

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

1405 N. SAN FERNANDO BLVD., SUITE 300
BURBANK, CA 91504
(818) 567-3000



File copy

INSPECTION REPORT

Quemetco Inc.
720 South 7th Avenue
City of Industry, CA 91748

EPA ID # CAD066233966

Inspected by: Guillermo Hernandez
Hazardous Materials Specialist

Date of Inspection: June 30, 1992

Date of Report: August 31, 1992

I. PURPOSE:

To conduct a Follow-up Inspection to the Compliance Evaluation Inspection of June 13, 14, 1991.

II. REPRESENTATIVES PRESENT:

Quemetco, Inc.:

Robert Finn, General Plant Manager
Alfredo Aviles, Plant Technical

Department of Toxic Substances Control (DTSC):

Guillermo "Memo" Hernandez, Hazardous Materials
Specialist (HMS)
Denise Hume, HMS
Gabriel Farkas, HMS

III. OWNER/OPERATOR:

Quemetco Inc., is a subsidiary of Revere Smelting and Refining (RSR) Corporation. Quemetco is a generator and has Interim Status for the treatment of RCRA and non-RCRA waste.

IV. BACKGROUND:

November 19, 1980
to
March 28, 1990

See August 29, 1991 Inspection Report (See Attachment B, Pages 2, 3 & 4).

August 14, 1990

EPA sent resolution of disputes concerning Ground Monitoring Plan (GMP) and Financial Assurance.

September 7, 1990

Quemetco submitted modified Closure Plan for the inactive surface impoundment.

September 27, 1990

EPA sent Quemetco some modifications to be made on the proposed Closure Plan.

December 14, 1990

Quemetco submitted Revised Workplan for Chemical Testing and Closure Plan.

December 14, 1990

EPA approved phase one of the Groundwater Monitoring Plan.

January 18, 1991

EPA approved Pilot Test for Closure w/modifications.

January 25, 1991

The Department approved phase one of GMP.

June 13, 1991

Quemetco submitted pilot test data and request for waste status document & extension of 90-day storage limit.

June 13, 14, 1991

The Department conducted a Compliance Evaluation Inspection.

September 11, 1991

A Report of Violation was sent to Quemetco citing continuing and additional violations.

V. GENERAL DESCRIPTION OF FACILITY:

See August 29, 1991 Inspection Report (Attachment B, Page 4).

VI. HAZARDOUS WASTE PROCESS:

See August 29, 1991 Inspection Report (Attachment B, Pages 4 & 5)

VII. OBSERVATIONS:

We arrived at the facility at approximately 10:00 am and registered with security. We were greeted by Robert Finn, General Plant Manager. We were escorted into his office, and joined by Alfredo Aviles. I stated the purpose of our visit and proceeded to request consent to conduct our inspection. I told Finn that the CEI normally involves a facility inspection, a record review and the taking of samples and photographs. Finn granted consent to continue with our inspection.

I asked Finn to identify any new activities that have occurred at the facility since our last site inspection. Finn informed us that as of two weeks ago no lead bearing materials such as gloves and work clothes are being put into the furnace. These materials are being sent to a landfill. Finn also told us that hard rubber batteries are no longer being used as a reducing agent and instead are being sent to it's sister facility in Indianapolis. Finn also stated that approximately 90 days ago the electric arc furnace was removed.

We then began with a walk-through of the facility.

At the Maintenance area Finn informed us of several operations that are on going in this area. He stated that this area does vehicle maintenance, rebuilding of pumps, fabrication, work orders, and the machine and electrical shop.

Finn informed us that batteries entering the facility are hand sorted, put on the conveyor belt manually and crushed using a roller crusher (See Attachment A, Picture # 1).

Finn stated that currently a drainage system is being put under each trailer to collect leaks during the transportation of the plastic chips.

We then proceeded to the polypropylene chip area. Finn stated that the chips go to a hammering system (See Attachment A, Picture # 2) than to two dewatering systems (See Attachment A, Pictures # 3) than to a blower system (See Attachment # 4) where they are blown into a trailer (See Attachment A, Picture # 5). The chips are stored to dry in trailers. Sample analysis are taken of each trailer to determine if a second washing is deemed necessary. The trailers are stored over a 12 inch pad of concrete underlaid by six feet of asphalt. The water draining from the trailers are sloped towards a drainage system which collects the water and later goes to the waste water treatment system.

At the former Waste Pile Area (called raw materials by Quemetco), the piles have been removed and placed into the Batch House (See Attachment A, Picture # 6)

After a brief visit of the scalehouse and the wastewater treatment plant, we proceeded to the new constructed Batch House.

At the Batch House (See Attachment A, Pictures # 7) we observed the storage of all the waste piles. Finn informed us that second run slags are loaded onto box cars and transported by Union Pacific.

This concluded the walkthrough portion of our inspection.

