UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
L.H., Inc. & C&D Oil Co.,	)	Docket No. V-W-83-010
	)	
Respondent	)	

1. RCRA - Operator of a facility in existence on November 19, 1980, which stores listed hazardous waste and has not been granted a permit or achieved interim status and whose operation has been shut down by a consent court-decree, assessed a civil penalty for violating RCRA by not closing the facility in accordance with the requirements of the interim status standards, 40 C.F.R. Part 265, Subpart G. and 40 C.F.R. 265.228(a).

2. RCRA - Operator of a facility in existence on November 19, 1980, which stored listed hazardous waste after that date assessed a civil penalty for violating RCRA by operating without permit and without achieving interim status.

Appearances:

Lewis M. Tingle, 845 Wheeling Avenue, Cambridge, OH, for Respondent.

Pierre Talbert, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL, for Complainant.

INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA"), section 3008, 42 U.S.C. 6928 (Supp. V 1981) in which the United States Environmental Protection Agency ("EPA") seeks civil penalties for violation of the Act, and has issued an order requiring compliance with the Act. 1/ These proceedings were instituted by the issuance of a complaint by the EPA, which, as amended, named as respondents L.H., Inc., C&D Oil Company, Inc., and Dee B. Heavilin and Margery A. Heavilin. By order of the Administrative Law Judge, dated January 17, 1983, the proceeding against L.H., Inc. was severed from the proceedings against the other respondents, and this decision is concerned only with the proceeding against L.H., Inc. 2/

The amended complaint charged L.H., Inc. with storing hazardous waste without filing a notification of such hazardous waste activity as required by RCRA, section 3010, 42 U.S.C. 6930, and without having obtained a permit or achieved interim status as required by RCRA, section 3005, 42 U.S.C. 6925, and

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1/ Pertinent provisions of section 3008 are:

Section 3008(a)(1): "(W)henever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle [C] the Administrator may issue an order requiring compliance immediately or within a specified time period . . . ."

Section 3008(g): "Any person who violates any requirement of this subtitle [C] shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

Subtitle C of RCRA is codified in 42 U.S.C. 6921-6931.

2/ C&D Oil Company and Dee B. Heavilin and Margery A. Heavilin requested a stay of proceedings because of their having filed petitions for bankruptcy. The requests being unopposed, the proceedings against them have been stayed until further order of the Administrative Law Judge.

with failing to comply with RCRA regulations regarding closure of their facility. A penalty of $25,000 was requested. The compliance order directed L.H., Inc. to submit a plan to close the facility in accordance with the regulations, to comply with that plan, and to respond to certain information which the EPA requested. L.H., Inc. answered alleging that it has been attempting to comply with the law and regulations, and that any failure to comply has been as a direct result of dealings with the Ohio Environmental Protection Agency. A hearing was requested.

A hearing was then held in Columbus, Ohio on December 1, 1983. Following the hearing each side submitted proposed findings of fact, conclusions of law, and a proposed order together with a supporting brief. On consideration of the entire record, a penalty of $25,000 is assessed and the compliance order is affirmed. The findings, conclusions and reasons for this decision follow. All proposed findings and conclusions which are inconsistent with this decision are rejected.

Findings of Fact

1. L.H., Inc., by lease dated May 29, 1980, leased real estate located at 1502 Beckett Avenue, Cambridge, Ohio ("site") for the purpose of treating, storing and disposing of waste acids ("waste pickle liquor") from Republic Steel Corporation's Canton and Massillon, Ohio facilities. Stipulation, Tr. 4. 3/

2. The waste pickle liquors from Republic Steel Corporation's Canton and Massillon, Ohio facilities are listed as hazardous wastes by regulation promulgated pursuant to RCRA, specifically, 40 C.F.R. 261.32, EPA Hazardous Waste No. K062. Stipulation, Tr. 4; Complainant's Exhibit 22.

3/ "Tr." refers to transcript of proceeding.

3. L.H., Inc. constructed three lagoons at the site to treat the waste pickle liquors. Treatment consisted of adding lime to the waste. The treated liquid was then discharged into the Cambridge, Ohio city sewer system. Sludge resulting from the treatment of the waste liquors was allowed to accumulate in the lagoons. Complainant's Exhibit Exhibit 39, pp. 10, 72-73.

