EC-G-2002-071

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

SEP 26 1984

MEMORANDUM

SUBJECT: Issuance of Administrative Orders Under Section 3013 of the Resource Conservation and Recovery Act

FROM: Courtney M. Price
Assistant Administrator for Enforcement and Compliance Monitoring

Lee M. Thomas, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Addressees

Section 17 of the Solid Waste Disposal Act Amendments of 1980 (P.L. 96-482) added Section 3013 to the Resource Conservation and Recovery Act of 1976 (RCRA). This memorandum provides guidance on the use of that section and replaces earlier guidance issued September 11, 1981.

DELEGATION

Under current delegation authority Section 3013 Administrative Orders (Orders) are issued by Regional Administrators (RAs) with the advance concurrence of the Director, Office of Waste Programs Enforcement (OWPE), except in cases of national significance or in multi-regional cases, when the Director, OWPE, issues the Orders. The Assistant Administrator for Enforcement and Compliance Monitoring (OECM), consults as requested on Orders, refers Section 3013 judicial actions to the Department of Justice, and sends notices of such action to the appropriate RA and to the Director, OWPE. Further redelegation is currently under review.

FINDINGS REQUIRED FOR ISSUANCE

Section 3013 (a). AUTHORITY OF ADMINISTRATOR.

"If the Administrator determines, upon receipt of any information, that -

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard."

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Under subsection (a), before an Order may be issued, the RA or, in cases of national significance or multi-regional cases, the Director, OWPE, must find that sufficient information has been received to determine that:

(a) the presence of hazardous waste[1/] at a site may present a substantial hazard to human health or the environment, or;

(b) the release of any such waste from the site may present a substantial hazard to human health or the environment.

The requirement for "information" means that some reliable information upon which a reasonable person would base a decision or take action has been gathered or presented before issuance of the Order. Such information may include laboratory analysis of samples, observations recorded in the course of an inspection, and citizens complaints corroborated by supporting information. Some background information regarding the type and quantity of waste likely to be found on the site can be located in EPA and State agency records, as well as by the use of site-specific requests under Section 3007 of RCRA and/or Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Section 3013 Orders may be used in situations where information required under Subtitle C has not been submitted if other factors support the determination that a substantial hazard may exist. In cases where information required to be submitted under Subtitle C has not been submitted, and no indication of substantial hazard is presented, enforcement action under Section 3008 may be appropriate.[2/]

[1/] Note that the exclusion of gasoline from the definition of hazardous substances under CERCLA is not applicable to the hazardous wastes as defined in RCRA. Accordingly, §3013 Orders may be useful enforcement tools in some situations involving leaking underground storage tanks (LUSTs). Note, too, that the statutory definition of hazardous waste (RCRA §1004(5)) is applicable in §3013 Orders, not the Subtitle C regulatory definition.

[2/] Section 106 of CERCLA also may be used to issue an order to prior owners/operators under circumstances where the "imminent and substantial endangerment" standard can be met. In such situations, it may be advantageous to issue a §3013 Order in conjunction with a §106 Order under CERCLA. In deciding whether to issue a §106 Order under CERCLA or a §3013 Order under RCRA, the main consideration should be whether available information can support a finding that there may be an "imminent and substantial endangerment." If such a finding can be supported, then a §106 Order or a §106 Order in conjunction with a §3013 Order is appropriate. The RI/FS policy regarding circumstances under which a potentially responsible party may be required to perform an RI/FS should be consulted. Section 3013 Orders should

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It should be noted that the mere presence of hazardous waste at a site or facility is sufficient to cause the issuance of an Order, provided that the information indicates that the presence of the waste may present a substantial hazard. This is true even in the absence of definite evidence of an actual release of waste, and covers the cases where there is a threat of release, or where it is difficult, if not impossible, to ascertain, without extensive sampling, analysis and monitoring whether a release has actually occurred or will occur.

Finally, a determination as to whether known and detectable or potential releases from the site may present a substantial hazard requires gathering of sufficient information to make a determination of two essential prerequisites:

(1) That there is a known or potential release of hazardous waste from the site.

(2) That the release "may present a substantial hazard" to human health or the environment.

Number (1) above may be determined in a variety of ways, including actual observation of escape from the site of a substance known to be hazardous, by governmental sampling or analysis, or through information supplied by the owner/operator. (See discussion of "information" above.) It is significant that Congress used the words "may present" rather than "is presenting," such as had been used in Section 7003 prior to the 1980 amendments. As in Section 7003, the effect of the words "may present" is to require that the information presented to the RA or Director, OWPE, show only that there is a possibility or potential of a substantial hazard to human health or the environment, rather than to show that the hazard actually exists.

Whether a "substantial hazard" may exist involves consideration of some of the same factors as those used to determine whether an "endangerment" exists under Section 7003. The standard itself, however, is a lesser standard than that under Section 7003. Again, actual harm to human health or the environment need not be shown, but only that the potential for harm may exist through a release or threat of release of hazardous waste from a site. Whether a release or threat thereof may present a "substantial hazard" essentially depends upon a number of factors, such as the likelihood of a release of hazardous wastes, the manner of release of the hazardous waste from the site (i.e., ground or surface water, air, etc.), the characteristics and amount of the waste discharged, current or potential use of the portion of the environment affected,

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[2/] (continued)
not be used to evade the RI/FS policy. Remedial investigations may be performed pursuant to a §3013 Order, but feasibility studies are beyond the jurisdictional scope of §3013.

potential for exposure to humans and the environment, and other related factors. If the site has been investigated and prioritized by the Federal government as to hazard presented, as required by Section 105 of CERCLA, that determination will be useful in assessing the risk.

TO WHOM THE ORDER MAY BE ISSUED

Section 3013(a) authorizes issuance of an order against the present owner or operator. Under the circumstances set forth in subsection (b), issuance of an order may also be appropriate against a prior owner or operator.

Section 3013 (b). PREVIOUS OWNERS AND OPERATORS.

> "In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a)."

Subsection (b) entitles the Agency -- under certain circumstances -- to go back in time in the chain of title to a previous owner or operator of the site. The conditions which must be met for issuance of a Section 3013 Order to a previous owner or operator of a site are:

(1) The facility or site must be one which is not "in operation" at the time a determination is made under subsection (a) and (2) the present owner of the facility or site "could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release." While in many cases there will be little question as to whether a facility is "in operation" (e.g., a closed landfill), in other cases that determination will not be as clear. We believe that it was the intent of Congress to place an interpretation on the words "in operation" which would enable EPA to gather information concerning potentially hazardous sites from those in the best position to provide that information -- the previous owners or operations. We therefore believe that a facility is not "in operation" if it has been abandoned or is not otherwise being actively operated as a hazardous waste facility by the current owner or operator.

It should be noted that if the present owner of the site could reasonably be expected to have actual knowledge of both the

presence of the waste and its potential for release (even though the waste had been placed in or on the site by a previous owner or operator), this subsection would appear to prohibit the issuance of an Order to the previous owner or operator.

Assuming the two conditions discussed above are met, the Order may be issued only to the "most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge. . . . " Whether an owner or a previous owner or operator of a site could "reasonably" be expected to have actual knowledge of the presence of the waste or its potential for release can best be determined through evidence showing the use of the facility during the period of ownership by the previous owners. For example, if a previous owner dumped uncontainerized waste into an unlined pit and then covered it with dirt, he can reasonably be expected to have the actual knowledge of both the presence and potential for release of the waste. The same determination could be made for an owner who stored waste in leaky containers on the bare ground without benefit of a pad or base and containment walls.

ELEMENTS OF AN ORDER

Section 3013 (c). PROPOSAL.

> "An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard."

