6/25/86

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
ELWIN G. SMITH DIVISION CYCLOPS CORPORATION	)	Docket No. RCRA-V-W-85-R-002
	)	
	)	
Respondent	)	
	)	

1. Under Section 3005 of Resources Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, permitting State Phase 1 interim authority to administer hazardous waste program, U.S. Environmental Protection Agency (U.S. EPA) retains authority in those areas where State authorization has not been granted.

2. As a condition to operating its facility under Interim Status, respondent is required by C.F.R. § 270.71(b) to comply with Interim Status Standards of 40 C.F.R. Part 265.

3. Among others, respondent found in violations for failure to: (a) File amendment to Part A permit application prior to storing quantities of hazardous waste beyond its authorized limit; (b) Submit Part B application by the date set by U.S. EPA; (c) To maintain adequate closure plan; (d) Store hazardous waste in containers in good condition, and in a manner to prevent leaks; and (e) Maintain adequate aisle space in outdoor drums storage area.

APPEARANCES:

For Complainant:

Thomas Daggett, Esquire
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U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

For Respondent:

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INITIAL DECISION

Introduction:

This matter had its origins in a complaint, findings of violations and order (complaint) issued on October 16, 1984, pursuant to Section 3008 of Resource Conservation and Recovery Act, (Act), 42 U.S.C. § 6928, and its implementing regulations. The complaint assessed total civil penalties of $98,250 for the alleged violations and contained an order requiring compliance with the Act. 1/ Respondent served an answer and supplemental answer on December 9, 1984, and March 22, 1985, respectively. On June 7, 1985, complainant filed a motion for an accelerated decision, pursuant to 40 C.F.R. § 22 .20, on the issue of liability, which motion was denied by the undersigned.

1/ Pertinent provisions of Section 3008 are:

> Section 3008(a)(1): "Compliance orders. - . . . whenever 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 . . . ."
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> Section 3008(g): "Civil penalty - 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."

The complaint was based upon information available to the complainant, United States Environmental Protection Agency (hereinafter U.S. EPA), including compliance inspections conducted by the Ohio Environmental Protection Agency (OEPA). On July 15, 1983, the State of Ohio received Phase 1 interim authorization pursuant to Section 3005 of the Act, 42 U.S.C. § 6925, to administer a hazardous waste program. This authorization allows the State and U.S. EPA to enforce those portions of the Ohio statutes and regulations, where applicable, in lieu of Federal Statutes, (Complaint at 1). The purported violations and the amount of penalty sought by U.S. EPA are as follows:

Purported Violations	Penalty Amount Sought
1. Failure to submit the Part B portion of application; failure to submit closure plan; and failure to have adequate closure plan at the facility.	$22,500
2. Failure to maintain adequate aisle space in the container (drum) storage area.	22,500
3. Failure to provide personnel with annual review of required training.	6,500
4. Failure to submit financial documents to OEPA.	250
5. Failure to submit revised Part A portion of application for storage capacity.	17,500

6. Failure to store hazardous waste in containers in good condition and to prevent leaks.	$22,500
7. Failure to keep in the operating record waste codes and waste handling codes.	6,500
	$98,250.

The hearing extended over a six day period. To be determined here is whether or not the alleged violations are supported by the preponderance of the evidence. 2/ "Preponderance of the evidence" is that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

2/ The applicable section of the Consolidated Rules of Practice, 40 C.F.R. § 22.24, provides in pertinent part that: " . . . Each matter in controversey shall be determined by the Presiding Officer upon a preponderance of evidence."

FINDING OF FACTS

Based upon a review of the evidence these are findings of fact. 3/ Respondent is a wholly-owned, separately incorporated division of Cyclops Corporation. The former has manufactoring facililties in other parts of the nation, but pertinent to this decision, the plant in question is located in Cambridge, Ohio. Respondent has approximately $100 million in annual sales, and represents about one-tenth of the total annual sales of Cyclops. The latter does make an end product. Its various divisions compete in the marketplace independent of each other. Each division reports separately to Cyclops concerning its sales, profits and losses. Respondent is engaged in the manufacture and erection of commercial siding, and the particular product manufactured at the respondent's Cambridge facility is foam panel, which is a urethane insulated product primarily used inside the walls in commercial application. In respondent's other manufacturing facilities it makes the trim pieces that surround the form, and component sash head and sill. The metal "skins" or coverings of the polyurethane foam are coated in the coil coating line, the foam is introduced be-

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3/ The findings necessarily embrace an evaluation of the credibility of witnesses testifying upon particular issues. This involves more than observing the demeanor of a witness. It also encompasses an evaluation of his testimony in light of its rationality or internal consistency and the manner in which it blends with other evidence. (Wright and Miller, Federal Practice and Procedure § 2586 (1971).

tween the metal skins,this product is cured and in a rigid state. Isocyanate is one of the components used in the manufacture of the foam. Also produced by respondent is a coated metal coil. The respondent's foam product meets the building codes of the various locations where it has been installed and there are currently more than three million square feet in buildings. (Ex. C-1; Tr. 111 at 845-850; V at 56-57, 78-84). For the last three years, including 1985, respondent had an estimated loss of $22 million. In an effort to control losses, respondent has cut back in all its departments. Respondent contends that if it were required to pay the full penalty assessed in this matter it would mean that it would have to come from operating funds in capital appropriations, and would reduce respondent's competitiveness in the marketplace. (Tr. V at 87-89).

On November 15, 1980, respondent submitted its Part A application to the U.S. EPA. 4/ It was submitted by Mark

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4/ The Part A application serves to notify the U.S. EPA of applicant's hazardous waste activities and its willingness to participate in the permit system concerning such activities. Part A application qualifies owners and operators of existing Hazardous Waste Management facility for "interim status." Facility owners or operators with such interim status must comply with U.S. EPA standards or with analogous provisions of the State program. Subsequently, Part B follows which is more complete than Part A and contains the necessary information to issue a final permit. (40 C.F.R. § 270).

Place, respondent's Division Plant Engineer, and it provided for the storage of hazardous waste in the amount of 110,000 gallons in container form. (Ex. C-1; Tr. I at 41). On September 24, 1981, Burton E. Raymond, on behalf of respondent submitted an "EPA form 3510-3(6-80)" apparently to Ohio Hazardous Waste Facility Board (OHWFB) in which it designated the facility's container capacity at 110,000 gallons. The OHWFB approved this the Hazardous Waste Permit application on February 5, 1982. (Ex. R-5, Tr. I at 83; II at 326; III 786). On September 16, 1982, however, David M. Wehr, Vice President of respondent's operations, submitted an amended Part A application which changed and reduced the container capacity from 110,000 to 10,000 gallons. On direct examination, Wehr's "recollection" was that the permit was for 110,000 gallons. The last page of the Part A application, however, bears an "Owner's Certification" in which the party signing certifies, in short, that he has personally examined and is familiar with the information submitted; that based upon his inquiry of those responsible for obtaining the information he believes the information to be true, accurate and complete. (Ex. C-2; Tr. I at 44; V at 95,114).