4. Field tests conducted at the site by the Ohio Environmental Protection Agency showed that the waste pickle liquor exhibited one or more hazardous waste characteristics not only upon arrival at the site but also prior to discharge to the Cambridge, Ohio sewer system notwithstanding the treatment of the waste by L.H., Inc. Tr. 45.

5. On September 25, 1980, L.H., Inc. ceased its treatment and disposal activities at the site as a result of an inspection by the Ohio Environmental Protection Agency. Complainant's Exhibit 39, p. 71; Tr. 65.

6. Between June 10, 1980, and September 25, 1980, L.H., Inc. had transported approximately 1.5 million gallons of waste pickle liquor from Republic Steel Corporation's Canton and Massillon, Ohio facilities to the site for treatment and disposal. Complainant's Exhibit 40.

7. Subsequent to the Ohio Environmental Protection Agency's September 25, 1980, inspection, the State of Ohio sued L.H., Inc., and the lessors of the site, C&D Oil Company, Inc. and Dee B. Heavilin and Margery A. Heavilin, to enjoin further operations at the site. On May 14, 1982, L.H., Inc. and the State of Ohio entered into a consent decree whereby L.H., Inc. was permanently enjoined from operating a facility for the treatment or disposal of waste at the site, and was ordered to submit to the Ohio EPA within 30 days an approvable written plan for closing the site. Complainant's Exhibit 26.

8. L.H., Inc. did not file with the EPA a timely notification of its hazardous waste activities. Pursuant to RCRA, section 3010, 42 U.S.C. 6930, L.H., Inc. should have notified the EPA of its transportation, treatment, storage and disposal of waste pickle liquor ninety days after that substance had been listed as a hazardous waste in the EPA's regulations. Regulations listing waste pickle liquor as a hazardous waste were promulgated on May 19, 1980 (45 Fed. Reg. 33124), so that L.H., Inc. should have notified the EPA by August 18, 1980. L.H., Inc., however, did not file a notification of any of its hazardous waste activities until over two months later on November 4, 1980, and then reported only its activity as a transporter of hazardous waste. Complainant's Exhibit 18.

9. Pursuant to the provisions of section 3005 of RCRA, 42 U.S.C. 6925, and the regulations promulgated thereunder, 40 C.F.R. 270.10 (formerly 40 C.F.R. 122.22), the treatment, storage or disposal of waste identified or listed by the EPA as hazardous, was prohibited after November 18, 1980, unless either a permit for such activities had been obtained, or the facility had complied with the requirements for interim status. To achieve interim status, the facility was required to have filed a timely notification of its hazardous waste activities and to submit by November 19, 1980, Part A of an application for a permit. L.H., Inc. has never filed a notification of its hazardous waste storage activity, and first applied for a permit to treat and store hazardous waste a year later on November 19, 1981. Complainant's Exhibit 22.

10. There is presently stored in the three lagoons on the site approximately 40,000 gallons of liquid waste and an undetermined amount of sludges which resulted from the treatment of the waste pickle liquor. Stipulation, Tr. 4.

11. The L.H., Inc. site has not been properly permitted as a hazardous waste storage facility. Stipulation, Tr. 4.

12. Currently, the sludges in the site's three lagoons and the liquid waste in lagoon Number 1, possess characteristics which make them hazardous to human health and the environment. Stipulation, Tr. 4; Complainant's Exhibits 44, 45, 46.

13. The liquid wastes in lagoon Numbers 2 and 3 currently do not possess any hazardous characteristics. Stipulation, Tr. 4.

14. On October 26, 1982, concurrently with issuing its complaint in this matter the EPA ordered closure of the L.H., Inc. site pursuant to the provisions of RCRA, section 3008, 42 U.S.C. 6928, and 40 C.F.R. Part 265, Subpart G, and 40 C.F.R. 265.228(a). Stipulation, Tr. 5.

15. L.H., Inc. has not closed the site as ordered by the EPA. Stipulation, Tr. 5.

16. In its answer to the complaint, which it filed on November 15, 1982, L.H., Inc. stated that it desired to close the facility, but is awaiting permission from the Ohio EPA in order to do so. A plan for closing the site conditioned on obtaining the permission of the Ohio EPA to discharge the liquid into the sewer system of the city of Cambridge, Ohio, was submitted as an attachment. L.H., Inc.'s answer; Tr. 13.

17. L.H., Inc.'s closure plan was found by the EPA to be incomplete. The EPA by letters dated December 9, 1982, and January 18, 1983, and by a sample plan furnished to L.H., Inc. on February 2, 1983, during consent settlement negotiations, told L.H., Inc. what information a closure plan should contain. No new or modified plan, however, has been submitted by L.H., Inc. Tr. 14, 19; Complainant's Exhibits 47, 48, 49.

