UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

<u>**CERTIFIED MAIL**</u>
<u>**RETURN RECEIPT REQUESTED**</u>

Stephen Shuman, Esq.
256 High Street
Morgantown, WV 26507

Re: Resource Conservation and Recovery Act
Administrative Complaint
and Notice of Opportunity for Hearing
<u>In the Matter of Kessel Lumber Supply, Inc.,</u>
<u>Docket No. RCRA 03-2006-0059</u>

Dear Mr. Shuman:

Enclosed please find a Complaint, Compliance Order and Notice of Right to Request Hearing ("Complaint") concerning alleged violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*, relating to Kessel Lumber Supply, Inc., New Creek Drive, Keyser, West Virginia.

The Complaint should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations.

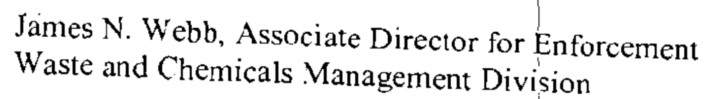
Unless you elect to resolve the proceeding as set forth in the Complaint, an Answer to the Complaint <u>must</u> be filed with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. Such Answer must respond specifically to the allegations in the Complaint. Failure to respond to the Complaint by specific Answer will constitute an admission of the allegations made in the Complaint. Failure to file an Answer may also result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed in the Complaint without further administrative proceedings.

You may request a hearing to contest any matter set forth in the Complaint. Such a request must be included in your Answer to the Complaint. Whether or not a hearing is requested, you may request an informal settlement conference to discuss resolution of this case. However, a request for an informal settlement conference does not relieve you of the responsibility to file an Answer as specified herein. A request for a settlement conference may be included in your Answer or you may contact the staff attorney assigned to this case:

Cheryl L. Jamieson (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2375

In addition, your company may be required to disclose to the Securities and Exchange Commission (SEC) the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the enclosed Notice of SEC Registrants, Duty to Disclose Environmental Legal Proceedings, for more information about this requirement and to aid you in determining whether your company is subject to it.

Sincerely,



James N. Webb, Associate Director for Enforcement
Waste and Chemicals Management Division

Enclosures

cc: Cheryl L. Jamieson (3RC30)
Jeanna Henry (3WC31)

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kessel Lumber Supply, Inc. **HC 84 Box 4** **New Creek Drive** **Keyser, West Virginia 26726,** **Respondent.**	: : :	**Docket No.: RCRA-03-2006-0059** **Proceeding under Section 3008(a) and (g), 42 U.S.C. § 6928(a) of the Resource Conservation and Recovery Act: Complaint, Compliance Order and Notice of Right to Request for Hearing**
Kessel Lumber Supply, Inc. **New Creek Drive** **Keyser, West Virginia 26726,** **Facility.**	: :	

I. INTRODUCTION

1. This Complaint, Compliance Order and Notice of Right to Request Hearing ("Complaint") is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), *as amended*, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint. The Complainant is the Associate Director for Enforcement, Waste and Chemicals Management Division, United States Environmental Protection Agency - Region III.

2. Respondent is hereby notified of Complainant's allegations that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and the West Virginia Hazardous Waste Management Regulations, Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (hereinafter "WVHWMR"), at the Kessel Lumber Supply Inc. ("Kessel") facility located at New Creek Drive, Keyser, Mineral County, West Virginia ("the Facility"). The WVHWMR, which incorporate by reference 40 C.F.R. Parts 260-279 (1997 ed.), were reauthorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926, on October 16, 2003, and became effective on December 15, 2003 (68 Fed. Reg. 59542 (Dec. 15, 2003)).

3. Section 3008(a) of RCRA authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, regulations promulgated thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. The authorized provisions of West Virginia's hazardous waste management program are requirements of RCRA Subtitle C and, accordingly, are enforceable by EPA pursuant to Section 3008(a) of RCRA.

Notice of Action to the State of West Virginia:

4. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA notified the West Virginia Division of Environmental Protection ("WVDEP"), of EPA's intent to issue this Complaint.

II. COMPLAINT
Findings of Fact and Conclusions of Law

In support of this Complaint, the Complainant hereby alleges the following findings of fact and conclusions of law:

5. Respondent is a corporation incorporated in the State of West Virginia and is a "person" as defined by WVHWMR Section 33-20-2, which incorporates by reference 40 C.F.R. § 260.10, and RCRA Section 1004(15), 42 U.S.C. § 6903(15).

6. The Facility is located in the State of West Virginia.

7. On or about February 19, 1988, Respondent submitted a Notification of Hazardous Waste Activity ("Notification") for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, to the West Virginia Division of Environmental Protection ("WVDEP") identifying itself as a generator of 100 to 1,000 kilograms of hazardous waste, D004 and D007, per calendar month. Respondent was subsequently assigned RCRA Identification Number WVD016087322. On or about April 26, 1999, Respondent filed a subsequent Notification identifying itself as a generator of less than 100 kilograms of hazardous waste, D006, D008, D018, D027, D039 and D040, per calendar month.

8. On September 15, 2004 and on February 1, 2005, representatives of EPA and the WVDEP conducted RCRA Compliance Evaluation Inspections (hereinafter CEI Nos. 1 and 2, respectively) at the Facility, pursuant to RCRA 3007(a), 42 U.S.C. § 6927(a).

9. On April 13, 2005, Complainant issued an Information Request Letter pursuant to RCRA Section 3007(a), 42 U.S.C. § 6927(a).

10. From at least February 1988 until December 31, 2003, Respondent manufactured

chromated copper arsenate ("CCA") pressure treated fence posts and mine lumber.

11. At all times relevant to this Complaint, "hazardous waste", F035, has been "generated", "treated" and "stored" by Respondent, at the Facility, as those terms are defined by WVHWMR § 33-20-2, which incorporates by reference Sections 1004(5), (6) and (33) of RCRA, 42 U.S.C. §§ 6903(5), (6), (33), and 40 C.F.R. §§ 260.10 and 261.3.

12. The Facility is a hazardous waste "storage" "facility" as those terms are defined by WVHWMR § 33-20-2, which incorporates by reference 40 C.F.R. § 260.10.

13. Respondent, is and has been, at all times relevant to this Complaint, the "owner" of the Facility as that term is defined by WVHWMR § 33-20-2, which incorporates by reference 40 C.F.R. § 260.10.

14. Respondent is and has been, at all times relevant to this Complaint, the "operator" of the Facility as that term is defined by WVHWMR § 33-20-2, which incorporates by reference 40 C.F.R. § 260.10.

15. Respondent is and has been, at all times relevant to this Complaint, a "generator" of, and has engaged in the "treatment", "storage" or "disposal" of, "solid waste" and "hazardous waste", as those terms are defined by WVHWMR § 33-20-2, which incorporates by reference 40 C.F.R. § 260.10.

16. Respondent generated greater than 1,000 kilograms or more of hazardous waste, F035, for each month relevant to the violations alleged in this Complaint.

17. Respondent owns and operates: (1) a hazardous waste wood treatment drip pad, (2) an associated collection system for the drip pad (hereinafter "associated collection system tank") known as a "sump", (3) an 8,000 gallon steel mix tank for the storage of CCA solution, and (4) a 3,000 gallon tank for storage of CCA preservative, at its Facility.

18. Respondent's hazardous waste drip pad was constructed prior to October 24, 1990. Respondent's drip pad is an "existing drip pad" as that term is described in WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.570(a).