Unless EPA and the respondent have agreed in advance on a work plan to be incorporated in the Order, the Order must require the respondent to prepare and submit a proposal for the monitoring, testing, analysis, and reporting Program for the site from which the waste is or may be escaping. Such proposal must be submitted within 30 days from the date of issuance of the Order. The Order should recite (1) the information and facts upon which it is based; (2) the threat or potential threat to human health and/or the environment; and, (3) outline with some degree of specificity the general areas of concern which should be addressed in the proposal to be submitted by the respondent. Attached to this memorandum is an example of an Order (Appendix

A) outlining the general areas of concern to be addressed in the requested sampling, analysis and monitoring program.[3/]

The Order shall direct the respondent to conduct the monitoring, testing, analysis, and reporting program and should be specific as to details of the program. For example, the Order may require the proposal to set forth the number, location and depth of monitoring wells, the number and frequency of samples to be taken, the parameters of the analysis, reporting requirements and other related details, including dates by which each element should be commenced and completed and, where appropriate, requirements for submission of status reports to EPA as work on the program progresses.

The Order, if issued unilaterally, must advise the respondent of his right to submit in writing any legal or technical defenses, objections or contentions which he may desire to make, and that he is entitled to confer in person and/or by attorney with EPA regarding the proposal. The Order must also specify the name, address and telephone number of the appropriate official of EPA whom the respondent may contact to arrange a conference. The Order should be sent to the respondent by certified mail, return receipt requested.

In some instances, contacts with the owner/operator may result in issuance of a §3013 Order on a consensual basis. An example of an Order issued after conferring with the owner/operator ("Consent Order") is attached (Appendix B). In such cases, the Order should note that the respondent has already conferred with EPA and consents to issuance of the Order.

In addition, when a plan already has met with the approval of the parties, it is advisable to include in the Order a provision such as:

> Respondent agrees to implement the requirements of the work plan set forth below for carrying out investigative activities including monitoring, testing, analysis and reporting at the facility. This work plan has been developed jointly by EPA and Respondent. EPA and Respondent agree that incorporation of this work plan in the instant Order satisfies the requirement under Section 3013(c) that Respondent submit a proposal and that EPA provide an opportunity for Respondent to confer regarding such proposal.

An Order is "final" in that it requires the preparation and submission of a plan. However, no actual sampling, analysis or

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[3/] The appendices are attached as examples only. They are not intended to dictate how Orders should be written. The unique circumstances of each case necessitates some latitude in the form of such Orders.

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monitoring should be conducted until after approval of a satisfactory plan submitted by the respondent (except in cases delineated in subsection (d)(1) of §3013).

REVIEW OF THE PROPOSAL

The proposal submitted by the respondent is not required to be in any particular form. It must be critically reviewed by EPA to ensure that it covers the areas addressed by the Order, both from a legal and technical standpoint. The proposal should be as specific as the circumstances and knowledge of the site will allow, setting forth, for example, the number and location of monitoring wells, the frequency of samples from the wells, the location of soil samples, parameters and protocols for analysis, and so forth. In some cases the extent of the work required will be such that submission of a detailed plan may be difficult to accomplish in a 30 day period. In such cases, it may be sensible to require submission of a broader, less detailed plan within the 30 day period and a lengthier, detailed plan after the respondent has had an opportunity to confer with EPA. In cases in which the sampling, analysis, testing and monitoring program is to be carried out in stages, or over a significant period of time, the proposal should include a statement that EPA shall be furnished periodic status reports from the respondent regarding progress being made in implementation of the program. The Order should always state that EPA has a right to approve any proposed changes or modifications after initial approval has been given to the proposal.

In reviewing a proposal, EPA personnel should examine two areas: first, the adequacy of the proposal to achieve the goals of the sampling, analysis and monitoring programs; and second, the competence of the persons or firms who will be implementing the proposal to conduct the sampling, analysis, monitoring and reporting activities in a technically acceptable manner, so that the information produced thereby will be reliable. The second area -- the competence of the contractor or consultant who will implement the program -- is delicate because EPA should not place itself in the position of formally approving or disapproving the professional qualifications of particular contractors and it should be made clear to the respondent that the respondent, not EPA, is responsible for the competence of the contractor. However, the design and implementation of the type of program which will be conducted under a §3013 Order requires engineers and other persons who are knowledgeable in a variety of areas such as hydrology, geology and chemistry, among others.

While an owner or operator of a site should be at liberty to hire a contractor of his own choice, EPA should always require the technical aspects of the proposal to be very detailed and specific so as to avoid misunderstandings during the implementation of the program and should also require frequent status reports while the work is in progress.

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In the event a conference results in a modified proposal, the respondent should either resubmit the entire proposal, as modified, or if the modifications are not extensive, the respondent may submit a separate amendment to the proposal. In all cases, the proposal, and any amendments or modifications, should be signed by the respondent.

PROPOSAL CONFERENCE

The Order must give the respondent an opportunity to confer on the proposal submitted for the monitoring plan. This conference will also afford the respondent the opportunity to indicate why the respondent should not be subject to the Order. A record in the form of a tape recording or stenographer's notes should be made and included in the case file. In the event of subsequent litigation over the Order, the recording or notes can then be transcribed for use, if necessary.

While the proposal must be submitted to EPA within 30 days after the date of the Order, we interpret §3013(c) to allow a conference requested by the respondent to be held either before or after the proposal is submitted. However, the holding of a conference cannot vary or extend the 30 day period for submission of the proposal, so that if a conference is requested for a time before the proposal is submitted, the conference must be held and the proposal submitted within the 30 day period. Conferences to be held after submission of the proposal should be scheduled as soon as possible after submission (i.e., not more than 30 days thereafter), so as to avoid delay in finalizing the proposal.

Under the statute, there is no requirement for public notice of the conference or any requirement that third parties be admitted to the conference. However, nothing precludes the admittance of a non-party to the conference, if the Region determines that such participation would be beneficial or desirable. In certain cases, the Department of Justice, the State or local pollution control agency and others may be appropriate attendees or participants.

Pursuant to information developed at the conference, EPA may modify the proposed sampling, analysis and monitoring requirements contained in the Order as may be reasonably required to ascertain the nature and extent of the hazard. This may include modifications making the requirements more strict or extensive, as well as less extensive.

APPROVAL OF PROPOSAL

An acknowledgement letter must be issued under §3013 after review of the respondent's proposal has been completed. The purpose of the letter is to acknowledge in writing the decision EPA has reached after review of the respondent's proposal. It should be signed, if possible, by the person who signed the Order. Section 3013(c) permits EPA to modify the proposal

submitted by the respondent or to develop its own program of sampling, analysis and monitoring in order to determine the nature and extent of the hazard. The letter should state whether the proposal has been accepted and should specify what modifications, if any, have been made to the proposal. This can be accomplished by attaching a copy of the proposal, as modified, to the acknowledgement letter. In the unlikely event that EPA plans to incorporate any major changes in the Order that were not discussed at the conference, EPA should notify the respondent of such changes before issuing the acknowledgement letter and provide reasonable opportunity to the respondent to comment upon such modifications.

MONITORING PROGRAM BY EPA, STATE, OR OTHER PERSONS

Section 3013(d). MONITORING, ETC., CARRIED OUT BY ADMINISTRATOR

"(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may--

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in Section 3007."

The provisions of this subsection provide for three situations where the Agency may carry out the monitoring activities or authorize others to do so:

(1) Where no owner or operator is able to conduct these activities satisfactorily;

(2) Where the testing conducted by the owner/operator is determined to be unsatisfactory; or

(3) Where it cannot be determined initially whether there is an owner or operator able to conduct the required monitoring and testing.

Numbers (1) and (3) are similar; the distinction is that in number (3) no owner/operator can be identified or located initially, whereas in number (1) the owner/operator is identified but unable or unwilling to conduct the required activities.

In numbers (1), (2) and (3) the important consideration is whether the owner/operator will conduct the required activities in a manner satisfactory to EPA, i.e., in a timely manner and in a manner technically consistent with EPA requirements. Subsection (d) is intended to allow EPA to conduct the monitoring, testing, analysis or reporting itself or to authorize the State or other third parties to perform the required activities if delay or inadequate performance will result from relying on the owner/operator.

