10/4/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	
U. S. ECOLOGY, INC.	DKT. NO. RCRA-V-W-025-92
	Judge Greene
Respondent	

DECISION AND ORDERS

UPON CROSS-MOTIONS FOR "ACCELERATED DECISION"

This matter arises under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA, the Act), as amended, 42 U.S.C. § 6928(a).

Respondent herein was charged by the U. S. Environmental Protection Agency (EPA) with violations of the Illinois

Administrative Code, specifically 35 Ill. Adm. Code §§ 725.243 (c)(4), 725.243(c)(7), 725.245(c)(7), and 725.247(a) and (b), between 1985 and 1992 based upon information furnished by the State of Illinois Environmental Protection Agency[1] (IEPA) and based also upon that agency's request for enforcement.[2]

The parties were unable to settle, and filed cross-motions for "accelerated decision" pursuant to 40 C.F.R. § 22.20(a). Each asserts that no genuine issue of material fact exists as to liability. Accordingly, it remains to be determined whether either party is entitled to judgment as a matter of law.

Respondent was charged with violations of certain portions of Subpart H, FINANCIAL REQUIREMENTS, of Part 725, *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* of the Illinois Code, in connection with its facility near Sheffield, Illinois.

The complaint alleges that in 1989 and 1990 Respondent failed to obtain financial assurance to the extent of then-current estimates of the cost of both closure of Defendant's hazardous waste facility and post-closure care for the facility

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[1] **Complaint, Findings of Violation and Compliance Order**, at 1, Preamble.

[2] **Complainant's Motion for Accelerated Decision**, at 4.

required by 35 Ill. Adm. Code § 725.243(c)(7)[3] and § 725.245(c)(7).[4] An earlier violation of § 725.243(c)(7) was

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[3] Section 725.245(c)(7), **Financial Assurance for Post-Closure Monitoring and Maintenance**, provides in pertinent part as follows:

> An owner or operator of a facility with a hazardous waste disposal unit shall establish financial assurance for post-closure care of the disposal unit(s). The owner or operator shall choose from the following options:
>
> . . . .
>
> (c) **Post-closure letter credit.**
>
> . . . .
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> (7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase
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> . . . .

[4] Section 725.243(c)(7), **Financial Assurance for Closure**, provides in pertinent part as follows:

> An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e). . . .
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> . . . .
>
> (c) **Closure letter of credit.**
>
> . . . .
>
> (7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. . . .

"identified" on September 28, 1988.[5] Respondent had letters of credit, but allegedly had failed to increase the amounts of the credit reflected in the letters to equal currently-estimated costs of closure and post-closure care for each of the years in question.[6]

The complaint charges further that Respondent failed to submit a letter with the letter of credit for financial assurance for closure of the facility, in violation of § 725.243(c)(4); and failed to include in letters submitted with other letters of credit the specific information required by § 725.243(c)(4).[7]

Last, Respondent was charged with failure to demonstrate that liability coverage for "bodily injury and property damage to third parties" caused by both sudden and nonsudden accidental occurrences arising from operations at the facility[8] had been obtained, as required by 35 Ill. Adm. Code §§ 725.247(a) and

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[5] Paragraph 8 of the complaint. The complaint does not specify the year in which this alleged violation took place.

[6] **Complaint, Findings of Violation, and Compliance Order** at 5-6, ¶¶ 8, 9, 10, 14, and 15-a and b.

[7] Id. at ¶ 16 (which recites the dates January 25, 1985, May 21, 1985, and June 12, 1985).

[8] The complaint does not specify the years during which Respondent allegedly failed to demonstrate liability coverage. However, it is evident from the moving papers that both Complainant and Respondent understand the dates to be 1986 through the present.

