UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
National Coatings, Inc.,	)	Docket No. V-W-84-R-052
	)	
Respondent	)	

1. RCRA - liability of Respondent for failure to supervise employees and contractors - hazardous waste was mistakenly included in a load of waste hauled from Respondent's site and dumped at an unpermitted landfill. Respondent held liable for violations caused because it failed to exercise proper supervision over the transporter and Respondent's employees to prevent such a mistake from happening.

2. RCRA - liability of generator for storing waste more than 90 days - fact that ownership or responsibility for disposing of certain drums of hazardous waste was disputed between Respondent and another party did not excuse Respondent, who claimed to be a generator, from becoming a storage facility subject to the interim status storage requirements when it stored the waste on site more than 90 days.

3. RCRA - financial ability to pay the penalty - where evidence indicated that penalty was not beyond Respondent's ability to pay but Respondent may not be able to pay the penalty in one lump sum, Respondent permitted to apply to the Regional Administrator for payment in installments.

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INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA"), Section 3008, 42 U.S.C. 6928, for assessment of civil penalties for alleged violations of the Act, and an order requiring compliance with certain regulatory requirements. 1/

The complaint, issued by the United States Environmental Protection Agency ("EPA"), Region V, charged that Respondent National Coatings, Inc. has been storing and disposing of hazardous wastes since November 19, 1980, without a permit or without having achieved interim status to operate as a storage or disposal facility pending issuance of the permit, and that it has violated numerous requirements prescribed by the State of Illinois under its hazardous waste program that it administers pursuant

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1/ Pertinent provisions of Section 3008 are:

Section 3008(a)(1): "[W]henever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both . . . ."

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

to authority granted under RCRA, Section 3006(c), 42 U.S.C. 6929(c). 2/

Specific violations charged were as follows:

- Operating as a hazardous waste storage or disposal facility without a permit or without having achieved interim status, in violation of RCRA, Section 3005(a).

- Failure to submit Part A of the application for a permit, as required by 40 C.F.R. § 270.10(e).

- Failure to obtain a detailed chemical/physical analysis of a representative sample of the waste, as required by 35 Ill. Adm. Code § 725.113(a).

- Failure to develop and keep at the facility a written waste analysis plan, as required by 35 Ill. Adm. Code § 725.113(b).

- Failure to prevent the unknowing entry, and minimize the unauthorized entry of persons or livestock onto the active portion of the facility, as required by 35 Ill. Adm. Code § 725.114.

- Failure to keep schedules and records of inspections for malfunctions, operator errors and deterioration which may lead to the release of hazardous wastes to the environment, as required by 35 Ill. Adm. Code § 725.115.

- Failure to maintain written job descriptions and records related to training for each position related to hazardous waste management, as required by 35 Ill. Adm. Code § 725.116(a) and (e).

- Failure to place no smoking signs whenever there is a hazard from ignitable waste, as required by 35 Ill. Adm. Code § 725.117.

- Failure to equip the facility with an internal emergency alarm system, and an emergency communications system capable of summon jng outside assistance, as required by 35 Ill. Adm. Code § 725.132.

2/ The EPA granted the State of Illinois Phase I interim authorization to operate its hazardous waste program on May 17, 1982. Interim authorization included the authority to administer the regulations which are involved in this proceeding. See 47 Fed. Reg. 21045. RCRA, Section 3008(a)(2), 42 U.S.C. 6928(a)(2), authorizes the EPA to enforce state regulations issued under authorized state programs if prior notice of the enforcement action is given to the state. The complaint alleges and Respondent does not deny that the EPA has given such notice.

- Failure to provide a contingency plan to minimize the hazards of unplanned releases of hazardous waste constituents, to maintain a copy of the plan at the facility, and to submit a copy of the plan to local Police, Fire and emergency authorities, as required by 35 Ill. Adm. Code § 725.151 and § 725.153.

- Failure to familiarize local authorities with the potential need for emergency services, as required by 35 Ill. Adm. Code § 725.137.

- Failure to keep a written operating record at the facility regarding the quantity, location, dates, etc., of hazardous wastes stored at the facility, as required by 35 Ill. Adm. Code § 725.173.

- Failure to have a written closure plan and to keep a copy of the plan at the facility, as required by 35 Ill. Adm. Code § 725.212.

- Failure to enter the respondent's identification number on each manifest (specifically, two manifests were found which did not contain the respondent's number), as required by 35 Ill. Adm. Code § 722.121.

- Failure to make a hazardous waste determination, as required by 35 Ill. Adm. Code § 722.111.

- Failure to submit an annual report on facility activities, as required by 35 Ill. Adm. Code § 725.175.

- Failure to prepare a manifest prior to the off site transportation of hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).

- Failure to package hazardous wastes according to applicable Department of Transportation regulations (49 CFR Parts 173, 178 and 179) prior to transportation off site as required by 35 Ill. Adm. Code § 722.130.

- Failure to label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (49 CFR Part 172) prior to transportation off site as required by 35 Ill. Adm. Code § 722.131.

- Failure to, prior to shipping hazardous waste off site, mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b).

  "HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

  Generator's Name and Address _____.
  Manifest Document Number _____.

- Failure to placard or offer the transporter placards according to Department of Transportation regulations (49 CFR Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133. 3/

Respondent's answer consisted of a brief letter denying the allegations and requesting a hearing. The issues, however, were subsequently narrowed by Respondent's response to Complainant's request for admissions. 4/ A hearing was held in Chicago, Illinois on November 19, 20, 21 and 22, 1985. Thereafter, both sides submitted post-hearing briefs. The following decision is entered on consideration of the entire record and the submissions of the parties.

Findings of Fact

The findings set forth herein are supplemented by additional findings on disputed issues in the discussion portion of this decision below. Proposed findings inconsistent with this decision are rejected.

1. Respondent, National Coatings, Inc., a Delaware Corporation, owns and operates a facility located at Route 150 East, Galesburg, Illinois (hereafter "facility"), at which it manufactures industrial paint products. Respondent has been operating that facility since June 1980. Respondent's response to request for admissions, No. 1; Tr. 90-91, 577.5/

2. Respondent's principal officers and owners are James H. Hillhouse, Richard L. Wade and John Mantovani. Tr. 577, 785-88.