VI. DISCUSSION WITH MANAGEMENT:

During the exit review we requested copies of shipping papers pertaining to the shipment of the second run slags. Finn requested that these documents be put in the Department's confidential file (See Enforcement Confidential File). We were later joined by John Larsen, shipping and receiving manager. Mr. Larsen assisted us in retrieving copies of the bill of ladings. We than discussed the violations noted during the August 29, 1992 inspection. We told Robert Finn that the collection system for the plastic chips was adequate and the system corrected the way the leaking liquids were formerly allowed to go onto the ground. We also informed Finn that during the inspection we observed all hazardous waste containers properly labeled and covered and that no additional violations were noted. We also informed Finn that the storage of waste piles in the batch house eliminated many of the violations noted during the August 29, 1991 inspection. We informed Finn of the on-going concern we have of second run slags (identified by the Department as hazardous waste) being transported via bill of ladings to Indianapolis. We told Finn that the slag should be manifested during transportation.

We handed Robert Finn a copy of the Surveillance and Compliance Report, which discussed the violations (See Attachment C).

VII. VIOLATIONS:

COUNT 1: Title 22, CCR., Section 66262.23.

On or about June 30, 1992 Quemetco violated Title 22, CCR., Section 66262.23 in that Quemetco does not use a manifest during transporting of hazardous waste. To wit; second run slags are shipped offsite to it's sister facility in Indiana under bill of ladings during transportation, when a manifest is required because slag is identified as hazardous waste.

manifest violation
1992

Evidence: See Enforcement Confidential File for copies of bill of ladings. Statements from Finn identifying that the second run slags are being shipped under bill of lading and not under manifest. Sample results taken from slag piles during the June 30, 1992 inspection.

VIII. ATTACHMENTS:

- A: June 30, 1992, Photographs - five pages.
- B: August 29, 1991 Inspection Report - four pages.
- C: Surveillance and Compliance Report - one page.
- D: August 29, 1991, Sample Results - one page

IX. SIGNATURES:

Original Signed

Guillermo Hernandez
Hazardous Materials Specialist

9-2-92
Date Submitted

Original Signed

Roy Yeaman
Senior Hazardous Materials Specialist

9-2-92
Date Approved

ATTACHMENT A

June 30, 1992 Photographs



Photo No. 1 Date June 30, 1992 Photographer Farkas

Description: Photo of damaged roller crusher used in the breaking of batteries located outside the Maintenance Area.

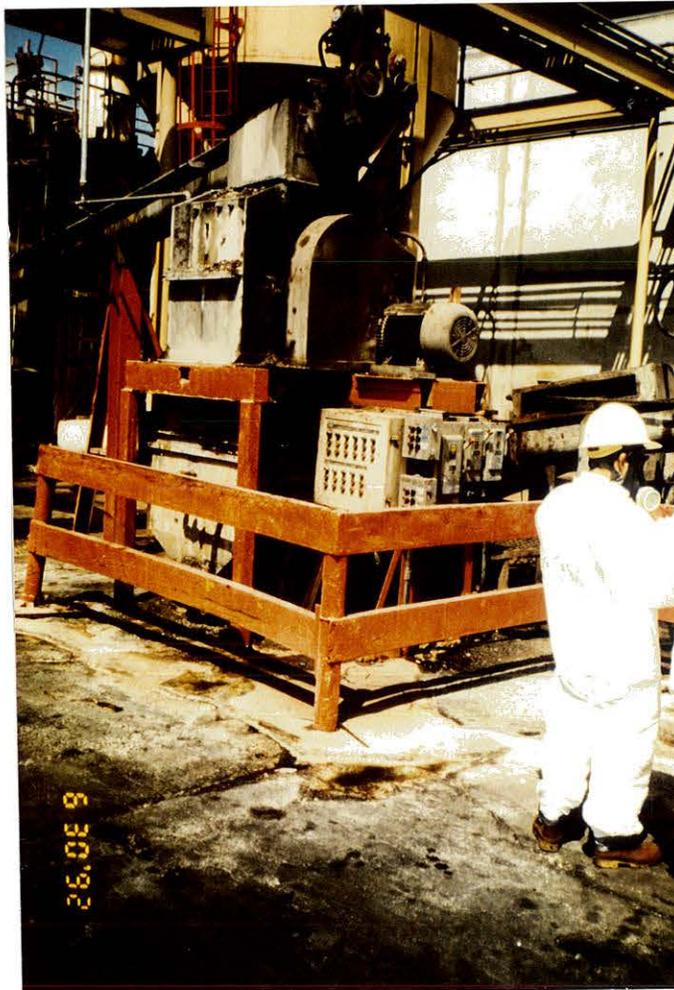


Photo No. 2 Date June 30, 1992 Photographer Farkas

Description: Photo of hammering system in the polypropylene area.



Photo No. 3 Date June 30, 1992 Photographer Farkas

Description: Photo of the dewatering system in the polypropylene area.



Photo No. 4 Date June 30, 1992 Photographer Farkas

Description: Photo of the Blower System used in ~~the~~ blowing chips into the trailer in the polypropylene chip area.



Photo No. 5 Date June 30, 1992 Photographer Farkas

Description: Photo of blower system used in blowing the chips into the trailers located in the polypropylene chip area.