By letter of January 28, 1983, the U.S. EPA told respondent that its Part A application had been processed and that it met the requirements for interim status. The letter contained an attachment with the pertinent process code "S01" showing the authorized container storage to be 10,000 gallons. No further record of an amended Part A application existed in

files of U.S. EPA. (Ex. C-3; Tr. I at 47, 55, 77). An initial visit was made to the facility by OEPA on January 26, 1981. This was not an official inspection but rather to offer technical help to the respondent in becoming familiar with the new regulations. The OEPA inspectors noticed quite an accumulation of drums, some of which appeared to be leaking and in poor condition. OEPA subsequently wrote to respondent in which the latter was notified of the large accumulation of drums; that some appeared not to be in good condition; and that some work was needed to rectify the situation. A formal interim status inspection of respondent's facility first occurred on September 22, 1981, wherein certain deficiencies were noted. This inspection was conducted by Messrs. Patrick Gorman, Leroy Scribner and Michael Moschell. On September 29, 1981, respondent was sent a copy of the inspection report by OEPA, and a cover letter in which respondent was admonished to correct the deficiencies (Ex. C-4; Tr. 96-104). 5/ Thereafter the respondent's facility was reinspected briefly October 2, 1981 by Michael Moschell (Moschell) of the OEPA, but not all the violations of the September 22, 1981 inspection had been corrected. There remained the problem of the large inventory of drums on the site. Respondent had begun to open up the drums

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5/ These numerous violations are set out in paragraph 9 of the complaint.

to determine their contents and to properly mark them; and to either overpack leaking drums or repair the leaks. Respondent was halfway through the pile of drums at the time the inspection occurred. In the latter part of October, Moschell went back to the facility to discuss with respondent, at the latter's behest, storage and disposal sites that would be used for the disposal of the waste. On December 30, 1981, another more complete inspection took place by OEPA. Two violations were uncovered this time, consisting of respondent's insufficient documentation of employee training, and that inspection of the drum storage area had not begun until about a week prior to the inspection. Respondent was advised of the violation by OEPA in a letter on January 22, 1982, with inspection form attached. (Ex. C-7; Tr. I at 110-113). On September 16, 1982, Moschell revisited respondent's facility, at which time there was about 24 leaking drums. He wrote a letter to the manager of the facility on October 29, 1982 in which the problems of the drum storage area were discussed, and that respondent should take steps to remove them as soon as possible. (Tr. I at 110-115). By letter of November 5, 1982, U.S. EPA wrote a formal request for submission of respondent's Part B

application, and that same should be submitted no later than May 16, 1983. This was followed by another communication of December 22, 1982 which, in part, was attached a guidance manual to assist respondent in submitting its Part B application, and requesting that three copies of it be sent to the OEPA. (Exs. C-5,6; Tr. I at 47-49). On May 10, 1983, respondent sent a letter to the OEPA, copy to U.S. EPA, in which it requested an extension to the deadline date of May 16, 1983 for filing the Part B application. The reasons given were that there was a change in plant management and that there was a delay in removal of "our existing 2,000 drums of flammable liquids" due to respondent's cooperation with the Ohio Attorney General's Office in a criminal matter regarding waste removal. Respondent expressed its intention to remove the 2,000 drums that have accumulated "for almost four years", and to take steps for (90) day removal of all new generated waste, cancel its Part A interim status permit and be classified as generator only. (Ex. C-8; Tr. I at 125-126).

In the interim, on January 13, 1983, Moschell conducted a follow up hazardous waste inspection at the facility with another inspector from OEPA, Brian Blair (Blair), but the witness was unable to report whether or not there were any violations as such data was omitted from Moschell's notes. On January 18, 1983, Moschell met with Al Fetters (Fetters), Plant Manager of respondent. They discussed permit changes and waste analysis requirements. (Tr. I at 119)

Moschell conducted another compliance inspection of respondent's facility on September 1, 1983, which is the subject of this litigation. This inspection disclosed numerous violations, (Ex. C-9; Complaint at par. 15; Tr. I at 130-134). 6/ Exhibit C-9 had the following handwritten statement made on the inspection form portion: "Note: Permit Limit - 110,000 gal. (2,000 55 gal. drums). Now in storage 124,080 gal. (2, 256 drums). Over Permit Limit - 14,080 gal. (256 drums)." This notation by Moschell was in error. Respondent's official capacity limit was 10,000 gallons. Concerning financial responsibility, Moschell also inserted "to withdraw permit." Additionally, Moschell observed in his handwritten notes on the inspection form that: "Part B was called in, not submitted. Requested permit withdrawal." (Ex. C-9 at 00102, 00105, 00106). On September 6, 1983, a copy of the September 1 inspection form was sent to respondent. The covering letter, among others, advised the respondent to correct the violations. Further, with reference to the Part B application, it is stated that if the respondent sought withdrawal of the application it should advise the OHWFAB and U.S. EPA prior to October 8, 1983 in order to avoid paying the next year's permit fee, and to submit a closure plan to the Director and Regional Administrator as soon as possible. The covering letter also stated, with regard to financial responsibility, that: "I understand Cyclops will

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6/ The violations are set out in Appendix A

not provide this coverage since the permit is to be withdrawn." Respondent was also advised that when its permit was surrendered it would only have the responsibilities of a generator, which responsibilities were enumerated in the letter. During the September 1 inspection Moshell observed that the hazardous waste drums were stacked at the time against a building and so closely packed that one had to stand sideways to go between them; that several of the drums had small bubbles coming up out of the top of the drumhead; that he observed soil contamination; and that in an area where drums had leaked he saw one drum that was spurting some waste a short distance from the drum. In the covering letter of September 6, Moschell advised respondent that a few areas of soil contamination were noted. Assuming Moschell may of had to turn sideways to conduct the inspection he nonetheless was able to inspect the drum area. Moschell arrived at the 124,000 gallon (rounded) capacity in the drum storage area from the inspection log of the facility which indicated the number of drums in the drum storage area. He then multiplied this by 55 gallons for each drum, making the assumption that each drum was full of waste. Moschell did not measure the contents of each drum, as this would require opening each drum for inspection and this was impracticable. (Ex. C-9 at 00092; Tr. I at 135-137).