18. On May 6, 1983, the Ohio EPA granted permission to L.H., Inc. in connection with closing the facility to discharge the liquid ("supernatant") in lagoons 2 and 3 into the wastewater treatment system of the city of Cambridge, Ohio, but directed that the liquid in lagoon 1 must be disposed of at an approved treatment or disposal facility to be specified in the closure plan. The consent of the city of Cambridge, Ohio to discharge the liquid in lagoons 2 and 3 was to be obtained first. No effort has been made by L.H., Inc. to obtain the consent of the city of Cambridge to discharge the liquid. Complainant's Exhibit 51; Tr. 57, 75.

19. An inspection by the EPA on November 29, 1983, to determine what had been done at the site pending closure since the previous inspection a year earlier in November 1982, disclosed the following:

a. The site was not posted as a hazardous waste site, nor was it properly secured.

b. The lagoons lacked sufficient freeboard to prevent a release of liquid waste to the environment.

c. There were no run-off controls or earthen dikes to prevent the lagoon's wastes from entering the environment.

d. There was no surveillance of the site by any personnel.

e. The lagoon's liners appear to have deteriorated

Tr. 7-8, 10-11; Complainant's Exhibit 31.

20. Republic Steel Corporation paid L.H., Inc. $118,530, during the period of July 7, 1980 through November 2, 1980, for the transportation and disposal of waste pickle liquor. Complainant's Exhibit 40.

21. The $25,000 start-up capital for L.H., Inc. was repaid to the contributors plus 10% interest. Tr. 84.

Discussion, Conclusions and Penalty

In May 1980, L.H., Inc., undertook to dispose of waste pickle liquor generated by Republic Steel. Waste pickle liquor is listed as a hazardous waste because it is both corrosive and toxic. 4/ The organizers of L.H., Inc., who were also its principal officers, went into the business with no prior experience in handling waste, and with only the most rudimentary knowledge of how to treat the waste they were handling. 5/ They appear to have not concerned themselves with the possibility that what was being done was subject to state and federal regulatory requirements. 6/ After operating for three months, L.H., Inc's. operation was shut down by the State of Ohio. The liquids and the sludges from treating the liquids have since been left standing in the lagoons and there has been almost no progress made in closing the site and removing the hazardous waste.

It is not contested that these activities by L.H., Inc. have resulted in its storing hazardous waste without notifying the EPA, as required by RCRA, section 3010, and without obtaining a permit or achieving interim status as required by RCRA, section 3005. It is also not disputed that although it has ceased receiving waste and has abandoned its waste disposal operation at the site, it has to date not complied with the closure requirements in the EPA's regulations. The sole question in this proceeding is the appropriate penalty.

4/ 40 C.F.R. 261.32. The hazardous constitutents of concern are hexavalent chromium and lead. 40 C.F.R. Part 261, Appendix VII.

5/ Complainant's Exhibit 38, pp. 29, 53, 67; Complainant's Exhibit 39, pp. 13, 37; Tr. 45.

6/ Complainant's Exhibit 38, p. 49; Complainant's Exhibit 39, pp. 36, 42, 72.

RCRA, section 3008(c), 42 U.S.C. 6928(c) provides that the penalty assessed for violation of RCRA's requirements shall be one which is "reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements."

The applicable requirements for closure are set out in the interim status standards, 40 C.F.R. Part 265, Subpart G, and 40 C.F.R. 265.228(a). 7/ Under these standards, L.H, Inc. had until May 31, 1981, or almost a year after it first began operations to prepare a written closure plan. Such closure plan should have been submitted to the EPA for approval no later than May 14, 1982, when L.H., Inc. entered into the consent decree to close operations at the site, and should have provided for prompt removal of the standing liquids, the sludge, the lagoon liners, and the contaminated soils underneath and surrounding the lagoons. 8/ In fact, L.H., Inc. did not submit a closure plan until it filed its answer to the complaint on

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7/ The interim status standards are standards issued under RCRA, section 3004, 42 U.S.C. 6924, applicable to facilities that were in existence on November 19, 1980, and fulfilled the requirements for interim status. Having interim status entitled a facility to continue in operation as though it had received a permit. See RCRA, section 3005(e), 42 U.S.C. 6925(e). L.H., Inc. never achieved interim status (Finding of Fact No. 9, supra). While this affected its right to continue in operation, it was still obligated to comply with the standards with respect to closing the facility. See 45 Fed. Reg. 33159 (1980). The compliance order is simply a remedy in addition to civil penalties for the failure to close the facility as required by the standards. See RCRA, section 3008.

