UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF: **PHILIP SERVICES CORPORATIO**N and **BURLINGTON ENVIRONMENTAL, INC.** a wholly owned subsidiary of Philip Services Corporation **WAD 00081 2909** Director, Office of Waste and Chemicals Management, EPA REGION 10 COMPLAINANT vs. **Philip Services Corporation** and **Burlington Environmental, Inc.** a wholly owned subsidiary of Philip Services Corporation RESPONDENTS	**COMPLAINT AND COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING** **EPA DOCKET No.** RCRA-10-2001-0188 Proceeding pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. §6928(a).

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I. JURISDICTION

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") proposing civil penalties and requiring immediate compliance with directives contained in Section III below is issued pursuant to authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 3008(a) and (g) of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C §6928(a) and (g), as amended. This authority has been delegated to EPA Regional Administrators by Delegation Nos. 8-31 and 8-32 dated April 16, 1985; and further delegated to the Director, Office of Waste and Chemicals Management, EPA Region 10.

2. In accordance with the Consolidated Rules of Practice set forth at 40 C.F.R. Part 22, which are applicable to this proceeding pursuant to 40 C.F.R. §22.01(a)(4), the Director, Office of Waste and Chemicals Management, EPA Region 10, authorized Complainant as defined in 40 C.F.R. §22.03, alleges the following violations of RCRA as set forth in Section II herein, in accordance with 40 C.F.R. §§22.14 and 22.37(e)(2).

3. The underlying bases of this Complaint are violations of the June 27, 1991, Permit for the Storage and Treatment of Dangerous Waste, Permit No. WAD 00081 2909 (“Permit”) and its subsequent modifications. The effective date of the Permit was August 5, 1991. The Permit was jointly signed by both the Washington Department of Ecology (“Ecology”) and EPA and issued to “Burlington Environmental, Inc.” EPA issued the corrective action requirements of the Permit and is the lead Agency for administering and ensuring compliance with these requirements. The violations cited in this Complaint are limited to those sections of the Permit which EPA has issued. The State of Washington, Department of Ecology ("Ecology") has a federally authorized State hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, and administers most RCRA requirements. Notification of this action has been given to Ecology in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

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4. If Respondents wish to contest any material fact contained in this Complaint including the amount of the proposed penalty, Respondents may request both a formal and/or informal hearing pursuant to the procedures set forth in the Section IV, Notice of Opportunity for Hearing and Section V, Settlement Conference. The administrative procedures to adjudicate the allegations and/or directives of this Complaint, including the imposition of civil penalties, are set out in 40 C.F.R. Part 22 (copy enclosed).

II. ALLEGATIONS AND PROPOSED CIVIL PENALTY

5. Philip Services Corporation ("Philip"), a corporation organized and existing under the laws of the State of Delaware, is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15).

6. Burlington Environmental, Inc. ("BEI" or "Permittee"), is a wholly owned subsidiary of Philip Services Corporation doing business in the State of Washington, and is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15).

7. Respondents have owned and/or operated, and/or continue to own and/or operate a "solid waste management facility", within the meaning of Section 1004(28) of RCRA, 42 U.S.C. §6903(28) at 734 South Lucile Street, Seattle, Washington ("Facility").

8. EPA and Ecology jointly signed and issued the Permit on June 27, 1991 to Burlington Environmental, Inc. The Permit became efffective August 5, 1991.

9. The Permit is for the storage and treatment of hazardous waste in containers and tanks and for corrective action of releases of hazardous waste and hazardous constituents from the Facility. Ecology issued permit provisions covering the storage and treatment of hazardous waste and EPA issued permit provisions covering both on-site and off-site corrective action of releases at, or from, the Facility.

10. In February 2000, EPA conducted a Comprehensive Monitoring Evaluation (CME). The purpose of the CME was to evaluate the Facility's compliance with permit requirements relating to

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groundwater monitoring as part of corrective action obligations. The major corrective action groundwater permit requirements are listed in paragraphs 11 through 14 below. The results of the CME are summarized in a document entitled, "Philip Services Corporation Georgetown Facility, Seattle, Washington, Comprehensive Groundwater Monitoring Evaluation, September 2000" (the CME Report). Respondents were provided with a copy of the CME Report on November 3, 2000.