OEPA did not receive a reply to its September 6, 1983 communication in which the violations were noted, and it wrote another letter to respondent on November 15, 1983, asking a re-

sponse within 10 days concerning the enumerated violations. Respondent was asked to respond "so that an enforcement action will not be necessary." (Ex. C-10). No response was forthcoming from respondent and Moschell, on February 7, 1984, had a conversation with Fetters to show how the problems were corrected. This was followed by a letter of February 14, 1984 from Moschell pointing out the existing deficiencies such as those dealing with the closure plan and the permit withdrawal. Respondent answered on February 24, 1984 in which it outlined what steps had been taken namely:

(1) Removal of accumulated waste and that all newly generated waste would be shipped within 90 days in order to meet "our obligations as a generator";

(2) That the area where waste had been stored was examined and that there could not be identified any particular area spillage, but this would be reexamined in early summer and shovel any top soil into drums that appeared contaminated;

(3) That two inactive lagoons and storage tank were tested by a laboratory for E.P. toxicity and the test results were below the maximum allowed. Respondent further advised that if closure plan met with approval, it would initiate the steps for permit withdrawal to obtain generator status. (Exs. C-10,11, 12; Tr. I at 137-140).

By letter of March 5, 1984, respondent was advised that its attempted procedure was improper and in substance being done without approval; that its close out procedure for the drum storage area was not adequate. Respondent was also di-

rected to get in touch with the Industrial Wastewater Section for special requirements on closing wastewater surface impoundments, observing that generally removal of all waste water and sluges is required before backfilling. (Ex. C-13; Tr. I at 143-145).

In another March 5, 1984 letter, respondent was also notified by Paula Cotter (Cotter) of OEPA that is was not in compliance with the financial responsibility requirements. Respondent did not come into compliance with the financial responsibility requirements and OEPA did not follow up with an enforcement proceeding. The reason for non-enforcement at this time was because Fetters was to testify in a criminal proceeding against certain defendants concerning illegal waste removal. OPEA did not want respondent to become bitter and not provide helpful testimony, nor did OPEA want to impugn the credibility of respondent at the criminal trial by having an outstanding enforcement action against it. Cotter requested Ronnie Lillich (Lillich) of the U.S. EPA to withhold enforcement proceedings until a time when it was anticipated the criminal proceeding would be over. (Ex. C-14; Tr. II at 562-565).

Lillich, who prepared the complaint in the proceeding, got in touch with Moschell in order to get details as part of the procedure for preparing the document, (Tr. VI at 183). Following the issuance of the complaint, Blair of OPEA conducted another inspection of respondent's facility on November 20, 19 84. The violations were the same or similar to many of the pre-

vious violation uncovered at the facility. 7/ On December 17, 1984, respondent was sent a communication advising it of the violations to which was attached Blair's inspection form. Respondent was informed that the violations must be corrected in thirty days. On January 4, 1985, Fetters sent a letter to Blair giving reasons why he could not comply with the time frame and and stating that a reply would be forthcoming in 30 days. (Ex. C-15, 16; Tr. at II 418-429). On February 4, 1985, Blair wrote to Fetters reminding him that a response had not been received, to date, and that he had not met his self-imposed deadline to respond in thirty days. Fetters responded on April 10, 1985, answering each item of the December 17, 1984 letter, but there were several matters which Blair concluded were not answered adequately. He responded to Fetters in a letter dated May 21, 1985 in which he outlined what he viewed as outstanding violations. Respondent was informed that it has not acted in a manner so as to reduce the violations observed in the November 1984 inspection. Respondent was again warned that the outstanding violations should be corrected within a stated time frame, and it was cautioned anew that closure activities must not be taken without an OEPA approved plan. No response was received from respondent to the May 21, 1985 letter, and as of the commencement of the hearing in July, many uncorrected

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7/ The violations are set out in Appendix B.

conditions remained which are reflected in Exhibit C-18. (Exs. C-17, 18, 23; Tr. II at 420, 434).

Fetters conceded that the facility, including the inside drum area, remained subject to the interim status, or Part A regulations, until respondent went through an approved and completed closure plan; that a contingency plan to address violations and a revision to the closure plan for the outdoor drum storage area was not prepared until the summer of 1985. Additionally conceded was that a two foot aisle space in the inside drum area 8/ cited to respondent several months before as a violation continued into the second phase of the evidentiary hearing in October 1985, and that there did not exist a closure plan for the lagoons storing hazardous waste listed as F019. The closure plan did not address the lagoon situation in Fetters' view for two reasons: First, the drum storage area closure plan would be addressed initially. Second, the lagoons were closed in the mid 1970's, which Fetters stated proceeded the passage of the Act. and thus raised the legal question whether or not the lagoons would be required in any closure plan. (Ex. R-79; Tr. IV at 1094-1096; V at 6-15, 27-32).

Respondent attempted to hold itself as a generator only, and in 1983 submitted "Generator Annual Hazardous Waste Re-

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8/ Further findings are made infra concerning this inside aisle space.

ports" to OEPA. (Exs. R-8, 9) 9/ Fetters was also under the impression that the information he gave to the representatives of the OEPA was sufficient with respect to the Part B application. (Tr. IV at 1037,1038). For example, respondent's waste treatment plan of September 30, 1981 contained a section designated as "Closure Plan." (Ex. R-9 at 26, 27) This submission, however, did not meet the problem in the drum storage area. Fetters admitted that respondent could not attain generator status without first going through a closure plan. (Tr. IV at 1093). Regardless of whatever impressions respondent may have been under, it is factually established that it did not submit a closure plan before beginning what it thought to be closure and that it did not properly close the facility. (Tr. I, at 248-253). Nor did respondent submit a Part B application to the U.S. EPA. It is found that respondent failed to submit a Part B application; that it failed to have an adequate closure plan; and that it failed to submit same.

