STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Petition of

AMERADA HESS CORPORATION

DECLARATORY RULING

for a Declaratory Ruling Pursuant to Section 204 of the State Administrative Procedure Act

DEC 17-05

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INTRODUCTION

Amerada Hess Corporation ("Petitioner"), Woodbridge, New Jersey, has petitioned the Department of Environmental Conservation ("Department") for a Declaratory Ruling, pursuant to §204 of the State Administrative Procedure Act and 6 NYCRR Part 619, to determine whether the New York Oil Spill Prevention, Control and Compensation Act (the "Act"), Navigation Law ("NL") Article 12, requires the payment of an additional assessment when petroleum is retransferred into New York State.

It is in the public interest to grant the instant petition and issue a Declaratory Ruling to inform Petitioner, and the general public, of the liability for assessments on the transfer of petroleum under the Act.

FACTS

The following facts are based solely on Petitioner's representations in its petition and are assumed solely for the purposes of this Ruling.

Petitioner is an oil company which has its primary storage facilities and a refinery facility in New Jersey. A large portion of the petroleum products which Petitioner brings into the New York/New Jersey area arrives in large tankers. Because of their draft, these tankers must be "lightered"[1], or partially offloaded, in deep waters before reaching port. For economic reasons, Petitioner generally offloads 50,000 barrels or more from the tankers into barges in New York waters. The barges deliver the petroleum into port in New Jersey and the lightered tankers, riding higher in the water, likewise proceed to offload their remaining petroleum at one of the New Jersey port facilities.

After storage or refining in New Jersey some or all of the product is then transferred a second time by barge to wholesale or retail terminals in New York or delivered directly to New York customers. In some instances customers take delivery of the product in New Jersey and barge it to their New York facilities.

DISCUSSION

Petitioner's concern is that it will be required to pay the license fee and surcharge twice under the Act for transfers of petroleum into New York: first, when the petroleum is lightered

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1. "Lighter", as defined in Webster's II New Riverside University Dictionary 692 (1984) means "a large barge, especially one used to deliver or unload goods to or from a cargo ship."

in New York waters; and, second, when again transferred into New York from New Jersey. Petitioner alleges that this amount, if assessed, would constitute an illegal double fee under the Act.

Operators of major facilities in the petroleum industry are required by the Act to be licensed and to pay a license fee which funds the New York Environmental Protection and Spill Compensation Fund and a surcharge which helps fund the State Hazardous Waste Remedial Fund (Superfund). NL §186.1. The license fee charged to major facility operators, like Petitioner, is one cent for each barrel of petroleum transferred. NL §174.4(a). The surcharge is currently two and one-half cents for each barrel transferred. NL §174.4(b).

To determine the circumstances which trigger imposition of the license fee and surcharge, an examination of the statutory terms is required. The pertinent definitions are:

"transfer" which means:

> onloading or offloading between major facilities and vessels or vessels and major facilities, and from vessel to vessel or major facility to major facility [NL §172(16)];

"major facility", which includes but is not limited to:

> any refinery, storage or transfer terminal, pipeline, deep water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport petroleum. A vessel shall be considered a major facility only when petroleum is transferred between vessels ... [NL §172(11) (emphasis added)];

and "vessel" which means:

> every description of watercraft or other contrivance that is practically capable of being used as a means of commercial transportation of petroleum upon the water, whether or not self-propelled [NL §172(17)].

Applying these definitions to the facts and circumstances provided by Petitioner, it is readily concluded that the lightering of the petroleum in New York waters, from tanker to barge, is a transfer between major facilities (from vessel to vessel), subject to the above-referenced fee and surcharge. Similarly, the barging of some or all of that same petroleum, in its original or refined state, back into New York and the offloading into Petitioner's terminals for wholesale or retail distribution, is also a transfer of petroleum.

The question raised by the instant petition is whether the fee and surcharge are legally imposed only at the point of first transfer or whether they may be imposed again at the time of the second transfer since the Act states that:

> The license fee shall be one cent per barrel transferred ..., provided, however, that the fee on any barrel, including any products derived therefrom, subject to multiple transfer, shall be imposed only once at the point of first transfer ... [NL §174(4) (emphasis added)].

The Act does not define "first transfer" nor does an examination of the legislative history supply a definitive indication of what the Legislature intended by this term or by the term "multiple transfer." Nonetheless, the statute must be construed to mean what its words plainly express, McKinney's Statutes §94, and the plain meaning of the underscored terms

indicates that a single per-barrel assessment is contemplated. The Legislature should be understood to have considered the normal conduct of the petroleum industry in the usual channels of commerce when enacting the statute. McKinney's Statutes §124. This would include the interstate transportation of petroleum for refining or storage, as contemplated by the "multiple transfer" spoken of in the statute.

This interpretation is consistent with that of the New York State Department of Transportation ("DOT"), the agency originally charged with administration of the Oil Spill Prevention, Control and Compensation program.[2] Under the regulations adopted by DOT, the monthly license fee and surcharge are assessed on the number of barrels received less the barrels received for which the fee and surcharge was previously paid. 17 NYCRR §30.9(a). This "secondary transfer" is evidenced by a "Major Petroleum Facility License Fee Secondary Transfer Certificate" which is completed by the first major facility to receive the petroleum (which also pays the fee and surcharge thereon) and passed to the transferee at the time of product exchange. 17 NYCRR §30.9(d).

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2. All of the duties and responsibilities of DOT under Article 12 of the Navigation Law were transferred to the Department by Chapter 35 of the Laws of 1985. All regulations of DOT pertaining to the Act continue in full force and effect as regulations of the Department until modified or abrogated by the Department. C.35, L.1985, §12(5).

CONCLUSIONS

The Department concludes that the Act requires only one assessment against transferors for the first transfer in New York, and the number and location of secondary transfers is irrelevant. This is true regardless of whether the product, during a series of multiple transfers, travels from New York to New Jersey and then returns to New York. Consequently, Petitioner is liable for a single license fee and surcharge assessment imposed at the first point of transfer in New York State, i.e., the point of the lightering of its vessels in the waters of New York. Subsequent transfers of petroleum, whether within New York or from New Jersey to New York, are secondary transfers not subject to imposition of an additional fee.

Dated: Albany, New York
September 18, 1987

Janice K. Corr
Deputy Commissioner and
General Counsel