11. Pre-Corrective Action Monitoring requirements are described in Section VII.B of the Permit. The pre-corrective action monitoring program has been ongoing since late 1992 and is required by the Permit. Permit Condition VII.B.1 requires the Permittee to "submit to the Administrator in accordance with the schedule contained in Table VII-1 of this Permit a draft plan for monitoring of the groundwater beneath the Facility until the implementation of the groundwater monitoring program designated in Permit Condition VII.E. At a minimum, this plan shall include the following: a) Monitoring of the wells listed in Table VII-2 at the sampling frequencies listed in Table VII-2; b) A listing of monitoring constituents that includes the clean-up standard constituents contained in Table VII-4; c) Program operation requirements in accordance with Permit Condition VII.G; d) Well construction, maintenance, and replacement requirements in accordance with Permit Condition VII.J.; e) A schedule for the initiation and completion of all tasks described in the plan."

12. Subsequent to the effective date of the initial Permit (August 5, 1991), Permittee requested modifications to the Permit regarding pre-corrective action monitoring requirements, and requested modifications to the approved monitoring plan. These modifications are summarized in paragraphs a. through d. below.

a. In November 1993, Permittee requested a variance to the monitoring plan to use dedicated sampling equipment, use low-flow sampling techniques, and to eliminate collecting equipment blanks. EPA approved the variance in December 1993, pending the submittal of a written monitoring plan addendum; The Permittee submitted the addendum in August 1994. Under the December 1993 variance

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approval, EPA denied approval of the proposed method to determine groundwater stabilization during sampling and the proposed method to sample for Dense Non-aqueous Phase Liquids (DNAPL).

b. In June of 1994, Permittee requested a modification to Sections VII.G.4 and VII.G.5 of the Permit regarding the frequency of conducting analyses for 40 C.F.R. Part 264, Appendix IX ("Appendix IX") constituents and the procedures for adding constituents to the permit-mandated constituent monitoring list. EPA approved the modification request on June 15, 1994, and issued a clarification to this approval in July 1994.

c. Permittee requested another permit modification in February 1995 to modify Table VII-2 regarding the sampling and analysis frequency for specific analyte groups. EPA approved the modification request on June 14, 1995, with a clarification in July 1995. This modification provided that samples are to be analyzed quarterly for Volatile Organic Compounds (VOCs) and semiannually for Semivolatile Organic Compounds (SVOCs), metals, and Polychlorinated Biphenyls (PCBs); however, the SVOCs: 2,4-dimethyphenol, 2-methylphenol, 4-methylphenol, and phenol are to be analyzed quarterly.

d. In August 1998 and again in April 1999, Permittee requested a modification to the monitoring plan to use the micropurging groundwater technique. EPA reviewed the initial request in November 1998. EPA conditionally approved the request on April 23, 1999.

13. Permit Condition VII.B.2. requires the Permittee to submit a final pre-corrective action monitoring plan, after EPA review and approval of the draft plan, in accordance with the schedule provided by EPA.

14. Permit Condition VII.B.3. requires the Permittee, upon approval of the final plan submitted in accordance with VII.B.2, to complete the tasks described in the monitoring plan in accordance with its terms and schedules.

15. On November 3, 2000, EPA issued a Notice of Violation to Philip outlining the violations discovered during the CME. Philip submitted to EPA a document entitled, "Response to Notice of

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Violation Letter dated November 3, 2000, Philip Services Corporation, WAD 00081 2909." The document was dated January 18, 2001 and received by EPA on February 5, 2001.

16. The allegations of violations of the Permit set forth in this Complaint, are based on information obtained by EPA from its investigations, including information from the CME and information provided by Philip in its response to the November 3, 2000, NOV.

17. Each permit condition alleged to have been violated in this Complaint is set forth as a separate count, and a civil penalty is proposed for each count. Each such proposed penalty is based upon facts alleged herein, and upon those factors which must be considered pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) and the RCRA Civil Penalty Policy (RCPP) of October 1990 (a copy of which is enclosed); including the seriousness and duration of the violations; good faith efforts by Respondents to comply with applicable requirements; any economic benefit accruing to Respondents; as well as such other matters as justice may require. In evaluating, Respondents' good faith efforts to comply, EPA considered Respondents' actions, if any, in promptly identifying and remedying a violation before EPA detected the violation. No gravity-based penalties are proposed for violations that occurred prior to August 31,1996. EPA does seek to recoup economic benefit realized by Respondents for those violations. Pursuant to the Debt Collection Improvement Act of 1996 (DCIA) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, each proposed penalty reflects a ten percent upward adjustment for violations that occurred after January 30, 1997, the effective date of the DCIA. Penalty computation worksheets are included as Appendix-A to this Complaint.

COUNT I.