725.247(b).[9]

The complaint notes that violations charged under §§ 725.243(c)(4) and 725.245(c)(7) of the Illinois Code were resolved by IEPA before the complaint here was issued by EPA. Some of the violations charged under § 725.243(c)(7) were resolved as well.[10] Another alleged violation "identified" under that

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[9] Sections 725.247(a) and (b) **Liability Requirements** provide, in relevant part, as follows:

> (a) **Coverage for sudden accidental occurrences.** An owner or operator of a hazardous waste treatment, storage or disposal facility . . . shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.
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> (b) **Coverage of nonsudden accidental occurrences.** An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste . . . shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. . . .

[10] **Complaint** at ¶¶ 10 and 14.

section was apparently resolved only in part.[11] None of the charges brought pursuant to §§ 725.247(a) and (b) had been resolved at the time the complaint issued.[12]

In its answer to the complaint, Respondent denied the violations alleged and interposed seven affirmative defenses including three defenses to the effect that the provisions of Subpart H of the Code, FINANCIAL REQUIREMENTS, mentioned in the complaint do not apply to its facility. The basis of these defenses, reasserted in Respondent's motion, is that (a) the facility had ceased operations in early 1983, well before the 1985 deadline for achieving full permit authority to operate; and (b) Respondent had achieved interim status authority to operate, but had lost that status on November 8, 1985, pursuant to the

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[11] ¶¶ 10 and 14 of the complaint. Paragraph 10 states that this alleged violation, discovered by IEPA on September 28, 1988, was "partly resolved" on October 14, 1988, and that the unresolved portion was "restated" to Respondent on March 3, 1989. Thereafter the complaint does not refer to this particular matter again. The resolution of "all the violations" mentioned at ¶ 18 of the complaint appears to refer only to those matters discovered on September 13, 1990, which were the subject of a November 30, 1990, letter and a December 20, 1990, pre-enforcement conference.

[12] The charges brought pursuant to § 725.247(a) were "restated" to Respondent on March 3, 1989, November 30, 1990, and December 20, 1990. See ¶¶ 14 and 18 of the complaint. The § 725.247(b) charges were also "restated" on November 30 and December 20, 1990. See § 18 of the complaint. The compliance order proposed by Complainant goes only to the § 725.246 (a) and (b) charges.

operation of 42 U.S.C. § 6925 (e)(2).[13] According to Respondent, loss of "interim status"[14] relieved Respondent of the obligation to comply with the Subpart H, the financial responsibility regulations. It argues that because operations at the facility had ceased (early 1983) and because interim status had terminated (November 8, 1985), its obligations respecting the facility were limited to closing it in conformance with regulations set out at Subpart G, CLOSURE AND POST CLOSURE, of the Illinois Code. In its cross-motion, Respondent states that Complainant "mischaracterizes US Ecology's pleadings" but, consistent with the theory that the financial responsibility regulations do not apply, does not contest facts alleged in the complaint to the effect that particular forms of financial assurance required by 35 Ill. Code §§ 725.243, 725.245, and 725.247 had not been obtained.[15]

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[13] Respondent notified EPA of hazardous waste activity for the facility pursuant to § 3010 of RCRA on August 18, 1980; filed Part A of the RCRA permit application pursuant to § 3005(a) [42 U.S.C. § 6925(a)] on November 19, 1980 (**complaint** at 4, ¶ 6); and achieved interim status (**complaint** at 4, ¶ 7).

[14] See RCRA § 3005(e)(2), whereby facilities that had achieved interim status, i. e. authority to operate, but had not applied for "a final determination regarding issuance of a permit under subsection (c) of this part" by November 8, 1985, lost interim status and were required to cease operations.

[15] **Respondent US Ecology, Inc.'s Memorandum in Opposition to Complainant's Motion for Accelerated Decision and in Support of its Cross-Motion for Accelerated Decision**, at 1.

For the reasons set forth below it is held that the financial assurance requirements of Subpart H of the Illinois Code are applicable to Respondent's Sheffield, Illinois, facility, and, accordingly, that Respondent was and is required to comply with them.

Affirmative Defenses Relating to Applicability of Financial Responsibility Requirements.