3/ The regulations codified at 35 Ill. Adm. Code Part 722 apply to generators of hazardous waste and those codified at Part 725 are the interim status standards for facilities treating, storing or disposing of hazardous waste. The Federal regulations to which they correspond are 40 C.F.R. Parts 262 and 265.

4/ Although not put into evidence, Respondent's response to the EPA's request for admissions is part of the file of this case and official notice is taken of the contents thereof.

5/ "Tr." refers to the transcript of proceeding.

3. On December 19, 1980, Respondent filed with the EPA a notification of hazardous waste activity reporting that it generated hazardous waste with the listed hazardous waste No. K078, and ignitable hazardous waste. Ignitable waste (D001 waste) was first identified as a hazardous waste on May 19, 1980, 45 Fed. Reg. 33121. K078 waste (solvent cleaning wastes from equipment and tank cleaning from paint manufacturing), was first listed on July 16, 1980, 45 Fed. Reg. 47833. Facilities were required to file a notification of hazardous waste activity within 90 days after publication of regulations identifying or listing a substance as hazardous waste, RCRA, Section 3010. Respondent's notification, therefore, was filed about four month's late with respect to its D001 waste and two months late with respect to its K078 waste.

4. On September 21, 1981, Respondent's facility was inspected by Glen D. Savage, Jr., an inspector for the Illinois Environmental Protection Agency (IEPA), which at that time was under contract with the EPA to do RCRA compliance inspections for it. Tr. 13, 16; Complainant's Exhs. 360, 361.

5. Mr. Savage noted that Respondent was generating waste solvents in the amount of approximately 8,800 gallons or 77,600 pounds a year, or an average of 2,940 kilograms per month, and was storing this waste on premises for more than 90 days. 6/ Tr. 31-32, 55-56; Complainant's Exh. 360. At that time, K078 waste (solvent cleaning waste) had been suspended as a listed waste. See 46 Fed. Reg. 4615 (January 16, 1981). The waste, however, was found to have a flash point of 25° F., making it an ignitable waste. Complainant's Exh. 360; 40 C.F.R. 261.21.

6/ Generators that generate less than 1000 kilograms of hazardous waste per month, or store hazardous waste for no more than 90 days, in general, are excluded from the regulatory requirements. 40 C.F.R. §§ 261.5, 262.34.

6. Mr. Savage found that although Respondent was storing hazardous waste, it had not applied for a permit to do so. He also found that the interim status standards for the storage of hazardous waste were being violated as follows:

a) 40 C.F.R. § 265.13 (Waste Analyses) - Respondent did not have a waste analysis plan and did not make the necessary analysis of its waste to provide it with all the information that should be known for the proper storage or disposal of its waste.

b) 40 C.F.R. § 265.14 (Security) - Respondent had not properly fenced off the area where the waste was stored and had not posted "danger" signs at the entrance to the area.

c) 40 C.F.R. § 265.15 (General Inspection Records) - Respondent had not kept records of its inspections for malfunctions and deterioration, operator errors, and discharges of hazardous waste.

d) 40 C.F.R. § 265.16 (Personnel Training) - Respondent did not keep records of its personnel training.

e) 40 C.F.R. § 265.32 (Required Equipment) - Respondent did not have an internal communications or alarm system for the drum storage area.

f) 40 C.F.R. § 265.37 (Arrangements with Local Authorities) - Respondent had made no arrangements with local authorities to familiarize them with Respondent's hazardous waste operations.

g) 40 C.F.R. § 265.51 (Development of a Contingency Plan) and § 265.53 (Copies of Contingency Plan) - Respondent had no contingency plan and no copies of a contingency plan had been given to local emergency response organizations.

h) 40 C.F.R. § 265.73 (Operating Record) - Respondent did not keep the required records with respect to its management of hazardous waste.

i) 40 C.F.R. § 265.112 (Closure Plan) - Respondent had no closure plan.

Tr. 16-31; Complainant's Exh. 360.

7. Mr. Savage discussed the violations with Mr. Hillhouse, but there is a conflict in the evidence as to how specific Mr. Savage was. They both agreed that Mr. Savage told Mr. Hillhouse that Respondent would be sent a document detailing Mr. Savage's findings. Tr. 30-31, 829. Further, even accepting Mr. Hillhouse's version of the conversation, Mr. Hillhouse admits that he was told by Mr. Savage about "new" RCRA regulations going into effect in the middle or latter part of 1980, that he should write the EPA for a copy, and that it did appear that Respondent's waste was hazardous waste and had to be disposed of within 90 days. Tr. 803-07, 809.

8. IEPA sent a letter to Respondent in January 1982, with a copy of the inspection report, noting the violations. Tr. 33-34; Complainant's Exh. 361. Respondent denied ever having received the letter and made no changes in its management of its waste. Tr. 809.

9. On January 28, 1983, Mr. David Jansen of the IEPA made another RCRA inspection of Respondent's facility, this time pursuant to the State's authorized program. 7/ The inspection disclosed that Respondent then had in storage approximately 150 to 160 drums of spent solvent waste, which had been stored there since June 29, 1981, Complainant's Exh. 1; Tr. 101-02. In addition, Respondent was storing on the premises 108 drums of what it referred to as "off-specification paint", but which actually consisted of some drums of new solvent, some drums of spent solvent, some

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7/ See supra, n. 2.

drums of material that was not reusable and some drums of reusable off-specification paint. These drums had been left by a former owner of the facility, and their disposition was the subject of a dispute between Respondent and the former owner. Tr. 102, 578-79, 622-23, 737, 778-79; Complainant's Exh. 1, Respondent's Exh. 21.

10. The solvent wastes stored by Respondent were hazardous waste either because they had the characteristic of ignitability (a flash point less than 140°F), or because they contained spent xylene (Hazardous Waste No. F003), or spent toluene (Hazardous Waste No. F005). 8/ Complainant's Exh's. 368, 378; Respondent's Exh. 24 (manifest No. A 109383, and waste analyses done for Respondent by Hydrite Chemical Co.); Tr. 135, 217, 619, 621, 710-11; see also Findings 19-20 below with respect to Respondent's waste that had been dumped at the Wataga/Knox County Landfill.