18. Paragraphs 1 through 17 are alleged and incorporated herein by reference.

19. Permit Condition VII.B.3, Permit Table VII-2 and Table 2 of the Sampling and Analysis Plan (SAP) require Permittee to monitor certain wells quarterly. Permit Condition VII.G.3 requires the submittal

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of results of analysis to EPA. Information obtained from the CME and from the response to EPA's November 3, 2000, NOV reveals that Permittee failed to sample permit-specified wells and/or failed to report analyses of sampling events (fourth quarter 1992 through first quarter 2000), as follows:

- fourth quarter 1992 [three wells (6-S-1, 8-S-2, and 11-S-1) were not sampled];
- first quarter 1998 [two wells (2-D and 102-S-2) were not sampled];
- second quarter 1998 [one well (102-S-2) was not sampled and analyses from seven (102-S-1, 103-S-2, 103-I, 105-S-1, 105-S-2, 105-I, and 111-I) wells were not reported]; and,
- third quarter 1998 [one well (102-S-2) was not sampled].

Accordingly, Permittee violated Permit Condition VII.B.3 on seven separate occasions by failing to sample permit-specified wells. Permittee violated Permit Condition VII.G.3 on seven separate occasions by failing to submit results of analyses to EPA.

20. A civil penalty in the total amount of $18,228.90 is proposed for these violations of Permit Conditions VII.B.3 and VII.G.3. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. By failing to monitor permit-specified wells during seven separate sampling events and by failing to submit results of analyses to EPA on seven occasions, Permittee presented some risk to human health and the environment and impeded administration of the RCRA corrective action process at this Facility. One of the objectives of the sampling required by the Permit is to ensure that the groundwater plume is adequately monitored so that, ultimately, EPA can make appropriate clean-up decisions. The failure to report data from monitoring wells and failure to monitor permit-specified wells caused important information to be omitted from that decision-making process. Complainant has determined that 14 violations of Permit Conditions VII.B.3 and VII.G.3 have occurred since issuance of the Permit. The total proposed penalty includes $6, 037.90 for the eleven violations that occurred after 1996 and an estimated economic benefit of at least $12,191.00 gained from Permittee's avoidance of monitoring permit-specified wells from 1992

through 1998. For three violations that occurred in 1992, Complainant is not seeking a gravity-based penalty, but does seek to recoup the economic benefit realized by Respondents.

COUNT II.

21. Paragraphs 1 through 20 are alleged and incorporated herein by reference.

22. Permit Condition VII.B.3, Permit Table VII-2, and Table 4 of the SAP require analysis of the Facility's groundwater monitoring wells for specific parameters. Permit Condition VII.G.3 requires the submittal of results of the analyses to EPA. From fourth quarter 1992 through second quarter 1995, VOCs, SVOCs, PCBs, and total and dissolved metals were required to be analyzed quarterly; beginning third quarter 1995 to present (per revised Permit Table VII-2 which became effective on June 15, 1995), VOCs, SVOCs, specific phenolic compounds, PCBs, and total metals were required to be analyzed either quarterly or semiannually. In the nine quarters of data evaluated during the CME (representing three quarters before permit modification and six quarters after permit modification), Permittee omitted analytes, or failed to report analytical results, for six quarters, as follows:

- Second quarter 1995 [one SVOC (benzoic acid) was not analyzed];
- Second quarter 1996 [one SVOC (benzoic acid) was not analyzed and one SVOC (dibenz[a,h]anthracene) was not reported];
- First quarter 1997 [two SVOCs (1,1,2-Trichloro-1,2,2-trifluoroethane and 2-Chloroethyl vinyl ether) were not reported];
- Fourth quarter 1998 [two VOCs (1,1,2-Trichloro-1,2,2-trifluoroethane and 2-Chloroethyl vinyl ether) were not reported];
- Third quarter 1999 [two SVOCs (1,1,2-Trichloro-1,2,2-trifluoroethane and 2-Chloroethyl vinyl ether) were not reported]; and,
- First quarter 2000 [two SVOCs (1,1,2-Trichloro-1,2,2-trifluoroethane and 2-Chloroethyl

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vinyl ether) were not reported].

Accordingly, Permittee violated Permit Condition VII.B.3 on two separate occasions by failing to analyze for permit-specified analytes. Permittee violated Permit Condition VII.G.3 on nine separate occasions by failing to submit results of analyses to EPA.