Once EPA or some other authorized person has performed monitoring, testing, analysis or reporting pursuant to §3013(d), an Order may be issued to require reimbursement of the costs. The Order for Reimbursement should be issued to the present owner or operator or the most recent previous owner or operator who could reasonably be expected to have actual knowledge of the hazardous waste. An example of an Order for Reimbursement is attached as Appendix C.

Note that subsection (d)(2) prohibits an Order for Reimbursement if the results obtained confirm the results of an Order issued under subsection (a) and (b). Our interpretation is that this provision prohibits seeking reimbursement in circumstance (2) above, where the Agency acted because of information leading to the belief that the results from the owner/operator tests were inaccurate or unreliable, and our subsequent tests, in fact, confirm the owner/operator test results.

ENFORCEMENT OF THE ORDER

Section 3013(e). ENFORCEMENT.

> "The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance

with such order and to assess a civil penalty not to exceed $5,000 for each day during which such failure or refusal occurs."

This subsection authorizes bringing a civil action to require compliance with any Order issued under Section 3013 and to assess a civil penalty of not to exceed $5,000 for each day of noncompliance with the Order. This authority includes commencement of a civil action to enforce an Order issued under Section 3013(d)(1) for reimbursement of costs incurred by EPA or other authorized person who conducts the monitoring, testing, or analysis in lieu of an owner/operator.

Any referral of a civil action under Section 3013(e) should follow the format used for other civil actions.

DEVELOPMENT AND PRESERVATION OF THE ADMINISTRATIVE RECORD

We attempt to emphasize throughout this memorandum the importance of obtaining the information required by the statute prior to the issuance of the Order. Equally important is the establishment and preservation of a record where the information and all documents relevant to the reimbursement or enforcement proceedings described herein should be kept, since the Order may eventually be reviewed by a court, and EPA must have a complete record of the information which formed the basis for its decisions and documentation of the opportunity afforded the respondents to confer. The acknowledgement letter is an important part of the documentation.

The Region should encourage communications with the respondent and his representatives to be in writing insofar as possible. Written records of communication should be made of all telephone conversations with the respondent and a record should be made of any conference held with respondents in accordance with this guidance.

In the event EPA should reject any objections, defenses or contentions of the respondent, or modify the respondent's proposal for monitoring, testing, analysis and reporting without the respondent's agreement, EPA should set forth the reasons for such rejection or modification and furnish those reasons in writing to the respondent.

Attachments

-RETYPED FROM THE ORIGINAL-

APPENDIX A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	RCRA Docket
Environmental Protection Agency, Complainant,	)	
v.	)	FINDINGS OF FACT, DETERMINATION, AND ORDER REQUIRING SUBMISSION AND IMPLEMENTATION OF PROPOSAL FOR SAMPLING, ANALYSIS, MONITORING AND REPORTING
Respondent.	)	
Proceedings under § 3013 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6934.	)	

PRELIMINARY STATEMENT

1. This is an administrative action instituted pursuant to Section 3013 of the Resource Conservation and Recovery Act [42 U.S.C. Section 6934], hereinafter referred to as "the Act" or "RCRA". The

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Complainant is Region of the United States Environmental Protection Agency (EPA).

2. The Regional Administrator of EPA Region , by and through authority duly delegated from the Administrator of EPA, having been presented with information concerning the presence of hazardous wastes that are being stored, treated or disposed at the facility described below, with information concerning potential releases of hazardous wastes from this facility, and with information that these circumstances may present a substantial hazard to human health or the environment, hereby issues the following Findings of Fact, Determination and Order Requiring Submission, pursuant to Section 3013 of the Act [42 U.S.C. Section 6934] that are set forth below.

FINDINGS OF FACT

1. , submitted a Notification of Hazardous Waste Activity (EPA Form 8700-12) for its facility at , which was received by Complainant on August 15, 1980. This notification satisfied Section 3010 of the Act. This notification indicated that , was a generator, and treater, storer and/or disposer of hazardous waste. The facility is located

2. , submitted a Part A application (EPA Forms 3510-1 and 3510-3) which was received by Complainant on November 18, 1980, as required by 40 CFR Section 270.10(e)(i). This application stated that was a storer, treater and disposer of hazardous waste at the facility.

3. , has operated a facility at since at least (from Respondent's Part A

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application), and including a period of time November 19, 1980, the effective date of regulations promulgated pursuant to RCRA.

4. Respondent's facility included a landfill of approximately 55 acre-feet in size consisting of at least 12 trenches, each of which was approximately 10 feet wide, 20 feet long, and 4 feet deep. Wastes, including hazardous waste and hazardous waste constituents, generated by Respondent's facility were periodically placed on and into the landfill prior to and after November 19, 1980. Respondent thus owns and operates a hazardous waste management facility for the treatment, storage, and/or disposal of hazardous wastes.

5. Respondent, in correspondence dated , advised Complainant that Respondent was discontinuing the landfilling of hazardous wastes and requested withdrawal of the Part A application.

6. Complainant issued a letter to Respondent on , formally requesting the submission of the Part B application. The letter required Respondent to submit the Part B application to the Complainant within six (6) months of receipt of the request.

7. Respondent, in correspondence dated , advised Complainant that it would not submit a Part B application. Respondent stated that effective , Respondent was storing all hazardous waste in drums and storing such waste on-site for less than ninety (90) days.

8. Complainant issued a letter to Respondent on , requesting Respondent to provide documentation that the landfill units at the facility were properly closed and that the units would be properly maintained after closure, if necessary. Complainant

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specifically requested, in part, that Respondent demonstrate closure occurred in a manner that "controls, minimizes or eliminates to the extent necessary to protect human health and the environment, any post closure escape of hazardous waste constituents to the ground, groundwater, surface waters, or to the atmosphere."

9. Respondent, in correspondence dated and , stated its contention that the landfilling activity at the facility was properly closed. Said correspondence included laboratory analyses of samples of landfilled material from the facility. These laboratory analyses show the presence of hazardous constituents, as defined in 40 CFR Part 261, in the landfilled material as summarized below:

Hazardous Constituents	Range of levels detected, ppm
Toluene	3.1 to 68.7
Lead	2.6 to 22.6
Chromium	13.5 to 49.6
Other Constituents	
Xylene	1.5 to 25.8
Methyl Isobutyl Ketone	1.2 to 9.8

Additionally, all of the samples of landfilled materials exhibited the hazardous waste characteristic of ignitability by having a flash point less than 60°F, indicating the hazardous waste had not been rendered non-ignitable prior to landfilling.

10. Respondent's correspondence dated stated that no analysis of groundwater quality has been performed.

Consequently, no evidence exists to determine whether hazardous waste or hazardous waste constituents have migrated to groundwater.

11. The continued presence of hazardous waste constituents in the Respondent's landfilled material could result in release of hazardous waste constituents by leachate production and migration off-site by means of surface run-off or groundwater flow. Respondent has not submitted to Complainant documentation that Respondent's facility is not or may not be releasing hazardous waste or hazardous waste constituents to ground or surface water.

DETERMINATION

Based upon the aforementioned data and information, it is hereby determined pursuant to Section 3013 of the Act that:

1. The facility, as described hereinabove, owned and operated by Respondent, is a facility at which hazardous wastes are present and at which hazardous wastes have been stored, treated, and disposed.

2. The methods and practices employed at the facility for treating and disposing of hazardous wastes are and were such that the presence of hazardous wastes at the facility may present a substantial hazard to human health or the environment.

3. Hazardous wastes and/or hazardous waste constituents released at the facility may have migrated to surface or ground waters. The release of hazardous wastes at and/or from the facility may present a substantial hazard to human health or the environment.

