UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of	)	
	)	
Capozzi Custom Cabinets,	)	Docket No. RCRA-5-2000-005
	)	
Respondent	)	

INITIAL DECISION

By: Carl C. Charneski
Administrative Law Judge

Issued: February 11, 2002
Washington, D.C.

Appearances

For Complainant: Michael J. McClary, Esq.
Jeffrey Trevino, Esq.
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois

For Respondent: Mary Davis, Esq.
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Cleveland, Ohio

I. Statement of the Case

This enforcement proceeding arises under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq*. The United States Environmental Protection Agency ("USEPA") has filed a Second Amended Complaint against John A. Capozzi, d/b/a Capozzi Custom Cabinets ("Capozzi Cabinets"), alleging six violations of RCRA and its implementing regulations.[1] For these violations, USEPA proposes a civil penalty totaling $156,064.

All six counts allege noncompliance with hazardous waste regulations. Three of the

[1] The initial complaint listed the respondent as Capozzi Custom Cabinets. This was changed with the First Amended Complaint which listed the respondent as John A. Capozzi, d/b/a Capozzi Custom Cabinets.

counts (Counts 1-3) involve the permitting for, and the handling of, hazardous waste; the remaining three counts (Counts 4-6) involve hazardous waste training, contingency plan, and closure plan requirements. Each of the six RCRA counts alleges a failure by Capozzi Cabinets to comply with implementing hazardous waste regulations contained in the Ohio Administrative Code ("OAC"). One of these counts also alleges a violation of a specific provision of the Resource Conservation and Recovery Act.

In an order dated November 9, 2000, the USEPA was awarded summary judgment on the issue of liability as to Counts 4, 5, and 6, but denied summary judgment as to Counts 1, 2, and 3. Thereafter, a hearing was held in Cleveland, Ohio, on November 15-16, 2000. This hearing involved the issue of liability for Counts 1, 2, and 3, as well as all outstanding civil penalty issues.

For the reasons set forth below, Capozzi Cabinets is held to have violated RCRA as alleged by the USEPA in Counts 1, 2, and 3, as well as in Counts 4, 5, and 6 as previously determined. A civil penalty totaling $37,600 is assessed against respondent for all six RCRA violations.

II. Introduction

Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of the USEPA may authorize a state to administer the RCRA hazardous waste program in lieu of the Federal program when the Administrator deems the state program to be substantially equivalent to the Federal program. On June 28, 1989, the Administrator granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the Federal government's RCRA program. 54 *Fed. Reg.* 27170.[2] Accordingly, state regulations govern the generation, transportation, treatment, storage, and disposal of hazardous waste in Ohio.[3] The USEPA brings this enforcement action pursuant to Section 3008(a)(2) of RCRA. 42 U.S.C. § 6928(a)(2).[4]

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[2] Additional hazardous waste authorization was provided to the State of Ohio at 56 *Fed. Reg.* 14203, 56 *Fed. Reg.* 28088, 60 *Fed. Reg.* 38502, and 61 *Fed. Reg.* 54950.

[3] The pertinent state hazardous waste regulations involved here are contained in Joint Exhibit 1. There, the parties have included Chapters 50, 51, 52, 59, 65, and 66 of Title 3745 of the Ohio Administrative Code. In addition to these Chapters, USEPA has submitted Chapter 54 of the OAC. Capozzi Cabinets, however, objects to Chapter 54 on relevance grounds. Because the parties are not in agreement regarding Chapter 54, it cannot be included as part of Joint Exhibit 1.

[4] The Federal regulations implementing RCRA are contained in 40 C.F.R. Parts 260 through 271. The Ohio Administrative Code regulations involved in this case are substantially equivalent to these Federal RCRA regulations.

III. Facts

John Capozzi is the owner of Capozzi Cabinets which is located in Leavitsburg, Ohio. Capozzi Cabinets is situated in a residential area. Tr. 73-74; *see* CX-6 (at p. US-77, top photograph). There is a church next door and an elementary school approximately one-third mile away. Tr. 195. Capozzi has operated this cabinet-making shop for approximately 30 years. Tr. 611, 613. It is a small business, employing six to seven workers. Tr. 615. He builds custom cabinets, fixtures, and counter tops using plywood, particle boards, and solid woods. Tr. 48, 613, 617; CX-1. Laminates, adhesives, paints, lacquer, and thinner are used in the making of these products. Tr. 616.

The main area of Capozzi's shop is 30 feet wide and 60 feet long. Tr. 614. In addition to the main area, there is a "finishing room." The finishing room is a 28-foot by 28-foot area where cabinets are sanded, finished, and stored. Tr. 618; *see* CX-6 (at p. US-77, bottom photograph). Approximately 80% of Capozzi's work is laminate work. A cabinet constructed with laminate, a plastic-like substance, does not go into the finishing room for lacquer or painting. Tr. 617-618. Only cabinets that are not laminated are finished.

