UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

Philip Yeany (3RC22)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency-Region III
841 Chestnut Building
Philadelphia, PA 19107

Dan Hilliard, Owner
Hilliard Mining Company
550 Dick Road
Butler, PA 16001

Re: EPA SPCC Docket No. PA-89-024

Dear Mr. Yeany and Mr. Hilliard:

Thank you for your participation in this morning's conference call. As we discussed, I have filed an Order Amending Notice of Violation with the Regional Hearing Clerk. I enclose your copies of this Order.

Please call me at (215) 597-9853 if you have any questions. In doing so, please avoid discussion of the merits of the hearing, as such communications may impair my ability to conduct a fair and impartial hearing.

Thank you for your cooperation in this matter.

Very truly yours,

Benjamin Kalkstein
BENJAMIN KALKSTEIN
Presiding Officer

Enclosure

cc: Regional Hearing Clerk (3RC00)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN THE MATTER OF:	:	
	:	SPCC Docket No. PA-89-024
HILLIARD MINING COMPANY,	:	
	:	Proceedings under Section
Respondent.	:	311(j) of the Clean Water Act,
	:	as amended, 33 U.S.C.
	:	§ 1321(j) [as saved
	:	pursuant to Section 6001(d)
	:	of the Oil Pollution Act of
	:	1990, 33 U.S.C. § 2751(d)]

ORDER AMENDING NOTICE OF VIOLATION

Pursuant to the Presiding Officer's June 3, 1993 Order to Show Cause, counsel for Complainant submitted a Response on June 16, 1993. In this Response Complainant moved for leave to amend its Notice of Violation (NOV), based upon its analysis of the applicability of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq.

This analysis, amply supported by Agency memoranda and documentation attached to the Response, showed that if Complainant had properly considered the effect of the PRA when it issued the NOV, the NOV would have recited a period of violation of 620 days rather than the 1340 days it did recite. Complainant's Response suggested a "new" proposed penalty of $1,800 rather than the $3,500 proposed penalty set forth in the NOV.

The Presiding Officer's Order to Show Cause allowed Respondent to file a response on or before July 2, 1993. Respondent filed no written response but the Presiding Officer solicited Respondent's position on Complainant's Motion for Leave to Amend the NOV in a

conference call with the parties' representatives on July 7, 1993. Respondent did not object to amendment of the NOV.

The Presiding Officer finds that Respondent will not be prejudiced by amendment of the NOV, that the interests of justice will be served by granting the Motion for Leave to Amend the NOV, and that this Order can effect the requested amendment. Accordingly,

Complainant's Motion for Leave to Amend the NOV is GRANTED, and this ORDER shall be deemed to amend the NOV as follows:

"Notice of Violation

...the Respondent has violated the requirements of 40 C.F.R. § 114.3 for a period of at least six hundred twenty (620) days...

Proposed Civil Penalty

...EPA proposes that a civil penalty of $1,800 be assessed for the above noted violation of 40 C.F.R. § 112.3."

DATE:

Benjamin Kalkstein

BENJAMIN KALKSTEIN
Presiding Officer