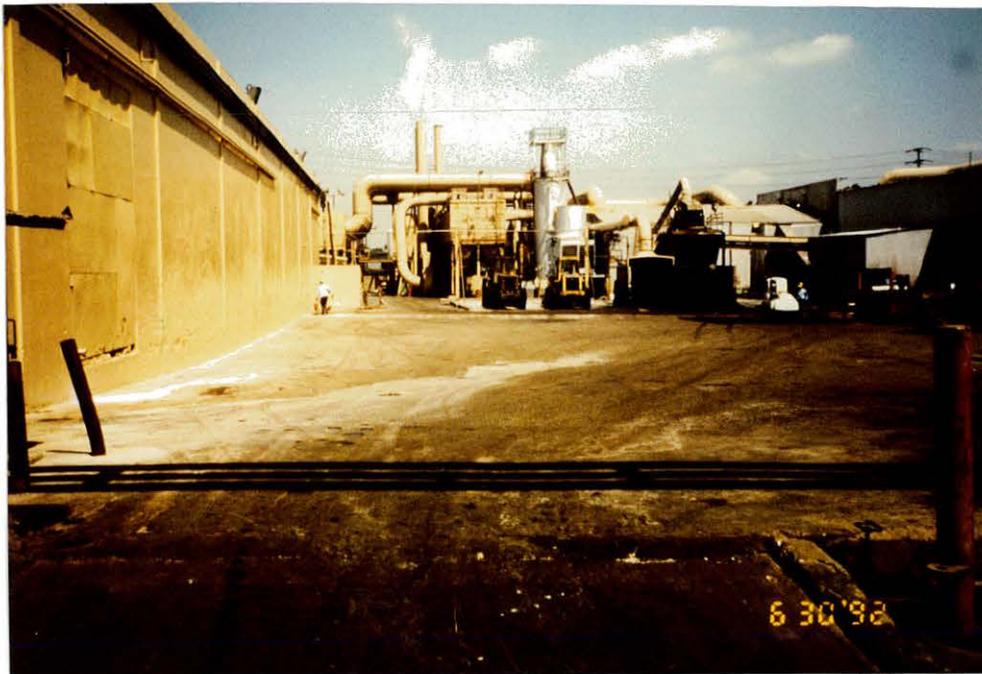


Photo No. 6 Date June 30, 1992 Photographer Farkas

Description: Photo of the former Waste Pile (Raw Materials) Area, where materials were stored.



Photo No. 7 Date June 30, 1992 Photographer Farkas

Description: Photo of the inside of the Batch House, where the Waste Piles are currently being stored.

ATTACHMENT B

August 29, 1992 Inspection Report

State of California Department of Health Services
 Hazardous Materials Laboratory
 151 Berkeley Way, Berkeley, CA 94704

HML #: 902744 to
 902751

Phone: (415) 540-3003 or (ATSS) 571-3003

Collector's Name: GUILLERMO HERNANDEZ
 Site of Sampling: QUEMETCO
 720 SOUTH 7TH AVENUE
 LOS ANGELES, 91804

Auth. No.: HMG0642
 Activity: ENF
 Date Collected: 06/13/91
 Date Received: 06/19/91

Analytical Procedure:
 EPA-SW 846

Samples are digested with 1:1 HNO3 (and 30% H2O2, and 1:1 HCl, if applicable) over a hot plate. The digestates are filtered and made to final volume with deionized H2O. Metal analysis of the digest is by ICPAES (EPA #6010). Units are mg/kg.

Method: 3050 for solids; 3010 for liquids; 3005 for clean water.

HML Number:	902747	902748	902749	902750	902751
Collector's Sample No.:	QDR-07	QDR-08	QDR-09	QDR-10	QDR-11
Sample Type:	PASTE	RUBBER	DROSSES	SLAG	PLASTIC
As-Arsenic	129	29.4	1600	3120	<5.00
Ba-Barium	512	51.1	151	142	0.99
Be-Beryllium	<0.15	0.29	<0.15	0.19	<0.15
Cd-Cadmium	5.63	1.15	365	124	<0.45
Co-Cobalt	<2.50	3.63	3.22	11.3	<2.50
Cr-Chromium	<4.25	7.67	28.7	412	<4.25
Cu-Copper	90.2	27.7	>17900	3430	<2.50
Mo-Molybdenum	<3.75	<3.75	<3.75	<3.75	<3.75
Ni-Nickel	14.7	11.4	>6540	650	<2.50
Pb-Lead	>23400	>28000	>37600	>31400	467
Se-Selenium	10.8	9.58	1230	64.4	<7.50
Tl-Thallium	<15.0	<15.0	<15.0	<15.0	<15.0
V-Vanadium	<3.00	7.50	5.31	86.5	<3.00
Zn-Zinc	14.4	8.59	94.7	443	26.2

Notes: < = below detection limit of method.
 > = beyond standard calibration curve;
 (to be confirmed; an additional report will follow)

Original Signed

EP Analyst,
 Marilyn de Guzman

7/14/91
 Date

Original Signed

Chemist's Signature
 Atif R. Kozman, Chemist

7/17/91
 Date

Original Signed

Milad S. Iskander, Supervisor

7/18/91
 Date

mst (rev) 7/17/91

ATTACHMENT C
Surveillance and Compliance Report

INSPECTION REPORT
Quemetco, Inc.

IV. BACKGROUND:

Quemetco Inc. is operating under an Interim Status Document (ISD) as a treatment, storage and/or disposal facility (TSDF).

November 19, 1980

Part "A" application filed.

May 16, 1983

DHS granted Quemetco an ISD for storage and treatment of hazardous waste with the stipulation that groundwater monitoring was to be conducted at the facility.