19. Respondent stopped doing business at its Facility and ceased wood treatment operations on or about December 31, 2003.

20. From at least January 1, 2004 until August 29, 2005, Respondent was storing, at the Facility, approximately five thousand gallons of hazardous waste, F035, (CCA) generated by Respondent, in the 8,000 gallon steel CCA solution tank which does not have secondary containment.

21. From at least January 1, 2004 until October 11, 2005, Respondent was storing, at the Facility, approximately three thousand gallons of hazardous waste, F035, (CCA) generated by Respondent in the 3,000 gallon steel CCA preservative tank which has secondary containment.

22. From at least January 1, 2004 and continuously until August 29, 2005, Respondent was storing, at the Facility, three hundred and fifty-three gallons of hazardous waste, F035, (CCA) generated by Respondent, in the associated collection system tank which does not have secondary containment.

23. From at least January 1, 2004, until August 29, 2005, Respondent was storing, at the Facility, an undetermined amount of hazardous waste, F035 (CCA), generated by the Respondent, on the surface of the wood treatment drip pad, and Respondent was moving horse trailers and farm equipment on and off of the drip pad causing tracking of CCA off of the drip pad. In addition, the roof over the drip pad was leaking allowing precipitation to fall onto the drip pad.

24. The 8,000 gallon tank, the 3,000 gallon tank and the associated collection system tank are "tanks", as that term is defined by WVHWMR § 33-20-2, which incorporates by reference 40 C.F.R. § 260.10, and in accordance with WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.190 which provides that tank systems, including sumps, and other collection devices or systems used in conjunction with drip pads must meet the requirements of 40 C.F.R. Subpart J- Tank Systems.

Count I
Operating a Hazardous Waste Storage Facility Without a Permit

25. The allegations of Paragraphs 1 through 24 of this Complaint, are incorporated herein by reference.

26. RCRA Section 3005(a), 42 U.S.C. § 6925(a), provides, in pertinent part, that each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste is required to comply with the regulations promulgated by EPA concerning permitting requirements and that the treatment, storage, or disposal of hazardous waste or the construction of a new facility is prohibited unless in compliance with all applicable permitting requirements.

27. WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 40 C.F.R. § 270.1(b) provide, in pertinent part, that a person may not own or operate a hazardous waste storage, treatment or disposal facility unless the person has first obtained a permit

or interim status for the facility from the WVDEP.

28. WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii), provides, in pertinent part, that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in tanks and the generator complies with Subpart J of 40 C.F.R. Part 265.

29. WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(iii) provides, in pertinent part, that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: the waste is placed on drip pads and the generator complies with Subpart W of 40 C.F.R. Part 265 and maintains the following records at the facility: (A) a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and (B) documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

30. From at least January 1, 2004 until October 11, 2005, Respondent stored hazardous waste as described more fully in Paragraphs 20 through 23, above, for greater than 90 days without a permit or without having interim status, and failed to maintain the following records: (A) a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and (B) documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

31. WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a)(4), provides, in pertinent part, that a generator may accumulate hazardous waste on-site without a permit for 90 days or less, provided that the generator complies with the requirements of 40 C.F.R. Part 265, Subpart C, relating to preparedness and prevention, Subpart D, relating to contingency plan and emergency procedures.

32. WVHWMR Part 265, Subpart D, includes 40 C.F.R.§ 265.51(a) which provides that each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

33. From at least January 1, 2004 to the present, Respondent failed to have an adequate contingency plan for the Facility as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R § 262.34(a)(4), which, in turn, incorporates 40 C.F.R. § 265.51(a).

Subpart J:

34. 40 C.F.R. § 265.190(c) provides, in pertinent part, that tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in § 260.10 of this chapter and regulated under 40 C.F.R. Part 265, Subpart W, must meet the requirements of 40 C.F.R. Subpart J.

35. 40 C.F.R. § 265.191(a) and (c) provide, in pertinent parts, that for each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 265.193, the owner or operator must determine that the tank system is not leaking or unfit for use, and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity, and that tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

36. From at least January 1, 2004 to the present, Respondent did not have written assessments, as described more fully in Paragraph 35, above, for the 8,000 gallon tank and the associated collection system tank at the Facility.

37. 40 C.F.R. § 265.197(c) provides that if an owner or operator has a tank system which does not have secondary containment that meets the requirements of 40 C.F.R. § 265.193(b) through (f) and which is not exempt from the secondary containment requirements in accordance with 40 C.F.R. § 265.193(g), then, (1) the closure plan for the tank system must include both a plan for complying with 40 C.F.R. § 265.197(a) and a contingent plan for complying with 40 C.F.R. § 265.197(b); (2) a contingent post-closure plan for complying with 40 C.F.R. § 265.197(b) must be prepared and submitted as part of the permit application.

38. From at least January 1, 2004 to the present, Respondent has two tank systems which do not have secondary containment that meets the requirements of 40 C.F.R. § 265.193(b) through (f), and which are not exempt from the secondary containment requirements in accordance with 40 C.F.R. § 265.193(g), while failing to have a closure plan for the tank systems that includes both a plan for complying with 40 C.F.R. § 265.197(a) and a contingent plan for complying with 40 C.F.R. § 265.197(b).

Subpart W:

39. 40 C.F.R. § 265.441 provides, in pertinent part, that for each existing drip pad as defined in 40 C.F.R. § 265.440 of Subpart W, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 40 C.F.R. Part 265, Subpart W,

except the requirements for liners and leak detection systems of 40 C.F.R. § 265.443(b); obtain and keep on file at the Facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation, and such assessment must be reviewed, updated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 265.443 of Subpart W are complete.

40. From at least January 1, 2004 to the present, Respondent did not evaluate the drip pad and determine that it meets all of the requirements of 40 C.F.R. Part 265, Subpart W, except the requirements for liners and leak detection systems of § 265.443(b); obtain and keep on file at the Facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation, and failed to have such assessment reviewed, updated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 265.443 are complete as required by 40 C.F.R. § 265.441.

41. 40 C.F.R. § 265.443(a)(4)(i) provides in pertinent part that drip pads must have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, as further described in such regulation.

42. From at least January 1, 2004 to the present, Respondent's drip pad did not have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second , as further described in 40 C.F.R. § 265.443(a)(4)(i).

43. 40 C.F.R. § 265.443(j) provides in pertinent part that a drip pad must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

44. On September 15, 2004, and on February 1, 2005, Respondent failed to operate and maintain the drip pad in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment, as required by 40 C.F.R. § 265.443(j).

45. 40 C.F.R. § 265.443(i), provides in pertinent part that the drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

46. From at least January 1, 2004 to the present, Respondent failed to thoroughly clean the drip pad surface in accordance with 40 C.F.R. § 265.443(i), and failed to document the date and time of each cleaning and the cleaning procedure used in the facility's operating log as required by 40 C.F.R. § 265.443(i).

47. 40 C.F.R. § 265.445(c)(1) provides that the owner operator of an existing drip pad, as defined in 40 C.F.R. § 265.443(b)(1), that does not comply with the liner requirements of 40 C.F.R. § 443(b)(1), must (i) include in the closure plan for the drip pad under 40 C.F.R. § 265.112 both a plan for complying with 40 C.F.R. § 265.445(a) and a contingent plan for complying with 40 C.F.R. § 265.445(b) in case not all contaminated soils can be practicably removed at closure; and (ii) prepare a contingent post-closure plan under 40 C.F.R. § 265.118 for complying with 40 C.F.R. § 265.445(b) in case not all contaminated soils can practicably be removed at closure.