23. A civil penalty in the total amount of $4,391.20 is proposed for these violations of Permit Conditions VII.B.3 and VII.G.3. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to conduct analyses for analytes required to be monitored for by the Permit on two occasions and failure to submit results of analyses to EPA on nine occasions, presented some risk to human health and the environment and impeded administration of the RCRA corrective action process at this Facility. One of the objectives of the sampling required by the Permit is to ensure that the groundwater is adequately monitored so that, ultimately, EPA can use this information to make appropriate clean-up decisions. The failure to comply with the Permit requirement to analyze for analytes and report results of the analyses to EPA caused important information to be omitted from that decision-making process. EPA has determined that 11 violations of Permit Conditions VII.B.3 and VII.G.3 have occurred since the effective date of the Permit. EPA is not seeking a gravity-based penalty for three violations that occurred before August 31, 1996. A total penalty of $4,391.20 is proposed for the remaining eight violations. The penalties for those eight separate incidents of violation have been calculated and combined into one count. No economic benefit component is included in the total penalty for this count because there is no information to indicate that Respondents realized an economic benefit from these violations of Permit Conditions VII.B.3 AND VII.G.3.

COUNT III.

24. Paragraphs 1 through 23 are alleged and incorporated herein by reference.

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25. Permit Conditions VII.B.3 and VII.G.4 require analysis for 40 C.F.R. Part 264, Appendix IX constituents at designated frequencies (fourth quarter 1992, fourth quarter 1993, first quarter 1996, first quarter 1998, and first quarter 2000). A complete 40 C.F.R. Part 264, Appendix IX, analysis includes ten (10) parameter groups: VOCs, SVOCs, organochlorine pesticides, organophosphorus pesticides, chlorinated herbicides, PCBs, dioxins and furans, metals, cyanide, and sulfide. Permittee failed to conduct complete Appendix IX analyses as follows:

- fourth quarter 1993 sampling event, Permittee conducted analysis only for metals, PCBs, and pesticides;
- first quarter 1996 sampling event, Permittee failed to analyze for cyanide, sulfide, and one SVOC; Permittee failed to report analyses for two SVOCs;
- first quarter 1998, Permittee failed to analyze for SVOCs, organochlorine pesticides, organophosphorus pesticides, chlorinated herbicides, dioxins and furans cyanide, and sulfide;
- first quarter 2000, Permittee delayed Appendix IX analysis until the sampling event in the second quarter of 2000;

Accordingly, Permittee violated Permit Conditions VII.B.3 and VII.G.4.

26. A civil penalty in the total amount of $33,360.90 is proposed for these violations of Permit Conditions VII.B.3 and VII.G.4; this includes a total gravity-based penalty of $29,148.90 and a total economic benefit component of $4,212.00. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to conduct complete Appendix IX analyses during the 1993, 1996, and 1998 sampling events, and the delay in conducting the first quarter 2000 Appendix IX sampling, presented risks, ranging in seriousness from minor to substantial, to human health and the environment. These violations impeded administration of RCRA corrective action process at this Facility. One of the objectives of the

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groundwater sampling requirements is to determine the rate and extent of releases of hazardous waste or hazardous constituents from the Facility into the groundwater. Permit Condition VII.G.4 is derived from 40 C.F.R. § 270.14(c)(4)(ii) which requires that the owner or operator of a hazardous waste facility identify the concentration of each Appendix IX constituent of Part 264 which has entered the groundwater, throughout the plume; or that the owner or operator identify the maximum concentrations of each Appendix IX constituent in the plume. One of the purposes of this analysis is to characterize the chemistry of the background and downgradient groundwater so that appropriate clean-up decisions can be made. The incomplete Appendix IX analyses and the delay of the required Appendix IX analysis in 2000 hindered the development of an adequate groundwater contamination characterization. Consequently, informed clean up decisions and corrective action progress have been delayed. For the incomplete analysis of Appendix IX constituents in 1993, EPA is not seeking a gravity-based penalty but is seeking to recoup an estimated economic benefit of at least $2,442.00 realized by Respondents for this violation. For the incomplete 1996 analysis, EPA is not seeking a gravity-based penalty or an economic benefit component. No economic benefit component is sought because there is no information to indicate that Respondents realized economic benefit from the 1996 violation. For the incomplete 1998 Appendix IX analysis, a penalty of $27,500.00 is proposed including an estimated economic benefit of at least $1,742.00. For the delay in conducting the 2000 Appendix IX analysis, a penalty of $1,648.90 is proposed including an estimated economic benefit of at least $28.00.

COUNT IV.