Respondent's First, Second, and Third Affirmative defenses raise a question as to whether the Subpart H financial responsibility requirements of the *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* are applicable, where, as here, an owner or operator has achieved, but then lost, interim status. In addition, these defenses raise the issue of whether the Subpart H regulations apply to an inactive facility.

40 C.F.R. § 265.1(a) provides that "the purpose of this part is to establish minimum national standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. . . ."[16]

40 C.F.R. § 265.1(b) provides that:

[16] The language of 35 Ill. Adm. Code 725.101(a)(1995) is virtually identical.

> ***The standards of this part . . . apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status*** under section 3005(e) of RCRA and § 270 of this chapter until either a permit is issued . . . or until applicable part 265 closure and post-closure responsibilities are fulfilled, ***and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file part A of the permit application*** as required by 40 C.F.R. 270.10(e) and (g). ***These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise*** in this part or part 261 of this chapter.[17]

The language of the state and federal implementing regulations clearly shows that a comprehensive *schema* was envisioned by Congress for governing the management of hazardous waste until certified closure of the facilities involved. Section 265.1(b) and 35 Ill. Code § 725.101(b) state that they apply to all facilities. No distinction is made, with respect to applicability of these provisions, between facilities that had achieved interim status and those which had never achieved it. Facilities that had done nothing whatsoever ("those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification . . . and/or failed to file part A of the permit application . . . .") are specifically

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[17] Emphasis supplied. The provisions of 35 Ill. Adm. Code 725.101(b) are virtually identical.

covered. It is noted also that 40 C.F.R. § 265.140 of Subpart H, FINANCIAL RESPONSIBILITY, and 35 Ill. Adm. Code § 725.240 provide that "the requirements of §§ 265.142, 265.143, and 265.147 through 265.150 [Ill. Adm. Code Sections 725.242, 725.243, and 725.247 through 725.250] ***apply to owners and operators of all hazardous waste facilities*** except as provided otherwise. . . ."[18] It could hardly be more clear that the financial responsibility provisions apply to Respondent in these circumstances.

Adoption of Respondent's argument would result in the creation of a special niche, without a logical reason for doing so, and contrary to the overall intent of the regulations, for facilities which had achieved but then had lost interim status. If the standard applies to facilities that had never provided "timely notification as required by section 3010 of RCRA and/or failed to file part A of the permit application as required by 40 C.F.R. 270.10," it is applies also to a facility that had taken initial steps but then did not continue on to obtain full permit status. Such a facility would no longer have authority to operate, and, as such, would be the legal equivalent of a facility that never had had interim status.

Nor is this a regulation which fails to give notice of the conduct expected of owners/operators of regulated facilities.

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[18] Emphasis supplied. None of the exceptions "provided otherwise" apply. Inactivity of a facility does not create an exception.

Since both interim status and non-interim status facilities are covered, so unquestionably is any facility which once had, but no longer has, interim status. The regulations do not lend themselves to a construction that strains to exempt facilities merely because they once held interim status, in the absence of a compelling reason why such facilities might logically be excluded from the financial responsibility requirements.[19] Respondent does not suggest a reason, and none come to mind.

The opinion in U. S. v. Ekco Housewares, Inc.[20] quoted with approval the lower court's conclusion that although Ekco had "never obtained interim status, it was nonetheless subject to the Part 265 financial requirements[,] and that 265.147 requires an owner/operator of a hazardous waste facility to demonstrate financial responsibility for third-party claims throughout the closure process until final closure is certified." The Circuit's opinion continued as follows:

> At first blush it is difficult to conceive of a basis on which Ekco could dispute its obligation to comply with § 265.147. . . .
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> . . . .

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[19] "Interim status," it must be remembered, was not a magic kingdom which, once entered, ever after conferred distinction upon a facility. Interim status could be had by little more than (1) notifying EPA of the location and type of hazardous waste and hazardous waste activity, and (2) submitting a "Part A" application for authority to operate. See 42 U.S.C. § 6925(e)(1), section 3005(e)(1) of the Act, Interim Status; and 42 U.S.C. § 6930(a), section 3010(a) of the Act, Preliminary Notification.