Those cabinets that are "finished" are either stained and then sprayed with a lacquer, or they are painted. In either event, a spray gun is used to apply the lacquer and paint. Tr. 618. It is precisely during this finishing operation that solvent waste, *i.e.*, a hazardous waste, is generated. This hazardous waste involves Capozzi Cabinets' use of a lacquer thinner. A Material Safety Data Sheet ("MSDS") provided by Capozzi Cabinets identified the lacquer thinner used during the finishing operation as "Lacquer Thinner Klean Strip 5." The MSDS reported that the thinner contains acetone, 4-methyl-2-pentanone (also known as, "methyl-isobutyl-ketone"), and toluene. Tr. 92, 95-96, 101-103; CX-4. This case is about respondent's disposal of such hazardous waste.

The October 26, 1995, Inspection

Acting upon a complaint by a former employee of Capozzi Cabinets, the Ohio Environmental Protection Agency ("OEPA") conducted an inspection of the cabinet shop on October 26, 1995. This former employee alleged that Capozzi improperly stored and disposed of hazardous waste at his facility. One of the charges made by this individual was that hazardous solvents, *i.e.*, lacquer and thinner, were being thrown out of the shop's back door and onto the ground. Tr. 40-44; CX-7.[5]

Inspector Ron Fodo of the OEPA took part in the October 26, 1995, inspection.[6] Fodo

[5] The back door of the facility is alternatively referred to as the "garage door." CX-1.

[6] Inspector Fodo is a member of the Special Investigations Unit. He conducts criminal investigations regarding the illegal disposal, transportation, and handling of solid and

testified that John Capozzi, the shop's owner, was at the facility when the October 26 inspection was conducted. At the start of this inspection, Capozzi told the inspector that solvent waste was one of the waste streams that was generated at the facility. This solvent waste was produced during the finishing operations of the cabinets. Tr. 48-49. Capozzi also told Fodo that he did not collect any of the solvent waste that was generated at his facility. Tr. 53, 84. When asked by Inspector Fodo about the disposal of such waste, Capozzi answered, "I toss it out. It's been tossed out the back door." Tr. 49. Before responding to Fodo, Capozzi didn't have to ask anyone what was being done with the solvent waste. Capozzi also related that the solvent waste was exhausted through the spray gun's ventilation system in the shop's finishing room. Tr. 50-51.[7] This discussion took place in the office area of the shop.

Thereafter, the inspection team proceeded to the "finishing room" of the facility. Again, this is the area where solvent wastes are generated as either lacquer or paint is applied to the cabinets. Inspector Fodo observed paint cans, containers, and solvents in the finishing room. While in this area, Fodo spoke with Cindy Garris, a Capozzi Cabinet employee. Tr. 49-51.

Garris has worked in the shop's finishing room for about four and one-half years. On October 26, she informed Inspector Fodo that solvent waste had been disposed of by placing it in the facility's solid waste dumpster. Tr. 54, 72; *see* CX-6 (at p. US-75, top photograph). In addition, Garris also told Fodo that one gallon of solvent waste was thrown out the back of the finishing room and onto the ground every two weeks. *Id.*[8]

Following this discussion with Garris, the OEPA inspection proceeded from the finishing room, outside to where the solvent waste was believed to be dumped onto the ground. There, Inspector Fodo made a visual inspection of the area. He was able to observe solvent stains on the ground, very close to the finishing room's back door and extending outward 10 to 15 feet. Fodo also detected a solvent odor. Tr. 56-57; *see* CX-6 (at p. US-71, top photograph and p. US-73, top photograph).

Inspector Fodo then disturbed the soil of this outside area and took a reading with a hand-held Photo Ionization Detector, or "PID." A pump on the PID pulls in the ambient air to

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hazardous waste. Tr. 34-35. On October 26, Inspector Fodo was accompanied by a representative from the state's Bureau of Criminal Investigation. Tr. 41-42. No criminal charges, however, were brought against respondent.

[7] Capozzi testified that he was upset at the time of this statement and that he was only being sarcastic when he informed Fodo that solvents were being exhausted out through the ventilation system. Tr. 634.

[8] Unfortunately, neither side called Garris to testify.

determine whether Volatile Organic Compounds such as solvents, paints, and stains are present. Tr. 57-58. Fodo's use of the PID indicated the presence of Volatile Organic Compounds in the area just outside the finishing room door. In Inspector Fodo's view, this PID reading was consistent with the presence of spent lacquer thinners. Tr. 61.

After obtaining a positive reading for the presence of Volatile Organic Compounds, Inspector Fodo took a soil sample of this stained area. The soil sample was marked as "CAB02." Tr. 69-70, 85-86; *see* CX-6 (at p. US 71, bottom photograph). According to Fodo, soil sample CAB02 emitted a "strong solvent smell." A laboratory analysis of this sample revealed the presence of acetone, methyl-isobutyl-ketone, and toluene. Tr. 86, 92-96; CX-2.