11. The inspection disclosed that Respondent had not corrected the violations that were observed at the first inspection on September 1981. Respondent still had no waste analysis plan nor had it made an analysis of its waste as required by 35 Ill. Adm. Code § 725.113(a) and (b) (similar to 40 C.F.R. § 265.13(a) and (b)), did not secure the hazardous waste storage areas as required by 35 Ill. Adm. Code § 725.114 (similar to 40 C.F.R. §265.14), did not maintain the inspection records required by 35 Ill. Adm. Code § 725.115 (similar to 40 C.F.R. § 265.15), did not keep the personnel records required by 35 Ill. Adm. Code § 725.116 (similar to

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8/ The Illinois identification and listing of hazardous waste is identical to the EPA's listing. Compare 35 Ill. Adm. Code Part 721 with 40 C.F.R. Part 261. Mixtures of spent xylene or spent toluene with other wastes are also hazardous wastes. 40 C.F.R. § 261.3(a), 35 Ill. Adm. Code § 721.103 (a)(2)(D).

40 C.F.R. § 265.16), did not maintain the alarm and communication systems required by 35 Ill. Adm. Code § 725.132 (similar to 40 C.F.R. § 265.32, had not made arrangements to familiarize local authorities with Respondent's hazardous waste operations as required by 35 Ill. Adm. Code § 725.137 (similar to 40 C.F.R. § 265.37), had not maintained a contingency plan or given copies of a contingency plan to local emergency response authorities as required by 35 Ill. Adm. Code §§ 725.151 and 153 (similar to 40 C.F.R. §§ 265.51 and 265.53), did not have the records with respect to the management of its waste required by 35 Ill. Adm. Code § 725.173 (similar to 40 C.F.R. § 265.73), and did not have a closure plan as required by 35 Ill. Adm. Code § 725.212 (similar to 40 C.F.R. § 265.112. Tr. 92-100; Complainant's Exhs. 1 and 2.

12. It was also found that Respondent, as a generator of hazardous waste had failed to list its EPA identification number on two manifests as required by 35 Ill. Adm. Code § 722.121, and had failed to make a hazardous waste determination of certain waste as required by 35 Ill. Adm. Code § 722.111. Tr. 106; Complainant's Exhs. 1, 2A, 2B.

13. Respondent was notified of the violations by letter of the IEPA dated April 1, 1983. This letter was received by Respondent who, by letter dated April 22, 1983, reported on what it was doing to correct the violations. In its letter, Respondent gave no indication of any intent to file a Part A permit application. Respondent also took the position that as to 108 drums of off-specification paint left by the former owner, a complete analysis would be made and their disposition would begin as soon as a decision as to ownership was made. Complainant's Exh. 2A.

14. The IEPA was not satisfied with Respondent's response and met with Respondent on October 20, 1983, to discuss Respondent's noncompliance. A compliance program was proposed whereby Respondent would close out the hazardous waste storage areas where the 108 drums of off-specification paint had been stored, cease future operations as a storage facility, and continue only as a hazardous waste generator. Specifically, the plan provided for the following:

a) Respondent would resolve the ownership of the 108 drums by December 1, 1983, if possible, would reprocess the off-specification paint that could be reprocessed by April 1, 1984, and dispose of the material that could not be reprocessed by May 1, 1984.

b) Respondent would transport the waste solvents remaining on its premises by December 1, 1983.

c) Respondent would satisfy all manifest requirements.

d) Respondent would develop a closure plan to be submitted to the IEPA by January 1, 1984. Complainant's Exh. 373.

15. On December 15, 1983, IEPA received a complaint from the manager of the Wataga/Knox County Landfill #1, LPC #0958160l ("Landfill"), Tr. 48-49; Complainant's Exh. 3.

16. In this December 15, 1983, complaint, the Landfill manager reported that at approximately 1:20 p.m. a Mr. James Harris had dumped 55-gallon drums of paint-like waste at the active portion of the Landfill without permission to do so. The Landfill manager also reported that the drums had probably come from Respondent. The Landfill was not at the time permitted to receive any hazardous waste for disposal. Tr. 5-6, 49-50; Complainant's Exh. 3, 380 (pp. 14-15, 22).

17. On December 16, 1983, an IEPA investigator investigated the unauthorized dumping of material and found 25 55-gallon drums at the southeastern edge of the active portion of the Landfill. Eleven drums were upright, and fourteen were on their sides. Eight of the 25 drums had one end removed. Some leakage of paint type waste and other waste from the drums on the grounds was observed. Pallets, general refuse, paint soaked rags and clothes were dispersed among the drums. Tr. 109-110; Complainant's Exh. 3, 4-27.

18. Samples were taken from nine drums. The samples taken with a description of the drums and their contents were as follows:

Drum #1 - Samples 1 and 1A - A white 55-gallon drum, full, containing a brown thick liquid with some solids.

Drum #2 - Sample 2 - A black 55-gallon drum, full, containing a purple or thin liquid; emitted an organic solvent odor.

Drum #6 - Samples 6 and 6A - A white 55-gallon drum, full, with a thick grey liquid, emitted a solvent odor.

Drum #13 - Sample 13 - A black 55-gallon drum, full, containing a thin, semi-transparent, honey colored liquid and a layer of solids on the bottom.

Drum #16 - Sample 16 - A green, 55-gallon drum, full, containing a thin grey liquid.

Drum #18 - Sample 18 - A black, with grey paint-like runs, 55-gallon drum, 80% full with a thick grey liquid on top of a solid bottom residue.

Drum #19 - Sample 19 - A black 55-gallon drum, full, containing a

Drum #23 - Sample 23 - A black 55-gallon drum, full, containing a mustard yellow liquid.

Drum #25 - Sample 25 - A blue, 55-gallon drum, with one end removed, 1/2 full approx. containing a black, red, pink, grey semi-solid substance.

Complainant's Exh. 3; Tr. 299.

19. Of the drums not sampled, some contained various materials such as concrete, clothing, rags and water. Tr. 298-99.

20. Test results disclosed that the contents of all drums sampled except drum #25 (containing the semi-solid substances) were hazardous materials. Complainant's Exhs. 28-38. The contents of the other eight drums all had a flash point of 75° F. or less, and had as constitutents xylenes present in concentrations between 25% and 58%, and toluene present in concentrations between 7% and 26%. Complainant's Exh. 365.