27. Paragraphs 1 through 26 are alleged and incorporated herein by reference.

28. Permit Condition VII.B.3, VII.G.4, VII.G.5, and SAP Table 4 require Permittee to report newly detected Appendix IX constituents. Permit Condition VII.G.4 initially required that any Appendix IX constituents detected, but not on Permittee's monitoring list (specified in Table 4 of the SAP), be

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reported to EPA. Permit Condition VII.G.5 required that any newly detected constituents be added to the list. These permit conditions were applicable to first quarters 1992 and 1993. For these Appendix IX quarters, Permittee did not take the required actions (that is, neither reported nor added any detected constituents to the monitoring list) for the following constituents:

- Fourth quarter 1992 (acetophenone, 3-methylphenol, vanadium);
- Fourth quarter 1993 (sulfide);

29. The failure to report newly detected Appendix IX constituents during 1992 and 1993 constitutes two separate violations of Permit Condition VII.B.3. The failure to add the four constituents detected during the 1992 and 1993 Appendix IX sampling constitutes four violations of Permit Conditions VII.B.3 and VII.G.5. Philip admitted to this omission in the response to EPA's NOV. Accordingly, Respondents violated permit conditions VII.B.3 and VII.G.5. Among other things, these violations are indicative of a pattern of noncompliance with groundwater Permit Conditions.

30. EPA is not seeking a gravity-based penalty for these 1992 and 1993 violations since they occurred before August 31, 1996. There is no information to indicate that Respondents realized an economic benefit from these violations.

COUNT V.

31. Paragraphs 1 through 30 are alleged and incorporated herein by reference.

32. Permit Conditions VII.B.3 and VII.G.3 require Permittee to submit quality assured results of analyses, including laboratory detection limits achieved for each constituent, within 30 days of receipt of results from the laboratory; or, no longer than 90 days from sampling to submission of results. Permittee failed to submit quality assured results for any quarterly or Appendix IX sampling and analysis rounds. Since the inception of the pre-corrective action program up to and including first quarter 2000, there have been 30 quarterly rounds and five Appendix IX rounds. Accordingly, Permittee has violated Permit

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Conditions VII.B.3 and VII.G.3 on 35 separate occasions.

33. A civil penalty in the total amount of $506,113.00 is proposed for these violations of Permit Conditions VII.B.3. and VII.G.3. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to provide quality assured analytical results caused substantial potential for harm to the RCRA program in general and to the administration of the RCRA corrective action program at this Facility. Respondents created a substantial potential for harm to human health and the environment because, among other things, data of unknown quality creates a substantial uncertainty in the corrective action decision-making process. EPA is not seeking a gravity-based penalty for violations which occurred prior to August 31, 1996, but is seeking to recoup economic benefit realized by Respondents for those violations. A penalty of $407,500.00 is proposed for 15 violations which occurred after August 31,1996. The proposed penalty includes an estimated economic benefit of $98,613.00 gained by Respondents for avoiding the costs associated with ensuring data was quality assured from 1992 through 1999.

COUNT VI.

34. Paragraphs 1 through 33 are alleged and incorporated herein by reference.

35. Permit Conditions VII.B.3 and VII.J.6(i), (j), (k) and (m) require that specific items be documented on well construction diagrams for any new or replacement monitoring well. A total of 19 wells were installed after permit issuance; 17 as part of the Phase III off-site RFI in 1991 and two wells in the North Field area in 1998. Permittee has not provided the following information on well construction diagrams:

- Casing and screen joint type;
- Placement method of filter pack material;
- Placement method of sealant material;

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- Well development procedures;

Accordingly, Permittee violated Permit Conditions VII.B.3 and VII.J.6 on 19 separate occasions.

36. A civil penalty in the total amount of $17,597.80 is proposed for these violations of Permit Conditions VII.B.3. and VII.J.6. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to provide well construction details has a negative impact on making appropriate clean-up decisions because of the increased uncertainty regarding the representativeness of aquifer testing results, groundwater level measurements, and groundwater analysis. This uncertainty poses a significant risk to human health and the environment and impedes the administration of the RCRA corrective action program at this Facility. EPA does not seek a gravity-based penalty for violations which occurred in 1991. The penalty is calculated for two violations which occurred in 1998. No economic benefit component is included in the proposed penalty because there is no information to indicate that Respondents realized economic benefit from these violations of Permit Conditions VII.B.3. and VII.J.6.

COUNT VII.

37. Paragraphs 1 through 36 are alleged and incorporated herein by reference.

38. Permit Conditions VII.B.3 and VII.J.3 require Permittee to maintain borehole integrity for each well by using one of three methods as specified in the Permit: (1) performing biennial-specific capacity calculations; (2) sounding wells annually to determine silt build up; or (3) performing biennial slug tests to determine hydraulic conductivities. Permittee did not conduct any of the required integrity tests until the fourth quarter of 1998. Minimum frequency requirements for each option since inception of the groundwater monitoring program are as follows:

- Option 1 (at least four times);
- Option 2 (at least eight times);

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- Option 3 (at least four times);

Accordingly, Permittee's failure to maintain borehole integrity for each well by using one of three methods as specified in the Permit constitutes violations of Permit Conditions VII.B.3 and VII.J.3.