[20] 62 F.3d 806, 812 (6th Cir. 1995).

> We decline to transform a statutory penalty -- the loss of interim status -- into an absolution from otherwise applicable regulatory obligations. Construing [the cases cited] in this manner would defeat [the] obvious goal of bringing facilities into full compliance with the RCRA. We therefore conclude that Ekco's obligation to comply with 265.147 was not affected by the 1984 LOIS [loss of interim status] amendment. . . .[21]

This reasoning applies as well to facilities which once had, but lost, interim status.

It is axiomatic that statutes and regulations must be read in the light of their general purpose and applied with a view to effectuate such purpose,[22] assuming consistency with fairness and due process. Nor may the plan of an entire statute be disregarded in interpreting any single provision.[23]

It is concluded that loss of interim status -- far from creating a facility not subject to financial responsibility requirements -- merely returned Respondent's facility to the category of facilities that had no authority to operate. In other words, a facility without a full permit either has interim status or has not. If it does not have interim status, it is covered by these regulations. They apply to such facilities, in so many words, without the need for interpretation, until such

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[21] Id. at 812-813.

[22] FTC v. Western Meat Co., 272 U.S. 554, 559 (1926).

[23] Dahlberg v. Pittsburgh & Lake Erie Railroad, 138 F. 2d 121, 122 (3d Cir. 1942).

time as final certification of closure of the facility has been achieved.

Second and Third Affirmative Defenses.

In its second affirmative defense, Respondent urges that the fact that the facility was inactive means that the period for liability coverage "should be deemed to have ended" pursuant to 35 Ill. Adm. Code § 725.247(e).[24] That section provides for liability coverage to end after certification of final closure pursuant to a closure plan approved by "the Agency," i. e. IEPA, has been made. Accordingly, the period cannot be "deemed" to have ended in the absence of such certification.

In its third affirmative defense Respondent asserts that the requirements for liability insurance set forth at section 725.247 are intended to address risk associated with treatment, storage, and disposal activities "during the operation of a hazardous waste management facility,"[25] and that pursuant to subsection (c) of that paragraph the requirement for liability insurance coverage "should be eliminated where no insurable risk continues to exist."

Section 725.247, Liability Requirements, provides at subsection (a) that "financial responsibility for bodily injury and property

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[24] **Answer and Affirmative Defenses of US Ecology**, at 11-12, ¶¶ 2, 7.

[25] Id. at 12.

damage to third parties . . . *arising from operations of the facility*. . . ."[26] shall be demonstrated. This requirement is not limited in so many words to current operations of a facility, and the word "during" -- although used by Respondent in its affirmative defense -- is absent. While liability "coverage for sudden accidental occurrences"[27] does imply that ongoing operations are principally envisioned here, the language not only does not exclude inactive facilities, it protects the public from owners and operators which has insufficient resources to complete closure of a facility. Moreover, section 725.247(c) specifically provides that adjustments of required liability coverage may be approved by IEPA following a written request by the facility's owner or operator, if it has been demonstrated "that the financial responsibility required by subsections (a) or (b)" [of section 725.247] is not "consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility." Alternatively, subsection (d) provides for adjustments in levels of financial responsibility, if (and when)

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[26] Emphasis supplied.

[27] § 725.247, LIABILITY REQUIREMENTS, at subsection (a), COVERAGE FOR SUDDEN ACCIDENTAL OCCURRENCES, provides in pertinent part that:

> An owner or operator of a hazardous waste treatment, storage or disposal facility . . . shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility. . . .

"the Agency" [IEPA] makes such a determination. Clearly, there is no automatic downward adjustment of the level of liability insurance, much less a cessation of the requirement, in the event a facility goes inactive. Nor does the record indicate that Respondent requested downward adjustment, or that IEPA made a revised determination based upon inactivity.

REMAINING AFFIRMATIVE DEFENSES

The remaining issues raised by Respondent, discussed in detail below, are not "affirmative defenses" as that term is normally understood, but go to the question of equity considerations at the monetary penalty stage of the proceedings.