21. Mr. Richard Wade, one of Respondent's owners and principal officers, was called by the IEPA on December 15, 1983, about the dumping. He visited the landfill the next day and admitted to ownership of the drums. Some of the drums came from the 108 drums stored at Respondent's site that had been left by the former owner. Mr. Wade had the drums reloaded and hauled back to Respondent's facility. Tr. 118, 670-71, 678-82, 71011; Complainant's Exh. 3 (p. 3).

22. None of the drums at the Landfill had been labelled in accordance with 35 Ill. Adm. Code § 722.131. Nor did any of the drums appear to contain the marking required by 35 Ill. Adm. Code § 722.132. Complainant's Exhs. 4-24.

23. According to Mr. Wade, Harris had not been authorized or instructed to haul away any drums containing hazardous waste. Wade had contracted with Harris, who had previously been used by Respondent for this kind of work, to remove only debris, rags and junk from the plant. Harris was also told he could take drums that had been "deheaded" (the solvent drained out and the paint sludge removed) that were in this general area. On the day that Harris came to remove the material, Wade reviewed with Harris the material he was to remove. Wade was not at the dock while the truck was being loaded nor did he see the truck after it had been loaded in the first day. On the second day, he observed it from a distance of 4 to 5 feet while walking by and also saw it while leaving the premises. The loading was done by Harris and his helper with the assistance of two of Respondent's employees, Steve Goff and Bobby Johnson. In neither instance did Wade see anything to indicate that the truck had hazardous materials on it. Tr. 635-45, 648-54, 661-62, 667-69; Respondent's Exh. 23.

24. On or about March 19 and 20, 1984, IEPA inspectors inspected the Hensley farm in Knoxville, Illinois. Approximately 37 drums were said to have been dumped there by James Harris in December 1983. Inspection of the site did disclose that some of the drums had Respondent's labels on them and others were similar in appearance to those dumped at the Wataga/Knox County Landfill. Results from samples taken from 19 of the drums disclosed that they contained hazardous waste. The Hensley farm is not a permitted RCRA facility. Tr. 143, 147-48, 150, 157; Complainant's Exhs. 39, 44, 45, 46, 59, 64, 366, 381 (p. 3). Not all drums could be identified as Respondent's drums. Tr. 308-10.

25. Respondent was notified of the dumped drums at the Hensley property on April 17, 1984. Although there were discussions about Respondent

cleaning up the site, these discussions were unproductive and the site was finally cleaned up by the State of Illinois at a cost of approximately $20,000. Tr. 168, 172, 310, 329-31, 337-39, 853-54, 868, 870-73.

26. On or about March 22, 1984, IEPA insepcted the James Harris property south of Knoxville, Illinois. Approximately 200 drums were found scattered around the Harris property, some of which had Respondent's markings on them. Laboratory samples taken from several of the drums found on the property disclosed that they contained hazardous waste. Tr. 175, 176, 191; Complainant's Exhs. 217, 225, 235, 258, 267, 268, 367. Mr. James Harris' farm is not a RCRA permitted facility. Complainant's Exh. 383.

27. The Harris site was cleaned up of hazardous waste by Respondent. Five drums of waste liquids and four drums of contaminated dirt, all identified as D001 (ignitable) waste were disposed of. Tr. 346-47, 881-83; Respondent's Exh. 24 (Manifest Nos. 0994555 and 0994556).

28. On April 10, 1984, IEPA investigated Respondent's facility to sample drums of hazardous waste stored there. Respondent was professedly only a generator of hazardous waste at this time. It was found that Respondent had omitted to put on containers holding hazardous waste the date on which each period of accumulation begins as required by 35 Ill. Adm. Code § 722.134(a). Tr. 210, 216; Complainant's Exh. 157. Also at the facility was hazardous waste that had been stored for more than 90 days. Tr. 202; Complainant's Exhs. 132, 152.

29. On August 16, 1985, still another RCRA compliance inspection of Respondent's facility was made by IEPA. It was found that while Respondent had taken steps to bring its facility into compliance, many of the violations observed in previous inspections had still not been completely corrected. Tr. 226-28, 231-34; Complainant's Exhs. 377, 378, 379.

Discussion, Conclusions and Penalty

Three main issues are raised in this case. The first deals with Respondent's failure to comply with the standards governing the storage of hazardous waste. Respondent contends that it was really a generator of waste and had good faith reasons for believing that it was not subject to the standards for storage of waste. The second issue deals with the illegal transportation of hazardous waste from Respondent's facility. Respondent contends that the waste had been taken without its knowledge or consent. Finally, there is the question of the appropriateness of the proposed penalty of $85,800. Respondent contends that the penalty is excessive and further that it lacks the financial resources to pay such a penalty.

A. Respondent's Failure to Comply With the Standards Governing the Storage of Hazardous Waste.

Respondent had in storage on November 19, 1980, the 108 drums of off-specification material, some of which held hazardous waste that on that date became subject to the interim status requirements. 9/ Further, after that date, although Respondent considered itself solely a generator, it stored hazardous waste on its premises for more than 90 days. 10/ Generator's who store waste for more than 90 days become operators of hazardous waste storage facilities and must comply with the permitting and storage requirements for such facilities. 11/

9/ Finding of Fact No. 10; Respondent's Exh. 21.

10/ Finding of Fact No. 9; see also Tr. 733-36.

11/ 40 C.F.R. § 262.34 (35 Ill. Adm. Code § 722.134). Certain exemptions from the 90-day storage are allowed but there is no evidence that the waste which the IEPA inspector on his January 28, 1983, inspection found to have been stored at Respondent's facility since June 29, 1981, was being stored pursuant to an exemption.

Respondent in defense of its failure to comply with the standards for storage of hazardous waste argues that but for the storage of the disputed 108 drums, Respondent would have been operating as a generator of hazardous waste, and Respondent in good faith believed that the presence of the 108 drums did not turn it into a storage facility. The argument is flawed in two respects.