Returning to the aisle space issue, complainant's position is that the aisle space in both the outside and indoor storage areas was inadequate because there was insufficient space between the rows of drums to provide "unobstructed movement" for the purposes, in short, of inspection of the drums, or removal of any of the drums in time of emergency. Moschell did not measure the width of the aisle space in the outdoor drum storage

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9/ Respondent also cites an Exhibit R-4 in its brief, However, this exhibit together with R-40 through R-45 was not offered into evidence. (Tr. VI at 358).

area, but to iterate there were some areas where he had to stand sideways to go between the drums; that they were stacked two high, had at least four drums on a solid wooden skid. (The actual physical arrangement was that the drums were stacked two high with a skid in between them, with the bottom skid resting on the open ground.) Moschell noticed about a half dozen leaking drums during the inspection visits. (Tr. I at 135, 169, 171, 180; II at 321; V at 138-139). With regard to the inside drum area, while there was two foot of aisle space in between the skids, the drums on the other side had a 15 foot aisle space that could service the rows; that "We can come in with a tow motor, turn the tow motor, go in and move any material very quickly." (Tr. V at 10)

Turning to the outside drum storage area, Moschell's testimony is that there was a two foot aisle space. Fetters testified that the distances between the rows was a minimum of four feet and it could be six feet, (Tr. V at 1003). The testimony of Moschell is more credible than that of Fetters. The possible explanation for Fetters' claim of four feet of aisle space being that when the facility later began to segregate the drums and put them in the open field behind the storage pad it may have provided more aisle space. However, on Moschell's first and second inspection the aisle space was about two feet. (Tr. I at 171-172). Fetters remained of the view that even with two feet of outdoor aisle the facility could act quickly

in the event of a spill, that an outside tow motor that could be used to handle the skids on which the drums were placed. (Tr. IV at 1006). This statement is not supported in the record. Unlike the inside storage area, the respondent appears to make no mention of a 15 foot aisle space or any other large aisle space to the other side of the skids in the outside area to accommodate a tow motor. The evidence does not support the assumption that the outside and indoor storage spaces were of the same configuration. The credible evidence supports the finding that it is more likely true than not true that the outdoor aisle space was about two feet, and unlike the indoor storage space it did not have a 15 foot or large aisle on the other side of the skids as did the inside storage area. It is found that respondent's inside storage area had sufficient aisle space to both conduct inspections and to permit the quick use of emergency equipment. It is found that two foot outdoor aisle space was sufficient to permit inspections, but was insufficient to allow the prompt use of emergency equipment.

To be addressed next is the question of respondent's alleged failure to provide an annual review of training. The violation was noted during the September 22, 1981 and the September 1, 1983 inspections. During the November 20, 1984 inspection, subsequent to issuance of the complaint, there was a similiar violation noted in that training documentation was not available at the time of the inspection. (Exs. C-4 at 00

020 and 00041; C-9 at 00092, 00098, 00104; C-15 at 00116 and 00121; Tr. I at 100, 131; Tr. II at 418-419). The September 1983 inspection report stated that an annual refresher course was needed and that respondent should advise OEPA, within thirty days, when training was completed. Moschell acknowledged in a letter of February 14, 1984 that an annual refresher course had been given the employees on February 6. Also, respondent had something resembling a training program as part of its agreement with labor union representing employees. This provision of the union agreement is of a general nature and addressed particularly to a training program for employees who bid and assume new jobs. Some training was provided to respondent's employees, but not that required by the pertinent regulation, (Exs. C-11; R-77 at 0427; Tr. IV at 1012-1016). It is found that respondent failed to provide an annual review of training to its employees.

Another violation concerns respondent's failure to submit required financial documents to OEPA. Respondent was advised by OEPA that <u>if</u> respondent had reverted back to a generator only status the financial responsibility rule would not apply. Respondent was under the impression that it had reverted to a generator status and that OEPA knew as early as September 1983 of respondent's plans to withdraw its Part A permit and not to file financial responsibility documents. In its September 6, 1983 communication to respondent regarding financial responsibility Moschell stated: "I understand Cyclops will not provide

this coverage since the permit is to be withdrawn." Fetters admitted that if respondent "reverted back to generator only the financial responsibility rules would not apply. (Ex. C-9 at 00093; Tr. II at 593-594). However, at that time financial responsibility documents were required to be filed respondent had not withdrawn its Part A application and it was hazardous waste management facility. It is found that respondent failed to submit financial documents to OEPA.

The fifth violation concerns respondent's alleged failure to submit a revised Part A Application for container storage. Respondent urgues that the facility's production records showed a maximum of 108,785 gallons of hazardous waste in storage as of September 1983; that many of the drums were not full, and that isocyanates are not hazardous waste. As found above, respondent's official and amended Part A application and permit were for 10,000 gallons, not 110,000 gallons. Even assuming, without finding, that some of the drums were not full or that others contained solid foam particles, respondent still exceeded its 10,000 gallon capacity. Respondent argues further that part of the waste stored (isocyanate) was not hazardous waste, and that less than 4,125 gallons of isocyanate were in storage bringing the total stored figure down to about 104,500 gallons. (Tr. V at 102-106) The basis for respondent's claim that isocyanate is not a hazardous waste

under the Act rests upon the testimony of its expert witness Edward Shapiro (Shapiro). However, Shapiro's opinions were based upon literature as opposed to his own testing. Futher, isocyanates react with water to generate carbon dioxide which could explosively rupture closed containers. (Exs. R-86, C-24 at 12; Tr. V at 62-68). It is found that respondent did not submit an amended Part A application for a permit to increase its storage capacity from 10,000 to the amount of approximately 124,000 gallons that it was storing on September 1, 1983.

Concerning the alleged violation of respondent's failure to store hazardous waste in containers in good condition and to prevent leaks, it was already found above that some of the drums were not in good condition; that several had small bubbles coming up out of the top of the drum; that there was an area where the drums had leaked and one drum was spurting waste out a short distance. (Tr. I at 135-136). As found earlier, Moschell estimated that there were about a half a dozen leaking drums and that others were in a deteriorated condition. Of the 2,000 plus drums in storage, the hazardous waste was stored in metal drums with an approximate non-leak period of five years, depending upon the type of waste they contain (Ex. C-4 at 00040; Tr. I at 175; II at 346-347).

Mary Owens (Owens) who supervised respondent's outdoor drum storage area noticed some leaking drums that would begin with a pinhole and the contents would seep down the side of the drum onto the wooden skid, and occasionally she saw seepage on the ground. When a leak occurred in a drum, it contents would be either placed into another 55 gallon drum, or would be "overpacked" within an 85 gallon container. The witness estimated to the best of her memory that during the period of 1980-1983 there were located and remedied 25 leaking drums of about 2,000 in storage. On cross-examination the witness was more edifying. When presented with drum storage inspection reports completed by her for four inspection periods, from January to August, 1983, it was revealed that there were 105 leaking drums. No further inspection report was made by the witness for the year 1983, though Owens was "with those drums every day". The last inspection report for August 29, 1983, showed three leaking drums. This was only a few days before Moschell's September 1 inspection when he noticed, and it is so found, waste spurting a short distance from one of the drums, (Ex. C-25; Tr. I at 135; V at 140-147). It is found that some of the respondent's drums were in poor condition; that respondent took some steps to remedy the situation; but that some drums were in such poor condition as to permit the contents to leak from the drums, and some of the hazardous waste reached the ground.