In addition, at the close of the October 26 inspection, Inspector Fodo informed Capozzi that the facility's solvent waste, particularly the solvent waste generated in the finishing process, could not be placed in the dumpster, exhausted through the ventilation fan, or tossed outside onto the ground. Tr. 55, 80. Fodo explained that instead, it would be necessary for Capozzi Cabinets to containerize the waste and to make arrangements with a contractor for its proper disposal. Tr. 55, 121.

The May 23, 1996, Inspection

Sometime after the inspection of October 26, 1995, this enforcement matter was transferred to the Civil Division of the Ohio Environmental Protection Agency. Tr. 193. Thereupon, the OEPA conducted a second inspection of the Capozzi Cabinets facility on May 23, 1996. Inspector Fodo participated in this second inspection along with two inspectors from the OEPA's Division of Hazardous Waste, Karen Nesbit and Chris Prosser. Tr. 108, 179, 194.

During the May 23 inspection, while in the finishing area of the facility, Inspector Fodo observed one 5-gallon container partially filled with solvent waste and several other 5-gallon containers which were empty. These containers did not have hazardous waste labels and they did not bear any hazardous waste accumulation dates. Tr. 110-111. Also, as of May 23, 1996, Capozzi Cabinets still hadn't hired a contractor to dispose of this hazardous waste. Tr. 122.

While in the finishing room, Inspector Fodo again spoke with Garris. She told him that two employees of Capozzi Cabinets had used the solvent waste that had been stored in the now empty containers to start a fire to burn unusable material. This material was burned in a "burn pit," approximately 10 to 12 feet in diameter. Tr. 77. This burn pit is located on Capozzi's property, between his facility and the neighboring church. Tr. 200; *see* CX-5 & CX-6 (at p. US-85, top photograph). Fodo estimated that between 15 to 20 gallons of the solvent waste

had been used on the fire. Tr. 110.[9] According to both Inspectors Fodo and Nesbit, Capozzi explained that the employees had used this solvent waste to burn fixtures because there was no room for them in the dumpster. Tr. 112, 114, 205. Capozzi, however, denies instructing the employees to use the solvent waste on the fire.

In addition to the waste solvent-outdoor burn incident, on May 23 Inspector Nesbit attributed to Capozzi the statement that, at times, spent thinner was thrown out the back door. Tr. 291. While Nesbit did not recall whether Garris also discussed waste thinner (*i.e.*, solvent waste) being disposed of in this manner (Tr. 292), Ruth Ann Gray, a former employee of respondent and the daughter of John Capozzi, testified that Garris told the OEPA inspectors that the waste thinner was disposed of "out the back door." Tr. 531, 539.

During the May 23, 1996, inspection, Inspector Fodo took water samples from the well on the Capozzi property, as well as from the residences next door. Tr. 113. While Inspector Fodo collected the water samples, Inspector Nesbit collected soil samples. Tr. 196. Nesbit collected one soil sample from the burn area and one soil sample from beneath the finishing room ventilation fan. Tr. 203. No additional samples were taken from the driveway area, immediately outside the finishing room. That area had been sampled during the October 26, 1995, inspection.

Laboratory analysis of the burn area soil sample taken on May 23, 1996, showed the presence of arsenic above the applicable regulatory level, thus constituting an arsenic toxicity characteristic hazardous waste. Tr. 224, 258.[10] The May 23 soil sample taken from the burn area, however, did reveal the presence of acetone, methyl-isobutyl-ketone, and toluene. CX-8. The soil sample taken from beneath the ventilation exhaust fan did not reveal the presence of any Volatile Organic Compounds. *Id*.

As far as the May 23 water samples are concerned, the results were a bit mixed. The OEPA reported that while toluene was detected from the Capozzi site water sample, it did not exceed the allowable maximum concentration level for that chemical. In addition, Volatile Organic Compounds were not detected in the water sample taken from the church on the one side of the Capozzi Cabinet facility, nor were they detected in the water sample taken from the residence on the other side. CX-8.

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[9] This is in line with Capozzi's May 23 statement to Inspector Nesbit that after the October 26 inspection, four to five 5-gallon cans of hazardous waste had been collected. Tr. 235-236.

[10] There was testimony, however, that this arsenic level may have been the result of rat poison being placed in the area. Tr. 253. In any event, respondent has not been cited by the USEPA for any arsenic-related violations. Moreover, the MSDS for the thinner used by Capozzi did not list arsenic as a constituent. Tr. 252.

Sometime after the inspection of May 23, 1996, the OEPA took water samples from the Capozzi site on two more occasions. On the first such occasion, the sample was split between Capozzi and the OEPA. The laboratory used by Capozzi did not detect any Volatile Organic Compounds, while the OEPA laboratory apparently did. Tr. 265, 268-269. On the second occasion, the well water sampled did not show any detectable quantities for the constituents tested. Tr. 293.

In addition, some time after the two Ohio Environmental Protection Agency inspections, respondent provided the OEPA with a Material Safety Data Sheet for the lacquer thinner used at the shop. As earlier noted, this MSDS showed that the thinner contained acetone, methyl-isobutyl-ketone, and toluene, all hazardous wastes. Tr. 100-103, 231; CX 4.