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ORDER REQUIRING SUBMISSION AND IMPLEMENTATION OF PROPOSAL FOR SAMPLING, ANALYSIS, MONITORING AND REPORTING

Pursuant to Section 3013 of the Act [42 U.S.C. § 6934], and in order to ascertain the nature and extent of the hazard at the facility as described hereinabove, Respondent is hereby ordered to submit a written proposal to EPA for the sampling, analysis, monitoring and reporting of the hazardous wastes and hazardous waste constituents that are present at or that may have been released from the facility, and is hereby ordered to implement such proposal, once approved by EPA. Such written proposal shall contain, but is not limited to, the following:

1. A plan and timetable for the determination of the horizontal and vertical permeabilities of the uppermost aquifer and the nature of the aquitards, or barriers, including a determination of the direction and velocity of groundwater flow in the uppermost water-bearing zones in the area likely to be affected by migration of hazardous wastes from the Facility. The plan shall consider means to determine areas of discharge and recharge of groundwater in the areas likely to be affected by migration of hazardous wastes from the facility.

2. A plan for determining whether hazardous wastes or hazardous waste constituents have leaked or are leaking from the landfill. This shall include a plan and timetable for the installation of a groundwater monitoring program, including proposals as to locations, depth, and construction thereof, designed to monitor groundwater elevation and water quality.

3. A sampling and analysis plan for monitoring groundwater at or near the landfill which describes analysis parameters, frequency of

sampling, and procedures and quality assurance measures for sampling and analyzing for hazardous waste and hazardous waste constituents. The plan shall provide that groundwater be sampled and analyzed at least quarterly for one year. The plan shall also provide for analysis of all priority pollutants contained in Appendix VIII of 40 CFR Part 261 for at least one of the quarterly sampling periods.

4. A plan and timetable to collect and analyze soil samples of appropriate size, depth, and location to determine the nature and extent of contamination of the surface and of the soil column above the groundwater table at the facility.

5. A proposal, including timeframes, for determining the extent of any hazard presented by hazardous waste or hazardous waste constituents that may have been released to drainage ditches, surface waters, or sediments therein. This proposal shall specifically include sampling of water, sediment, and soils, both on and off-site, sufficient to document the extent of contamination by hazardous waste or hazardous waste constituents that may have resulted from past events such as rainfall and resulting run-off.

6. A provision for site access for employees, agents, and contractors of Complainant at all reasonable times for purposes of inspecting and verifying compliance with the provisions of this Order in accordance with and pursuant to the authority of §3007 of the Act, 42 U.S.C. §6927.

7. A description of the means of implementation of the items set forth above, a proposal for reporting to EPA on the progress of these items, and for reporting the results of the sampling, analysis and monitoring program.

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OPPORTUNITY TO CONFER

Under the provisions of the Act, Respondent may confer with EPA at any time prior to submittal of the proposal. The proposal submitted by Respondent shall be subject to review, modification and approval by EPA. After submittal of the proposal, Respondent shall be afforded an opportunity to confer with EPA on a date specified by EPA to discuss the terms of the proposal. Following this conference and after review, modification (if any), and approval of the proposal by EPA, Respondent shall forthwith conduct, carry out and implement the sampling, analysis, monitoring and reporting program according to its approved terms and schedules. The written proposal ordered herein must be submitted by Respondent to the Contact Person, at the address listed below, within thirty (30) days of Respondent's receipt of this Order.

LIABILITY

If EPA determines that Respondent is not able to conduct the activities required by this Order in a satisfactory manner, is not able to conduct the activities contained in the approved proposal, or if actions carried out are deemed unsatisfactory, then EPA may conduct such actions deemed reasonable by EPA to ascertain the nature and extent of the hazard at the facility. Respondent may then be ordered to reimburse EPA for the costs of such activity pursuant to §3013(d) of the Act. In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.

WITNESS MY HAND as Regional Administrator pursuant to the authority of the Administrator of the United States Environmental Protection Agency, on this ____ day of _____, 1984.

By: _____

Regional Administrator

Contact Person:

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APPENDIX B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: Environmental Protection Agency, Complainant, v. Respondent. Proceedings under §§ 3008 and 3013 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928 and 6934.	)	RCRA Docket X83-11-08-3008 3013 FINDINGS OF FACT, AGREED COMPLIANCE ORDER, AND AGREED ORDER REQUIRING SUBMISSION AND IMPLEMENTATION OF PROPOSAL FOR SAMPLING, ANALYSIS, MONITORING AND REPORTING

PRELIMINARY STATEMENT

1. This is an administrative action instituted pursuant to Sections 3008(a) and 3013 of the Resource Conservation and Recovery

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Act [42 U.S.C. Sections 6928(a) and 6934], hereinafter referred to as "the Act" or "RCRA". The Complainant is Region of the United States Environmental Protection Agency (EPA).

2. Complainant has reason to believe that , ("Respondent") has violated Section 3005 of the Act [42 U.S.C. §6925] as set forth below. Additionally, the Regional Administrator of EPA Region , by and through authority duly delegated from the Administrator of EPA, having been presented with information concerning the presence of hazardous wastes that are being stored, treated, and disposed at the facility described below, with information concerning potential releases of hazardous wastes from this facility, and with information that these circumstances may present a substantial hazard to human health or the environment, hereby issues the following Findings of Fact, Determination, Compliance Order, and Order Requiring Submission, pursuant to Sections 3008 and 3013 of the Act [42 U.S.C. Sections 6928 and 6934] that are set forth below.

3. Respondent consents to comply with the penalty assessment, Compliance Order and Order Requiring Submission as described below.

FINDINGS OF FACT

1. submitted a Notification of Hazardous Waste Activity (EPA Form 8700-12) for its facility near which was received by Complainant on . This notification satisfied Section 3010(a) of the Act. This notification indicated that was a generator, transporter, and treater, storer, and/or disposer of hazardous waste. The facility is

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located at and was then and is now known as (hereafter "the facility").

2. submitted a Part A application (EPA Forms 3510-1 and 3510-3) dated , which was received by Complainant on November 18, 1980, as required by 40 CFR Part 270.10(e)(1). This application stated that , was a storer and disposer of hazardous waste at the facility.

3. had operated a facility at since , and including a period of time prior to and after November 19, 1980. At the facility, accepted waste including hazardous waste for storage and/or disposal as indicated on its notification and Part A permit application. Therefore, the facility known as qualified for Interim Status pursuant to Section 3005(e) of the Act.

4. 40 CFR Part 265 establishes and sets forth standards, known as the Interim Status Standards (ISS), which were promulgated pursuant to Section 3004 of the Act, and which are applicable to all hazardous waste treatment, storage, and disposal facilities that qualify for Interim Status. These standards apply to such facilities until final administrative disposition has been made of permit applications submitted by owners and operators of such facilities. No such disposition has been made with respect to the facility. Thus, the standards of 40 CFR Parts 270, 124, and 265 apply to the facility.

5. In correspondence from , dated , Complainant was notified that Respondent intended to acquire all of the capital stock of and to liquidate

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the assets of into ,
The letter further stated that would continue the operations of at the facility. The notification was submitted pursuant to 40 CFR Part 122.23 (now 270.72).

6. In correspondence dated , Respondent notified Complainant that the operating name of Respondent's facility would be , the date that formal closing of the ownership transaction would occur. After that date, Respondent has owned and operated the facility, known as

.

7. Respondent on , submitted a revised Part A permit application and requested approval to add treatment as a hazardous waste management process to be conducted at the facility. Complainant approved the request on .

8. Respondent thus owns and operates a hazardous waste management facility (IDD) for the treatment, storage, and/or disposal of hazardous wastes, which is subject to the Interim Status provisions of Section 3005(e) of the Act and regulations promulgated under the Act.

9. Complainant issued a letter to Respondent on formally requesting the submission of the Part B permit application. The letter required Respondent to submit the Part B application to the Complainant within six (6) months of receipt of the request.

10. Respondent requested, in correspondence dated , a four (4) month extension for submittal of the Part B application. Complainant approved the request and extended the submittal date

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to ,

11. Complainant has conducted and/or participated in several inspections of Respondent's facility to determine compliance with the Interim Status Standards. An inspection was conducted by Complainant on . Several violations of the ISS were noted during the inspection. Respondent was advised of these findings, which were attached to correspondence dated . Corrective action was required as a part of the Part B permit application but, in any event, within six (6) months of Respondent's receipt of the letter.