November 18, 1984

Notice of Violation (NOV) issued to Quemetco by DHS citing:

1. Non-compliance with groundwater monitoring as noted in their ISD.
2. Presence of groundwater contamination.
3. Failure to report significant increases in detected groundwater constituents.
4. Failure to submit a groundwater assessment.

November 8, 1985

Quemetco lost authorization from DHS to operate its surface impoundment. Quemetco incorporated above ground storage tanks into its wastewater treatment system to replace the the surface impoundment. The tanks store the wastewater prior to treatment and subsequent discharge to the sewer. The facility is presently undergoing enforcement action with the Environmental Protection Agency (EPA) and DHS concerning groundwater contamination and the closure of the surface impoundment.

November 8, 1985

Quemetco refiled part "A" reclassifying it's piles from hazardous waste to product.

March 18, 1987

DHS conducted a compliance evaluation inspection of the Quemetco facility, and a NOV and Schedule for Compliance was issued on July 17, 1987, for not having a waste analysis plan present at the facility.

INSPECTION REPORT
Quemetco, Inc.

85/86-605

1: W.A

On March 18, 1987, Quemetco was issued a Consent Decree from the United States District Court for the Central District of California and a Remedial Action Order. The Decree and Remedial Action order directed Quemetco to:

1. Eliminate use of sprinklers in the battery storage area.
2. Contain runoff from the battery storage area, polypropylene chip and hard rubber storage area, the reverberatory and electric furnace slag storage area, and from parked trucks serving those areas.
3. Take steps to minimize and contain leakage from bins and trucks.
4. Not place, treat, store, dispose, or release hazardous waste into the surface impoundment.
5. Seal all pavement cracks in the battery storage area, polypropylene chip and hard rubber storage area, scrap lead area, and the reverberatory and electric furnace slag storage area.
6. Install a berm around the battery storage area.

February 17 & 18, 1988

DHS conducted a compliance evaluation inspection at the facility.

March 4, 1988

DHS issued a Report of Violation (ROV) citing the following violations:

1. Inadequate waste analysis plan.
2. Inspection log deficiencies.
3. Inadequate training plan.
4. Contingency Plan not submitted to local police departments, hospitals, and state or local emergency response teams that may be called upon to provide emergency services.
5. No visible accumulation start dates on sixteen containers.
6. No signs posted at the entrances to the active portion of the Hazardous waste area.
7. Sixteen containers containing hazardous waste were not covered.

November 9, 1988

DHS conducted an annual compliance evaluation inspection of the facility. No violations were found.

February 15 & 20, 1990

DHS conducted an annual compliance evaluation inspection of the facility.

March 28, 1990

DHS issued an ROV citing the following violations:

1. Waste piles were not managed to avoid dispersal by wind.
2. Quemetco has not designed, constructed, operated and maintained a run on system for their waste piles.
3. Waste piles were not protected from run on and precipitation.
4. Quemetco placed waste bearing free liquids in the filter cake, hard rubber, polypropylene chip, and separator bottoms in waste piles.
5. Quemetco did not maintain and operate the facility to minimize the possibility of any unplanned, sudden or non-sudden release of hazardous waste.
6. No closure plan available at the facility.
7. Two open drums of hazardous waste.
8. At least two drums were improperly labeled.

V. GENERAL DESCRIPTION OF FACILITY

Quemetco is a secondary lead smelter. Approximately ninety percent of the accepted feedstock is from spent automobile and truck batteries. The remaining ten percent comes from lead bearing trash. In 1990, Quemetco had 210 employees and operated 24 hours a day, seven days a week. In 1989 Quemetco processed 7.2 million batteries and in 1990 processed an average of approximately 28 thousand batteries per day. Presently Quemetco is operating at 70% capacity, due to a slow down in incoming feedstock. Quemetco is approximately 10 acres in size and is located on the northeast corner of Salt Lake Avenue and Seventh Avenue in the City of Industry.

VI. HAZARDOUS WASTE PROCESS:

Quemetco is both a hazardous waste treatment facility and a generator of hazardous waste. It is not permitted to serve as a disposal site. The Part A application indicates that the following hazardous wastes were being handled at the facility:

1. Corrosive Materials (D002)
2. Lead (D008)
3. Emission control dust from lead smelting (K069)

Present industrial processes include the cracking of lead acid batteries, sizing and separating of battery parts and the smelting and refining of lead. Scrap pre-treatment is also employed at the facility. Quemetco produces lead for smelting, polypropylene chips for sale, and hard rubber is used as a reducing agent in the furnace.

The first step involving treatment of hazardous waste is the battery/cracker unit in which spent batteries are broken into various sized parts. Parts of casing posts, grids ect., are separated in a water float sink tank with the lighter polypropylene rising to the surface and the heavier metals settling to the bottom. The polypropylene chips are sent to another washer unit and readied for sale. The lead is sent to the furnace for smelting.

Quemetco has two furnaces onsite - an electric arc furnace and a reverberatory furnace. The electric arc furnace uses slag exclusively as its primarily feedstock. According to Finn, "slag can be sold as a product" and as a result the electric arc furnace "has not been used in two years." The reverberatory furnace uses slag and battery components as its primarily feedstock. The furnace produces 5,000 pound blocks which are fed into the melting kettles. In the melting kettles antimony and other alloys are added to produce various types of lead.