Following the OEPA inspection of May 23, 1996, Capozzi retained Chemical Solvents, Inc., to remove and to dispose of the hazardous waste generated at his facility. Tr. 643; CX-9 & CX-10. Chemical Solvents, Inc., performed a chemical analysis of the lacquer thinner to be disposed of from Capozzi's shop and found that it contained the hazardous chemicals toluene, various forms of acetate, and "MIBK," also known as methyl-isobutyl-ketone. CX-11.

The Remediation Plan

Thereafter, Capozzi agreed with the OEPA to remediate the site. Tr. 222. He submitted a remediation plan to OEPA which subsequently was approved by the State Agency. Tr. 587; CX-22. The area to be remediated included both the "burn area," referred to as Area 1, and the portion of the driveway immediately outside the garage door of the facility, referred to as Area 2. Tr. 232. The remediation plan called for the excavation of six to ten inches of top soil in a 13½-foot by 12½-foot section in Area 1, and six to ten inches of top soil in a 10-foot by 10-foot section in Area 2. Tr. 547, 556; RX-D.

The soil that was excavated in Areas 1 and 2 was analyzed. The sampled soils tested "clean" and Capozzi Cabinets was allowed to return this soil to the excavated areas. Tr. 551-562.

IV. Discussion

A. Liability

The USEPA already has been awarded judgment as to Counts 4, 5, and 6.[11] The liability issue as to Counts 1, 2, and 3 has yet to be resolved.

Count 1

In Count 1, USEPA alleges a violation of RCRA Section 3005(a), 42 U.S.C. § 6925(a), and Ohio Administrative Code Section 3745-50-45(A). Together, these provisions prohibit the treatment, storage, or disposal of hazardous waste, without a permit, by owners and operators of hazardous waste management units. This count involves respondent's disposal of lacquer thinner and the requirement that it have a permit for the disposal of such hazardous waste.

As a preliminary matter, there is no evidence in the record that Capozzi Cabinets was ever issued a permit from the OEPA for the management of hazardous waste. Tr. 111. In addition, respondent hadn't submitted to the OEPA a waste manifest for hazardous waste transported from its facility prior to October 25, 1995, or between October 25, 1995, and May 23, 1996. Tr. 240. Still, the question must be answered whether such a permit was needed in the first place.

Section 3005(a) of RCRA directs the Administrator of the United States Environmental Protection Agency to promulgate regulations for obtaining a permit for the treatment, storage, or disposal of hazardous waste. Section 3005(a) also provides, "the treatment, storage, or disposal of any such hazardous waste … is prohibited except in accordance with such a permit."

In the State of Ohio, this RCRA permitting requirement is implemented by Section 3745-50-45(A) of the Ohio Administrative Code. Section 3745-50-45(A) provides:

> Chapter 3734 of the Revised Code requires a permit for the treatment, storage, or disposal of any hazardous waste as identified or listed in Chapter 3745-51 of the Administrative Code. The terms 'treatment,' 'storage,' 'disposal,' and 'hazardous waste' are defined in rule 3745-50-10 of the Administrative Code. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit….

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[11] Count 4 involves a violation of Section 3745-65-16(D)(4) of the Ohio Administrative Code for a failure to maintain employee hazardous waste training records. *See* 40 C.F.R. 265.16(d)(4). Count 5 involves a violation of Section 3745-65-51(A) of the Ohio Administrative Code for a failure to have a contingency plan for the facility in the event of any unplanned release of hazardous waste. *See* 40 C.F.R. 265.51(a). Count 6 involves a violation of Section 3745-66-12(A) of the Ohio Administrative Code for a failure to have a written closure plan for the facility. *See* 40 C.F.R. 265.112(a).

OAC § 3745-50-45(A).

The threshold inquiry here is whether Capozzi Cabinets operates a "waste management unit." The answer to this question lies in the definitional section of the Ohio Administrative Code. There, the term "hazardous waste management unit" is broadly defined as a "contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area." OAC § 3745-50-10(A)(46). Examples of hazardous waste management units appearing in the regulation are "a surface impoundment, a waste pile, a land treatment area, a landfill cell, [and] an incinerator." *Id*.

Given this definition, can a small entity like respondent, which makes cabinets and fixtures out of wood, properly be considered as operating a "hazardous waste management unit" because it engaged in a practice of tossing spent lacquer thinner out of the back door? While a facility such as Capozzi Cabinets might not first come to mind when describing the operation of a hazardous waste managing unit, the question posed must be answered in the affirmative.