12. Complainant again inspected the facility on , 1983, to determine compliance with the ISS. Copies of several documents required to be developed and maintained by the facility were collected and were reviewed in detail after on-site inspection. Several violations of Interim Status Standards were noted and made known to Respondent in a Notice of Violation and Warning (NOVW) dated . Among those noted were violations of requirements for the Waste Analysis Plan (40 CFR §265.13), General Inspections (40 CFR §265.15), Personnel Training (40 CFR §265.16), Contingency Plan (40 CFR §265.52), Groundwater Monitoring (40 CFR Part 265 Subpart F), and Closure and Post-Closure (40 CFR Part 265 Subpart G). In the NOVW, Respondent was required to submit a plan and schedule for compliance.

13. Respondent submitted a plan and schedule dated 1983 for compliance with the items noted in the , NOVW, and requested an extension of the 30 day submittal requirement for 40 CFR 265 Subpart F violations, until . Complainant granted the extension, in correspondence dated , to

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allow completion of geotechnical work then underway at the site. Respondent subsequently submitted the plan and schedule, in correspondence dated , in which Respondent proposed installation of a groundwater monitoring program. Complainant accepted Respondent's plan and schedule, with some revisions, in correspondence dated , 1983, and advised Respondent that full compliance with ISS groundwater monitoring requirements was required to be achieved by , . A ground water waiver demonstration was developed by Respondent. Based on an inspection in and subsequent review of the waiver demonstration Complainant advised Respondent in the NOVW dated that the waiver demonstration was inadequate. Respondent therefore has not implemented a groundwater monitoring program (or developed a complete waiver demonstration) capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility as required by 40 CFR Part 265 Subpart F.

14. A storm and flash flood occurred at Respondent's facility on the night and/or morning of , which may have exceeded a 25-year storm event. Complainant conducted an inspection of the facility on during which erosion and other signs of runoff from the site were noted at two areas of the facility. The erosion noted was due to runoff from the storm. Inspectors noted liquid in an active hazardous waste disposal trench (Trench). This liquid had flowed into the disposal trench from surrounding areas during the storm. After the storm, facility personnel constructed a berm at the end of Trench to deflect future storm run-off into that trench. Failure to prevent

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flow of surface water into an active hazardous waste disposal trench constitutes a violation of 40 CFR §265.302(a).

15. Complainant was advised on or about by the County Prosecutor that violations of the Interim Status Standards had allegedly occurred at Respondent's facility during the approximate period of through . Respondent was alleged to have disposed of large quantities of drums of improperly solidified and unsolidified liquid waste in Respondent's disposal trench used for disposal of hazardous waste (Trench).

16. On or about , Respondent voluntarily began excavating and exhuming drums of waste previously disposed in Trench . Complainant has continually observed excavation activities since . Excavation of drums continues to date by Respondent. As drums have been recovered from the disposal trench they have been individually opened and examined by representatives of Respondent and Complainant.

17. During the period of , Respondent removed 1412 drums from the disposal trench (Trench). Of these, 528 drums were determined to contain liquid in whole or in part as follows:

a. 145 drums full or containing greater than approximately 75% liquid

b. 33 drums containing between approximately 50% and 75% liquid

c. 44 drums containing between approximately 25% and 50% liquid

d. 226 drums containing between approximately 5% and 25% liquid

e. 80 drums containing less than approximately 5% liquid

18. At the request of Complainant, Respondent provided control records that document the dates that some of the above-mentioned 528

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drums containing liquids were placed in the disposal trench. These records disclosed that drums found to contain liquids were placed in Trench on at least the following occasions:

Date	Control No.	No. of Drums
5/27/82	2352	21
	2358	7
	2281	3
5/20/83	2323	1
6/10 and 8/9/83	2330	9
8/3/83	2343	32
	2361	4
	2392	16
6/3/83	2370	7
	2374	47
6/10/83	2381	2
6/21/83	2386	6
	2384	5
6/18/83	2443	13

Such placement of liquids in Trench was in violation of 40 CFR §265.314. Some of the control documents provided to Complainant fail to clearly account for all containers in each shipment of hazardous waste manifested to the facility.

19. On and , Complainant again inspected Respondent's facility. The purpose of the inspection, in part, was to determine compliance with RCRA Interim Status Standards. More specifically, the inspection was to examine facility

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operations and physical conditions at the facility. The inspection disclosed the following:

a. Approximately 8,500 drums were in storage at the facility. The number of drums in storage is increasing.

b. Several drums containing hazardous waste in storage on-site were corroded or badly deteriorated; specifically, drums of hazardous waste designated as D007 were bulging and had not been managed in accordance with 40 CFR §265.171.

c. Several drums containing hazardous waste in storage on-site were leaking either from the top seals or openings or through the drum; specifically, drums of hazardous waste designated by waste codes on the labels as containing F003, F005, D001, D006, and phosphoric acid, were leaking, and had not been managed in accordance with 40 CFR §265.171.

d. Several drums containing hazardous waste were stored with open tops; specifically, drums designated by waste codes on the labels as containing D002/D007 and F003/F005 had open tops, in violation of 40 CFR §265.173(a).

e. Drums containing hazardous waste were stored in a manner which may cause them to leak; specifically, drums were stored directly on the ground surface and in areas of poor drainage which may cause or accelerate drum deterioration or rusting, in violation of 40 CFR §265.173(b).

f. Run-off from active portions of the facility was not collected in a collection system. Prevailing grade determines the course of run-off and natural ponding. Ponds

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formed by run-off or run-on were allowed to evaporate or percolate into the soil, in violation of 40 CFR §265.302(b).

g. The diversion structure (a berm) which had been constructed to cause run-on into Trench 11 was still in place, in violation of 40 CFR §265.302(a).

h. Inspections by Respondent of containers in storage had not been adequate to detect deterioration and releases of hazardous waste constituents to the environment, in violation of 40 CFR §265.15(a). Remedial action had not been initiated to correct such drum management problems in violation of 40 CFR §265.171.

i. Respondent's facility was not then currently maintained and operated to minimize the possibility of unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to air, soil, or surface water; specifically, any spill during use of the stabilization pad could result in hazardous waste flow to surrounding soil, and failure of any container of hazardous waste in storage would result in discharge to the soil or surface water, in violation of 40 CFR §265.31. Additionally, Respondent's facility is not equipped with a facility or system to prevent the release of hazardous waste or hazardous waste constituents from trucks or other vehicles leaving the site.

20. At Respondent's facility there are underground structures .

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These structures were filled with liquid and solid hazardous waste and hazardous waste constituents prior to November 19, 1980. The integrity of the underground structures is unknown. Respondent, in correspondence dated , advised Complainant that groundwater had been encountered beneath the site near a depth of 200 feet.

21. A well reaching a deep artesian aquifer was constructed as part of the original facility. An integral part of that well is its steel casing. The water produced by this well contains natural chemical compounds which may be destructive to metals such as the steel well casing. The well and construction materials are approximately 25 years old. The condition and integrity of the casing and well head are unknown. The well head is situated in an underground structure (the power house) which is connected by a series of tunnels, structures, and access doors to underground structures containing hazardous waste. The potential of a well casing failure exists. Such a failure could result in the release of a large volume of water to the soil and to hazardous waste disposal units, which might result in the release of hazardous waste by leachate production and migration off-site by means of surface run-off or groundwater flow. The well presents a potential risk of unplanned sudden and non-sudden release of hazardous waste or hazardous waste constituents.

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CIVIL PENALTY

In view of the violations noted in the Findings of Fact above, Complainant hereby assesses a civil penalty of ONE HUNDRED FIFTY THOUSAND DOLLARS [$150,000].

DETERMINATION

Based upon the above information, it is hereby determined pursuant to Section 3013 of the Act that:

1. The facility as described hereinabove, owned and operated by the Respondent, is a facility at which hazardous wastes are present and at which hazardous wastes have been treated, stored, and disposed.

2. The methods and practices employed at the facility for treating, storing, and disposing of hazardous wastes are such that the presence of the hazardous wastes at the facility may present a substantial hazard to human health or the environment.

