINGS BOARD

JUDITH A. BENDOR, Chair and Presiding

HAROLD S. ZIMMERMAN, Member

ANNETTE S. McGEE, Member