Indeed, the actions of the Capozzi Cabinets employees in this case are not at all unlike the actions of respondent's employees in *Harmon Electronics, Inc.*, 7 E.A.D. 1 (1997), *aff'd, Harmon Industries, Inc. v. Browner*, 19 F.Supp2d 988 (W.D.Mo. 1998), *rev'd on other grounds,* 191 F.3d 894 (8th Cir. 1999). There, Harmon Electronics, Inc., was engaged in assembling signal equipment for the railroad industry. Its workers disposed of organic solvents, classified as hazardous waste under RCRA, "by throwing them out the back door of the facility onto the ground." 7 E.A.D. at 4. In *Harmon*, the respondent was held in violation of RCRA Section 3005(a) for operating a hazardous waste disposal facility *without a permit*. 7 E.A.D. at 32. The same result must obtain in this case.[12]

As discussed earlier, it is has been established that Capozzi Cabinet's employees for years routinely disposed of spent lacquer thinner by throwing it out of the back door of the shop and onto the ground. This improper method of disposal became the customary practice of respondent's finishing process. The waste lacquer thinner that was tossed out of respondent's finishing area door contained the chemicals acetone, methyl-isobutyl-ketone, and toluene, all hazardous wastes under Section 3745-51-03(A) of the Ohio Administrative Code.[13] Thus, the

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[12] Section 3745-50-45(C) of the Ohio Administrative Code provides exemptions to the Code's permitting requirements. Capozzi Cabinets does not fall within any of the listed exemptions. In addition, while respondent has several times asserted that it is a "conditionally exempt small quantity generator," respondent has failed not only to establish that fact, but also to show what significance such a status would bring to this case. *See* Resp. Br. at 2.

[13] Acetone, methyl-isobutyl-ketone, and toluene are specifically listed in OAC Section 3745-51-33(F) as hazardous wastes. Also, the chemical analysis of the waste thinner

manner in which respondent's business operated satisfies the Code's requirements for being a "hazardous waste management unit."

In fact, respondent doesn't even contend that the provisions of RCRA Section 3005(a) and OAC Section 3745-50-45(A) do not apply here. Rather, respondent's argument is an evidentiary one. It submits that the USEPA simply failed to prove facts which would support the Resource Conservation and Recovery Act and the Ohio Administrative Code charge alleged in Count 1. Specifically, Capozzi Cabinets argues that USEPA has failed to carry its burden of proof because it has not shown that any hazardous waste material was disposed of between October 25, 1995, and June 30, 1995. This is the period of time in which the USEPA alleges the violation took place. In fact, respondent asserts that the OEPA inspectors didn't even know how waste lacquer thinner was generated at the shop, let alone when it was deposited on the soil. Resp. Br. at 9-10.[14]

Respondent's evidentiary argument is not well-taken. The OEPA inspection of October 26, 1995, indisputably establishes that respondent disposed of hazardous waste by tossing it on the ground. The soil sample taken by the OEPA during that inspection showed that acetone, methyl-isobutyl-ketone, and toluene were present in the ground. This laboratory result is consistent with the facts that the OEPA inspector detected the smell of solvents in that area, as well as confirming the presence of Volatile Organic Compounds with a Photo Ionization Detector. Moreover, the record clearly establishes that it was respondent's practice to rid itself of waste thinner by tossing it out the back door of the finishing room.

Thus, the record shows that Capozzi Cabinets operated a hazardous waste management unit in the driveway area, just outside the door to the shop's finishing room, and that it routinely disposed of hazardous waste in this area. Moreover, the record also shows that at no time did respondent have the required permit for this hazardous waste disposal. Accordingly, respondent is in violation of RCRA Section 3005(a) and OAC Section 3745-50-45(A).

The fact that an OEPA inspector didn't personally observe the violations being committed in no way serves as a bar to USEPA's prosecution of this case. To require the USEPA, or the state environmental enforcement authority, to catch a respondent "in the act" of unlawfully disposing of hazardous waste before it could initiate enforcement action would do

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performed for respondent by Chemical Solvents, Incorporated, reported waste codes D-001 (characteristic of ignitability), F-003 (hazardous waste), and F-005 (hazardous waste). Tr. 220-221; CX-11.

[14] Respondent submits that the timing of the alleged hazardous waste disposal is an important consideration in this matter. It cites the case of *3M Company v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994), for the proposition that a five-year statute of limitations applies to the prosecution of any alleged violations of the Resource Conservation and Recovery Act of 1976. As discussed, *infra,* it appears that the USEPA is in agreement.

severe damage to the RCRA statute. Such a result would be particularly ludicrous in this case, given the substantial amount of evidence showing that respondent failed to comply with the permit provisions of RCRA and the State of Ohio Code. The events of October 26, 1995, are sufficient to support a finding of the violation charged in Count 1.

While it is held that USEPA established a violation under Count 1, the breadth of that violation warrants some discussion. In its Second Amended Complaint, USEPA maintained that the period of violation alleged in Count 1 ran from June 30, 1995, to October 26, 1995. Thereafter, in its post-hearing brief, USEPA also argued that respondent's subsequent outdoor burn, discovered during the OEPA inspection of May 23, 1996, likewise supported the charges alleged in Count 1. Thus, complainant now argues that respondent also unlawfully operated a hazardous waste management unit without a permit from May 16, 1996, to May 23, 1996. USEPA Amend. Concl. at 8. Capozzi Cabinets, however, takes issue with USEPA's reliance upon the outdoor burn. It argues that the events surrounding the May, 1996, outdoor burn are beyond the scope of the complaint and thus beyond the scope of the present enforcement case. Resp. R.Br. at 3. Respondent is correct.