Any impurities commonly called "drosses" produced in the melting kettles are separated out and returned to the furnace for further refining. Impurities resulting from the melting operation in the reverberatory furnace are called slags. After slag is run through the furnace two or three times it is called "second run slag" and was sold to Alco Pacific in 1990, a facility in Mexico. According to Finn, Quemetco is presently sending its second run slag to its sister facility in Indianapolis, Indiana. Impurities from the melting kettles are called drosses. Tin dross as well as slag is shipped for further refining to an electric arc furnace at Quemetco's sister facility in Indianapolis, Indiana.

According to Finn, Quemetco only generates excess hard rubber and refractory material as hazardous waste. This waste is sent under manifest to U.S. Ecology in Beatty, Nevada.

VII. OBSERVATIONS:

June 13, 1991:

Rasmussen, Kou, Smalstig and I arrived at the facility at approximately 9:15 a.m. to conduct an annual compliance evaluation inspection (CEI). We met with Finn and Aviles at the front office. I stated the purpose of our visit and proceeded to request consent to conduct our inspection. I told Finn that the CEI normally involves a facility inspection, a record review and the taking of photographs and samples. I asked if that was okay and Finn stated "yes."

ATTACHMENT D

August 29, 1991, Sample Results

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
(REGION 3)
1405 N. SAN FERNANDO BOULEVARD, SUITE 300
SANTA ANA, CA 91504
(714) 567-3000



SURVEILLANCE AND COMPLIANCE REPORT
HAZARDOUS WASTE GENERATORS/
TRANSPORTERS/TSDFs

CAD 066 233 966
Date of Inspection 6/30/92
Guillermo Hernandez

EPA I.D. # _____ Inspector's Name: _____
Facility Name/Address: 720 S 7th ave Mailing Address: Sine Ownership: RSR Corporation

County _____ Type of business: Battery Recycler Persons present: Robert Fin
Alfredo Avilas
John Larson
Contact Person Robert Fin Phone # (818) 330-2294
Guillermo Hernandez Denise Home

Samples taken? Yes (receipt attached) No
Plan of Correction necessary? Yes (Due date: _____) No

Discussions with Management:
walk through - no potential violations noted, except for permit issues, and 2nd RUN slag
Record Review - closure plan available
- Financial assurance - will be reviewed

Facility operating under: TSD Permit Other _____

On this date an inspection of your facility was conducted under authority of Section 2185, California Health and Safety Code (H&SC) and Section 66272.1, Title 22, California Code of Regulations. The collection of samples or other evidence, including the taking of photographs, was done under authority of Section 66272.1, Title 22, California Code of Regulations. Specific violations of one or more Sections of the H&SC; Title 22, California Code of Regulations; or Code of Federal Regulations, Part 40 are noted above. These violations relate to the generation, storage, handling, transportation, and/or disposal of hazardous and extremely hazardous waste.

Authorized Representative of Firm* Name _____ Title _____ Signature _____ Date _____
Authorized State Agent Name Guillermo Hernandez Title Hazardous Materials Specialist Signature Original Signed Date 6/30/92

* Signature of firm representative signifies receipt of copy of this form

Travis 6/30/92



June 30, 1992

Chief, Waste Programs Branch
Toxics & Waste Management Division
U.S. Environmental Protection Agency
Region 9, Mail Stop H4
75 Hawthorne Street, 16th Floor
San Francisco, CA 94105

Certified Mail # P 787 435 002

Chief, Southern California Section
Department of Toxic Substances Control
1405 N. San Fernando Blvd., Suite 300
Burbank, CA 91504

JUL 2 1992

Certified Mail # P 787 435 003

Supervising Engineer
Hazardous Waste Section
Regional Water Quality Control Board
101 Centre Plaza Drive
Monterey Park, CA 91754-2155

Certified Mail # P 787 436 500

RE: Submittal of Progress Report for Quemetco, Inc., Pursuant to Consent Decree CV. 86-6644
and Remedial Action Order HWCA 85/86-CO5

Ladies and Gentlemen:

Enclosed please find the above referenced report for your review.

If you have any questions concerning this matter, please contact me at (214)631-6070.

Sincerely,

Original Signed

Gerald A. Dumas
Manager
Environmental Services

cc: Robert E. Finn
Quemetco, Inc.

Lynn L. Bergeson, Esq.
Weinberg, Bergeson & Neuman
1300 Eye Street
Suite 600 East
Washington, DC 20005

John C. Mueller, Esq.
Baker, Hostetler, McCutchen & Black
600 Wilshire Blvd.
Los Angeles, CA 90017

ENCLOSURE

PROGRESS REPORT # 18

1. Efforts to obtain Environmental Impairment Liability Insurance are described in the enclosed letter from Johnson & Higgins.
2. Groundwater monitoring was performed on June 5, 1992. Results were transmitted to EPA, DTSC, and RWQCB on June 26, 1992.
3. The Closure Plan for the surface impoundment has been revised and transmitted to EPA, DTSC, and RWQCB on June 16, 1992.