First, it ignores Respondent's failure to comply with the 90-day storage limitation on generators. Respondent implies that the waste solvents stored by it were being held for reuse or recycling. The record does not support this, but even if this were so, the waste involved included waste listed in 40 C.F.R. § 261.31. 12/ Such wastes are subject to the storage requirements regardless of whether they are held for reuse or recycling. 13/

Second, Respondent's protestations of good faith would be more persuasive if the 108 drums had consisted solely of off-specification paint that was hazardous only because of its ignitability and would be reclaimed once the dispute as to ownership was resolved. The record, however, does not show this. Thirty-eight drums were eventually disposed of as

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12/ See, e.g., Tr. 733-35; Respondent's Exh. 24. The wastes listed on the first page of Respondent's Exh. 24 were described as "K078 wastes", but are shown in the applicable manifest (Wisc. A-109383) as F003 waste (spent nonhalogenated solvents).

13/ At the time the violations were committed the storage of ignitable hazardous waste prior to beneficial use, or reuse or legitimate recycling or reclamation would have been excluded from the interim status standards. Listed wastes such as spent xylene (F003 waste) and spent toluene (F005 waste) were subject to the storage requirements of the interim status standards even if they were reusable. See former text of 40 C.F.R. § 261.6, set out as a note following present provision, 40 C.F.R. § 261.6 (1985). It is assumed that the state regulations were similar.

waste, some of which consisted of spent solvents. 14/ Indeed, the circumstances under which the drums were left at the facility by the former owner, Grow Group, Inc., should have indicated to Respondent that it was not likely that they all contained material that could be reprocessed into usable products. The former owner had made arrangements to dispose of the drums but the arrangements were cancelled after Respondent purchased the property. 15/ Respondent also admits that it estimated that the contents of only about 3/4 of the drums could be reprocessed. 16/

Given that Respondent had reason to believe that some of the drums may have contained hazardous waste, Respondent, if it desired to continue to store the drums after November 19, 1980, had also to assume the obligation of storing them in accordance with RCRA's requirements. 17/ There

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14/ Respondent's Exh. 21. Another five drums were unaccounted for but may have been dumped at the Hensley farm. Id.

15/ Tr. 578-79, 765-66, 778-79.

16/ Tr. 817.

17/ It is unnecessary to explore what Respondent's rights precisely were vis-a-vis the Grow Group. As the owner of the property, Respondent surely had some rights with respect to insisting upon removal of the drums, if Grow Group claimed ownership to them. There is no evidence that Respondent ever did insist upon removal of the drums but only that Grow Group was unwilling to relinquish to Respondent whatever rights Grow Group had in the material. Tr. 818. The settlement finally reached with Grow Group was that Respondent's owners and principal officers would bear all costs of removing and disposing of the drums. See consent order in Grow Group, Inc. v. Sterling Lacquer Mfg. Co., No. 82-0969-C(D) (E.D. Md.). This order and forwarding letter of Grow Group's attorneys are admitted into evidence as Respondent's Exh. 31. Respondent seems to be saying that the dispute between it and Grow Group was over who had the right to potentially valuable property. Tr. 818. But when the settlement is considered along with the fact that Grow Group had originally intended to dispose of the drums, the indication is, instead, that the dispute was over who was going to be responsible for and pay for the cost of disposing of the drums. See Tr. 765-66, 778-79.

is certainly no basis in RCRA and the regulations for Respondent's interpretation that the storage of hazardous waste could go unregulated for the convenience of Respondent until Respondent had resolved its dispute with the Grow Group over the waste, which in this case would have meant a period of three years or more. 18/

Respondent argues that neither Mr. Wade nor Mr. Hillhouse were aware of the new regulations until they were told about them in September 1981. Respondent had a duty to inform itself of the applicable published regulations pertaining to its business. 19/ Respondent knew that the generation of hazardous waste was subject to regulation for it filed a notification of hazardous waste activity on December 19, 1980, reporting that it was generating K078 and ignitable hazardous wastes. 20/ Respondent's violations, in short, appear to have resulted from its carelessness in familiarizing itself with the regulatory requirements and not from any lack of notice that there were regulations governing the storage of hazardous waste. 21/

18/ The dispute was finally resolved in March 1984. Tr. 819; Respondent's Exh. 31. Respondent, however, started disposing of the waste in December 1983. Tr. 620-21, 835.

19/ Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947).

20/ Complainant's Exh. 369.

21/ Mr. Hillhouse admitted to receiving a copy of the Federal regulations after the September 1981 inspection. Tr. 929-30. Even after receiving the regulations, Respondent still persisted in its position that the 108 disputed drums were excluded from the storage requirements, an interpretation that was no doubt convenient for Respondent but without foundation in the regulations and not warranted by anything said by the IEPA inspector. See Tr. 30-32. It also continued to store hazardous waste for more than 90 days.

B. The Illegal Transportation of Waste

There is no dispute that drums of hazardous waste had been transported illegally from Respondent's facility and dumped at the Wataga/Knox County Landfill by James Harris. The only question is whether this occurred with Respondent's knowledge and consent.

Steve Goff, the employee who helped to load Harris' truck testified that some unidentified supervisory employee of Respondent had instructed him to load sludge drums on Harris' truck the first day, and that Richard Wade, himself, had told Goff to load sludge drums on the truck the second day. 22/ Wade denies ever having given such instructions. 23/ James Harris, the trucker, refused to testify, claiming a Fifth Amendment privilege. 24/

On balance, I find Wade's version of the incident more credible than Goff's. It does appear that Respondent had to be prodded into compliance, and often seemed inattentive to the details for achieving full compliance. Nevertheless, for Respondent to deliberately attempt to illegally dispose of hazardous waste seems totally out of character with what is revealed about Respondent's actions in this case. For example, shortly before the dumping incident, Respondent had arranged to legally dispose of some 5,200 gallons of waste solvent and appears to have done so in full compliance with the regulatory requirements. 25/ The circumstances of the

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22/ Tr. 453-57, 488, 490, "Sludge drums" refers to drums containing waste solvents or waste paints. Tr. 426.

23/ Tr. 654, 657-58, 660-63.

24/ Tr. 80-82.