8/ 40 C.F.R. 265.112, 265.228.

November 15, 1982, and has still to submit a plan that the EPA will approve. In the meantime, the site has been left inadequately secured, and unattended. The lagoon containing the harmful liquid waste is exposed to rain which could flood the lagoon and cause its contents to spill over and onto the surrounding soil, and eventually leach into the groundwater. 9/ There is also the likelihood that the acidic property of the waste pickle liquor has caused the liners of the lagoons to deteriorate so as to contaminate the soil underneath and also lead to contamination of the groundwater. 10/

The seriousness of the violation can be judged by the intrinsic hazard of the waste involved and the likelihood of exposure, and also by the extent of deviation from regulatory requirements. 11/ Here the hazardous nature of the waste, the potential for exposure to both humans and the environment, and the unexcusable failure to remedy the situation that L.H., Inc's. officers created by not promptly closing the facility in a manner required by law, all warrant classifying the violation as of the most serious kind.

9/ Finding of Fact No. 19, supra.

10/ Tr. 9-10, 30-32.

11/ See Complainant's Exhibit 35, "A Framework for Development of a Penalty Policy for Resource Conservation & Recovery Act." Although this document has not been officially approved by the EPA, it has been used as a guide in assessing penalties under RCRA, where it has been considered appropriate to do so. See e.g., Cellofilm Corporation, Docket No. II RCRA-81-0114 (Initial Decision, August 5, 1982).

L.H., Inc. argues that the delay in removing the waste has been caused by the slowness with which the Ohio EPA has acted in approving the discharge of the liquid into the city of Cambridge sewer system. That argument would be more persuasive of L.H, Inc's. good faith efforts were it not for the fact that the Ohio EPA in a letter dated May 6, 1983, did approve the discharge of two of the lagoons into the Cambridge sewer system subject to obtaining the consent of the city of Cambridge, and at the date of this hearing, seven months later, L.H., Inc. had done nothing about obtaining the consent of the city of Cambridge. 12/

Further, what pervades this case is the extremely casual attitude which L.H., Inc. and its officers have shown toward complying with the law, which also belies their protestations of good faith. L.H., Inc's officers claim that they relied on the advice of others, including an employee of the Ohio Environmental Protection Agency, for their knowledge of what the law required. 13/ They cannot, however, blame others for their ignorance about governmental requirements when they initially went into the business of treating and disposing of hazardous waste, an operation which by its very nature should have alerted them that it was likely to be subject to both

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12/ Finding of Fact No. 18, *supra*.

13/ See *e.g.*, Tr. 66-70.

federal and state regulation. In any event, since the federal standards were published in the FEDERAL REGISTER on May 19, 1980, L.H., Inc. and its officers were charged with notice of them, regardless of what they may have been told or not told by others. 14/ Further, when it filed the preliminary notification of hazardous waste activity, if not before, L.H., Inc. had actual notice that there was a federal law regulating hazardous waste. 15/ Even filing the preliminary notification was not a good faith attempt to comply with the federal requirements, since the only activity L.H., Inc. was engaged in at that time was the storage of hazardous waste, which was not reported. 16/

14/ See 44 U.S.C. 1507. In Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947), the Supreme Court stated, "[j]ust as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the FEDERAL REGISTER gives legal notice of their contents."

15/ See Complainant's Exhibit 18, the preliminary notification filed by L.H., Inc., where it is stated on the face of the form that the information is required by RCRA, section 3010. If L.H., Inc. had read the instructions for filing notification referred to in the form, it would also have read that a facility that failed to timely file a notification would not be allowed to continue until it had obtained a hazardous waste permit. See 45 Fed. Reg. 12752 (1980).

16/ The Secretary-Treasurer of L.H., Inc. apparently regarded the storage of the waste as something forced upon them by the Ohio EPA. Complainant's Exhibit 39, p. 32. It is true that the Ohio EPA had stopped the disposal of the waste into the Cambridge city sewer system, and was requiring that the waste be disposed of in accordance with an approved plan. Complainant's Exhibit 26. If she had taken the time to read the RCRA regulations, however, she would have discovered that these circumstances did not make the holding of waste any less a storage of waste within the meaning of regulations. "Storage" is defined as "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere." 40 C.F.R. 260.10. See also Environmental Defense Fund v. Lamphier, 714 F.2d. 331, 335 (4th Cir. 1983).