48. From January 1, 2004 until the present, Respondent did not have a closure plan for the drip pad, and therefore, failed to (i) include in the closure plan for the drip pad under 40 C.F.R. § 265.112 both a plan for complying with 40 C.F.R. § 265.445(a) and a contingent plan for complying with 40 C.F.R. § 265.445(b) in case not all contaminated soils can be practicably removed at closure; and (ii) prepare a contingent post-closure plan under 40 C.F.R. § 265.118 for complying with 40 C.F.R. § 265.445(b) in case not all contaminated soils can practicably be removed at closure as required by 40 C.F.R. § 265.443(c).

49. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit to treat, store or dispose of hazardous waste at the Facility as required by WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

50. For the reasons set forth in Paragraphs 25 through 49, above, Respondent did not qualify for the exemptions from the permitting requirement set forth in WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(a).

51. The Facility is, and at the time of the violations alleged herein, was a hazardous waste management facility and Respondent was required to have a permit or interim status for the treatment, storage and/or disposal activities described in Paragraph 25 through 49, above.

52. Respondent violated WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and RCRA § 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), by operating a hazardous waste treatment, storage and/or disposal facility without a permit or interim status from at least January 1, 2004 until the present.

Count II
Failure to Have a Contingency Plan

53. The allegations of Paragraphs 1 through 52, above, of this Complaint, are incorporated herein by reference.

54. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.51, provides that the owner and operator of a facility must have a contingency plan which is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility.

55. From at least January 1, 2004 to the present , Respondent did not have a contingency plan which satisfied the requirements of WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.51, for the Facility.

56. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.51, from at least January 1, 2004 to the present, by failing to have a contingency plan for the Facility.

Count III
Failure to have a Closure Plan for the Facility

57. The allegations of Paragraphs 1 through 56, above, of this Complaint, are incorporated herein by reference.

58. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.112, provides, in pertinent part, that the owner or operator of a hazardous waste management facility must have a written closure plan which meets the requirements specified in 40 C.F.R. Part 264, Subpart G, and 40 C.F.R. § 264.197 (tank closure) and 40 C.F.R. § 264.575 (drip pad closure).

59. From at least January 1, 2004 to the present, Respondent did not have a written closure plan for the Facility, as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.112, as well as 40 C.F.R.§ 264.197 and § 264.575.

60. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.112, from at least January 1, 2004 to the present, by failing to have a closure plan, for the Facility, which meets the requirements specified in 40 C.F.R. Part 264, Subpart

G, and 40 C.F.R. § 264.197 (tank closure) and 40 C.F.R. § 264.575 (drip pad closure).

Count IV
Failure to Prepare a Contingent Post-Closure Plan for the Drip Pad

61. The allegations of Paragraphs 1 through 60, above, of this Complaint, are incorporated herein by reference.

62. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.575(c)(1), provides that the owner or operator of an existing drip pad, as defined in 40 C.F.R. § 264.570, that does not comply with the liner requirements of 40 C.F.R. § 264.573(b)(1) must (i) include in the closure plan for the drip pad under 40 C.F.R. § 264.112 both a plan for complying with 40 C.F.R. § 264.575(b) in case not all contaminated subsoils can be practicably removed at closure; and (ii) prepare a contingent post-closure plan under 40 C.F.R. § 264.118 for complying with 40 C.F.R. § 264.575(b) in case not all contaminated subsoils can be practicably removed at closure.

63. From January 1, 2004 until the present, Respondent's existing drip pad did not comply with the liner requirements of 40 C.F.R. § 264.573(b)(1) and Respondent did not prepare a contingent post-closure plan under 40 C.F.R. § 264.118 for complying with § 264.575(b) in case not all contaminated subsoils can be practicably removed at closure.

64. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.575(c)(1) by failing to prepare a contingent post-closure plan under 40 C.F.R. § 264.118 for complying with 40 C.F.R. § 264.575(b) in case not all contaminated subsoils can be practicably removed at closure.

Count V
Failure to Prepare a Contingent Post-Closure Plan for the 8,000 gallon tank and the associated collection system (tank) for the drip pad

65. The allegations of Paragraphs 1 through 64, above, of this Complaint, are incorporated herein by reference.

66. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.197(c), provides that if an owner or operator has a tank system which does not have secondary containment that meets the requirements of 40 C.F.R. § 264.193(b) through (f) and which is not exempt from the secondary containment requirements in accordance with 40 C.F.R. § 264.193(g), then, (1) the closure plan for the tank system must include both a plan for complying with 40 C.F.R. § 264.197(a) and a contingent plan for complying with 40 C.F.R. § 264.197(b); (2) a contingent post-closure plan for complying with 40 C.F.R.

§ 265.197(b) must be prepared and submitted as part of the permit application.

67. From January 1, 2004 until the present, Respondent did not prepare a contingent post-closure plan under 40 C.F.R. § 264.197(c) for complying with 40 C.F.R. § 264.197(b) for the 8,000 gallon tank and the associated collection system tank for the drip pad, at the Facility, which did not have secondary containment and were not exempt under 40 C.F.R. § 264.193(g).

68. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.197(c), by failing to prepare a contingent post-closure plan for complying with 40 C.F.R. § 264.197(b) for the 8,000 gallon tank and the associated collection system (tank) for the drip pad, at the Facility, which did not have secondary containment and were not exempt under 40 C.F.R. § 264.193(g).

Count VI
Failure to Provide Site Security

69. The allegations of Paragraphs 1 through 68, above, of this Complaint are incorporated herein by reference.

70. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(a), provides, in pertinent part, that the owner or operator of a hazardous waste management facility must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Regional Administrator that: (1) physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and (2) disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this part.

71. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(b) and (c), provides, in pertinent part, that unless the owner or operator has made a successful demonstration to the Regional Administrator pursuant to 40 C.F.R. § 264.14(a), a facility must have a 24-hour surveillance system which continuously monitors and controls entry onto the active portion of the facility or an artificial or natural barrier which completely surrounds the active portion of the facility, a means to control entry at all times though the gates or other entrances to the active portion of the facility, and a facility must post a sign with the legend, "Danger Unauthorized Personnel Keep Out", at each entrance to the active portion of a facility, and at other locations in sufficient numbers to be seen from any approach to the active portion of the Facility.

72. From at least January 1, 2004 to the present, Respondent failed to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, and failed to make the demonstration to the Regional Administrator, as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(a), and failed to fulfill the requirements of

73. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(a)-(c), from at least January 1, 2004 to the present, by failing to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, failing to make the demonstration to the Regional Administrator as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(a), and failing to fulfill the requirements of 40 C.F.R. § 264.14(b) and (c).

Count VII
Failure to Establish Financial Assurance

74. The allegations of Paragraphs 1 through 73, above, of this Complaint, are incorporated herein by reference.

75. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.143, provides, in pertinent part, that the owner or operator of a hazardous waste management facility must establish or have financial assurance for the closure of the facility by choosing from the options of 40 C.F.R. § 264.143 (a) through (f).

76. From at least January 1, 2004 to the present, Respondent did not establish or have financial assurance for the closure of the Facility as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.143.

77. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.143, from at least January 1, 2004 to the present, by failing to establish financial assurance for the closure of the facility by choosing from one of the options of 40 C.F.R. § 264.143 (a) through (f).

Count VIII
Failure to obtain written assessments for two tanks that did not have secondary containment

78. The allegations of Paragraphs 1 through 77, above, of this Complaint, are incorporated herein by reference

79. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.191(a) and (c) provides, in pertinent part, that for each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 264.193, the owner or operator must determine that the tank system is not leaking or unfit for use, and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity, and that tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

80. On January 1, 2004 until the present, Respondent did not have written assessments, as described more fully in Paragraph 79, above, for 8,000 gallon tank system and the associated collection system tank for the drip pad, at the Facility, which did not have secondary containment and were not exempt under 40 C.F.R. § 264.193(g).

81. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.191(a) and (c), by failing to have a written assessment as described more fully in Paragraph 79, above, for the 8,000 gallon tank system and the associated collection system tank for the drip pad, at the Facility, which did not have secondary containment and were not exempt under 40 C.F.R. § 264.193(g).

Count IX
Failure to Obtain a Written Assessment of the Drip Pad

82. The allegations of Paragraphs 1 through 81, above, of this Complaint, are incorporated herein by reference.

83. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571, provides, in pertinent part, that for each existing drip pad as defined in 40 C.F.R. § 264.570, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 40 C.F.R. Part 264, Subpart W, except the requirements for liners and leak detection systems of 40 C.F.R. § 264.573(b); obtain and keep on file at the Facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation, and such assessment must be reviewed, updated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 264.573 are complete.

84. From January 1, 2004 to the present, Respondent did not evaluate the drip pad and determine that it meets all of the requirements of 40 C.F.R. Part 264, Subpart W, except the requirements for liners and leak detection systems of 40 C.F.R. § 264.573(b); obtain

and keep on file at the Facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation, and such assessment must be reviewed, updated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 264.573 of 40 C.F.R. Part 264, Subpart W, are complete as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571(a).

85. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571, from January 1, 2004 to the present, by failing to evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of 40 C.F.R. § 264.573(b); obtain and keep on file at the Facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation, and reviewed, update and re-certified annually such assessment until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 264.573 of 40 C.F.R. Part 264, Subpart W, are complete.

Count X
Failure to Meet Hydraulic Conductivity Requirement for the Drip Pad

86. The allegations of Paragraphs 1 through 85, above, of this Complaint, are incorporated herein by reference.

87. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i), provides in pertinent part that drip pads must have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, as further described in such regulation.

88. From at least January 1, 2004 to the present, Respondent's drip pad did not have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, as further described in WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i).

89. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i), from at least January 1, 2004 to the present, by failing to have, for its drip pad, a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, as further described in WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i).

Count XI

Failure to Minimize Tracking of Hazardous Waste from the Drip Pad

90. The allegations of Paragraphs 1 through 89, above, of this Complaint, are incorporated herein by reference.

91. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), provides in pertinent part that drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

92. On September 15, 2004, and on February 1, 2005, Respondent failed to operate and maintain the drip pad in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment, as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j).

93. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), on September 15, 2004, and on February 1, 2005, by failing to operate and maintain its drip pad to minimize the tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

Count XII
Failure to Inspect Drip Pad Weekly

94. The allegations in Paragraphs 1 through 93, above, are incorporated herein by reference as though fully set forth at length herein.

95. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.574(b)(3), provides that while a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any deterioration or cracking of the drip pad surface.

96. From at least August 1, 2001 until January 1, 2004, Respondent failed to inspect the drip pad at the Facility weekly as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.574(b)(3).

97. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.574(b), by failing to inspect the drip pad at the Facility weekly, as described in Paragraph 94, above.

Count XIII
Failure to Properly Store Land-Disposal Restricted Waste

98. The allegations of Paragraphs 1 through 97, above, of this Complaint, are incorporated herein by reference.

99. WVHWMR § 33-20-10.1 which incorporates by reference 40 C.F.R. § 268.50(a), provides, in pertinent part, that:

> Except as provided in this section, the storage of hazardous waste restricted from land disposal under [40 C.F.R. Part 268, Subpart C or] RCRA Section 3004 is prohibited unless the following conditions are met: (1) a generator stores such waste in tanks, containers or containment buildings on-site for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal, and the generator complies with the requirements in [40 C.F.R.] § 262.34 and [40 C.F.R.] Parts 264 and 265.

100. The hazardous waste referred to in Paragraphs 20 through 23, above, is and at the time of its storage at the Facility, was land-disposal restricted hazardous waste within the meaning of WVHWMR § 33-20-10.1, which incorporates by reference 40 C.F.R. § 268.50(a).

101. The land-disposal restricted waste referred to in Paragraphs 20 through 23, above, did not meet the applicable treatment standards or prohibition levels under WVHWMR § 33-20-10.1, which incorporates by reference 40 C.F.R. § 268.40, at the time of their storage at the Facility.

102. The drip pad referred to in Paragraph 23, above, is not and, at the time of the violations alleged herein, was not a container, tank or containment building.

103. As alleged in Paragraphs 25 through 49, above, Respondent failed to comply with the requirements of 40 C.F.R. § 262.34 and 40 C.F.R. Parts 264 and 265 with respect to the hazardous waste storage described in Paragraphs 20 through 23, above.

104. Respondent violated WVHWMR § 33-20-10.1, which incorporates by reference 40 C.F.R. § 268.50(a), from at least January 1, 2004 until the present, by storing land disposal restricted wastes in a manner which failed to meet the conditions set forth in 40 C.F.R. § 262.34.

Compliance Tasks

Respondent shall perform the following Compliance Tasks within the time periods specified. "Days" as used herein shall mean calendar days unless specified otherwise.

105. **Compliance Tasks**:

A. Immediately, Respondent shall:

1. Cease the treatment, storage or disposal of hazardous waste at the Facility except in accordance with a permit or interim status under RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and/or WVHWMR § 33-20-11, or in accordance with all of the conditions for a valid exemption from such permit requirements.

In particular, Respondent shall:

a. Remove any remaining liquid and solid/debris CCA waste (F035) from the 8,000 gallon tank, the 3,000 gallon tank, and the associated collection system tank for the drip pad, at the Facility, and dispose of such hazardous waste in accordance with WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. Part 264.

b. Remove the dry CCA waste, wood chips and wood debris from the drip pad, at the Facility, and dispose of such hazardous waste in accordance with WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. Part 264.

c. Cease the storage of land-disposal restricted waste except in accordance with WVHWMR § 33-20-10.1, which incorporates by reference 40 C.F.R. § 268.50.

d. Repair the roof of the building which surrounds the drip pad to prevent precipitation from falling onto the drip pad at the Facility. Respondent shall use tarps, if necessary, for further protection from rain water.

B. Within fifteen (15) days after the effective date of this Complaint, Respondent shall provide site security as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.14(b) and (c).

a. Respondent shall fence the open side of the drip pad building and lock such fencing.

b. Respondent shall post a sign with the legend, "Danger–Unauthorized Personnel Keep Out", at each entrance to the active portion of the Facility, and at other locations, in sufficient numbers, to be seen from any

approach to the active portion of the Facility.

C. Provide copies of all hazardous waste manifests for wastes which have been, and will be, removed from the Facility from January 1, 2004 until WVDEP-approved regulatory closure has occurred, to the WVDEP and to EPA, and retain returned manifests at the Facility for a period of three years as required by WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.40.

