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

JUL 14 2000

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Chris Early
Safety-Kleen Corporation
1301 Gervais Street
Columbia, SC 29201

Dear Mr. Early:

Thank you for your e-mail of May 31, 2000. Through this letter, we respond to the questions you posed in your e-mail.

Your first set of questions concerned the meaning of the terms "transportation-related" and "non-transportation-related" as they relate to SPCC facilities. You also raised issues concerning transfers of oil in the first set of questions. You posed the fact situation of "a rail car containing oil that enters my site by crossing site boundaries." You added that the "rail car is one of many rail cars and is the only rail car containing oil." We will repeat your questions, and answer them immediately below. We note that we have coordinated our response with the U.S. Department of Transportation (DOT).

1. **Question:** "If the rail car is passing through my facility and the oil contained in this rail car is not loaded or unloaded is it subject to the SPCC requirements including SPCC Plan and containment system/diversionary structure or proof of impracticability requirements? Or, is this rail car subject to DOT requirements because it is considered as a transportation-related unit?"

Answer: As a general rule, we will presume that the rail car is considered to be a "transportation-related facility" under the 1971 Memorandum of Understanding (MOU) between DOT and the U.S. Environmental Protection Agency (EPA) if it is consigned to your property or is consigned elsewhere and is being stored incidental to transportation in commerce. Storage incidental to transportation in commerce is storage between the time the oil is offered for transportation to a carrier until the time that it reaches its destination and is accepted by the consignee, assuming no circumstances marking an end to the transportation process. EPA will consider all the circumstances concerning the presence of the rail car at the facility before determining that there has been an end to the transportation process and a beginning of non-transportation-related storage subject to SPCC requirements. If non-transportation-related storage has begun, the rail car will be subject to SPCC requirements if it contains above the regulatory threshold

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amount and there is a reasonable possibility of discharge from the rail car to navigable waters or adjoining shorelines. If the rail car is consigned to the Safety-Kleen facility, as indicated on shipping papers, bills of lading, or other shipping documentation, then transportation of the rail car ends once it arrives at the facility, and the rail car is subject to SPCC requirements. However, if the rail car is consigned to a different facility and is merely passing through the Safety-Kleen facility on its way to its consigned destination with no unreasonable delays, then the rail car is considered to be in storage incidental to transportation in commerce and is not subject to SPCC requirements. Instead the car is subject to applicable DOT requirements for the duration of such transportation.

2. **Question:** "If this rail car stops on my property for any period of time but the oil in the rail car is never loaded or unloaded is it subject to SPCC requirements at any time including SPCC Plan and containment system/diversionary structure or proof of impracticability requirements?"

Answer: See the answer to Question 1 above.

3. **Question:** "If the rail car is loaded or unloaded at any time is it subject to SPCC Plan and containment system/diversionary structure or proof of impracticability requirements?"

Answer: The loading or unloading of the rail car may mark an end to the transportation process and the beginning of non-transportation-related storage, triggering all SPCC requirements, assuming that the rail car stores oil in an amount above the regulatory threshold and that there is a reasonable possibility of discharge to navigable waters or adjoining shorelines. In this case, the rail car itself may become the non-transportation-related facility even if no other containers at the property would qualify the property as a non-transportation-related facility.

4. **Question:** "If the rail car is loaded/unloaded intermittently (i.e., over a period of 14 days oil in the rail car is unloaded on two consecutive Mondays) is the rail car subject to SPCC requirements only during the loading events including SPCC Plan and containment system/diversionary structure or proof of impracticability requirements?"

Answer: The loading or unloading of the rail car, whether intermittent or not, may mark an end to the transportation process and the beginning of non-transportation-related storage, triggering all SPCC requirements, assuming that the rail car stores oil in an amount above the regulatory threshold and that there is a reasonable possibility of discharge to navigable waters or adjoining shorelines. In this case, the rail car itself may become the non-transportation-related facility even if no other containers at the property would qualify the property as a non-transportation-related facility.

5. **Question:** "If the rail car enters my site (1/3 crosses the facility boundaries), is any portion of the rail car subject to SPCC Plan requirements including SPCC Plan and

containment system/diversionary structure or proof of impracticability requirements?"

Answer: If by entry on the site, the rail car has reached its ultimate destination, then the transportation process has ended and non-transportation-related storage has begun, triggering all SPCC requirements, assuming that the rail car stores oil in an amount above the regulatory threshold and that there is a reasonable possibility of discharge to navigable waters or adjoining shorelines. In this case, the rail car itself becomes the non-transportation-related facility even if no other containers at the property would qualify the property as a non-transportation-related facility.

Your second set of questions posited the fact situation that you demonstrate in your SPCC Plan that it is impracticable to provide containment systems/diversionary structures and instead provide a strong oil contingency plan.

1. **Question:** "Does the word 'demonstrate' used here indicate that the SPCC Plan will only require certification by a Registered Professional Engineer no matter the reason used to determine impracticability?"

Answer: The owner or operator of the facility must demonstrate impracticability if he cannot provide secondary containment. The Professional Engineer must certify that demonstration of impracticability. If the Regional Administrator disagrees with the owner or operator's determination, he may require that the owner or operator amend his Plan.

2. **Question:** "In developing a strong Oil Contingency Plan who determines if the plan is 'strong' enough to respond and prevent released oil from reaching navigable water?"

Answer: The owner or operator of the facility must determine that the Contingency Plan is adequate to meet regulatory requirements. The Professional Engineer must certify that determination. If the Regional Administrator disagrees with the owner or operator's determination, he may require that the owner or operator amend his Plan.

Your third set of questions asked "at what point the following transportation-related facility units become non-transportation related and subject to SPCC requirements."

a. **Question:** "Rail car"

Answer: A rail car may or may not be transportation-related, depending on the use to which it is put. See the 1971 MOU, § II(1)(F), (1)(J), and (2)(D).

b. **Question:** "Any vehicle with oil capacity of 660 gallons."

Answer: A vehicle may or may not be transportation-related, depending on the use to

which it is put. See the 1971 MOU, § II(1)(F), (1)(J), and (2)(D).

Again, thank you for your e-mail. Should you have any questions concerning this letter, please contact Hugo Fleischman of my staff at 703-603-8769. Please do not hesitate to contact us again should you have other questions.

Sincerely,

David Lopez, Director
Oil Program Center

cc: Susan Gorsky, DOT