39. A civil penalty in the total amount of $40,119.80 is proposed for these violations of Permit Conditions VII.B.3 and VII.J.3. There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to verify borehole integrity and redevelop the wells as needed creates significant uncertainty regarding the representativeness of the sample results collected during the sampling program. Accurate contamination characterization may be compromised due to the uncertainty of sample results. Consequently, this resulted in significant potential for harm to the administration of the RCRA corrective action program at this Facility. EPA does not seek a gravity-based penalty for violations which occurred prior to 1996, but is seeking to recoup economic benefit realized by Respondents for violations during this period. A gravity-based penalty of $24,197.80 is proposed for Respondents' failure to maintain borehole integrity after 1996, on two occasions, for each well, utilizing one of the three methods specified by the Permit. The penalty includes an estimated economic benefit of $15,922.00 gained from Respondents' avoidance of the obligation to maintain borehole integrity of the Facility's groundwater monitoring wells.

COUNT VIII.

40. Paragraphs 1 through 39 are alleged and incorporated herein by reference.

41. Permit Condition VII.B.3 and Section 7.2.1.1 of the Micropurge SOP PSC-124 (Revision No. 3) require Permittee to operate dedicated pumps at a flow rate of less than 300 mL/min during purging. For first quarter 2000, five wells (2-S-1, 8-S-1, 101-S-1, 102-I, and 102-D) were purged at flow rates exceeding 300 mL/min at least once. Accordingly, Permittee has violated Permit Condition VII.B.3 and Section 7.2.1.1 of the Micropurge SOP PSC-124 (Revision No.3).

42. Permit Condition VII.B.3 and Section 7.2.2 of the Micropurge SOP PSC-124 (Revision No.3) require Permittee to purge groundwater from each well, before sampling, until all field parameters have been stabilized over at least three consecutive readings. The SOP further states that if stabilization cannot be achieved, and the well does not run dry, then at least one well casing volume must be purged. At the time of the CME, 25 of 36 wells did not stabilize for all parameters during the purging for first quarter 2000. Of these 25 wells, 18 (1-I, 1-D, 2-I, 2-D, 4-D, 5-D, 6-S-1, 9-I, 12-I, 102-S-2, 102-I, 102-D, 103-S-2, 103-I, 104-I, 105-S-2, 105-I, and 111-I) were purged less than the one-volume minimum. Accordingly, Permittee has violated Permit Condition VII.B.3. and Section 7.2.2 of the Micropurge SOP PSC-124 (Revision No. 3).

43. Permit Condition VII.B.3 and Section 7.3 of the Micropurge SOP PSC-124 (Revision No. 3) require Permittee not to "lower the water table or disturb the water column" during sampling. The lowering of the water table during the purging of a well is commonly referred to as 'drawdown'. At the time of the CME, drawdown (or an unsteady pumping rate during sampling, indicating that the water table was lowered or disturbed) was observed in 22 wells (1-S-1, 1-I, 1-D, 2-S-1, 2-I, 2-D, CG-3, 5-S-1, 5-I, 9-I, 11-S-1, 11-I, 12-I, 102-S-1, 102-I, 102-D, 103-S-2, 104-I, 104-D, 105-S-1, 105-I, and 111-I) for the sampling during first quarter 2000. Accordingly, Permittee has violated Permit Condition VII.B.3 and Section 7.3 of the Micropurge SOP PSC-124 (Revision No. 3).

48. A civil penalty in the total amount of $16,498.90 is proposed for these violations of Permit Condition VII.B.3 and the Micropurge SOP PSC-124 (Revision No. 3). There was no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to perform groundwater micropurge sampling in accordance with the Micropurge SOP PSC-124 (Revision No. 3) caused substantial potential for harm to human health and the environment and impeded the administration of the RCRA corrective action program. The failure to properly implement the micropurge sampling technique when collecting

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groundwater samples may have created a substantial potential for low bias in the analytical results. These analytical results were then used in decision making during the RCRA corrective action process. Because the results may be biased low, the extent of groundwater contamination may have been underestimated and may have led to inappropriate risk management decisions during clean up. The proposed penalty does not include an economic benefit component because there was no information to indicate that Respondents gained an economic benefit from these violations.

COUNT IX.