25/ Tr. 618-19; Respondent's Exh. 24.

dumping itself are such as to make Goff's story implausible. It is most unlikely that anyone knowingly engaged in a conspiracy to illegally transport waste, which could well be a criminal act (see 42 U.S.C. 6928(d)(1)), would have planned to dump the waste at a local landfill in broad daylight during operating hours where the owner of the waste could be readily recognized. 26/

On the other hand, Goff's testimony must be considered against the circumstance that the drums filled with rubble and debris and the deheaded drums (drums which had been emptied of solvent and sludge), to be removed by Harris, were on the day of loading in the same general area as the sludge drums. 27/ Given this, it is not at all improbable that Goff could have misunderstood his instructions with respect to the drums to be loaded. Also, Goff's recollection at the time he testified of what had happened, could well have been colored by his animosity toward Respondent. 28/

26/ The manager of the landfill seems to have had no trouble in tracing the drums to Respondent. Tr. 50; Complainant's Exh. 3.

27/ Tr. 451-52, 515, 519, 648-49; Respondent's Exhs. 7 (pp. 9-11), and 9 (pp. 12-13). For deheading of drums see Tr. 613-14.

28/ There were several inconsistencies between what Goff testified to at the state criminal trial about the incident and his testimony at this proceeding. See Tr. 481, 502-03, 510. It is also surprising that Goff did not remember who instructed him to load the sludge drums the first day, given the significance that Goff seems to have attached to the event. Tr. 452, 488, 490-91. The number of supervisors could not have been large as Respondent only had 10 employees at the plant. Tr. 442-43. As to Goff's animosity toward the company, it is unclear whether this existed at the time of the loading incident or developed afterwards. Tr. 465-66, 467, 498, 656; Respondent's Exhs. 7 (pp. 22-24), 8 (pp. 4-12), 9 (pp. 10-11). Goff was eventually fired at the end of January 1984. According to Goff, he was fired for taking pictures of what he considered to be environmental violations, but according to Respondent his conduct had become disruptive and unreliable. Tr. 464, 761, 903.

I find, accordingly, that dumping of waste at the Watago/Knox County Landfill by Harris was done without Respondent's knowledge and consent. 29/ This, however, does not absolve Respondent from responsibility for the illegal transportation of hazardous waste. It is impossible to reconstruct precisely what happened at the time. But this is clear, the loading of the drums seems to have been left largely to Goff and Harris with very little supervision over them. 30/ This was certainly not a responsible decision if Respondent was truly concerned about the sludge drums not being taken. It does not matter whether the drums were loaded by mistake or in deliberate disobedience of Respondent's instructions. Respondent should have recognized that conditions at the loading site were such as to create the risk that the wrong drums might be taken, and it should have exercised greater care to ensure that this did not happen. It must be held responsible, accordingly, for the violations that occurred. See International Distributing Corp. v. American District Telegraph, 569 F.2d 136, 139 (D.C. Cir. 1977) (an employer is liable for negligent breach of its duty to supervise its employees); accord, United States v. Remitti, 363 F.2d 662, 666 (9th Cir. 1966).

29/ It is further found that waste generated by Respondent and dumped at the Hensly and Harris sites, which were assertedly part of the three truckloads hauled away by Harris, had also been transported without Respondent's knowledge or consent.

30/ There were four or five people involved in loading the drums, but Goff could only identify himself as having been instructed to load sludge drums and assist in their loading on the truck. Tr. 448, 489-90, 500-01. Other employees involved in the loading denied that they received any instructions to load sludge drums or that they loaded sludge drums. See Respondent's Exh. 7 (pp. 5, 7, 8, 12, 20); Respondent's Exh. 11 (pp. 11-14). Goff, of course, could only speak of what happened during the period that he was present, but according to Goff he was present the majority of the time on both days. Tr. 469, 489.

The EPA argues that $800 paid by Respondent to Harris in February or March 1984, was, in fact, a payment to Harris for his services in hauling the hazardous waste that had been dumped in December 1983. Harris was normally paid $25 to $50 a load for hauling trash, and Respondent was unable to give any explanation for the $800 payment other than that it was for work done by Harris for a period of a year or more. 31/ The sum of $800 is not so large that Respondent's explanation lacks credibility. The EPA's argument would be more persuasive if what was paid to Harris was less than what Respondent would have had to pay dispose of the waste legally, for it seems highly unlikely that Respondent would use Harris for such purposes unless this were so. The record does not contain evidence, however, that permits such a comparison.

The Appropriate Penalty

The EPA proposes a total penalty of $85,800, for the numerous violations charged in the complaint. 32/ The penalty assessed is as follows:

Violations involved in the illegal dumping at the Wataga/Knox County Landfill. Five violations are charged in connection with the illegal dumping at the landfill - failure to provide a manifest prior to the

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31/ Tr. 763-64, 937-38, 95.

32/ Broken down into specific violations, the penalties for the violations aggegate $93,025. Complainant's brief in support of proposed order at 24-30. This is because the EPA in its brief has calculated the separate penalties according to the final RCRA civil penalty policy issued on May 8, 1984, while the penalty proposed in the complaint was calculated on the basis of the draft penalty policy. See Complainant's Exh. 364. The EPA says that it does not seek a penalty greater than the $85,800 proposed in the complaint. Tr. 561-62. Following the EPA's procedure, penalties will be determined acording to the final RCRA penalty policy issued on May 8, 1984 (hereafter "RCRA Penalty Policy"). This is also in accordance with that policy since the complaint was issued after May 8, 1984. See RCRA Penalty Policy at 2.

transportation of waste (35 Ill. Adm. Code § 722.120), failure to ship the waste in closed drums (§ 722.130), failure to properly label the drums (§ 722.131), failure to properly mark the drums being transported (§ 722.132), and failure to placard the waste shipment (§ 722.133). The EPA proposes a penalty of $9500 for each of these violations or a combined penalty of $47,500.

The record does not support a finding that any hazardous waste was transported in uncovered drums. Of the nine drums actually sampled at the landfill, only one was uncovered and that drum (No. 25), despite the unattractive looking sludge in it, did not contain hazardous material according to the tests. 33/

The manifest prepared for each shipment of hazardous waste plays a central role in the enforcement of RCRA. 34/ Proper labeling and marking of the drums of waste and furnishing placards to the transporter guard against the waste, which consists of highly flammable material, being mishandled. Potential for harm under the RCRA penalty policy is determined by the likelihood of exposure to the waste or the adverse effect noncompliance has on the statutory or regulatory purposes or procedures for implementing the RCRA program. 35/ Measured against these standards, the EPA has properly classified the violations as having a moderate potential for harm.