3. The releases of hazardous wastes and/or hazardous waste constituents at the facility may have migrated to surface or groundwater. Several off-site wells on adjacent or nearby property exist which could be or could become contaminated as a result of such releases. Therefore, the release of hazardous wastes at the facility may present a substantial hazard to human health or the environment.

COMPLIANCE ORDER

Based upon the foregoing and pursuant to Section 3008 of the Act, it is hereby ordered that the Respondent take the following corrective actions within the time periods specified:

1. Respondent shall upon its receipt of this Order initiate telephone contact with all known generators and transporters of hazardous waste who ship or transport hazardous waste to Respondent's facility and advise each:

a. to immediately cease shipping any containerized hazardous waste or bulk hazardous waste which contains free liquids to the facility until further notice; and

b. to allow shipments of hazardous waste already in transit to the facility to continue to the facility; and

c. that any shipments of containerized hazardous waste or bulk hazardous waste which contain free liquids will not be accepted at the facility if shipped after the telephone notice.

The telephone notifications shall be completed as soon as possible but in any event all such generators and transporters must be so notified within three (3) working days of Respondent's receipt of this Order.

2. Respondent shall follow the above telephone notification with written confirmation to each such generator and transporter and shall provide a written summary to Complainant within five (5) working days of Respondent's receipt of this Order, which includes:

a. a copy of each written notification (a single copy of the notification will suffice if the text of all such notifications is identical).

b. a list of the companies to which the notification is sent, including company name, company EPA ID number, mailing

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address of the company, company contact, and company telephone number.

c. a record of the dates the telephone contacts were made.

3. Respondent shall, upon its receipt of this Order, immediately cease and thereafter desist from accepting at the facility any containerized hazardous waste or bulk hazardous waste which contains free liquid and which was shipped from any generator after the aforementioned telephone notification to that generator. In no event shall Respondent accept at the facility any containerized hazardous waste or bulk hazardous waste which contains free liquids shipped later than three (3) working days after Respondent's receipt of this Order; with respect to hazardous waste containing free liquid that is unknowingly accepted at the facility, such waste shall not remain on the facility for a period longer than 24 hours. This prohibition shall remain in effect until Respondent has complied with Paragraph 4 below and further, until Complainant by its Contact designated hereinbelow has notified the Respondent, orally or in writing, that this prohibition has been removed.

4. Respondent shall immediately upon its receipt of this Order implement procedures which assure that no container containing free liquids is placed in a landfill. These and/or alternative procedures shall be documented in writing and submitted to Complainant for review and approval. Until Complainant has advised the Respondent, orally or in writing, that the procedures are approved, Respondent shall open and inspect all containers of hazardous waste prior to placement in a landfill and shall verify that no free liquids exist in any such

container. Following Complainant's approval, orally or in writing, Respondent shall immediately implement the approved procedures.

5. Respondent shall remove from Trench all liquids disposed therein in violation of 40 CFR §265.314. In order to accomplish this, Respondent shall continue to excavate, exhume, and examine for liquids, drums and/or containers disposed in Trench at the facility. This activity shall continue until Complainant notifies Respondent in writing that such activity may cease. Respondent shall remove for solidification drums containing free liquid in accordance with EPA guidance and Complainant's on-site representative when such is present.

6. Respondent shall within fifteen (15) working days of its receipt of this Order create and maintain a current written record of the total inventory of containers of hazardous waste in storage on-site. This inventory shall include all containers which are or have been exhumed from the landfill and which contained free liquids when exhumed. Respondent shall not allow the storage inventory of containers to exceed the design capacity of the facility which is currently defined by the Part A application on file with Complainant.

7. Respondent shall develop, install, and put into operation equipment and/or procedures to remove hazardous waste or hazardous waste constituents from exterior surfaces of vehicles which leave the site. Respondent shall, within fifteen (15) working days of its receipt of this Order, submit to Complainant for approval a written plan and proposal for this purpose, including a proposed schedule for installation and implementation. This plan and proposal must assure that no vehicle leaving the facility is visibly contaminated with

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hazardous waste and must assure that any dirt, soil, or other material which has become adhered to the exterior of the vehicle, is removed prior to leaving the site. The plan and proposal shall provide that all such materials removed, including any washing solutions or wastewater, shall be treated as hazardous waste unless it can be demonstrated otherwise. Upon approval of the plan by Complainant, Respondent shall immediately implement the plan.

8. Respondent shall, within fifteen (15) working days of its receipt of this Order, develop a written plan and schedule to divert run-on away from active portions of the facility and to collect and manage, as hazardous waste, run-off from active portions of the facility in accordance with 40 CFR §265.302. The plan and schedule shall be submitted to Complainant for review and approval. The plan and schedule as approved by Complainant shall be implemented by Respondent immediately upon receipt of written approval by Complainant.

9. To the extent Respondent has not already done so, Respondent shall, by , attempt to enter into arrangements or agreements with local authorities such as police and fire departments, emergency response teams, contractors and equipment suppliers, and local hospitals, in compliance with 40 CFR §265.37(a). Where such arrangements or agreements have not been reached by Respondent shall document the refusal of such State, County, or other local authorities to enter into such arrangements, in compliance with 40 CFR §265.37(b).

10. To the extent Respondent has not already done so, Respondent shall, within fifteen (15) working days of its receipt of this Order,

maintain a written operating record at the facility, including records of the dates of disposal and location and quantities of hazardous waste, in compliance with 40 CFR §265.73(b).

11. Respondent shall, within fifteen (15) working days of its receipt of this Order, cease and thereafter desist from the storage of drums of hazardous waste in a manner which may cause them to deteriorate and/or leak, including the closing of all drums in storage and removal of drums from storage on the ground surface and/or in areas of poor drainage, in compliance with 40 CFR §265.173.

12. Respondent shall upon its receipt of this Order implement procedures to inspect daily all containers of hazardous waste on-site. Respondent shall further, within fifteen (15) working days of its receipt of this Order, transfer any hazardous waste contained in corroded, deteriorated, leaking, or bulging drums, or drums not in good condition, into sound drums in good condition or shall otherwise comply with 40 CFR §265.171. Thereafter, Respondent shall comply with 40 CFR §265.171.

13. To the extent Respondent has not already done so, Respondent shall, within thirty (30) days of its receipt of this Order, equip its facility with a continuously operable and operating internal communications or alarm system in compliance with 40 CFR §265.32(a) and (b).

14. Respondent shall, within thirty (30) working days of its receipt of this Order, prepare and submit to Complainant a written plan and schedule to maintain and operate Respondent's facility so as to minimize the possibility of unplanned sudden or non-sudden

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releases of hazardous waste to soil or surface water. The plan shall provide for at least the following specific measures:

a. such measures as are necessary to eliminate the threat of failure of the well casing in the on-site artesian well. The plan shall contain provisions to permanently plug the well. The plan, as approved by Complainant, shall be implemented immediately upon approval.

b. such measures as are necessary to minimize, contain, or prevent the release of hazardous waste to the soil or surface water upon the failure of any container or tank.

c. such measures as are necessary to minimize, contain, or prevent:

(1) any release due to spillage during off-loading of hazardous waste into the stabilization pond, and

(2) any release due to failure of the berm surrounding the stabilization pond during use and/or treatment of hazardous waste for stabilization or solidification.

15. Respondent shall implement and comply with the groundwater monitoring proposal and schedule submitted to Complainant in correspondence dated . Respondent shall also, within seven (7) working days of its receipt of this Order, provide a written response to Complainant's letter of which provided comments on the Respondent's proposal. The written response shall document the actions Respondent has taken or intends to take with respect to the fourteen (14) comments in Complainant's letter, except for item twelve (12), which is covered under the Section 3013

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Order, infra. Additionally, Respondent shall include in the Part B application for the facility (due) a plan and proposal, including timeframes, for installation and implementation of a groundwater monitoring system and program that fully complies with 40 CFR Parts 264 and 265, Subparts F.