49. Paragraphs 1 through 48 are alleged and incorporated herein by reference.

50. Permit Conditions VII.B.3 and VII.G.1 and Sections 10, 12.3.2 and 12.3.4 and Appendix B of the SAP and EPA SW-846 require Permittee to "use the techniques and procedures specified in the most recent edition of EPA SW-846 . . . when collecting, preserving, shipping, analyzing, tracking and controlling samples." Five inconsistent chain-of-custody (COC) procedures were identified during first quarter 2000, including failure by Permittee to perform the following tasks:

- Apply COC seals to sample shipping containers (5 occurrences);
- Provide sufficient COC documentation with sample shipments from the Respondent laboratory to NCA laboratory (4 occurrences);
- Properly document receipt of samples at the NCA laboratory (4 occurrences);
- Sign COC forms included in the laboratory data packages (4 occurrences);
- Provide adequate COC documentation or sufficiently explain documentation included in the laboratory data packages (6 occurrences);

Accordingly, Permittee has violated Permit Conditions VII.B.3 and VII.G.1 on five occasions during the first quarter 2000 sampling event.

51. A civil penalty in the total amount of $137,500.00 is proposed for these violations of Permit

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Conditions VII.B.3 and VII.G.1. There is no information to indicate that a penalty adjustment based on good faith efforts to comply would be appropriate; therefore no such adjustment was made to the penalty amount. The failure to utilize proper chain-of-custody procedures when collecting, preserving, shipping, analyzing, tracking and controlling samples, caused a substantial potential for harm to the RCRA program and to the administration of RCRA corrective action at this Facility. Because chain-of-custody procedures were not utilized, the possession and handling of the samples from the time of collection through analysis and final disposition of the samples cannot accurately be traced. The affected samples represent a significant portion of groundwater monitoring data for the winter of 2000 sampling event. Accurate data is critical because the data is used in the human health risk assessment. If samples were tampered with or mishandled, the current extent of groundwater contamination may not have been accurately documented and may have led to inappropriate risk management decisions. The proposed penalty does not include an economic benefit component because there was no information to indicate that Respondent's gained an economic benefit from these violations.

COUNTS I THROUGH IX - TOTAL PROPOSED PENALTY

52. The total proposed penalty for the RCRA Permit Condition violations alleged herein is $773,810.50, as follows:

COUNT I	$ 18,228.90
COUNT II	$ 4,391.20
COUNT III	$ 33,360.90
COUNT IV	$ 0
COUNT V	$506,113.00
COUNT VI	$ 17,597.80
COUNT VII	$ 40,119.80

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COUNT VIII	$ 16,498.90
COUNT IX	$137,500.00
TOTAL	**$773,810.50**

III. COMPLIANCE ORDER

53. IT IS HEREBY ORDERED that within 30 calendar days of receipt of this Complaint, Respondents shall pay a penalty in the amount of seven hundred and twenty-seven thousand, thirty-eight dollars ($773,810.50) to the "Treasurer of the United States." Payment by a certified or cashier's check made payable to the "Treasurer of the United States" and accompanied by a transmittal letter that clearly identifies the case name and EPA Docket Number of this administrative complaint and Respondents' addresses shall be remitted to:

U.S. EPA **Region 10**
P.O. Box 36093M
Pittsburgh, PA 15251

Copies of the transmittal letter and of the check shall be sent to **each** of the following:

Regional Hearing Clerk
U.S. EPA Region 10, ORC-158
1200 Sixth Avenue
Seattle, WA 90101

Manager, RCRA Compliance Unit
U.S. EPA Region 10, WCM-126
1200 Sixth Avenue
Seattle, Washington 98101

54. IT IS FURTHER ORDERED that, within the 30-day time period specified, Respondents shall comply with all provisions of the Permit and with applicable federal, state, and local regulations, including, but not limited to the following:

a) Pursuant to the requirements imposed by EPA in its approval of Respondent's August 14, 1998, permit modification request, Respondents shall submit an evaluation of the effectiveness of the micropurge technique. In accordance with those requirements, this evaluation must include:

1. a comparison of analytical results obtained from groundwater monitoring wells (before the micropurge technique was implemented) to the analytical results obtained after the micropurge technique was initiated;

2. a discussion on analytical results from groundwater monitoring wells where there was a significant temperature increase, well drawdown or aquifer effervescence;

3. a discussion on analytical results for groundwater monitoring wells where a steady low-flow rate could not be maintained during sampling; and

4. a discussion of how extensively Respondents' implementation of the micropurge technique varies from EPA's 1992 guidance entitled, "RCRA Groundwater Monitoring: Draft Technical Guidance."

b) Respondents shall submit all well development records associated with the well development activities which took place in the summer of 1999 and in January 2001. No records of this activity were included in Philip's response to the NOV despite Philip's assertion that these activities took place.