Later, in applying for an Ohio permit, in November 1981, L.H., Inc's. Secretary-Treasurer seems to have been willing to represent that L.H., Inc. would comply with all laws, rules and regulations of both the Ohio EPA and the U.S. EPA. 17/ Yet when L.H., Inc. subsequently in May 1982, entered into a consent order to close the facility, it was still completely ignorant of the federal closure requirements. 18/

Consequently, L.H., Inc.'s failure to comply with the federal standards for closure seems but one more example of the disposition of L.H., Inc. to either ignore altogether or else pay little attention to the federal standards.

In determining the appropriate penalty, account must also be taken of the fact that L.H., Inc. has been operating without a permit and without achieving interim status. The permitting provisions of RCRA are not mere formalities. To the contrary, they are the means by which the comprehensive waste management program to protect human health and the environment mandated by RCRA is carried out. 19/ When granted, the permit establishes the conditions under which the waste management facility can be operated. A facility like L.H., Inc. which was in existence on November 19, 1980, and managing

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17/ Complainant's Exhibit 41.

18/ Tr. 71.

19/ See 46 Fed. Reg. 2803 (1981).

a waste that had been listed by the EPA in regulations promulgated on May 19, 1980, could receive "interim status" authorizing it to continue to operate until a permit has been issued, provided it had timely filed a preliminary notification of hazardous waste activity and Part A of a permit application. 20/ The Part A application contained information about the operation and location of the facility which was to be used by the EPA to fix priorities in processing permits. 21/ Even though it may not have been entitled to interim status because of its failure to file a proper preliminary notification, L.H, Inc. still had to file a Part A application if it continued in existence on or after that date. The rule specifically provided that owners and operators of facilities in existence on November 19, 1980, must submit their Part A application within the time prescribed by RCRA and the regulations, in this case by November 19, 1980. 22/

L.H., Inc's. operating without complying with the permitting requirements either by having a permit or by achieving interim status, is a serious violation for two reasons: First, these requirements would be rendered ineffective as regulatory devices if companies could comply with them

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20/ See 40 C.F.R. 270.70 (formerly 122.23).

21/ See 45 Fed. Reg. 33322 (1980). Subsequently, the facility in "interim status" would be required to file Part B of the application, which would contain more detailed information about its operations. Id, see also 40 C.F.R., section 270.13, 270.14 (formerly 122.24, 122.25).

22/ See former 40 C.F.R. 122.22, 45 Fed. Reg. 33433 (1980) (now codified at 270.10(e)-(H).

at their own leisure. Second, by filing a defective preliminary notification and by not filing either the preliminary notification or its application for a permit promptly, L.H., Inc. had the means for evading regulatory action by the EPA, since it is through such filings that the EPA is informed of the existence and nature of the hazardous waste activity carried on by a facility. These are consequences which possibly have not been specifically considered in the proposed policy submitted as an exhibit in this case, since it analyzes the seriousness of a violation by the likelihood of exposure to a harmful waste. 23/ That policy, however, is proposed only. The importance of the permitting requirements to the effective enforcement of RCRA is a factor which I believe I also may properly consider in determining the seriousness of the violation.

Accordingly, I find, based upon the seriousness of the violations found herein and the absence of any mitigating factors, that $25,000 is an appropriate penalty. A penalty in this amount is justified because the facility in its present condition poses a direct and immediate threat to public health and the environment. It is also justified by L.H., Inc's. conduct in operating a facility without complying with the permitting requirements. 24/

23/ See supra at 9.

24/ I am aware that in City Industries, Inc., RCRA 83-160-R-KMC (order dismissing complaint dated October 4, 1983), which is currently on appeal to the Administrator, Judge Yost indicated that a penalty cannot be levied for failure to apply for a permit. In that case, however, the respondent had complied with the requirements for interim status, and subsequently had been directed by the EPA to submit a Part B application, which contains more complete information about a facility's operation. Here, L.H., Inc. was operating without any authorization at all, a completely different factual situation. Moreover, I respectfully disagree with Judge Yost's ruling to the extent it does hold that the permitting requirements of RCRA and its regulations are not requirements which can be enforced by civil penalties, as well as by action taken to shut down the facility. See, Environmental Defense Fund, Inc. v. Lamphier, 714 F.2d 331, 338 (4th Cir. 1983) (a facility which had terminated its waste disposal activities pursuant to court order can still be required to comply with RCRA's permitting requirements).