D. Within *forty-five* (45) days after the effective date of this Complaint, Respondent shall commence closure:

Specifically, Respondent shall:

1. Provide a written closure plan and contingent post-closure plans for the drip pad and tanks, at the Facility, to WVDEP, for approval, and to EPA for review, in accordance with WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. Part 264, Subpart G, and 40 C.F.R. §§ 264.197 and 264.575.

2. Provide financial assurance for the Facility as required by WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.143.

3. Immediately upon WVDEP's approval of such plans, implement such plans as directed by WVDEP.

106. **Certification** - Within ninety (90) days of the effective date of this Complaint, Respondent shall certify to EPA in writing that it is in compliance with the Compliance Tasks described in Paragraph 105, above. Such certification shall be made in the manner specified in Paragraph 107, below, of this Complaint.

107. **Submissions to EPA**
(1). Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Complaint, including, but not limited to, the document referred to in Paragraph 106, above, shall include a certification by a responsible corporate officer of Respondent. For purposes of such certification, a responsible corporate officer of Respondent means: 1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or 2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid

certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment for knowing violations.

Signature:________________
Name: ________________
Title: ________________

(2). Mailings to EPA - Documents to be submitted to EPA pursuant to or concerning this Complaint shall be sent via certified mail, return receipt requested, or overnight commercial delivery service to the attention of:

Jeanna R. Henry (3WC31)
RCRA Enforcement and Compliance Officer
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

and:

Cheryl L. Jamieson, Esq. (3RC30)
Senior Asst. Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

(3). Mailings to WVDEP - Documents to be mailed by Respondent to WVDEP shall be sent by certified mail, return receipt requested, or overnight commercial delivery service, to:

Jamie Fenske
Northern Unit Supervisor
Div. Of Waste & Waste Management
West Virginia Dept. of Environmental Protection
131A Peninsula Street
Wheeling, WV 26003

108. The failure of Respondent to comply with the Compliance Tasks set forth in Paragraphs 104 through 106 of this Complaint, including failure to complete any task within the deadline specified for such task, shall be deemed a violation of this Complaint and may subject Respondent to further administrative or judicial enforcement.

III. CIVIL PENALTY ASSESSMENT

109. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides in relevant part that any person who violates any requirement of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, shall be liable for a civil penalty not to exceed $25,000 for each day of violation. The Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 ("Penalty Inflation Rule"), a copy of which is enclosed with this Complaint, increase the maximum civil penalty that can be assessed by EPA under RCRA for each violation occurring on or after January 30, 1997 by 10%, to $27,500 per day, and for each violation occurring on or after March 16, 2004, to $32,500 per day.

110. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4). For purposes of determining the amount of any penalty to be assessed, Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by Respondent to comply with the applicable requirements. In general, in developing the proposed penalty, Complainant will be guided by EPA's June 2003 *RCRA Civil Penalty Policy* ("*RCRA Penalty Policy*"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to the specific facts and circumstances of this case.

111. Under the *RCRA Penalty Policy*, an initial gravity-based penalty will be calculated for each violation based on two components: the potential for harm of the violation and the extent of deviation from the applicable requirement. The results of that analysis will be used to select corresponding penalty values for single day and multi-day violations from the penalty matrices published in the *RCRA Penalty Policy*. The initial penalty for each violation will be adjusted in accordance with the *RCRA Penalty Policy* to account for

other factors including any good faith efforts to comply with the applicable requirements, and any willfulness or negligence. In addition to the gravity-based penalty, the *RCRA Penalty Policy* requires that penalty assessments capture any significant economic benefit that Respondent realized as a result of noncompliance. As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. Complainant will consider Respondent's ability to pay a penalty as a factor in determining the proposed civil penalty. The burden of raising and presenting evidence regarding any inability to pay a particular penalty rests with the Respondent.

112. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number of and severity of violations is set forth below. When EPA proposes the assessment of a civil penalty of up to $27,500.00 per day (if the violation occurred prior to March 14, 2004) or $32,500 per day (if the violation occurred on or after March 16, 2004) against Respondent for each of the violations alleged in this Complaint, pursuant to Section 3008(a)(3) and (g) of RCRA, that penalty proposal will be based, in part, on the following application of the statutory and penalty policy factors to the facts and circumstances of this case. This explanation does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

113. **COUNT I: Owning/operating a hazardous waste treatment, storage or disposal facility without a permit or interim status**

Potential for Harm -Moderate
Deviation from Requirements- Moderate
Days of Non-Compliance- 1 day penalty plus 179 days multi-day penalty

From at least January 1, 2004 until August 29, 2005, Respondent was storing hazardous waste, F035, chromated copper arsenate, in an 8,000 gallon tank and on the drip pad, and in an associated collection system tank for the drip pad, at the Facility. From at least January 1, 2004 until October 11, 2005, Respondent was storing hazardous waste F035 in a 3,000 gallon tank at the Facility. Because Respondent was not complying with the regulatory conditions to qualify for exemption from a permit on January 1, 2004, and because Respondent stored wastes for a period of time exceeding the time allowed by the hazardous waste accumulation exemption specified in 40 C.F.R. § 262.34(a)(1)(iii), Respondent was required to have a hazardous waste storage permit or interim status. The total number of days by which Respondent's storage of hazardous waste exceeded the period of exemption far exceeds 180 days, which is the maximum number of days for which penalties are generally assessed for such violations as explained on page 25 of the *RCRA Penalty Policy*.

Gravity-Based Penalty Component - Potential for Harm: The "potential for harm" arising from Respondent's storage of hazardous waste without a permit or interim status is moderate. Respondent's failure to comply with the permitting requirements of RCRA and the authorized West Virginia Pennsylvania Hazardous Waste Management Regulations had the potential to cause harm to human health, the environment and the integrity of the RCRA program. The permitting process is the backbone of the RCRA program. It ensures that EPA is aware of the existence of those facilities which treat, store or dispose of hazardous waste and that such facilities handle hazardous waste in accordance with regulatory or permit standards designed to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the storage of substantial quantities of hazardous waste for periods exceeding the 90-day accumulation exemption period indicates that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of hazardous waste, thereby posing a substantial risk to human health and the environment. Specifically, Respondent's storage activity increased the risk that a catastrophic event such as a fire or accidental spill could have released substantial quantities of hazardous waste in the environment.

Extent of Deviation: The violations of the permit requirement were significant and extended for a significant period of time. Although operating a hazardous waste treatment, storage or disposal facility without a permit or qualifying for the 90-day accumulation exemption represents a substantial violation, the extent of deviation is mitigated here by the fact that Respondent did remove some the hazardous waste in August or September of 2005. The foregoing will justify a gravity-based penalty in the moderate-moderate range of the *RCRA Penalty Policy* matrix.