Good Faith Efforts, Impossibility, and Inclusion of Respondent's Facility on the National Priorities List.

Respondent's fourth affirmative defense recites numerous efforts made to obtain liability insurance coverage for bodily injury and property damage to third parties caused by both sudden and nonsudden accidental occurrences at its facility. The fifth defense incorporates the fourth, and asserts impossibility of obtaining such coverage.[28]

Complainant correctly states the controlling precedents with respect to good faith efforts and impossibility asserted in ad-

[28] **Answer and Affirmative Defenses of US Ecology, Inc.,** at 13-14.

ministrative proceedings brought pursuant to RCRA. Such matters are not the substance of an affirmative defense. They go to the issue of a monetary civil penalty -- i. e. whether such a penalty is warranted for any violations found, and, if so, what amount is appropriate in the particular circumstances.

So, too, does inclusion of Respondent's facility on the National Priorities List for remediation pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act. Respondent objected to the listing, and asserts that liability insurance became impossible to obtain as a result of such listing.[29] Complainant's motion states that the facility was on the list for only a short time, and "certainly was no longer on it in 1986."[30]

Estoppel.

Respondent asserts that IEPA and EPA are:

> estopped from contending that US Ecology can or must obtain liability insurance . . . and that it has failed to use its best efforts to do so, or that there is any meaningful harm or threat to the public health and welfare or the environment as a result of the lack of such insurance,[31]

based upon extensive oral and written communications with IEPA as to the lack of insurance, good faith efforts, and inability to

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[29] Id. at 15-16.

[30] Complainant's **Motion for Accelerated Decision**, at 8.

[31] **Answer and Affirmative Defenses of US Ecology**, at 16.

obtain such insurance, and based also upon IEPA's silence about it. Respondent asserts that IEPA "thereby effectively recognized and accepted the impossibility of obtaining such insurance."

None of these assertions constitute a defense to the charges here, but, as indicated above, may be considered at such time as a penalty issue comes on for determination.

Prior RCRA § 3008(h) "Corrective Action" Order.

Respondent raises an issue as to the effect of a "corrective action" consent order between Respondent and EPA pursuant to section 3008(h) of RCRA, effective September 30, 1985. Respondent states that the "order encompasses all future obligations concerning the Sheffield facility."[32] This argument is more fully developed in Respondent's reply.[33]

The consent order pertains to actions to be taken by Respondent in consequence of a "release of hazardous wastes and hazardous constituents into the environment" from the Sheffield facility.[34] The Statement of Purpose set forth at section II of the document recites that:

> in entering into this Consent Order, the mutual objectives of the U.S. EPA and the Respondent are: (1) to perform a Remedial Investigation . . .

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[32] Id. at 11.

[33] **Respondent U.S. Ecology's Reply in Support of its Cross-Motion for Accelerated Decision**, at 6-7.

[34] **Respondent's Exhibit 7**, the Administrative Order by Consent in U.S. EPA Docket No. V-W-88-R-1.

> to determine fully the nature and extent of the presence or any release of hazardous wastes and constituents at or from the hazardous waste management facility owned and operated by US Ecology, Inc. . . . (2) to perform a feasibility study to identify and evaluate alternatives for the appropriate extent of corrective action necessary to prevent or mitigate any migration or release of hazardous wastes or constituents at or from the Facility; and (3) to perform any corrective action deemed necessary by the U.S. EPA to protect protect [sic] human health or the environment.

The purposes of the order, therefore, go to remedying a particular situation. The situation has no bearing upon the matters at issue in the instant case. The remedies agreed to in the order and the provisions designed to support the steps that were to be taken are not inconsistent with any RCRA requirements or applicable regulations. In the absence of a specific provision in the consent order which provides that Respondent is to be relieved of compliance with applicable statutes or regulations, and in the absence of inconsistencies between what Respondent was required to do pursuant to the consent order and its obligations pursuant to RCRA and applicable regulations, that order cannot be considered as an intent to relieve Respondent of its regulatory obligations. U. S. v. Taracorp Industries, Inc.,[35] cited by Respondent, does not support an argument to the contrary.

