UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
National-Standard Company	)	Docket No. RCRA-V-W-86-R-30
(Lake Street Plant) and	)	and
National-Standard Company	)	Docket No. RCRA-V-W-86-R-31
(City Complex Plant),	)	
	)	
Respondents	)	

ORDER

By way of background, and with regard to Docket No. V-W-86-R-30, complainant sought an extension for the serving of prehearing exchanges in a motion of November 26, 1986, which motion was granted by order of December 10, 1986. This was modified by order of December 11, 1986, in which the parties were directed to engage in prehearing exchanges should the matter not be settled by January 26, 1987. In the interim, for the reasons stated in its response served December 12, 1986, respondent opposed the motion. Complainant replied to the response on December 29, 1986. In Docket No. RCRA-V-W-86-R-31, the scenario was essentially the same except that by order of December 11, 1986 the prehearing exchanges were to take place on January 27, 1987.

The arguments raised by the parties in their submissions have been assessed, and they will not be repeated here except to the extent deemed necessary by this order. Citing

Northside Sanitary Landfill, Inc. v. Thomas, 25 ERC 1065, 1073 (7th Cir. 1986), respondent argues that the U.S. Environmental Protection Agency (EPA) no longer has authority to review its Part B permit. In that case, and in pertinent part, the State of Indiana received authorization, pursuant to Section 3006 of the Resource Conservation and Recovery Act (Act), 42 U.S.C. § 2926, to "determine the closure requirements for any facility in that state whose interim status has been terminated by EPA." (emphasis supplied) The holding in Northside is confined to the power of EPA to oversee closure plans in those states given authority to administer same. A fair reading of the case shows it did not come to grips with the broad question concerning the authority of EPA to bring enforcement actions.

The complaint in the subject matters recites that the action is commenced pursuant to Section 3008 of the Act, 42 U.S.C. § 6928. It has been held that Congress did not intend, by authorizing a state program, to preempt Federal regulations entirely. EPA ". . . may exercise Section 3008 powers even where a state program is in effect . . . ." Wyckoff Co. v. E.P.A., 796 F.2d 1197, 1200 (9th Cir. 1986). EPA retains authority to bring this enforcement action against a respondent in the State of Michigan even though this State now has authorization of its programs under the Act.

Complainant's reply raises the question of the interpretation of the last paragraph of the response. The undersigned

also finds its meaning somewhat murky. Respondent seems to be saying that it is prepared to settle the case solely for the proposed civil penalty of $7,475 without any compliance order. If this is the case, settlement negotiations are strictly between the parties, and the undersigned shall not interject himself into same.

IT IS ORDERED that:

1. Complainant's motion for extensions of time to submit prehearing exchanges in the subject dockets is GRANTED. Additionally, the prehearing exchange dates of January 26 and 27, 1987 are extended to February 10, 1987 should the matter not be settled by this latter date.

2. Each party, no later than 10 days of the service date of this order, shall show cause why the subject dockets should not, pursuant to 40 C.F.R. § 22.12, be consolidated.

Frank W. Vanderheyden
Administrative Law Judge

Dated: January 14, 1987
Washington, D.C.

IN THE MATTER OF NATIONAL STANDARD COMPANY, Docket Nos. RCRA-V-W-86-30 and RCRA-V-86-31.

Certificate of Service

I certify that the foregoing Order dated January 14, 1987 was sent this day in the following manner to the below addressees:

Original by regular mail to:

Regional Hearing Clerk
U.S. EPA, Region V
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Copy by regular mail to:

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Dottie Woodward
Dottie Woodward
Secretary

Dated: January 14, 1987