Multi-Day Penalty Component: With a "moderate" potential for harm and "moderate" extent of deviation, a multi-day penalty is presumed appropriate under the *RCRA Penalty Policy*. Complainant has determined the alleged violations occurred on or about January 1, 2004 until August 29, 2005 which is a time period well in excess of the 180 days at which penalties for such violations may be capped under the *RCRA Penalty Policy.*

Economic Benefit of Non-Compliance: Pursuant to the *RCRA Penalty Policy* the economic benefit of noncompliance may be included in the assessed penalty to ensure that a violator does not gain an economic advantage through its violations. Respondent's violations involved avoidance of hazardous waste transportation costs because shipments did not occur at 90-day intervals. Further, Respondent avoided the costs of, among other things, applying for a permit, designing and constructing a hazardous waste storage facility, and financial assurance for closure, which are all costs associated with the storage of hazardous waste for periods longer than 90 days. Compliance with RCRA

regulations requires a financial commitment which all generators are required to undertake. Successful implementation of the RCRA program depends on the compliance and accountability of all hazardous waste generators and facilities and involves costs that must be share equitably among all regulated entities and to prevent any violator from enjoying a competitive advantage by avoiding or delaying hazardous waste management expenses. Consequently, an assessment for economic benefit for the avoided shipments and other avoided costs may be included in the penalty calculation with regard to Count I of the Complaint.

114 **COUNT II: Failure to have a Contingency Plan**

Potential for Harm - Major
Deviation from the Requirement - Major
Days of Non-Compliance - One

On January 1, 2004, Respondent became a large quantity generator of hazardous waste and the owner and/or operator of a hazardous waste management facility. As such, Respondent was required to comply with the emergency preparedness requirements of RCRA which includes a requirement to have a contingency plan.

Gravity-Based Penalty Component- Potential for Harm: The purpose of a contingency plan is to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. The provisions of the plan must be carried out immediately whenever there is a fire, explosion or release which could threaten human health or the environment. The failure to have such a plan could lead to ineffective or dangerous responses during an emergency. If Respondent fails to respond appropriately during an emergency event, human health and the environment may be placed at significant risk. Consequently, such a violation has a major potential for harm.

Extent of Deviation: From at least January 1, 2004 until the present, Respondent has failed to have a contingency plan for the Facility. This violation represents a substantial "major" deviation from the regulatory requirement.

No multi-day, economic benefit, or compliance history adjustments are contemplated for this violation at this time.

115. **COUNT III: Failure to Have a Written Closure Plan**

Potential for Harm - Major
Extent of Deviation - Major

Days of Non-Compliance - One

Respondent owns a drip pad, an associated collection system (tank) for the drip pad, an 8,000 gallon tank and a 3,000 gallon tank, at its Facility, which held hazardous waste, F035. Respondent ceased wood treatment operations at the Facility at the end of December, 2003. Although Respondent has removed a large portion of the hazardous waste from these four hazardous waste management units in August and October of 2005, Respondent is required to have required to have a written closure plan for the Facility.

Gravity-Based Penalty Component - Potential for Harm: The purpose of a written closure plan is to identify the steps which must be taken to perform partial or final closure of a facility. The plan must describe how the hazardous waste management units at the facility will be closed in accordance with the RCRA regulations including, but not limited to, a description of how the hazardous waste will be removed or disposed of. In the instant case, the facility has ceased operating and some hazardous waste has been left on site with no plan to remove the remaining waste or to determine whether contamination from the hazardous waste management units is present in soil, surface water or ground water. The failure to have a closure plan has the potential to put human health and the environment at significant risk. Therefore, such a violation presents a major potential for harm.

Extent of Deviation: From at least January 1, 2004 to the present, Respondent has failed to have a closure plan for the Facility's drip pad, associated collection system and tanks. This is a substantial and "major" deviation from the regulatory requirements.

No multi-day, economic benefit, or compliance history adjustments are contemplated for this violation at this time.

116. **COUNT IV: Failure to Prepare a Contingent Post-Closure Plan for the Drip Pad**

Potential for Harm - Major
Deviation from Requirement - Major
Days of Non-Compliance - One

Respondent owns a drip pad which was used for wood treatment operations until the end of December 2003. During wood treatment operations, hazardous waste, F035, was placed onto the drip pad. Hazardous waste is present on the drip pad. In addition, the roof over the drip pad leaks resulting in precipitation falling onto the drip pad. Because closure of the drip pad has not yet occurred, and due to possibility that contaminated subsoils are present which may not be able to be practicably removed at closure, Respondent must prepare a written contingent post-closure plan.

Gravity-Based Penalty Component - Potential for Harm: The purpose of a written contingent post-closure plan is to identify the steps that will be taken if contaminated subsoils are present at the Facility which cannot be practicably removed after closure activities for the drip pad have been implemented. The contingent post-closure plan must describe planned monitoring and maintenance activities to be utilized to ensure the integrity of the containment system during the post-closure care period. The failure to have a contingent post-closure plan has the potential to put human health and the environment at significant risk. Therefore, such a violation presents a "major" potential for harm.

Extent of Deviation: From at least January 1, 2004 to the present, Respondent has failed to have a written contingent post-closure plan for the Facility's drip pad. This is a substantial and "major" deviation from the regulatory requirements.

No multi-day, economic benefit, or compliance history adjustments are contemplated for this violation at this time

117. **COUNT V: Failure to Prepare a Contingent Post-Closure Plan for Two Tanks Which do not have Secondary Containment**

Potential for Harm - Major
Deviation from Requirement - Major
Days of Non-Compliance - One

Respondent owns and operates an 8,000 gallon tank and an associated collection system (tank) for the drip pad at the Facility. The two tanks which do not have secondary containment were used to store hazardous waste, F035, from at least January 1, 2004 until August 29, 2005. Because the closure of such tanks has not yet occurred, and due to the possibility that all contaminated soils cannot be practicably removed or decontaminated, Respondent is required to prepare a written contingent post-closure plan.

Gravity-Based Penalty - Potential for Harm: The purpose of a written contingent post-closure plan is to identify the steps which will be taken if contaminated subsoils are present at the Facility which cannot be practicably removed or decontaminated after closure activities for the two tanks have been implemented. The contingent post-closure plan must describe planned monitoring and maintenance activities to be utilized to ensure the integrity of the containment system during the post-closure care period. The failure to have a contingent post-closure plan has the potential to put human health and the environment at significant risk. Therefore, such a violation presents a "major" potential for harm.

Extent of Deviation: From at least January 1, 2004 to the present, Respondent has failed to have a written contingent post-closure plan for the Facility's drip pad. This is a substantial and "major" deviation from the regulatory requirements.

No multi-day, economic benefit, or compliance history adjustments are contemplated for this violation at this time

118 **COUNT VI: Failure to Provide Site Security**

Potential for Harm- Minor
Deviation from Requirement-Major
Days of Non-Compliance- One plus multi-day for 179 days

Respondent owns and operates a facility with hazardous waste management units on site. Respondent ceased wood treatment operations at the site at the end of December 2003. Hazardous waste remains stored on site. From at least January 1, 2004 until the present, Respondent failed to provide site security for the hazardous waste storage facility.

Gravity-Based Penalty Component - Potential for Harm: An owner or operator of a hazardous waste storage facility must prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility unless he makes a demonstration to the Regional Administrator in accordance with the RCRA regulation at 40 C.F.R. § 264.14(a). Respondent failed to provide security and failed to make a demonstration as regulatorily required. The potential for harm is characterized as "minor" due to the particular location of the facility at issue.

Extent of Deviation: From at least January 1, 2004 until the present, Respondent ceased wood treatment operations at the Facility and failed to provide for site security. This is a substantial and "major" deviation from the regulatory requirement.

No economic benefit, or compliance history adjustments are contemplated for this violation at this time.