The EPA has also classified these violations as major deviations from regulatory requirements on the assumption that there was a deliberate

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33/ Tr. 299-300; Complainant's Exhs. 3, 23, 24, 38.

34/ See 45 Fed. Reg. 12728 (February 25, 1980).

35/ RCRA penalty policy at 6.

attempt by Respondent to evade the transportation and disposal requirements. As already noted, however, the violations were inadvertent and happened only this one time. Accordingly, the extent from deviation should be considered minor. I find, then, that the appropriate penalty for each violation is $3,000, or a combined penalty of $12,000, for the four violations associated with the dumping at the landfill.

Failure to Determine Whether Solid Waste was Hazardous Waste (§ 722.111) There were apparently a few drums whose contents Respondent could not identify. It is found that an appropriate penalty for this violation is $300.

Incomplete Manifests (§ 722.121) - The penalty of $300 proposed by the EPA is found to be appropriate.

Failure to Have a Detailed Chemical Analysis of a Representative Sample (§ 725.113(a)) - While it is not clear that Respondent had a detailed waste analysis on file since 1981, as Respondent claims, Respondent apparently did have enough information on file about the waste it was generating to make the violation minor both as to potential for harm and to extent of deviation from regulatory requriements. The proposed penalty of $300 is found to be appropriate for this violation.

Failure to Have a Waste Analysis Plan (§ 725.113(b))- The EPA classifies this as a violation with a minor potential for harm, but a major deviation from regulatory requirements, and proposes a penalty of $2250, which is the midpoint for the penalty range in that cell in the matrix. Respondent asserts that it did develop a plan in 1983, and that the extent of deviation should also be considered minor. Respondent, accordingly, says that the penalty should be $1000. 36/ An investigation of the IEPA in

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36/ Respondent presumably based its calculation on the proposed penalty policy (Complainant's Exh. 362).

1985, showed that Respondent still did not analyze for EP toxicity parameters. 37/ Accordingly, the extent of deviation will be considered major, but in view of Respondent's efforts at bringing itself into compliance, the penalty will be assessed at $1500.

Inadequate Security (§ 725.114) - Respondent does not appear to have established any clearly defined separate storage area for its hazardous waste. Thus, the adequacy of the security must be judged by the precautions taken to secure the facility itself. The main entrance, however, was without any gate or fencing so as to leave it accessible to trespassers at night. 38/ Nor were the precaution's against unauthorized entry into the plant in themselves sufficient to protect fully against unauthorized or unknowing entry into the areas where hazardous waste was stored. The record does not, as the EPA claims, support a finding that the loading of hazardous waste drums on Harris' truck could be attributed to inadequate security. If Steve Goff's testimony is to be believed he was authorized to enter the area where hazardous waste was stored and he knew the nature of the contents of the drums he was loading. There is, however, evidence indicating that Harris might at times have taken drums containing sludge by mistake. To this extent, Respondent cannot be said to have adequately secured its active area against unknowing entry. 39/

37/ Complainant's Exh. 370, Appendix A (Item 5). In its EPA manual, Respondent has an analytical report dated March 25, 1984, purporting to analyze for EP toxicity, but showing only what appears to be a total metals analysis.

38/ See Respondent's Exh. 22; Tr. 598.

39/ Tr. 741.

Under these circumstances, the potential for harm can be considered minor, but at the maximum penalty for that cell in the matrix. Accordingly, I find that an appropriate penalty for this violation is $3000.

Inspection Schedule and Records of Inspection (§ 725.115) - The purpose of inspection is to identify problems in the management of waste, e.g., operator errors, deterioration in storage drums, malfunctions in safety and emergency equipment before they harm human health or the environment. The records assure that the inspections are regularly made according to schedule. Here, however, the inspections would seem mainly to apply to the handling of the waste solvents and sludge and to its proper storage. It does appear that Respondent was inspecting the containers regularly. 40/ The penalty of $800 although not strictly within the guidelines, is found to be the appropriate penalty for this violation.

Job Descriptions and Personnel Training Records (§ 725.116) - The EPA proposes a penalty of $2,250, the midpoint of the range for a violation that constitutes a major deviation from requirements but with a minor potential for harm. Respondent apparently did institute a personnel training program in April 1983, but had none prior thereto. 41/ Since Respondent did make a good faith effort to comply prior to the issuance of any complaint in in this proceeding, $1500 is found to be the appropriate penalty for this violation.

40/ Complainant's Exh. 1 (p. 9).

41/ Respondent's Exh. 24; Respondent's response to request for Admissions (Nos. 27, 28 and 29.)

No Smoking Signs (§ 725.117) - Respondent contends that it did have no-smoking signs on its premises. But the record indicates that they were not there during the Janauary 1983 inspection. 42/ According to Respondent there were some no-smoking signs on the premises as early as 1980. After the January 1983 inspection, Respondent apparently brought itself into full compliance with this requirement. 43/ Although Respondent is dealing with a flammable waste, there is no evidence that the waste waste is being handled in a manner to justify classifying this violation as creating a moderate risk of harm. 44/ I find, accordingly, that the extent of deviation from requirement to be moderate, and not major as claimed by the EPA, and the appropriate penalty to be $750.

Alarm and Communication Devices (§ 725.132(a) and (b)) - The EPA has properly classified this violation as a major deviation from regulatory requirements, since Respondent had no such devices at the time of the January 1983 inspection. Respondent, however, has now brought itself into full compliance with this requirement. 45/ Accordingly, a penalty of $3000 is assessed for this violation.

Arrangements with Local Emergency Authorities (§ 725.137) - The EPA's proposed penalty of $1000 is found to be the appropriate penalty for Respondent's failure to make the necessary arrangement with local police, fire departments and emergency response teams.

42/ See Complainant's Exh. 2A.

43/ See Tr. 886-892; Complainant's Exh. 277 (p. 4).

44/ Respondent, for example, appears to be storing its waste in containers which were in good condition and generally managing its containers properly. See Complainant's Exh. 1 (p. 9).

45/ Complainant's Exh. 377 (p. 5).

Contingency Plan (§§ 725.151(a) and 725.153) - Respondent's failure to have a contingency plan to minimize environmental and human harm in the event of fire and of unplanned release of the environment is properly classified as a major deviation from requirements. Again the violation is one that should be more properly classified as creating only a minor potential for harm. 46/ Accordingly, an appropriate penalty for this violation is $3000.