The last violation concerns the failure of respondent to include waste codes and waste handling codes in its operating

records. The inspection of September 1, 1983 confirmed this and the respondent was so advised, (Ex. C-9 at 00092, 00095; Tr. I at 133). 10/ Earlier, during the pleading stage of the proceeding, respondent stated: ". . . Although no such references were contained in the form, the descriptions of the stored hazardous wastes were of sufficient detail that one familiar with such matters would be able to ascertain the substances contained in the drums . . . . " Answer, at par. 15(g). If not in the respondent's operating record, some hazardous waste codes could be found elsewhere. For example, they were in respondent's Part A application. (Ex. C-1 at 00005; C-2 at 00012; Tr. II at 271). Chem Waste, a waste disposal company transported respondent's waste to Emelle, Alabama. Respondent prepared manifests for the shipment which respondent asserts had to be prepared in accordance with provisions of the pertinent regulations. (Tr. IV at 964-965). The implication by respondent is that the waste would not have been removed if the manifests did not reflect the hazardous waste codes. It is found, however, that in the September, 1983 inspection waste codes for the hazardous waste storage area were not included in respondent's written operating record.

10/ Subsequent to the inspection, respondent in submitting facility annual hazardous waste reports to the OEPA on October 18, 1983 and March 1, 1984 did use U.S. EPA waste code numbers. (Attachments H & I to respondent's answer).

DISCUSSION AND CONCLUSIONS OF LAW

By way of background, the Act provides that a state with an authorized program operates it in lieu of the federal program, and that such state program has the same force and effect as any federal action taken by the Administrator. 42 U.S.C. § 6926(c)(d). However, authority to take enforcement actions remains with U.S. EPA in states having such authority, 42 U.S.C. § 6928(a)(2). U.S. EPA and the State of Ohio entered into a Memorandum of Agreement (Agreement) pursuant to 42 U.S.C. § 6926(c) The Agreement specifically provided that U.S. EPA may take enforcement action pursuant to 42 U.S.C. § 6928(a)(2) when the State has not taken timely and appropriate enforcement actions. Additionally, under the Agreement appropriate State enforcement may not include more than two warning letters for any violations followed by timely enforcement proceedings. 11/ Further, U.S. EPA has had a long standing policy which provides for escalation of enforcement methods where initial efforts are inadequate to achieve compliance. (Tr. III at 613-615).

Though there were previous inspections of respondent's facility that disclosed violations which were cited in the complaint, the heart of the complaint concerns alleged violations disclosed during the September 1, 1983 inspection, some of

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11/ The Memorandum of Agreement is found as an attachment to U.S. EPA's (complainant's) Memorandum in opposition to respondent's motion to dismiss complaint of July 24, 1985.

which were noted in an inspection almost two years earlier. Following the former inspection, two letters were sent to respondent concerning the violations. A response was not forthcoming. OEPA opted for a further visit to the facility rather than the issuance of a complaint. U.S. EPA was apparently of the view, and rightly so, that OEPA's enforcement efforts were neither timely nor apppropriate and it issued the complaint in the subject proceeding. The violations will be treated seriatim.

1. Failure to Submit Part B Application; Failure to Submit Closure Plan; Failure to Have Adequate Closure Plan

It was found that the respondent submitted an amended Part A application in which it reduced its authorized drum storage capacity to 10,000 gallons. (Authority concerning permits was not delegated to Ohio by the Agreement.) The September 1983 inspection showed a storage capacity of 124,080 but respondent had taken no official permit action with U.S. EPA to change its storage capacity from 10,000 to 124,080 gallons. Moschell's handwritten notes indicating respondent's capacity at 110,000 gallons do not in any way alter the violation. Ohio was without authority concerning permits, and respondent's official capacity could not be elevated from 10,000 to 110,000 gallons because of Moschell's mistake. Knowing full well that its amended Part A called for a limit of 10,000 gallons, respondent could not justify relying on handwritten notes which it knew, or should have known, were

in error. Respondent also urgues, though testimony of Shapiro, that the isocyanate waste is not hazardous, within the meaning of the Act. Assuming, without concluding, this to be the case, such waste comprised a small portion of the total amount, and respondent's storage remained vastly in excess of its 10,000 gallon limit.

Respondent also challenges the mathematical method Moschell used to arrive at the 124,080 gallon figure. The inspector was under no legal obligation to examine each and every drum to determine whether or not it contained 55 gallons. First, this would place an unduly, time-consuming task on the inspector which would impede greatly any inspection. It would also be an unnecessary task. If the respondent contended that the drums were not completely full, the burden rested with it at the time of the inspection to produce evidence of this. Otherwise, it was reasonable for the inspector to rely on the assumption that a 55 gallon drum was filled to capacity.

Turning next to the closure plan, respondent's central argument is that the Part B was unnecessary because it intended to surrender its Part A permit and in actuality had returned to a generator status. If respondent were a generator only it, of course, would not be required to file Part B permit application or meet some other requirements of a facility operating under Part A permit interim status. Intent to be a generator will not suffice. Nor will conducting the facility as if it were a generator only be adequate. There are certain

conditions precedent that must be met to attain such a status which rest upon valid public interest considerations. When a facility has interim status, as did respondent, it could not return to a generator status unless and until it abided by pertinent regulations including closing the facility in compliance with closure regulations. In short, the appropriate regulations provide that to attain closure a facility must prepare a plan, submit it to the designated governmental authority within a prescribed time frame for review, make any amendments to the plan deemed necessary to remedy any of its deficiencies, and then carry out the closure plan in the approved manner. One of the vital public interest reasons for the regulatory requirement is that all hazardous wastes and residues should be removed from the facility before it is permitted to return to a generator only status. Fetters conceded that the facility could not revert to generator status unless respondent had an approved closure plan, which it did not. Removal of the drums of hazardous waste is insufficient where, as here, respondent failed to comply with notices to test the soil of the outdoor drum storage area for residues of hazardous waste. As found above respondent was advised by OEPA that it would have to submit a closure plan as soon as possible and engage in testing and removal of areas of soil contamination in the storage area. The respondent did not do this.

Respondent's "waste treatment plan" (Exhibit R-9) which contained a page entitled "Closure Plan" was not an adequate closure plan because it did not come to grips with the drum storage area problem. It fell far short of what was required by the appropriate regulations.

It is concluded that respondent failed to submit a Part B application; failed to submit a closure plan; and failed to have an adequate closure plan, and that it was in violation of 40 C.F.R. § 270; 40 C.F.R. § 265.110-115; and Ohio Administrative Code (OAC) 3745-66-(12).