L.H., Inc. argues further that the proposed penalty must also take into account its assertedly straightened financial condition, and that no purpose would be served by exacting as a penalty funds which could be used to close the facility. Unlike other statutes, RCRA does not specifically require that a respondent's ability to pay be considered in determining the appropriate penalty. 25/ The difficulty with simply entering a compliance order without a penalty here is that all efforts to close the facility seem to be currently at a standstill, and a compliance order would simply leave L.H., Inc. in the same position it is already in. Nevertheless, recognition will be given to L.H., Inc's. current financial condition as indicated in the data it has produced, in that the penalty assessed herein will be reduced to $12,500, if L.H., Inc. within the time provided in the compliance order hereinafter entered submits a closure plan which the Regional Administrator finds fully complies with the order. This will make part of the money that would otherwise be paid as a civil penalty available for use in closing the facility, but only upon showing that L.H., Inc. is now intending to go ahead in good faith and close the facility by having an approved closure plan. The penalty assessed here, however, is separate and apart from the penalty of up to $25,000 for each day of noncompliance that may be assessed for failure to comply with the compliance order.

25/ See e.g., The Toxic Substances Control Act, section 16(a)(1)(13), 15 U.S.C. 2615(a)(1)(B), wherein the Agency in assessing a penalty is specifically required to consider the violator's ability to pay, and the affect of the penalty upon the violator's ability to continue in business.

I also find that the EPA's compliance order issued on October 26, 1982, and included in the amended complaint is appropriate. Said order is affirmed and is also included as Paragraph 2 of the order entered herein.

ORDER 26/

Pursuant to the Solid Waste Disposal Act, as amended, section 3008, 42 U.S.C. 6928, the following order is entered against Respondent L.H., Inc.:

1. (a) A civil penalty of $25,000, is assessed against Respondent for violations of the Solid Waste Disposal Act found herein. If Respondent within the time provided in the order entered in Paragraph 2 below submits a closure plan which is approved by the Regional Administrator as being in full compliance with said order, the penalty is reduced to $12,500.

   (b) Payment of the full amount of the penalty assessed herein shall be made within sixty (60) days after service of this order upon Respondent by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America.

26/ Unless an appeal is taken pursuant to 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

2. (a) Respondent shall within fifteen (15) days after service of this order, submit a closure plan which meets the requirements of 40 C.F.R. Part 265, Subpart G and 40 C.F.R. §265.228(a) for the hazardous waste facility located at 1502 Beckett Avenue, Cambridge, Ohio, to the Regional Administrator of U.S. EPA.

Respondent's closure plan shall include, at the minimum the following:

i) a description of how and when the facility will be completely closed;

ii) an estimate of the maximum inventory in storage at the facility;

iii) a description of the steps needed to decontaminate equipment during closure;

iv) a description of how remaining soils surrounding and underlying surface impoundments will be tested to determine whether they are hazardous waste;

v) a description of how standing liquids, waste and waste residues, and liners if any, will be removed and how they will be disposed of;

vi) a time schedule setting forth intervening closure activities and dates for completion of those activities.

(b) Respondent shall remove from the facility all hazardous waste in accordance with the time schedule in the closure plan approved by U.S. EPA.

(c) Respondent shall complete closure activities at the facility in accordance with the time schedule in the closure plan approved by U.S. EPA.

(d) Respondent shall submit bi-weekly progress reports to the Regional Administrator of EPA on each milestone set forth in the closure plan approved by U.S. EPA. The reports shall indicate any deviations from time schedules and reasons for such deviations, if any.

(e) Respondent shall respond in full to all questions in the U.S. EPA §3007 RCRA information request, dated June 28, 1982.

(f) Respondent shall allow state and federal employees, agents and contractors, access to the facility during all reasonable hours, for purposes of inspection for compliance with this order.

All submissions required by this order shall be sent to:

Regional Administrator, Region V
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604
Attn: Waste Management Branch 5HW-TUB

Notwithstanding any other provisions of this order, an enforcement action could be brought pursuant to section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the facility may present an imminent and substantial endangerment to human health or the environment.

Gerald Harwood

Gerald Harwood
Administrative Law Judge

February 28, 1984