

Cause No. 00-34F
Name: Houba, Inc.
Administrative Law Judge: Teeguarden
Date: December 5, 2001
Commission Action: Affirmed

FINDINGS OF FACT

1. The SFM is an agency within the meaning of IC 4-21.5.
2. The SFM is the state agency responsible for administering the IFC.
3. The FPBSC is the ultimate authority as defined in IC 4-21.5 with respect to orders issued by the SFM.
4. At all times relevant to this proceeding, Houba operated a pharmaceutical manufacturing company near Culver, Indiana.
5. On February 4, 2000, a duly authorized inspector employed by the SFM inspected the Houba facility.
6. As a result of that inspection, an order was written by the SFM on March 13, 2000.
7. The order was based on a waste storage system being used by Houba to store waste products from manufacturing.
8. The problem becomes much more complicated at this point.
9. Prior to February of 2000, Houba collected its waste products in permanent tanks on site.
10. The waste at issue here is spent acetone and methanol ("Waste") which are both liquid hazardous wastes under EPA and IDEM rules and flammable or combustible materials under the IFC.
11. Pursuant to discussions with IDEM, Houba began disposing of the Waste by placing the material in an EPA and DOT approved tanker trailer.
12. Approximately every three weeks, a licensed hazardous waste transporter delivers a new empty tanker and removes the full one to a licensed hazardous waste dumping site.
13. The SFM contends this IDEM approved storage plan violates IFC 7902.1.9.1.2., which is relevant part provides "Tank cars and tank vehicles shall not be used a permanent storage tanks."
14. The initial argument between the parties focused on whether a storage system which moved the tanker every three weeks was permanent or temporary.
15. An outgrowth of that dispute also involved IC 22-13-2-3, apparently passed or readopted in 1987, which provides that rules adopted by the FPBSC take precedence over a rules by a state agency which conflicts with the FPBSC rule.
16. Normally, IC 22-13-2-3 makes a dispute between agency rules easy to answer; that is, the IFC provision would take precedence.
17. In the matter of dealing with materials which are classified as hazardous wastes, however, the answer is not that simple.

18. In 1976, Congress passed the Resource Conservation and Recovery Act, 42 USC 6901 et seq., (“RCRA”), in order to deal with the problem of the disposal of hazardous waste.
19. RCRA places the responsibility for regulating hazardous waste in the hands of the EPA.
20. 42 USC 6926 authorizes the EPA to allow a state to administer the hazardous waste program if approved by the EPA.
21. The EPA delegated the responsibility for RCRA enforcement to IDEM in 1986. See 40CRF 272.750 for the official notice of the approval by EPA.
22. Therefore, IDEM, through approval by the EPA, is the State Agency responsible for the regulation of hazardous waste.
23. Also leading to that conclusion is the fact that in 1996, the Indiana Legislature enacted (or re-enacted) IC 13-13-5-1 and IC 13-19-3-1 which provide that IDEM is the solid waste agency for all RCRA purposes for Indiana and that rule writing for hazardous materials rest in the Solid Waste Management Board.
24. For the small segment of materials which are flammable and combustible but are also classified as hazardous waste, regulatory authority falls solely to IDEM and the Solid Waste Management Board.
25. The order should be vacated.

NONFINAL ORDER

Since jurisdiction over the waste in question belongs solely to the Indiana Department of Environmental Management, the Order of the State Fire Marshal issued to Houba, Inc. on March 13, 2001, is hereby vacated.