2. Aisle Space

The regulation involved in this violation states:

> The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of the above mentioned purposes. (emphasis supplied) 12/

The obvious purpose of this regulation is principally to permit unimpeded inspections of the respondent's storage areas and to permit equipment to enter in time of emergency. It was found that equipment could not be used in the outside storage area as comtemplated by the regulation. The undersigned does not con-

12/ OAC 3745-65-35; (40 C.F.R. § 265.35).

cur in respondent's conclusion, notwithstanding it repetitive claims, that the aisle space in the outdoor storage area was adequate to permit both the movement of people and equipment (Resp. Op. Br. at 12). During the initial inspections the outdoor aisle space was clearly not adequate to permit the unobstructed movement of equipment. It is concluded that respondent was in violation of OAC 3745-65-35.

3. Failure to Provide Personnel with Annual Review of Training

Respondent was advised that the September 1983 inspection revealed that its employees were not provided with an annual refresher course in compliance with the appropriate regulation. That the employees were given such a course some months after the violation does not eradicate the violation. In defense to the violation respondent argues that its employees received some training by some means. For example, it is stated that it has a "thorough training" job qualification program in connection with its union agreement, citing the agreement and Mr. Fetters' testimony in this regard. (Resp. Op. Br. at 20). An examination of the cited Article in the agreement and Mr. Fetters' testimony failed to establish that this type of employee "training" was in conformity with, or that envisioned by,the pertinent regulation. It is concluded that respondent violated OAC 3745-65-16-(C); (40 C.F.R. § 265.16(c).

4. Failure to Provide Financial Documents to OEPA.

In response to this violation respondent relies prin-

cipally upon its belief that is had acquired a generator only status and was exempt from the requirement of filing financial responsibility documents. For reasons mentioned above, respondent's status had not changed and it was legally obligated to file the documentation. In its Brief respondent stated that additional financial documents were not mailed on advise of OEPA. (Resp. Op. Br. at 23). This is a misstatement of the of the situation. Referring to Exhibit C-9 at 00093, paragraph 7, Moschell's statement was based upon respondent's representation that it intended to withdraw its Part A permit which, of course, did not materialize. Additionally,there is the telling statement of Fetters that the financial responsibility requirements were applicable if respondent were not a generator. Absent proper closure plan and it acquiring a generator only status, respondent was legally obligated to file the financial responsibility document. It is concluded that respondent violated OAC 3745-66-43, 45, 47; (40 C.F.R. § 265.143, 145, 147).

5. Failure to Submit A Revised Part A Application.

The pertinent regulations 13/ provides in significant part that:

> (a) New hazardous wastes . . . may be . . . stored . . . at a facility if the owner or operator submits a revised Part A permit application prior to such change;

13/ 40 C.F.R. § 270.72

> (b) Increases in the design capacity . . . used at the facility may be made if the owner or operator submits a revised Part A permit application prior to such change . . . and the Director approves the change because of lack of available . . . storage . . . capacity;

The above issue has been discussed in connection with the other permit and closure violations. Sparing the reader, the the thoughts expressed above will not be repeated here except to the following extent: Respondent's legally permitted storage capacity for hazardous waste was 10,000 and not 110,000 gallons. Let it be assumed, without concluding, that there may be some imprecision on the part of OEPA in its method of calculating the gallons. Let it further be assumed, without concluding, that some of the waste in th drums have been of a non-hazardous nature. It is highly unlikely, if not inconceivable, that the aforementioned assumptions would account for the great differences between respondent's legal and actual container capacity. It is concluded that respondent violated 40 C.F.R. § 270.72.

6. Failure To Store Hazardous Wastes In Containers In Good Condition and to Prevent Leaks

The regulation in point 14/ states:

> If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the haz-

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14/ OAC 3745-66-71, 73; (C.F.R. § 265.171; 173)

> ardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of the hazardous waste interim standards . . . .
>
> A container holding hazardous waste must not be . . . stored in a manner which may . . . cause it to leak.

It has been found that respondent took some corrective actions when a leak appeared in a drum. Notwithstanding these corrective procedures, as outlined by Owens, it was also found that in an eight month period Owens discovered 105 leaking drums during four inspections in 1983; that some of the waste reached the ground; and that the last three inspections took place on August 29, 1983. Significantly, Moschell noticed the drum spurting liquid a few days later during his inspection. If 105 leaking drums were detected in the first eight months of 1983, how many more drums may have been leaking during the remainder of the year when no further drum storage inspection reports were made, even though Owens was in the drum storage everyday. The fact that there was 105 leaking drums detected in an eight month period establishes that either the waste was not stored in drums in good condition, or that respondent was derelict in not taking more prompt and efficacious action to prevent any leaking. It is concluded that respondent was in violation of OAC 3745-66-71, 73.

7. Failure to Include In The Operating Record Codes And Waste Handling Codes

The relevant regulation provides in pertinent part that:

> (a) The owner or operator must keep a written operating record at his facility.
>
> (b) The following information must be recorded, as it becomes available, and maintained in the operating record until the closure of the facility: (emphasis supplied)
>
> (1) A description and the quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility as required by Appendix I . . . . OAC 3745-65-73; C.F.R. § 265.73)

During the September 1983 inspection it was found that the facility did not have hazardous waste code identification numbers in its operating record. Significantly, respondent in its answer conceded the violation, with an explanation, as noted in the findings above. The explanation will not suffice. Appendix I mentioned in the regulations specifically provides that for recordkeeping purposes the owner or operator must use the hazardous waste number assigned to it, and that same be maintained in the operating records. The respondent's Answer and other parts of the record show use of hazardous waste code on certain documents. Such isolated submissions, however, do not constitute "a written

operating record" with the meaning and intent of the regulation. It is concluded that respondent violated OAC 3745 -65-45-73.

Appropriateness of the Penalty

Before determining what penalty, if any, should be assessed for each violation, some mention of the section of the Act in point, and EPA's approach to penalties should be addressed. Section 3008 of the Act. 42 U.S.C. § 6928(a)(3) provides in pertinent part:

> . . . Any penalty assessed . . . shall not exceed $25,000 per day of noncompliance for each violation . . . . In assessing such penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. (emphasis supplied)

As an aid in arriving at penalties under the Act, U.S. EPA issued on May 8, 1984, a 34 page document entitled "Final RCRA Civil Penalty Policy" (Penalty Policy). (Ex. R-74). The Penalty Policy enunciates that its purpose "is to assure that RCRA civil penalties are assessed in a fair and consistent manner; that the penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance with RCRA are eliminated; that persons are deterred from committing RCRA violations; and that compliance is achieved." As a guide to determining the gravity of a violation the Penalty Policy, stated broadly, sets forth a ma-

trix setting out "major", "moderate" and "minor" categories with one standard being the potential for harm, and the other measurement being the extent of deviation from the the statutory or regulatory requirement. After determining the penalty based upon gravity and where appropriate, economic benefit, the Penalty Policy provides that a penalty may be adjusted upwards or downwards to reflect the particular circumstances surrounding the violation. In this regard, it specifies factors that should be considered. These are:

(1) Good faith efforts to comply/lack of good faith;

(2) Degree of willfulness and/or negligence;

(3) History of non-compliance;

(4) Ability to pay;

(5) Other unique factors.