119. **COUNT VII: Failure to Have Financial Assurance**

Potential for Harm - Major
Extent of Deviation - Major
Days of Non-Compliance - One

Respondent owns a wood treatment facility with a drip pad, an associated

collection system and two tanks. Respondent ceased wood treatment operations at the end of December 2003. While a large quantity of hazardous waste was removed from the site in August and October of 2005, there are four hazardous waste units which remain on site. The Facility does not have financial assurance for closure of the facility which was required on at least January 1, 2004 when Respondent became the owner and/or operator of a hazardous waste management facility.

Gravity-Based Penalty Component - Potential for Harm: An owner operator of a hazardous waste management facility must establish financial assurance for the closure of the facility. The purpose of requiring financial assurance is to provide a financial mechanism which can be utilized to perform RCRA closure of a hazardous waste management facility. The potential for harm is also "major" because Respondent has informed representatives of EPA that it intends to file a petition for bankruptcy in the immediate future, and that Respondent is unable to remove the hazardous waste on site and to remove any contamination which may be present from past wood treatment operations. The failure to have financial assurance to perform closure has the potential to put human health and the environment at significant risk.

Extent of Deviation: The deviation from the requirement is "major" because Respondent failed to establish any financial assurance, and Respondent has ceased operations and left hazardous waste remaining on site.

Economic benefit may be calculated for this violation.

120. **COUNT VIII: Failure to Obtain a Written Assessment for Two Tanks which do not have Secondary Containment**

Potential for Harm - Major
Extent of Deviation - Major
Days of Non-Compliance - One

Respondent owns two tanks: an 8,000 gallon tank, and an associated collection system tank for the drip pad, which were used to store hazardous waste, F035, from at least January 1, 2004 until August 29, 2005. The two tanks are existing tank systems which do not have secondary containment. Respondent must obtain and keep on file, at the Facility, a written assessment that attests to the integrity of each tank system.

Gravity-Based Penalty Component - Potential for Harm: The purpose of requiring a written assessment for tanks systems which do not have secondary containment is to determine that the tank systems are not leaking or unfit for use. The written assessment, which must be kept at the Facility, must be reviewed and certified by an independent,

qualified, registered professional engineer. The failure to have a written assessment of Respondent's two tank systems has the potential to put human health and the environment at significant risk. Therefore, such a violation presents a "major" potential for harm.

Extent of Deviation: From at least January 1, 2004 until the present, Respondent has failed to obtain and keep on file, at the Facility, a written assessment of the 8,000 gallon tank and the associated collection system for the drip pad (tank). This is a substantial and "major" deviation from the regulatory requirements.

No economic benefit, or compliance history adjustments are contemplated for this violation at this time.

121 **COUNT IX: Failure to Obtain a Written Assessment of the Drip Pad**

Potential for Harm - Major
Extent of Deviation - Major
Days of Non-Compliance - One

Respondent's drip pad was constructed prior to October 1990 and is defined in 40 C.F.R. § 264.570 as an "existing" drip pad. As the owner/operator of an existing drip pad, Respondent was required to evaluate the drip pad and determine that it meets all of the requirements of Subpart W, except the requirements for liners and leak detection systems. The owner or operator must obtain and keep on file at the Facility a written assessment of the drip pad, reviewed and certified by and independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in 40 C.F.R. § 264.573(b). From at least January 1, 2004, Respondent failed to obtain and keep on file at the Facility an evaluation of the drip pad as required.

Gravity-Based Penalty Component - Potential for Harm: The "*potential for harm*" resulting from Respondent's failure to obtain a written assessment of the drip pad is "major." Subpart W drip pads are hazardous waste management units that are unique to the wood preserving industry. Drip pads are used to accumulate and manage excess wood preserving formulations following the treatment of virgin timber. Due to the nature of wood preserving wastes and the manner in which they are generated (*i.e.*, over a very large surface area), EPA discovered that the regulations governing traditional RCRA hazardous waste management units were not particularly useful. To accommodate this uniqueness and to ensure proper and consistent waste management, EPA developed

specific standards for the design, installation, operation, and closure of hazardous waste drip pads by recognizing drip pads as a new type of hazardous waste management unit under RCRA. One of the key elements of the existing drip pad regulations is the annual evaluation requirement. The purpose of the annual drip pad evaluation is to make sure a facility's drip pad meets all the design and operating requirements. If a drip pad is not designed and operated properly, it will be unable to properly perform its primary function of capturing and accumulating spent wood preservative, potentially resulting in the release of hazardous waste or hazardous waste constituents into the environment.

Extent of Deviation- The extent of deviation associated with this Count is "major." From at least January 1, 2004 to the present, Respondent has failed to obtain and keep on file a written evaluation for the Facility's drip pad. This is a substantial deviation from the regulatory requirements.

Economic Benefit of Non-Compliance: Economic benefit may be calculated for this violation.

122. **COUNT X: Failure to Meet the Hydraulic Conductivity Requirement for the Drip Pad**

Potential for Harm - Major
Extent of Deviation from Requirements - Major
Days of Non-Compliance - One

From at least January 1, 2004 to the present, Respondent's drip pad did not have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

Gravity-Based Penalty Component - Potential for Harm: The *"potential for harm"* resulting from the Respondent's failure to properly seal or coat the Facility's drip pad to meet the hydraulic conductivity requirement is "major." One of the main goals of the drip pad design standards is to prevent the flow of waste from the drip pad to the surrounding environment. Subpart W requires owners/operators to protect against the migration of hazardous wastes and their constituents into the environment. During EPA's September 2004 and February 2005 CEIs, the inspector observed CCA waste preservative being stored on the Respondent's concrete drip pad and associated collection system. CCA is a water-borne preservative formulation consisting of water, arsenic acid, chromic

acid, and copper oxide. CCA is highly toxic and can damage mucous membranes and tissues of the respiratory system and cause chemical burns on the skin and even skin lesions. CCA has also been determined to be a possible carcinogen. Due to this, addition of a sealant or coating to Respondent's drip pad is necessary as the pad and associated collection system are constructed of concrete which is inherently porous. Without the addition of a sealant or coating to the drip pad surface and associated collection system, there is no way to prevent hazardous wastes from seeping through the drip pad and/or associated collection system into the surrounding environment. Furthermore, Respondent's drip pad is an "existing" drip pad and was constructed without a liner and leakage detection system. In the event CCA preservative did seep through the drip pad or associated collection system, the Facility would have no way of determining whether or not there was a release. Therefore, based on the specifics of this case, EPA determined the potential for harm to be substantial to human health and the environment, in addition to the RCRA Program, as a result of the Facility's failure to properly coat or seal the drip pad

Extent of Deviation: Respondent's *"extent of deviation"* associated with this violation is "major." By failing to apply a sealant or coating to the Facility's drip pad and associated collection system as required by WVHWMR §33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i), Respondent completely failed to meet the regulator requirement, resulting in a substantial extent of deviation.

Economic Benefit of Non-Compliance: No economic benefit was associated with this count.

123. **COUNT XI: Failure to Minimize Tracking of Hazardous Waste from the Drip Pad**

Potential for Harm - Major
Extent of Deviation from Requirements- Major
Days of Non-Compliance - Two : September 15, 2004
and February 1, 2005

During EPA's September 15, 2004 and February 1, 2005 Compliance Evaluation Inspections, Respondent was using the Facility's drip pad, which was contaminated with CCA, as a storage area for farm equipment, a horse trailer and a car trailer as evidenced by photographs taken during the CEIs. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment. By moving and storing farm equipment and horse/car trailers on and off of the drip pad which became contaminated with CCA, Respondent failed to minimize the tracking of hazardous waste off of the drip pad as required.