To the extent that USEPA seeks to rely upon the outdoor burn to support another period of violation with respect to Count 1, it is overreaching. As late as USEPA's Second Amended Complaint, the period of alleged violation in Count 1 (as well as in Counts 2 and 3) was June 30, 1995, through October 26, 1995. USEPA had ample opportunity to include in the amended complainant that the violative period relating to Count 1 encompassed May 16 to May 23, 1996, as well. It didn't. Nor did complainant articulate at the hearing, or at anytime prior to its post-hearing brief, that the events surrounding the outdoor burn supported the finding of an additional period of violation.[15] Accordingly, to do so now would be manifestly unfair to respondent. To the extent that the events surrounding the outdoor burn and the OEPA inspection of May 23, 1996, cast light upon the violation alleged in the complaint, they may be considered. They may not, however, serve as the basis for finding an additional period of violation.

Count 2

In Count 2, the USEPA charges a violation of OAC Section 3745-59-40, alleging that Capozzi Cabinets improperly land disposed of toluene, a hazardous waste.[16] Section 3745-59-

[15] In fact, at the hearing Inspector Nesbit testified that the violation alleged in Count 1 was based upon the fact that the sample results obtained by Inspector Fodo in October of 1995, matched up with the constituents listed in the Material Safety Data Sheet for the thinner used by Capozzi Cabinets. Tr. 212.

[16] In the complaint, USEPA also alleged that respondent improperly land disposed of methylene chloride and acetone. Complainant did not pursue these charges at hearing, limiting

40(A) of the Ohio Administrative Code states:

> A restricted waste identified in rule 3745-59-41 of the Administrative Code may be land disposed only if an extract of the waste or of the treatment residue of the waste … does not exceed the value shown in Table CCWE of rule 3745-59-41 of the Administrative Code for any hazardous constituent listed in Table CCWE for that waste….

OAC § 3745-59-40(A). Table CCWE of Section 3745-59-41 of the Ohio Administrative Code identifies toluene as a "restricted waste." Furthermore, Table CCWE sets the maximum allowable concentration for land disposal of toluene at 0.33 milligrams per liter ("mg/L").

There is no dispute here that Capozzi Cabinets land disposed toluene. Indeed, the record clearly shows that respondent routinely tossed spent lacquer thinner out the garage door and onto the ground. According to an analysis performed by Chemical Solvents, Inc., a laboratory retained by Capozzi Cabinets, this lacquer thinner was comprised of 71% toluene. Tr. 462; CX-11. Regarding this percentage, OEPA Inspector Nesbitt testified that the amount of toluene unlawfully disposed of by Capozzi cabinets exceeded the 0.33 mg/L limit for that chemical as set forth in Table CCWE of OAC Section 3745-59-41. Tr. 246. Respondent did not dispute Nesbit's testimony. Accordingly, the USEPA has established that Capozzi Cabinets violated Section 3745-59-40 of the Ohio Administrative Code.

Count 3

In Count 3, the USEPA alleges a violation of Section 3745-65-13(A)(1) of the Ohio Administrative Code for a failure to obtain a detailed chemical and physical analysis of hazardous waste prior to its disposal. Section 3745-65-13(A)(1) provides:

> Before an owner or operator treats, stores, or disposes of any hazardous waste … he shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of Chapters 3745-59 and 3745-65 to 3745-69 of the Administrative Code.

OAC § 3745-65-13(A)(1).

The elements to support this violation already have been established. The record evidence shows that Capozzi Cabinets disposed of waste lacquer thinner by routinely tossing it

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its evidence under Count 2 to the chemical toluene.

out of the door to the finishing area and onto the ground. This lacquer thinner is a hazardous waste, largely comprised of the chemical toluene.

There is no evidence that respondent had this hazardous waste analyzed prior to its unlawful disposal. In fact, Capozzi Cabinets doesn't even make this argument. The only hazardous waste analysis performed by respondent was in June of 1996, well after the laquer thinner was land disposed on facility property. CX-11. By not obtaining a detailed chemical and physical analysis of a representative sample of the waste laquer thinner prior to its disposal, Capozzi Cabinets violated Section 3745-65-13(A)(1) of the Ohio Administrative Code.[17]

B. Civil Penalty[18]

Section 3008(a)(3) of the Resource Conservation and Recovery Act provides for a civil penalty up to $25,000, per day, for each violation of Subtitle C, "Hazardous Waste Management." 42 U.S.C. § 6928(a)(3). Section 3008(a)(3) further provides: "In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." This is the penalty yardstick by which the six RCRA violations committed by Capozzi Cabinets are to be measured. *See Bil-Dry Corporation*, RCRA Appeal No. 98-4, at p. 50 (January 18, 2001)(EAB). Also, it must be kept in mind that, as with the issue of liability, it is the USEPA who bears the burden of proof on the penalty issue. *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 537 (1994).