File: 0016.EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Lead-Bearing Hazardous Materials Case-by-Case
Extension

FROM: *Nick Vizzone*
Nick Vizzone, Environmental Engineer
U.S. EPA, OSW, WMD, CPB

TO: Josephine Chen
Hazardous Waste Management Division

On June 26, 1992, EPA granted a National Case-by-Case Extension for secondary lead smelters who are engaged in the reclamation of lead-bearing hazardous materials. Owners and operators were required to submit certain information to EPA if they wanted to participate in this variance.

In Region 9, two companies submitted the required information. Those companies are:

RSR Corporation in City of Industry, CA
GNB, Inc. in Vernon, CA.

Attached is a copy of the information submitted by these facilities plus a copy of the Federal Register notice. These facilities did submit the information within the time frame established in the notice and have been granted a one-year extension of the Land Disposal Restrictions effective date.

If you have any questions please call me at (703) 308-8477.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Lead-Bearing Hazardous Materials Case-by-Case
Extension
Nick Vizzone
FROM: Nick Vizzone, Environmental Engineer
U.S. EPA, OSW, WMD, CPB
TO: Josephine Chen
Hazardous Waste Management Division

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If you have any questions please call me at (703) 308-8477.



June 24, 1992

Mr. Gerald A. Dumas
Manager, Environmental Services
RSR Corporation
1111 West Mockingbird Lane
Dallas, Texas 75247

Re: Environmental Liability Insurance

Dear Mr. Dumas:

Since we wrote to you in April on the status of our monitoring and marketing efforts to place environmental impairment insurance coverage on your behalf, there has been a change in the marketplace.

Zurich-American has created an environmental unit and plans to offer various pollution liability products. Zurich-American has hired staff from the competitors, will be using the competitors' applications and, presumably, offering similar Claims Made forms. We would expect to see similar pre-engineering and monitoring requirements as the other carriers in the marketplace. We are working to clarify what the requirements would be for RSR Corporation now.

We will continue to monitor the market and keep you apprised of any developments.

Sincerely,

Original Signed

Valery McAndrew, CPCU
Broker

VM/ch

cc: John A. DePaul - RSR Corporation
Rena Williams - RSR Corporation
Kevin Dwyer

Memorandum

My
COPR

To : Denise Hoffman
Toxics Legal Office

Date : June 23, 1992

Telephone: ATSS (8) 631-3496
(619) 238-3496
FACSIMILE (619) 238-3313

Confidential - Attorney/Client Communication

From : Dennis A. Ragen
Deputy Attorney General
Environment Section
Office of the Attorney General - San Diego

Subject: *Quemetco - Status of Polypropylene Chips*

Quemetco operates a battery recycling plant in the City of Industry, California. One of the results of its recycling process is a stream of crushed polypropylene chips ("poly chips"), which the company separates, washes and transports to KW Plastics in Bakersfield. As they leave Quemetco's premises, the poly chips are contaminated with low-level lead oxide residues. KW washes the chips further and extrudes them into pellets that are used to make new plastic products. Quemetco believes that sometimes the chips are extruded directly into new products.

I. Status of the Poly Chips under the Federal Regulations.

Under the Federal Regulations, Quemetco's poly chips are a RCRA waste if they are "spent materials" which are "reclaimed." (40 CFR § 261.2(c)(3)). Accordingly, it is first necessary to determine whether the plastic chips are a spent material.^{1/}

1. Are the Poly Chips "Spent Materials"?

The regulations define "spent materials" as follows:

A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.
(40 CFR § 261.1 (c)(1), emphasis added.)

1. Spent materials are per se solid wastes under the Federal Regulations (40 C.F.R. § 261.2(c)(3)) and it is therefore unnecessary to determine whether these materials are also "by products". EPA has defined "by products" as a "catch-all" category to cover "most secondary materials which are not spent materials or sludges." 48 Fed. Reg. 14,476 (1983), 50 Fed. Reg 618 (1985).

In this case, it is undisputed that the poly chips have been "used" and can "no longer serve the purpose for which [they] were produced without processing". The question, then, is whether this is "as a result of contamination". Quemetco argues that the reason the chips can no longer serve their purpose is not that they are contaminated, but simply that they are physically broken. We would argue that the chips are contaminated with lead, and that they cannot serve their original purpose until this lead levels are cleaned to below hazardous levels. We would point out that KW has a sophisticated process for washing the remaining lead off of the chips.

We would also argue that the regulations generally recognize that used lead acid batteries and their components - including the plastic chips - are "spent materials". For example 40 CFR §266.80, Subpart G, recognizes used lead acid batteries as "spent". Similarly, when EPA discusses the harm likely to result from the improper handling of lead acid batteries, it recognizes that the used casings are "spent":

These wastes are spent acid solutions and spent battery casings. Ordinarily, both are hazardous wastes when disposed or when treated before disposal (the spent acid solutions usually are hazardous because of their corrosivity and toxicity, and the spent casings may exhibit the EP toxicity characteristic). 48 Fed Reg. 14,498 (1983)(emphasis added).

Both common sense and EPA interpretation thus indicate that the poly chips are "spent".

Under the federal regs, however, if Quemetco cleans its chips to below 5 mg/l lead (using the TCLP test), these chips may not be "spent materials." If the chips are clean when they arrive at KW, then the fact that the chips "can no longer serve [their original] purpose" would not result from contamination, but from the fact that the chips are physically broken and must be re-formed prior to use. Accordingly, as long as the chips are contaminated at the time that Quemetco sends them to KW, they are "spent"; if, however, they are cleaned of contamination prior to being sent off Quemetco's premises, they may no longer be regarded as "spent".