Gravity-Based Penalty Component - Potential for Harm: The *"potential for harm"* arising from the Respondent's failure to minimize the tracking of hazardous waste and hazardous waste constituents off of the drip pad is "major." The primary reason behind RCRA's preservative containment requirements is to keep preservative chemicals out of the ground and surface waters. Contamination of soil and groundwater is a serious problem because it can move considerable distances as it is picked up by water moving through the soil and the water table. Because there are few, if any, naturally occurring organisms in the environment that can readily break down these chemicals, once the contamination enters the ground it has the potential to linger for long periods of time and cause extensive contamination to surrounding subsurface environments.

Respondent uses a preservative formulation of CCA, which is highly toxic due to the presence of chromium and arsenic and is a possible carcinogen. At the time of EPA's September 2004 and February 2005 inspections, the Facility was storing farm equipment, a horse trailer, and a car trailer on the drip pad which was contaminated with CCA. The farm equipment is clearly used in applications where it regularly comes into contact with soil, while the horse/car trailers are used for travel on public roadways. Based on this, the Complainant has determined that there is a substantial potential for harm to human health and the environment, in addition to the RCRA Program, as a result of the Facility's failure to meet the requirements of WVHWMR §33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), which requires the drip pad to be operated in a manner to minimize the tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

Extent of Deviation: Respondent's *"extent of deviation"* associated with this violation is also "major" as Respondent substantially deviated from the requirements of WVHWMR §33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), by failing to operate and maintain the drip pad in a manner to minimize the tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

Economic Benefit of Non-Compliance: No economic benefit was associated with this count.

124. **COUNT XII: Failure to Inspect Drip Pad Weekly**

Potential for Harm - Moderate
Extent of Deviation from Requirements - Major
Days of Non-Compliance - One

From at least August 1, 2001 until January 1, 2004, Respondent failed to inspect

the drip pad weekly and after storms to detect evidence of any deterioration or cracking of the drip pad surface.

Gravity-Based Penalty Component: The *"potential for harm"* arising from the Respondent's failure to meet the requirements of WVHWMR §33-20-7.2, which incorporates by reference 40 C.F.R. § 264.574(b)(3), is "moderate" due to the fact the wood treating operations were minimal and the drip pad was covered. In making this determination, the Agency considered the design of the Facility's drip pad and the nature of the preservative. The Facility's drip pad was constructed prior to October 24, 1990 and is defined in 40 C.F.R. § 264.570 as an "existing" drip pad, therefore, it was not constructed with a synthetic liner or leakage detection system. CCA contains toxic constituents that have the potential to cause skin, eye, and respiratory irritation as well as more serious ailments in humans. In addition, CCA is also considered a possible carcinogen. CCA is water soluble, therefore, it is highly mobile.

The primary reason behind RCRA's weekly inspection requirement is to keep deterioration of the drip pad from occurring so that preservative chemicals do not contaminate ground and surface waters. Contamination of soil and groundwater is a serious problem because it can move considerable distances as it is picked up by water moving through the soil and the water table. Because there are few, if any, naturally occurring organisms in the environment that can readily break down these chemicals, once the contamination enters the ground it has the potential to linger for long periods of time and cause extensive contamination to surrounding subsurface environments. Based on this information, the Complainant has determined that there is a substantial potential for harm to human health, and the environment, in addition to the RCRA Program, as a result of the Facility's management practices of the drip pad with regard to the failure to inspect the drip pad weekly and after storms for deterioration or cracking of the drip pad surface.

Extent of Deviation: The *"extent of deviation"* associated with this violation is "major." Respondent completely failed to comply with the requirements of 40 C.F.R. § 264.574(b)(3) which requires the drip pad to be inspected weekly and after storms to detect deterioration or cracking of the drip pad surface. At the time of EPA's September 2004 and February 2005 CEIs, there was a noticeable residue of CCA and CCA contaminated debris covering a majority of the Facility's drip pad surface.

Economic Benefit of Non-Compliance: No economic benefit was associated with this count.

125. **COUNT XIII: Failure to Properly Store Land-Disposal-Restricted Waste**

Due to the fact that the Count XIII arose from the same set of facts as Count I, a separate penalty will not be calculated for Count XIII.

126. Any violation of this Compliance Order or further violation of RCRA Subtitle C may subject Respondent to further administrative, civil and/or criminal enforcement action, including the imposition of civil penalties and criminal fines and/or imprisonment, as provided in RCRA Section 3008, 42 U.S.C. § 6928.

IV. OPPORTUNITY TO REQUEST A HEARING

127. Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at such hearing contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

128. If Respondents fail to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer shall result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing penalties proposed herein without further proceedings.

129. Any hearing requested by Respondent will be conducted in accordance with EPA's Consolidated Rules of Practice, a copy of which is enclosed. Hearings will be held in a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d).

130. Respondent's Answer and all other documents that Respondent files in this action should be sent to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy should be sent to Cheryl L. Jamieson, the attorney assigned to represent EPA in this matter, at:

Office of Regional Counsel (3RC30)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. SETTLEMENT CONFERENCE

131. Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint. A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.

132. In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a final order signed by the Regional Administrator or the Regional Judicial Officer. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

133. The Quick Resolution procedures set forth at § 22.18 of the Consolidated Rules of Practice are not applicable to this proceeding because this Complaint contains a compliance order. *See* 40 C.F.R. § 22.18(a)(1).

134. If you wish to arrange a settlement conference, please contact Ms. Jamieson, Sr. Asst. Regional Counsel, at (215) 814-2375. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VI. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

135. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Waste and Chemicals Management Division, the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this

case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: __________

____
James N. Webb
Associate Director for Enforcement
Waste and Chemicals Management Division

ENCLOSURES:

Consolidated Rules of Practice, 40 C.F.R. Part 22.

West Virginia Hazardous Waste Management Regulations.

Civil Monetary Penalty Adjustment Rule, 40 C.F.R. Part 19.

RCRA Civil Penalty Policy, June, 2003.

Revised Penalty Matrices for *RCRA Civil Penalty Policy*, January, 2005.

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
Kessel Lumber Supply, Inc. **HC 84 Box 4** **New Creek Drive** **Keyser, West Virginia 26726**	: :	**U.S. EPA Docket Number** **RCRA-03-2006-0059**
Respondent	:	

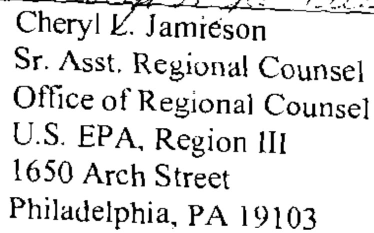
CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Overnight Delivery Service, true and correct copies of the Complaint, Compliance Order and Notice of Right to Request Hearing: *In Re: Kessel Lumber Supply, Inc., Docket No. RCRA-03-2006-0059*, to the persons and addresses listed below. The original Complaint, Compliance Order and Notice of Right to Request Hearing were hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region III.

Stephen Shuman, Esq.
Reeder & Shuman
256 High Street
Morgantown, WV 26507

Lawrence Kessel
HC 84 Box 4
New Creek Drive
Keyser, West Virginia 26726

Date: 1 2 EP [illegible]



Cheryl L. Jamieson
Sr. Asst. Regional Counsel
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103