Written Operator Record (§ 725.173) - Respondent's argument that this requirement applies exclusively to a treatment facility is contrary to the wording of the requirement itself. The penalty of $2250 proposed by the EPA is found to be an appropriate penalty.

Closure Plan (§ 725.212) - As already noted, Respondent became subject to the interim status storage requirements by reasons of its having stored waste on site for more than 90 days. As such, it is required to file a closure plan. The penalty of $2250 proposed by the EPA for failure to file a closure plan is found to be a reasonable penalty for this violation.

To summarize, penalties have been assessed for the several violations as follows:

46/ Respondent, for example, was storing its wsate in containers which were in good condition and generally managing its container's appropriately. See Complainant's Exh. 1 (p. 9).

35 Ill. Adm. Code Section	Amount
722.120	$ 3,000
722.131	$ 3,000
722.132	$ 3,000
722.133	$ 3,000
722.111	$ 300
722.121	$ 300
725.113(a)	$ 300
725.113(b)	$ 1,500
725.114	$ 3,000
725.115	$ 800
725.116	$ 1,500
725.117	$ 750
725.132(a) and (b)	$ 3,000
725.137	$ 1,000
725.151(a) and 725.153	$ 3,000
725.173	$ 2,250
725.212	$ 2,250
TOTAL ASSESSED PENALTY	$31,950

The final point to be considered is whether a penalty in the amount of $31,950, is within Respondent's ability to pay. I have examined the financial information put in by Respondent. 47/ I cannot conclude that the payment of $31,950 is beyond Respondent's ability to pay. It may

47/ Respondent's Exhs. 4, 5 and 5A; Tr. 953-57. This information has been admitted in camera. See Tr. 916 for protective order.

well be that payment in one sum could only be done by borrowing the money, and that this may not be possible because of insufficient cash flow or what appears to be the relatively large debt Respondent has already incurred. 48/ If Respondent can show the Regional Administrator that this is the case, Respondent should be given the option of paying in installments, and the order entered will so provide.

The EPA's motion to file a proposed order out of time is granted. The compliance order proposed by the EPA differs from that originally proposed in that it does not require Respondent to qualify for interim status by filing a notification of hazardous waste activity and a Part A permit application, but instead, requires Respondent to submit a closure plan for its storage facility. Although submitted on the mistaken belief that Respondent could not obtain interim status under RCRA, § 3005(e)(2), as amended by the Hazardous and Solid Waste Amendments of 1984, closure of the site for use as a hazardous waste storage facility does accord with the facts in this case. As the EPA states, Respondent has represented throughout an intent and desire to only be subject to the standards applicable to generators. Closure would also be in accord with the agreement made with the IEPA in October 1983. 49/ Accordingly, the provision requiring closure will be included in the order. Closure, however, should not preclude Respondent from continuing to store waste as permitted by § 722.134. Also paragraph c.13. of the proposed order will be deleted as redundant.

48/ See Respondent's Exhs. 4, 5 and 30.

49/ See Finding of Fact No. 14, supra.

ORDER 50/

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

I. a. A civil penalty of $31,950 is assessed against Respondent for violations of the Solid Waste Disposal Act found herein.

b. Payment of the civil penalty shall be made by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, IL 60673

Payment shall be made within sixty (60) days of the service of the final order unless prior thereto, upon application by Respondent, the Regional Administrator approves a delayed payment schedule or an installment plan with interest, in which case payment shall be made according to said schedule or installment plan.

II. The following compliance order is entered against Respondent:

a. Respondent shall, within fifteen (15) days of receipt of this order, submit to U.S. EPA and Illinois EPA (IEPA) a closure plan for the storage facility. The plan shall be prepared in accordance with

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

the standards for such plans contained in 35 Ill. Adm. Code § 725.210, and shall detail the activities to be accomplished by the Respondent to remove and properly dispose of, or otherwise handle the hazardous wastes in the facility. IEPA will approve, disapprove, or modify this plan.

b. Respondent shall comply with 35 Ill. Adm. Code § 722.134 regarding storage of hazardous waste for a period in excess of 90 days.

c. Respondent shall comply immediately with the following requirements.

1. Familiarize local authorities with the potential need for emergency services, as required by 35 Ill. Adm. Code § 725.137.

2. Make a hazardous waste determination, as required by 35 Ill. Adm. Code § 722.11.

3. Prepare and maintain a written operating record which shall be available at all reasonable times upon inspection by EPA in accordance with 35 Ill. Adm. Code §§ 725.173 and 725.174.

4. Prepare a manifest prior to the off-site transportaion of any hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).

5. Package hazardous waste according to applicable Department of Transportation regulations (49 CFR Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.131.

6. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (49 CFR Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.131.

7. Prior to shipping hazardous waste off-site, mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

> "HAZARDOUS WASTE---Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
>
> Generator's Name and Address_____.
> Manifest Document Number_____.

8. Offer the transporter placards according to Department of Transportation regulations (49 CFR Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

9. Obtain a detailed chemical/physical analysis of a representative sample of the waste, as required by 35 Ill. Adm. Code § 725.113(a).

10. Develop and keep at the facility a written waste analysis plan, as required by 35 Ill. Adm. Code § 725.113(b).

11. Keep schedules and records of inspection for malfunctions, operator errors and deterioration which may lead to the release of hazardous wastes to the environment, as required by 35 Ill. Adm. Code § 725.115.

12. Maintain written job descriptions and records related to training for each psotion related to hazardous waste management, as required by 35 Ill. Adm. Code § 725.116(a), (b), (d).

d. Notwithstanding any other provision of the Order and enforcement action may be brought pursuant to Section 7003 of RCRA (42 U.S.C. 6973) or any other applicable statutory authority, should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the facility may present an imminent and substantial endangerment to human health or the environment.

e. The Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted not later than forty-five (45) days from receipt of this Order to the U.S. EPA, Region V, Waste Management Division 230 South Dearborn Street, Chicago, Illinois 60604 Attention: Technical, Permits, and Compliance Section.

Gerald Harwood
Administrative Law Judge

DATED: June 20, 1986
Washington, D.C.