2. Are the Poly Chips Reclaimed?

Under the Federal Regulations, spent materials are hazardous wastes if they are "reclaimed". (40 CFR § 261.2(c)(3)).

The term "reclaimed" is defined as follows:

A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. 40 CFR § 261.1(c)(4).

It appears that the Quemetco/KW process constitutes reclamation. The purpose of this process is to "recover a usable product" namely the polypropylene, from the spent batteries. Specifically, we understand that KW's washing process is intended to remove lead and other contamination from the poly chips so these chips can be re-used as polypropylene. The point of this process is thus to reclaim the clean, useable polypropylene from the contaminated chips.

Quemetco, however, claims that the Poly Chips fall within two exceptions.

Exception 1: Are the chips "secondary materials which are used as ingredients to make new products without distinct components of the materials being recovered as end products"?

This exception provides that materials are not "reclaimed" if they are:

- (1) "secondary materials"
- (2) which "are used as ingredients to make new products"
- (3) "without distinct components of the materials being recovered as end-products."

50 Fed. Reg. 633, emphasis added.

The first two items are not in dispute: The poly chips are "secondary materials" which are "used as ingredients to make new products". Turning to the third criterion, Quemetco claims that this exception is satisfied because:

Poly chips are used as an ingredient to make a new product (i.e. battery casings) without distinct components of the poly chips being recovered as end products.

This argument is not persuasive. The material that Quemetco sends to KW is poly chip contaminated with lead. KW recovers a distinct component (namely, clean polypropylene) from this material and sells this component as its end product.

(In making its argument, Quemetco seems to be fudging the question of what the "end product" is. While Quemetco suggests

that the end product is the battery casing which is ultimately made out of the chips, it appears that the true "end product" - the one KW sells - is clean polypropylene, usually in pellet form. The purpose of KW's process, then, is to reclaim a "distinct component" - namely, the polypropylene - from the contaminated poly chips. KW then sells this reclaimed polypropylene in pellet form as an "end product".)

Accordingly, the third criterion quoted above does not apply, since a "distinct component" - the polypropylene - is being (i) recovered from the contaminated chips which Quemetco sends to KW, and (ii) sold as an "end product".

Caveat - This exception is not precisely worded and it is impossible to be sure that a judge would give it the interpretation that we put forward. It is, for example, very possible that a judge could take a broader view of the Quemetco/KW process and conclude that (i) the result of this process is the production of new battery casings and (ii) "distinct components" of the plastic chips are not the "end product" of this process. In this case, the poly chips would not be "reclaimed" and would not be solid wastes.

Exception 2: Are the Poly Chips put to direct use as substitutes for commercial products?

Quemetco also notes that materials are not reclaimed if they are "secondary materials put to direct use as substitutes for commercial products". (50 Fed. Reg. 633). It claims that the poly chips are direct substitutes for other polypropylene commodities. What we know about KW's process, however, suggests that the poly chips are not put to direct use. Instead, they are washed and usually extruded into pellets before they become a substitute for clean polypropylene. It therefore appears that this exception does not apply either.

Since KW is reclaiming the polypropylene from the poly chips, and since neither of the claimed exceptions apply, it appears that KW is reclaiming the poly chips. Furthermore, since the poly chips are a spent material, under §261.2(c)(3) the chips are a solid waste.

3. Are the Poly Chips a RCRA Hazardous Waste?

In order to be a hazardous waste, the poly chips must exhibit a characteristic of toxicity. (40 CFR §261.3(2)). Accordingly, the chips must show a TCLP value of over 5 mg/l in order to qualify as a hazardous waste under Federal law. We have been informed that when the chips leave Quemetco, their TCLP lead levels are less than 5 mg/l. If this is the case, the chips would not qualify as a hazardous waste under Federal Law.

II. Are the Poly Chips California Wastes?

Under 22 Cal. Code Regs. §66261.2, "spent materials" which are "reclaimed" are wastes. The definitions of "spent materials" and "reclaimed" are substantially the same under 40 CFR §§261.1(c)(1)&(4) and 22 Cal. Code Regs. §66260.10. Pursuant to the above discussion of the federal regulations, the poly chips are spent materials that are reclaimed and, accordingly, they are wastes under California law.

22 CCR §261.3 provides that a waste is a hazardous waste if it exhibits any of the characteristics of hazardous waste identified in article 3; that article provides that lead is a hazardous waste at STLC levels greater than 5 mg/l. Since the poly chips are usually contaminated with lead at STLC concentrations greater than this when they leave Quemetco, the chips are a California hazardous waste.

1. Are the Poly Chips exempt Recyclable Materials under California law?

The next question is whether the chips fall within any of the recycling exemptions of Health & Safety Code §25143.2. Certain subsections of § 25143.2 provide exemptions for recycling done on the premises of the generator of the waste or at another facility owned by that generator. (§ 25143.2, §§ (b)(2)(a); (d)(1); (d)(3) & (d)(4)). These exceptions appear to be inapplicable here since KW and Quemetco are separately owned.