16. Respondent shall immediately upon its receipt of this Order provide access to to employees, agents, and contractors of Complainant at all reasonable times, for the purposes of inspecting and verifying the status of Respondent's compliance with this Order, in accordance with and pursuant to the authority of §3007 of the Act, 42 U.S.C. §6927.

ORDER REQUIRING SUBMISSION AND IMPLEMENTATION OF PROPOSAL FOR SAMPLING, ANALYSIS, MONITORING AND REPORTING

Pursuant to Section 3013 or the Act [42 U.S.C. §6934], and in order to ascertain the nature and extent of the hazard at the facility as described hereinabove, Respondent is hereby ordered to submit a written proposal to EPA for the sampling, analysis, monitoring and reporting of the hazardous wastes and hazardous waste constituents that are present at or that may have been released from the facility, and is hereby ordered to implement such proposal, once approved by EPA. Such written proposal shall contain, but is not limited to, the following:

1. A determination of whether hazardous waste or hazardous waste constituents have leaked or are leaking from the underground structures. This shall include a plan and timetable for the installation of a groundwater monitoring program, including

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recommendations as to locations, depth, and construction thereof, designed to monitor groundwater elevation and water quality.

2. A sampling and analysis plan for groundwater at or near the underground structures containing waste which describes frequency of sampling, and procedures and quality assurance measures for sampling and analyzing for hazardous waste and hazardous waste constituents. The plan shall provide that groundwater be sampled and analyzed at least quarterly for one year. The plan shall also provide for analysis of all priority pollutants contained in Appendix VIII of 40 CFR Part 261 for at least two of the sampling periods.

3. A proposal, including timeframes, for determining the chemical composition of the contents of any container which has been exhumed from and which contained free liquid at the time of exhumation. Such determination shall include, as a minimum, sampling and analysis of a representative number of such containers. Such proposal shall be sufficient to determine whether Respondent's records and record-keeping procedures accurately reflect drum contents and the chemical composition of liquid hazardous wastes disposed by Respondent. Nothing in this paragraph shall limit the exhumation, processing, and disposal activities required by this Order prior to approval and implementation of this proposal.

4. A proposal, including timeframes, for determining the extent of any hazard presented by hazardous waste or hazardous waste constituents that have leaked or otherwise been released to the environment from tanks, containers, vehicles, or other containment devices, or that have otherwise originated from active treatment, storage, or disposal units at the site. This proposal shall

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specifically include sampling of soils, both on and off-site (assuming access can be obtained), sufficient to document the extent of contamination by hazardous waste or hazardous waste constituents that may have resulted from past events, including:

a. rainfall and resulting run-on and run-off;

b. liquid waste solidification activities;

c. waste transfer between process units at the facility;

d. vehicle entry, vehicle unloading, and vehicle exit from the facility;

e. other on-site waste management practices including, inter alia, container storage, tank storage, treatment, and disposal of hazardous waste.

5. A provision for site access for employees, agents, and contractors of Complainant at all reasonable times for purposes of inspecting and verifying compliance with the approved proposal in accordance with and pursuant to the authority of §3007 of the Act, 42 U.S.C. §6927.

6. A description of the means of implementation of the items set forth above, a proposal for reporting to EPA on the progress of these times, and for reporting the results of the sampling, analysis and monitoring program.

OPPORTUNITY TO CONFER

Under the provisions of the Act, Respondent may confer with EPA at any time prior to submittal of the §3013 proposal. The proposal submitted by Respondent shall be subject to review, modification and approval by EPA. After submittal of the proposal, Respondent shall be

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afforded an opportunity to confer with EPA on a date specified by EPA to discuss the terms of the proposal. Following this conference and after review, modification (if any), and approval of the proposal by EPA, Respondent shall forthwith conduct, carry out and implement the sampling, analysis, monitoring and reporting program according to its approved terms and schedules.

CONTACT

The written proposal ordered herein must be submitted by Respondent to at the address listed above, within thirty (30) days of Respondent's receipt of this Order. Submittals required by the Section 3008 Compliance Order, supra, as well as any questions, shall likewise be addressed to

LIABILITY

If EPA determines that Respondent is not able to conduct the activities required by this §3013 Order in a satisfactory manner, is not able to conduct the activities contained in the approved proposal, or if actions carried out are deemed unsatisfactory, then EPA may conduct such actions deemed reasonable by EPA to ascertain the nature and extent of the hazard at the facility. Respondent may then be ordered to reimburse EPA for the costs of such activity pursuant to §3013(d) of the Act. In the event Respondent fails to comply with the terms and provisions of this §3013 order, EPA may commence a civil action to require compliance with such order and to assess a civil penalty of not to exceed $5000 for each day during which such failure or refusal occurs.

CONSENT

1. In connection with this matter, the Respondent consents to the following:

a. To pay the assessed civil penalty of $150,000, on the terms described below.

b. To comply in full with the Compliance Order issued pursuant to Section 3008 of the Act.

c. To comply in full with the Order Requiring Submission and Implementation of Proposal for Sampling, Analysis, Monitoring and Reporting.

2. The consent of both Respondent and Complainant to settle this matter on the terms and conditions set forth in the penalty assessment and order provisions of this document (hereafter collectively referred to as the "Order") is based upon the following:

a. Respondent neither admits nor denies any factual or legal allegations contained in this Order. Nevertheless, in full and complete settlement of this matter, Respondent agrees to be bound by the terms of this Order, consents to the assessment of the civil penalty set forth herein, and explicitly waives its right to request a hearing regarding any provision of this Order.

b. The provisions of this Order imposing duties (other than the payment of penalties) upon Respondent shall apply to and be binding upon not only Respondent, but also its officers, agents, servants and employees, and upon all those in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

c. It is the intention of this Order to bring Respondent and all operations at the facility in compliance with the provisions of RCRA and applicable RCRA regulations. It is not Complainant's intention by this Order to impose standards or conditions more stringent than those specified in the aforementioned provisions except to the extent that it may be necessary to remedy existing alleged violations at the facility.

d. This Order shall in on way relieve the Respondent of its obligation to comply with any other local, State or Federal law in any way related to the substance of this Order.

e. This Order is not and shall not be interpreted to be a permit for treatment, storage or disposal of hazardous waste under Section 3005 of RCRA (or under the terms of a State program operating in lieu of the Federal program under Section 3006 of RCRA), nor shall this Order in any way affect the Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be validly imposed as conditions for the issuance of such permit nor of Respondent's right to appeal any conditions of such permit.

f. This Order is being entered into between Complainant and Respondent in full settlement of all civil penalties for the alleged violations identified herein. Nothing in this Order shall restrict the right of Complainant to initiate further enforcement action for penalties or otherwise only in the

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event additional facts are uncovered which are unknown to Complainant at the time this Order is entered and which justify such action.

g. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for abatement of any imminent and substantial endangerment to the public health, welfare or the environment posed by this facility.

h. Within 60 days of the date hereof, Respondent shall pay by cashier's or certified check, a civil penalty in the amount of $150,000.00 in full and complete settlement of all violations alleged herein. Such check shall be payable to the Treasurer, United States of America, and shall be remitted to , Regional Administrator.

i. Complainant shall expeditiously review all plans and proposals submitted pursuant hereto and shall not unreasonably withhold its approval.

j. The terms of the Order may be modified by written mutual agreement of the parties.

k. This Order shall terminate two years from the date it is entered or on the date of issuance of the Part B permit, whichever is earlier.

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3. By the following signatures, the Complainant and Respondent hereby consent to the entry of the Order on the terms and conditions herein stated:

DATED:

_____
Respondent

_____
Secretary

DATED:

_____
, Regional Counsel
EPA, Region
Attorney for Complainant

_____
Assistant Regional Counsel
EPA, Region
Attorney for Complainant

ENTRY OF FINAL CONSENT ORDER

It is so Ordered as set forth above. This ORDER, including each and every portion hereof, shall become effective immediately.