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[35] No. 91-CV-579 WDS (S.D. Ill., June 8, 1993) (unpublished opinion).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent, a California corporation, is a person as defined by section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 35 Ill. Adm. Code § 720.110. It owns and operated a facility near Sheffield, Illinois, which generated, treated, stored, or disposed of hazardous waste. The facility obtained interim status authority to operate pursuant to section 3005(e) of the Act. Such interim status terminated on November 8, 1985. The facility was engaged actively in the disposal of hazardous waste until early 1983.

2. Subpart H, FINANCIAL REQUIREMENTS, of the *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* of the Illinois Code applied to Respondent's facility at all relevant times herein, and will apply until such time as certification of closure pursuant to an approved plan is achieved.

3. Section 725.247(c) does not operate to reduce the level of liability insurance in the absence of approval of a written request for downward adjustment. Section 725.247.(e) does not operate to end the requirement for liability insurance in the absence of certification of final closure pursuant to a closure plan approved by "the Agency," i. e. IEPA.

4. The prior consent order between Respondent and EPA does

not supercede Respondent's obligations under applicable law and regulations.

5. Respondent failed to demonstrate financial assurance as required by applicable provisions of the Illinois Administrative Code, as alleged in the complaint. Consequently, as charged in the complaint, Respondent violated the applicable financial responsibility provisions of the Code. Complainant's motion for summary determination will be granted as to liability.[36]

6. Most of the violations were resolved by the Illinois Environmental Protection Agency before the complaint was issued.

7. Good faith efforts, impossibility, and listing of Respondent's facility of the National Priorities List are not defenses on the matter of liability, but may be considered in connection with the amount of civil penalty, if any, to be assessed for violations found. IEPA and EPA cannot be estopped from contending that Respondent can or must obtain liability insurance. As to whether Respondent failed to use its best efforts or that there is "any meaningful harm or threat to the public health and welfare or the environment as a result of the lack of liability insurance," it is appropriate to consider this matter, too, during the monetary penalty phase, if any, of these proceedings.

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[36] Complainant's motion is titled "Motion for Accelerated Decision," but a determination only as to liability was sought in the motion.

8. The circumstances surrounding the violations, including affirmative defenses and the period of time from submission of a closure plan to final approval, will be duly considered at such time as the monetary penalty issue comes on for decision.

ORDER

Accordingly, it is ***ORDERED*** that Complainant's motion shall be, and it is hereby, granted with respect to Respondent's liability for the violations charged in the complaint; and Complainant's motion is denied with respect to the issue of the penalty.

And it is ***FURTHER ORDERED*** that Respondent's cross-motion shall be, and it is hereby, denied.

And it is ***FURTHER ORDERED*** that the parties shall confer for the purpose of attempting to settle the issue remaining herein, and shall report upon the progress of their effort **no later than November 10, 1995.**

COMPLIANCE ORDER

Respondent having been found in violation of the above cited rules and regulations, the following is hereby entered pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

A. Respondent shall, within thirty (45) days of this Order becoming final, obtain and demonstrate to EPA and IEPA liability coverage for bodily injury and property damage to third parties

caused by sudden accidental occurrences arising from operations of the facility, pursuant to 35 Ill. Adm. Code § 725.247(a).

B. Respondent shall, within thirty (45) days of this Order becoming final, obtain and demonstrate to U.S. EPA and IEPA liability coverage for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility, pursuant to 35 Ill. Adm. Code § 725.247(b).

C. Respondent shall notify EPA in writing within seven (7) days of achieving compliance with each requirement of paragraphs A and B of this Order. Such notification shall be made by sending it to U. S. EPA, Region V, Waste Management Division, attention RCRA Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

J. P. Greene
Administrative Law Judge

Washington, D. C.
October 4, 1995

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on October 5, 1995.

Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: US Ecology, Inc.
DOCKET NUMBER; RCRA-V-W-025-92

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