Adjustment of penalty may take place before issuing the proposed penalty, and penalties may be adjusted before determining the proposed assessment if necessary information is available. While compliance/enforcement personnel should use whatever information concerning the violation at the time of the initial assessment, the issuance of the complaint should not be delayed in order to collect additional adjustment information. As required by the Act, good faith efforts to comply must be considered in assessing a penalty. Prompt correction of the violation can constitute good faith. There is discretion to make adjustments up or down to the extent of

of 25 percent of the gravity-based penalty, and up to 40 percent, but only in unusual circumstances. No downward adjustment should be made if good faith efforts to comply consist primarily of coming into compliance. To assist in setting penalties hypothetical illustrations are provided. (Ex. R-70 at 0377, 0379, 0380, 0386, 0392-0393,0400-0410).

Much evidence was taken at the hearing concerning how the penalty policy was applied in this proceeding, with emphasis upon the potential for harm and extent of deviation. Lillich was examined extensively on how he arrived at the penalty calculation reflected in Exhibit C-20. His examination consumed almost the entire last day of the hearing. Additional introductory remarks are necessary here. The penalty calculations were made solely upon the violations found existing in the September 1983 inspection. U.S. EPA could have considered the economic benefits to respondent for its failure to comply with certain hazardous waste regulations which could range from $10,000 to over $100,000 (Tr. VI at 327-330). 15/ Also, William E. Muno, who at the time of the hearing, was Chief of the Act's Enforcement Section, provided extensive evidence concerning the application of the Penalty Policy to this case. He reviewed the calculations of Lillich contain-

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15/ The Consolidated Rules of Practice also provide that the Presiding Officer may assess a penalty higher than that recommended in the complaint. 40 C.F.R. § 22.27(b).

ed in the complaint, and he concurred in the manner in which they were performed. (Tr. III at 613, 623, 631) Though Lillich could have done so under the Penalty Policy, he did not adjust the penalty upwards 25 percent because many of the same violations existed at the facility two years earlier in 1982. (Tr. III at 648-649).

In arriving at the penalties below, the undersigned has given consideration to the seriousness of the violations and good faith efforts to comply as stated in 42 U.S.C. § 6928 (a)(3) and as required in 40 C.F.R. § 22.27(b). Additionally, the undersigned has weighed all the factors concerning penalty adjustment stated Exhibit R-70 at 0380. With particular reference to history of noncompliance, it should be observed that some of the violations continued after the complaint was issued. On the issue ability to pay, respondent's evidence was was singularly unpersuasive.

Concerning the first violation of failure to submit Part B; failure to submit closure plan; and failure to have adequate closure plan, respondent conceded in its answer that it did not timely file the Part B application for the reason that its efforts were directed toward closure of the facility and that submittal of Part B in such a situation would have served no constructive purpose. Answer, at par. 15(a). Respondent also admitted that it did not have a closure plan to meet all the requirements in the regulations. Its only explanation was that OEPA did not reject the plan as unacceptable but only pointed

out areas where more detail was necessary. Respondent's evidence did not dispute the charge that it did not submit a Part B application or have an adequate closure plan. Rather, it centered its defense on challenging the importance of the violation and amount of penalty assessed. Respondent's principal position was that the removal of the leaking drums solved all environmental hazards, and that the remaining paperwork requirements did not warrant the penalty assessed. Complainant's argument is convincing that the removal of over 2,000 drums, some of which were in poor condition and leaking, exposed individuals to hazardous waste. Additionally, there is the important consideration that though the drums were stored on wooden skids, some of the hazardous waste reached the bare ground posing groundwater contamination problems. In calculation of the penalty, U.S. EPA was correct in selecting the major/major category for the extent of deviation from the requirement and potential for harm resulting from the violation. The major extent of deviation is justified because no closure plan was submitted for review, and the soil contamination situation with groundwater problems were not met. (Ex. C-20 at 00145; Tr. III at 633) EPA's selection of $22,500 is an appropriate penalty.

Regarding the aisle space issue, there were over 2,000 drums stored in the outside storage area for several years,

some in poor condition and leaking, with aisle space inadequate to permit emergency equipment to operate efficiently. Some of the leaking drums resulted in soil contamination. In drafting the penalty calculations, Lillich properly classified the potential for harm and the extent of deviation as major. Weighing heavily against the respondent was that the aisle space violation noted in the 1981 inspection (Ex. C-4 at 00040) continued to exist in the 1983 inspection. (Exs. C-4 at 00040; C-9 at 00096; C-20 at 00051). Considering all pertinent factors the penalty of $22,500 was appropriate.

The next penalty issue concerns the third violation of failure to provide an annual review of training. U.S.EPA viewed the potential for harm in this instance as moderate because of the large amount of repacking and removal of the drums was being performed as part of the closure operation. Since some of the drums were in poor condition, it was important that there be trained personnel who were competent to perform the task. Viewing the extent of deviation from the requirements as moderate was also proper because some personnel training had been provided in the past. However, an annual refresher course had not been given and a violation existed (Ex. C-20 at 153-157; Tr. III at 637-639). The penalty of $6,500 is appropriate for this violation.

The fourth violation of failure to submit required financial documents was classified as a minor/minor category

concerning potential for harm and deviation from the regulatory requirement. These categories were selected because while the financial documents were submitted to U.S. EPA, the respondent failed to submit them to OEPA when the latter became authorized to operate the Act's interim status program in July 1983. At that time the respondent had an obligation to submit the documents to OEPA. It did not do so. (Ex. C-20 at 00159, 00162; Tr. III at 639-640). The penalty of $250 is appropriate.