Turning to other potentially applicable provisions, section 25143.2(b) provides that, subject to certain limitations, recyclable materials that meet the following definitions are not hazardous wastes:

- (1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.
- (2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.
- (3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(emphasis added).

It appears that none of these exemptions is applicable since, as discussed with respect to the federal regulations, the poly chips are being "reclaimed" at KW Plastics.

Subsection (d)(2) provides, in pertinent part, that a recyclable material, which is not a RCRA waste, is not a California hazardous waste if:

- (A) The material is a product, which has been processed from a hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:
 - (i) The products does not contain constituents, other than those for which the material is being recycled which render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

This exemption does not seem to apply because, while the poly chips are being recycled to obtain plastic, they contain another constituent, namely lead, which renders them hazardous.

Subsections (d) (5) and (6) each provide that a recyclable material will not be considered a hazardous waste if it is used to make a product and it is treated in certain specific ways:

(5) The material is used or reused as an ingredient in an industrial process to make a product, if the material is not being treated before introduction to that process except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws.

- (A) Filtering.
- (B) Screening.
- (C) Sorting.
- (D) Sieving.
- (E) Grinding.
- (F) Physical or gravity separation, without the addition of external heat or any chemicals.
- (G) pH adjustment.
- (H) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material is not being treated except by one or more of the following procedures, and if any discharges to air from the following

procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws:

- (A) Filtering.
- (B) Screening.
- (C) Sorting.
- (D) Sieving.
- (E) Grinding.
- (F) Physical or gravity separation, without the addition of external heat or any chemicals.
- (G) pH adjustment.
- (H) Viscosity adjustment.

The poly chips probably satisfy the initial requirements of sections (d)(5) and (6) because

- with respect to (d)(5), the poly chips "are used as an ingredient in an industrial process to make a product", namely, the plastic pellets that KW sells.

- with respect to (d)(6), the poly chips may be "a safe and effective substitute for commercial products" i.e., new polypropylene.

KW, however, treats the chips by washing them, and washing is not one of the treatments listed under subsections (d)(5) and (6) which would qualify for exemption. Accordingly, since KW is washing the chips instead of filtering them, screening them, etc., the chips are not entitled to the exemption under §25143.2(d)(5) and (6).

The result is that the polypropylene chips do not qualify for any of recycling exemptions set forth in §25142.2 and they are therefore hazardous wastes under California law.

III. Litigation and policy considerations.

The conclusions suggested above do not rest on the firmest legal ground. For example, the definitions of "spent" materials and "reclaimed" in the federal regulations are vague, leaving Quemetco plenty of room to argue that the poly chips are neither spent nor reclaimed. It is impossible to predict whether a court would accept our arguments or Quemetco's. Similarly, section 25143.2 of California law is difficult to understand, and it will be particularly hard for us to explain why, under subsections (d)(5) and (6), the poly chips would be exempt if KW filtered, screened, sorted, sieved, ground, pH-treated, or viscosity-treated them, but that they are not exempt if KW washes them.

It is therefore far from certain that the court will conclude that the poly chips are a hazardous waste and, even if it does,

it is highly unlikely that a court would award significant penalties based on Quemetco's misunderstanding of these complicated and abstruse provisions of federal and state law.

Furthermore, the conclusion that the Poly Chips are a hazardous waste is not wholly satisfactory, even to us. Quemetco performs a valuable activity by recycling the chips. If DTSC determines that the chips are hazardous waste, this activity may cease, because there is no permitted facility capable of processing the chips in the way that KW does. In that case, the chips would have to be disposed of as a hazardous waste. This result would harm the environment and cost the jobs of many Quemetco and KW workers. It may therefore be appropriate to determine whether a variance is available.

IV. The possibility of a variance.

Section 25143(a) provides in pertinent part:

(a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or not otherwise regulated pursuant to, [RCRA].

(2) The department makes the following findings:

(A) The hazardous waste or the hazardous waste management activity is insignificant or unimportant as a potential hazard to human health and safety, and the environment.

(B) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety and the environment.

* * *

Such a variance may be appropriate in this case if Quemetco can show:

1. That the chips being sent to KW are not a RCRA waste because they consistently have TCLP lead levels of less than 5 mg/l.

2. That the trucks carrying the poly chips to KW do not leak any lead-containing liquid onto the highways.
3. That Quemetco and KW satisfy the requirements of § 251453.9 (labelling, business plan and storage requirements for handlers of recyclable materials)
4. That Quemetco show that the chips are a safe and effective substitutes for new polypropylene, i.e. that if the ultimate plastic product still contains lead residues, it is not used to make plates, spoons, etc.
5. That KW meets all applicable air pollution control requirements.

V. Penalties.

The Court is unlikely to award the Department significant penalties as a result of Quemetco's failure to treat its poly chips as a hazardous waste. While we hope that we can establish that the chips are a hazardous waste, the court will probably conclude that the Quemetco's contrary argument is a good faith, plausible reading of complicated statutes and regulations, and that no penalties are warranted.

Unlike the GNB case, we have no evidence that the chips polluted the highways or the company's premises. On the contrary, KW has informed us that Quemetco's chips are much cleaner than the ones KW receives from GNB.

Penalties may be appropriate for the company's other violations.

Original Signed

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