Regional Administrator
EPA, Region 10

DATED this

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MODIFICATION OF AGREED ORDER
ENTERED INTO , BETWEEN ENVIRONMENTAL
PROTECTION AGENCY REGION AND

Upon the mutual agreement of the parties to the above-referenced Agreed Order as evidenced by the signatures below, and pursuant to Paragraph 2.j. of the "CONSENT" section thereof (p. 25 of 26), the Agreed Order is hereby modified as follows:

1. Page 13 of the Agreed Order shall be amended as follows:

   a. On line 11 thereof, omit "three (3)", and insert "ten (10)" in place thereof;

   b. On line 14 thereof, omit "five (5)", and insert "twelve (12)" in place thereof.

2. Page 14 of the Agreed Order shall be amended as follows: On line 2 thereof, omit "three (3)", and insert "ten (10)" in place thereof.

3. Noncompliance with Paragraph 4 on Page 14 of the Agreed Order prior to shall, in the sole discretion of the Complainant by its Contact designated on Page 22 of the Agreed Order, and without further notice or opportunity for a hearing, effect a further unilateral modification of any of the three provisions modified above, but such modification shall maintain the existing date relationship of Paragraphs 1, 2 and 3 on Pages 12-14 of the Agreed Order of

_____ _____
DATE

_____ _____
DATE for Environmental Protection Agency Region

ENTRY OF ORDER AMENDING AGREED ORDER

IT IS SO ORDERED.

_____ _____
DATE Regional Administrator

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APPENDIX C

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	RCRA Docket
	)	
	)	
	)	
	)	ORDER
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	)	
	)	
Respondents.	)	
	)	
	)	
Proceedings under §3013 of the Resource Conservation and Recovery Act, 42 U.S.C. 6934.	)	

ORDER FOR REIMBURSEMENT OF

MONITORING, TESTING, AND ANALYSIS COSTS

This Order is issued pursuant to Section 3013(d) of the Resource Conservation and Recovery Act [42 U.S.C. 6934 (d), hereinafter referred to as "the Act"], by the undersigned, the Assistant Administrator for the Office of Solid Waste and Emergency Response, a duly authorized designee of the Administrator of the United States Environmental Protection Agency (EPA), to

Respondents.

DETERMINATIONS AND FINDINGS OF FACT

The undersigned makes the following determinations and findings of fact:

1. The Facility [hereinafter referred to as, "the Facility"] is located at , near the junction of Road and Street in . The Facility is owned and operated by .

2. is managing owner, operator and Chairman of the Board of Directors of Company, Inc.

3. was, until , the President of .

4. and each have personally participated in each and every operation conducted at the Facility. Together they exercise or have exercised control over all activities occurring at the Facility.

hereinafter referred to as "Respondents".

5. The EPA Administrator determined, on or before August , 198 , that the presence of hazardous waste at the Western Processing facility and the release of hazardous waste from the facility may be presenting a substantial hazard to human health or the environment and that determination required monitoring, sampling, analysis and reporting. The basis for that determination is documented in an Order issued to Respondents signed by Administrator

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on August , 198 , pursuant to the authority of Section 3013 of the Act.

6. The §3013 Order was served on the Respondents on August 17, 1982.

7. The §3013 Order required the Respondents to submit to EPA a proposal for monitoring, testing, analysis, and reporting of hazardous waste and hazardous waste constituents that are present at or that have been released from the facility, and to implement such proposal, once approved by EPA. The Respondents were required to submit the proposal to EPA within thirty (30) days of receipt of the Order.

8. Notwithstanding such Order, Respondents failed to submit any proposal and on September , 198 , notified EPA that the Respondents were unable to develop the proposal and to implement monitoring, testing, analysis, and reporting.

9. Based upon the Respondents' failure to submit the required proposal and the notification by the Respondents of their inability to develop the proposal and implement the required investigation, the Assistant Administrator for the Office of Solid Waste and Emergency Response determined that no owner or operator was able to conduct the required monitoring, testing, analysis, and reporting.

10. Accordingly, and pursuant to the authority contained in §3013(d) of the Act, the Assistant Administrator for the Office of Solid Waste and Emergency Response, acting through the Regional Administrator of Region 10 EPA, undertook to conduct monitoring, sampling, and analysis of the site to ascertain the nature and extent

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of the hazard associated with the site. Such activity was initiated on September , 198 .

11. Monitoring, testing, and analysis conducted through November , 198 , have resulted in expenditures of funds in the sum of $184,450. This sum has been expended for conducting monitoring, testing, and analysis on or in the vicinity of the Western Processing site deemed necessary and reasonable to ascertain the extent of the hazard associated with the site.

12. The $184,450 has been expended as follows:

Prime Contractor Personnel Costs.

Field Investigation Team	1,958 hrs @ $35.00	$68,530.00
Technical Assistance Team	395 hrs @ 35.00	13,825.00
Prime Contractor Total		$82,355.00

Sub-Contractor Costs

South Seattle Asphalt	$1467.98
RJB Wholesale	2729.27
RJB Wholesale	518.82
Sanikan	209.34
National Barricade	468.77
Rental Mart - submersible pump	332.28
Analytical Services Center (Buffalo)	2400.00
Burns Security	1542.30
Brooks Truck Line - forklift, flatbed	339.99
Story and Dodge (well driller)	20444.50
Crosby and Overton - barrel storage	360.00
City of Kent - Water	45.00

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Sub-Contractor Total		$30,858.25
Equipment and Supplies		
Sears - fencing gate	$ 324.39	
Sears - come-along hand wrench	85.18	
Burdic Feed and Hardware - wire stretcher	56.90	
N.W. Stationers - stencil and paint for drums	68.05	
Cascade Bag - sample bags	79.82	
Seattle Barrel Company	1427.10	
Lone Star Industries	223.66	
Glacier Sand and Gravel	275.84	
J.C. Penny's - lantern	45.78	
MSA - supplies, cartridges, respirator supplies	896.53	
check valve, hydrant wrench	35.52	
pipe without gasket	152.61	
drive caps	46.86	
disposable gloves	114.60	
diesel, gas, ice, small equipment	156.69	
personal mileage, supplies, maintenance	172.85	
film development and purchase	54.00	
Seattle Skin Diving - refill air bottles	38.07	
Andrews Machinery - pressure release valve	17.34	
Sears paint for drums	28.46	
Label Master Labels	27.96	
Equipment and Supplies Total		$4328.11

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Car Rental		
3 vehicles @ $6.10 per day (157 days)	$957.70	
1 vehicle @ 6.50 per day (5 days)	32.50	
Mileage	891.00	
Gasoline	645.00	
Car Rental Total		$2526.20

Analytical Support (Laboratory) (includes 10% Mgmt. overhead)		
Soil samples - inorganics	122 samples @ $93	$11,346.00
- organics	124 samples @ $ 305	37,820.00
Water samples - inorganics	25 samples @ 93	2,325.00
- organics	25 samples @ 305	7,625.00
Special services		
high hazard samples	1 @ $398	398.00
Filter samples	35 @ 8	280.00
% moisture	124 @ 5	620.00
Analytical Support total		$60,414.00
Sample Transportation and Packaging	3,968.69	
Grand Total to November 29, 1982		$ 184,450.24

The above sum covers only activities which were carried out under contract to EPA. Activities carried out by EPA personnel are not included in the above sum.

ORDER

Based upon the determinations and findings of fact above, the Respondents are hereby ordered to pay a sum of ONE HUNDRED EIGHTY FOUR

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THOUSAND FOUR HUNDRED FIFTY dollars ($184,450) to reimburse the United States for incurred costs of the monitoring, testing and analysis conducted through November , 198 . This sum shall be paid within 15 days of the date of this Order by a certified check payable to "Treasurer, United States of America." This payment must be remitted to the contact person at the address below.

Failure to comply with the terms of this Order may subject Respondents to a civil action by EPA for assessment of a penalty of an amount not to exceed $5,000.00 for each day of such failure to comply.

The contact person shall be:

Witness my hand as Assistant Administrator for the Office of Solid Waste and Emergency Response pursuant to the Authority of the Administrator of the United States Environmental Protection Agency.

Dated this _____ day of _____, 198 .

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