Concerning the failure to submit a revised Part A application for the container storage, a major category for potential harm was properly chosen here because the Act's regulatory program is based fundamentally on facility's Part A permit application. Respondent's actions had a substantial adverse effect on the statutory and regulatory procedures for implementing the Act's programs. The Part A procedure is basic to regulating hazardous waste. Failure to receive accurate information concerning the hazardous waste activities can seriously damage the regulatory program. The selection of extent of deviation as moderate was sound because respondent had made an initial Part A submission, but it failed to revise the Part A application to be consistent with the actual drum capacity it was handling at the facility. (Ex. C-20, at 165-170; Tr. III at 640-645). The penalty of $17,500 is appropriate.

The sixth violation concerns the failure of respondent to store hazardous waste in containers that were in good condition to prevent leaks, The major/major category was arrived at cor-

rectly. There was a major potential for harm since some of the drums were in poor condition. These drums contained ignitable wastes, and with some leaking there was presented a substantial fire or explosion hazard. The extent of deviation as major was because the drums had been in storage for a number of years in poor condition. As noted in the findings above the respondent's own inspection records show that 105 of the over 2,000 drums had leaked during eight months in 1983, and a few days following respondent's last inspection one of the drums was found by Moschell to be spurting hazardous waste. (Ex. C-20, 171-176; Tr. III at 645-646). The penalty of $22,500 for this violation is appropriate.

The last violation involves respondent's failure to include hazardous waste codes in the operating records of the facility. It is iterated that respondent did not deny this violation in its Answer. Rather, an explanation was offered concerning respondent's perception on the extent of deviation. The potential for harm was properly classified as moderate. As brought out by Lillich in his penalty calculation, the absence of codes takes on great significance when the respondent was to move over 2,000 drums in a short period of time, when the lack of codes could have impeded the tracking of drums and the proper handling of them. The extent of deviation as moderate was correct classification, because the facility did have operating records. Some components of the records were

being properly recorded, but not that pertaining to the drum storage area. (Ex. C-20, at 00171, 00180-00182; Tr. III at 647-648). The penalty of $6,500 is appropriate.

Placing the pertinent section of the Act and Penalty Policy alongside the extensive evidence taken in this matter concerning the penalty calculations one is led ineluctably to the conclusion that a total penalty of $98,250 is warranted in this matter.

ORDER 16/

Pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928, the following order is entered against respondent Elwin G. Smith Division, Cyclops Corporation:

I. A civil penalty in the amount of $98,250. is assessed against the respondent Elwin G. Smith Division, Cyclops Corporation.

II. Payment of the full amount of the civil penalty assessed shall be made within sixty days of the service of the final order by submitting a certified or cashier's check payable to

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16/ Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this decision sua sponte, this Initial Decision shall become the final order of the Administrator. See 40 C.F.R. § 22.27(c).

the United States of America and mailed to:

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

III. The following compliance order is also entered against respondent:

A. Respondent shall within thirty days of receipt of this order cease all treatment, storage or disposal at the facility and shall be in complete compliance with the standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (40 C.F.R. part 265).

B. Respondent shall within thirty (30) days of receipt of this Order achieve compliance with the following requirements:

1. Submit a full closure plan for the hazardous waste container storage area. To the extent not already done, the plan shall detail procedures used to remove the drums from the storage area. This shall include waste analysis procedures, procedures to prevent leaks from the drums, overpacking procedures, loading and drum transfer procedures, safety procedures and equipment, personnel training of workers, decontamination, manifests, costs, and any other relevant procedures or supporting documentation concerning the removal of the drums. In addition, the plan shall detail procedures for determining the extent of soil contamination in the the container storage area with associated clean up procedures and estimat-

ed costs. The plans shall include sample locations, sample depths, sampling technique, laboratory selection, analytical procedures, and quality assurance procedures. Parameters selected for analysis shall be determined by the types of waste which had previously been in storage. A schedule indicating time frames for completion of each activity shall also be included. The plan will be public noticed by U.S. EPA as required by 40 C.F.R. § 265.112(d). U.S. EPA/OEPA shall approve or modify this plan. Upon approval of the plan,the respondent will immediately initiate activities in accordance with the schedule in the approved plan.

2. Submit financial responsibility documents and evidence of sudden and accidental liability insurance coverage to the OEPA pursuant to Ohio Administrative Code 3745-66-43, 45, and 47.

3. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted no later than the times stipulated above to the U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Mr. Ron Lillich, Technical, Permits and Compliance Section.

A copy of these documents and all correspondence with U.S. EPA regarding this order shall also be submitted to Richard Shank, Office of Hazardous Materials Management, Ohio Environ-

mental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of the Resource Conservation and Recovery Act, or other statutory authority, where the handling, storage, treatment, transportation or disposal of solid waste at respondent's facility may present an imminent and substantial endangerment to human health or the environment.

Frank W. Vanderheyden
Administrative Law Judge

Dated: June 25, 1986
Washington, D.C.

APPENDIX A

Below are the violations revealed in the September 1, 1983 inspection of respondent's facility, with reference to the pertinent regulatory section.

1. Part B permit application had not been timely submitted in accordance with the appropriate regulation. 40 C.F.R. §270.I.

2. An annual refresher course was needed for personnel training, OAC 3745-65-16.

3. Some hazardous waste containers were not in good condition and to prevent leaks. OAC 3745-66-71, 73.

4. The facility was storing 124,080 gallons of hazardous waste, which exceeded respondent's part A authorization limit. 40 C.F.R. §270.72.

5. The facility's operating record did not reflect properly the hazardous waste identification number and handling codes. OAC 3745-65-73.

6. The facility did not have a closure plan available which addressed in detail any soil contamination in its drum storage area. Additionally, the maximum amount of waste in storage should be included, removal and disposal costs should be updated, along with the year closure is expecated, and a time line for closure activities. OAC 3745-66-12.

7. There was not adequate aisle space in the drum storage area to allow unobstructed movement of emergency or spill control equipment. OAC 3745-65-35.

8. Financial responsibility documentation was not submitted to the State of Ohio. OAC 3745-66-43, 45 and 47.

APPENDIX B

Violations noted during the November 20, 1984 inspection of respondent's facility with reference to the appropriate section of the regulations. (Ex. C- 15).

1. Lack of proper waste evaluation for sludges from chemical conversion coating of aluminum and a type of plating process. OAC 3745-52-11.

2. Personnel training documents were not available at time of inspection. OAC 3745-65-16.

3. Waste analysis plan was not available at the time of inspection. OAC 3745-65-13.

4. Inspection plan not available at the time of inspection. OAC 3745-65-15.

5. The aisle space in the indoor drum storage area was not adequate because there was less than two feet of space between the drums. OAC 3745-65-35.

6. A copy of the contingency plan was not available at the facility at the time of inspection. OAC 3745-65-50, 53.

7. There was no suitable closure plan for the storage facility available at the time of inspection. OAC 3745-66-12.