55. All work to be performed pursuant to this Complaint and Compliance Order ("CCO") shall be under the direction and supervision of qualified personnel. Respondents shall provide a copy of this CCO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this CCO. Respondents shall provide a copy of this CCO to any successor(s) in interest prior to any transfer of ownership or operation of the Facility.

56. Attached to this CCO is a Certificate of Completion which must be executed by the Respondents and returned to EPA at the address set forth in Paragraph 58 below, within 14 days after full compliance with all of the provisions of Section III of this CCO. No alternate, substitute, or additional proof of compliance will be accepted, or reviewed, by EPA.

57. In accordance with Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), as amended, violation of any portion of this Compliance Order shall subject Respondents to a civil penalty of up to $27,500 per day,

per violation.

58. Unless otherwise specified, any communications with EPA regarding this Complaint and Compliance Order shall be in writing and directed to:

Manager, RCRA Compliance Unit
U.S. EPA Region 10, WCM-126
1200 Sixth Avenue
Seattle, Washington 98101

A copy of each document or other correspondence submitted to EPA pursuant to this Complaint and Compliance shall be sent to:

Julie Sellick, Manager,
Washington Department of Ecology,
3190-160th Avenue SE
Bellevue, WA 98008-5452

59. All actions required pursuant to this Order shall be undertaken in accordance with all applicable local, state, and federal laws and regulations.

IV. NOTICE OF OPPORTUNITY FOR HEARING

60. The Complaint shall become final unless Respondents request a hearing pursuant to Section 3008(b) of RCRA, 42, U.S.C. §6928(b), and files a written Answer pursuant to 40 C.F.R. §§22.15 and 22.37 no later than 30 days after service of this Complaint.

61. A written Answer to the Complaint must satisfy the requirements of 40 C.F.R. §22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The Answer and any request for an administrative hearing must be made with the Regional Hearing Clerk at:

Regional Hearing Clerk
U.S. EPA Region 10, ORC-158

1200 Sixth Avenue
Seattle, WA 90101

Copies of all papers filed by Respondents must also be served on Joan Shirley, Assistant Regional Counsel, at:

Office of Regional Counsel
U.S. EPA Region 10, ORC-158
1200 Sixth Avenue
Seattle, WA 90101

62. If a hearing is requested, Respondents may: a) contest or explain the material factual allegations in the Complaint; b) contest the amount and/or appropriateness of the civil penalty proposed in the Complaint; and/or c) demonstrate that the Complaint is not in accordance with the law.

63. Any Answer Respondents file must: a) request a hearing of this matter or such a hearing is deemed waived; b) contain clear and direct admissions, denials, and/or explanations, with respect to each of the factual allegations of the Complaint; c) contain a definitive statement of any facts that Respondents contend constitute grounds for defense against the civil penalty stated in the Complaint; d) contain clear and direct statements of all material facts in the Complaint that Respondents intend to place in issue at a hearing; and e) contain a concise statement concerning all commands and directions set out in the Complaint that Respondents contend are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

64. Respondents' failure to file a written Answer within 30 days of service of this Complaint may result in the entry of a default order against Respondents. Default by Respondents constitutes a binding admission of all allegations contained in the Complaint and a waiver of Respondents' right to a hearing. Upon entry of a default order against Respondents, the civil penalties proposed herein shall become due and payable without further proceedings.

V. SETTLEMENT CONFERENCE

65. Whether or not Respondents request a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, Respondents, or, if represented by counsel, Respondents' attorney, must contact EPA attorney, Joan Shirley, at the address in Paragraph 61, or by calling (206) 553-0978.

66. A request for a settlement conference does not extend the 30-day period during which a written Answer and a request for hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

67. EPA encourages all parties against whom a civil penalty is imposed to pursue the possibility of settlement through an informal conference. However, no penalty reduction will be made simply because a conference is held. Such a conference might resolve matters by a settlement, making a hearing unnecessary. Any settlement reached as a result of such conference shall be embodied in a written Consent Agreement and Consent Order.

68. If Respondents have neither effected a settlement by informal conference nor requested a hearing within the thirty 30-day period allowed, the proposed penalties will be assessed without further proceedings.

DATED this 6th day of August, 2001.

(Signed by R. Albright)

RICHARD ALBRIGHT, Director
Office of Waste and Chemicals Management
U.S. EPA Region 10

Appendix A - Memo with Penalty Computation Worksheets and Summary Table
Appendix B - Certificate of Completion

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