Count 1 (Disposal of Hazardous Waste Without a Permit)

For this violation, the USEPA requests a penalty of $62,569. In support of this requested sanction, it submits, among other things, that the probability of exposure to hazardous waste was high, that the releases of hazardous waste were intentional and occurred on a regular basis, and that the potential seriousness of contamination was moderate. Compl. Amend. Concl. at 15-24. However an impressive an indictment this might appear at first, the

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[17] To the extent that the USEPA seeks to expand the period of violation for Count 3 from June 30, 1995, through October 26, 1995, the time alleged in the Second Amended Complaint, to include the respondent's outdoor burning of fixtures in May of 1996, it is rejected here for the same reasons that it was rejected in Count 1.

[18] In advancing its civil penalty position, the USEPA relies in part on the fact that respondent used waste thinner as an accelerant to burn fixtures sometime in May of 1996, and also that arsenic was discovered in the soil of this burn area. This case, however, is not about respondent's outdoor burning of fixtures; nor is it at all about arsenic. Rather, as alleged in the complaint, and as testified to by Inspector Nesbit, this case is about the events surrounding the OEPA inspection of October 26, 1995. Those events concern the land disposal of thinner which contained acetone, methyl-isobutyl-ketone, and toluene.

penalty evidence laid out by USEPA does not quite fit the violation alleged, and proven, in Count 1.

In that regard, both Section 3005(a) of RCRA and Section 3745-50-45(A) of the Ohio Administrative Code specifically require "a permit for the treatment, storage, or disposal of any hazardous waste." Count 1 involves a permit violation; the civil penalty evidence relied upon by USEPA, however, addresses the consequences of respondent's having unlawfully disposed of the hazardous waste – that's Count 2.

Nonetheless, the importance of the permitting requirements of RCRA and of the Ohio Administrative Code is obvious. They enable the USEPA and, in this case, the State of Ohio, to oversee the proper disposal of hazardous waste at covered hazardous waste management units. A review of the permitting standards at 40 C.F.R. Part 270 and Ohio Administrative Code Sections 3745-50-40 through 3745-50-58 underscore the complexity of this undertaking.

Thus, the permitting requirements of RCRA and the Ohio Administrative Code are important and their violation is of no small matter. Still, while recognizing the significance of these permitting provisions, one must not lose sight of the specific facts of this case. Capozzi Cabinets is a small entity, employing approximately six workers, and generating relatively small amounts of hazardous waste. It is no longer in violation of the RCRA and OAC permitting requirements, not because it has applied for and has obtained a permit, but because it now collects the hazardous waste in a 55-gallon drum and has made arrangements with a contractor for the proper disposal of this waste.

Accordingly, given the factual context of this violation, a penalty of $5,000 is assessed against respondent for the violation listed in Count 1.[19]

Count 2 (Improper Land Disposal of a Hazardous Waste)

Of the six violations involved in this case, this violation is the most serious. Here, USEPA proposes a civil penalty of $42,246. The record evidence supports the assessment of a $30,000 penalty.

As discussed earlier, the OEPA inspection of October 26, 1995, revealed that respondent disposed of waste thinner by tossing it out of the finishing room door and onto the

[19] The USEPA's "economic benefit" analysis is deserving of comment. Complainant submits that by failing to comply with the permit provisions in Count 1, respondent saved $9,991, *i.e.*, the avoided cost for non-compliance. Compl. Amend. Concl. at 24. Given the fact that in order to come into compliance all that Capozzi Cabinets had to do was to containerize its hazardous waste and to arrange for a contractor to haul it away for proper disposal, this economic benefit analysis overstates respondent's avoided cost.

driveway. Use of a Photo Ionization Detector identified the presence of Volatile Organic Compounds in the air, and soil samples from the driveway identified the presence of acetone, methyl-isobutyl-ketone, and toluene in the ground. It is clear from the testimony of both Inspector Fodo and Inspector Nesbit, and John Capozzi as well, that this hazardous waste was intentionally deposited on the ground. It is also clear that this hazardous waste disposal was not a one-time event. Rather, it was the customary manner in which respondent's finishing room got rid of unwanted waste thinner. As coffee cans would fill with this waste, the disposal process of "flinging" it out the back door would follow. Thus, the facts of this case clearly show that respondent was highly negligent in the manner in which it disposed of its waste thinner. The negligence of respondent in unlawfully disposing of this hazardous waste is a major reason for the assessment of the civil penalty in Count 2.

Just how much hazardous waste was tossed from the finishing room onto the driveway, and just how far back in time this practice extended are issues that are hotly contested by the parties. We first address the amount of hazardous waste unlawfully disposed of here. The evidence shows that Capozzi Cabinets tossed approximately two gallons of spent thinner onto the driveway every month.

In that regard, Inspector Fodo testified that during his October 26, 1995, inspection, he learned that a one-gallon sized coffee can full of solvent waste was thrown from the finishing room and onto the driveway every two to four weeks. Fodo described this waste as "a solvent stain[,] paint waste related to the finishing operation." Tr. 49. The inspector attributed the one-gallon every two- to four-week estimate to Capozzi, the shop's owner, and to Garris, the finishing room employee. Tr. 51, 54, 173-174. In addition, during the OEPA inspection of May 23, 1996, Garris likewise informed Inspector Nesbit that the finishing room operation usually produced "between a half and a full coffee can container of hazardous waste per week." Tr. 206-207.

Despite this testimony, Capozzi Cabinets argues that the thinner that was actually "solvent waste" was considerably less than the amounts claimed by Fodo and Nesbit. Respondent submits that the OEPA inspectors had little understanding as to how the thinner was used in the finishing room spray gun operation and, therefore, could not accurately estimate the amount of hazardous waste generated. *See* Tr. 151-152, 156. In fact, respondent submits that contrary to the inspectors' testimony, as explained by Capozzi, most of the thinner referred to by the inspectors would be mixed with lacquer and would be reused. Resp. Br. at 10–12.

Considering all the evidence on this issue, the testimony of Fodo and Nesbit supports a finding that Capozzi Cabinets generated two gallons of solvent waste per month in its finishing room operation. Even though Inspector Fodo seemed to admit on cross-examination that he had asked respondent how long it took to accumulate the thinner in the coffee can, and not if the thinner in the can was thrown out (Tr. 158), the whole of his testimony indicates otherwise. A reading of the entire testimony of Inspector Fodo shows that it was his understanding from talking to Capozzi and Garris that the coffee can amounts were of the hazardous waste

subsequently tossed out the back door. In addition, the testimony of Inspector Nesbit, in which she relates her May 23, 1996, discussion with Garris, reflects a similar understanding as to the monthly amount of solvent waste generated at Capozzi Cabinets. (Garris told Nesbit that they generated between a half and a full coffee can container of hazardous waste per week. *See* Tr. 206-207.)

Moreover, the events of May 23, 1996, lend further support for this finding. During the May 23 inspection, the OEPA learned that waste thinner that had been collected by respondent since the October 26, 1995, inspection had been used by Capozzi Cabinet employees as an accelerant in the burning of fixtures. The testimony of the OEPA inspectors was that between 10 to 15 gallons of solvent waste was thrown onto the fire. These 10 to 15 gallons constituted the bulk of the solvent waste generated in the finishing room from the time of the first OEPA inspection of October 26, 1995, to the time of the follow-up OEPA inspection of May 23, 1996. Thus, the amount of hazardous waste generated by respondent in between the inspections is roughly two gallons per month.

This finding is consistent with respondent's counsel's representation to the OEPA that, at a maximum, Capozzi Cabinets generated five gallons of solvent waste every three months. CX-15. Based upon these facts, respondent's proposed finding that it generated approximately five gallons of waste lacquer thinner per year is rejected. *See* Resp. Pro. Find. at 2. Respondent has based this proposed finding on the solvent waste generation data compiled by Capozzi *after* the OEPA inspections in this case. *See* RX-3. These facts also warrant the rejection of complainant's theory, based upon the hazardous waste generation data provided by respondent to Chemical Solvents, Incorporated, that it would need to dispose of 110 gallons of solvent waste annually. *See* CX-10. In that regard, Capozzi's testimony that the 110 gallons was not intended as an accurate estimate of the solvent waste generated at his facility is credited. Tr. 643.

In sum, the evidence establishes that at the time of the unlawful disposal alleged in Count 2, Capozzi Cabinets generated approximately two gallons of hazardous waste per month in its finishing room operation. The next question is, when did this unlawful disposal begin?

With respect to this question, at least two facts can be gleaned from the record. One is that the violation existed on October 26, 1995, when the OEPA discovered the hazardous waste in the soil. The other is that neither the USEPA, nor the OEPA, observed the actual disposal of the waste thinner from the finishing room door.[20] Still, it is clear from several sources that the violation existed prior to that date.

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[20] As discussed with respect to Count 1, there is no need for the inspectors to actually observe the violation being committed. This does not in any way diminish the USEPA's burden of proving a violation, as the Agency must still establish, by a preponderance of the evidence, that a violation occurred. It just recognizes the reality that inspectors can't be everywhere.

First, there is the letter from John Capozzi to the Governor of Ohio. In that letter, dated August 5, 1996, Capozzi spoke of the difficulties arising from the OEPA investigation which is the focus of this case. After admitting that "years ago" Capozzi Cabinets used lacquer thinner to burn scrap wood, Capozzi stated: "Every so often we would also fling small amounts of used thinner out the back door." CX-13. Second, there are the statements of Capozzi and Garris to Inspector Fodo and Inspector Nesbit that tossing the waste solvent out of the finishing room door was customary practice at Capozzi Cabinets. Garris worked at respondent's facility for approximately four and one-half years prior to the OEPA's initial inspection. There is no indication that the practice of tossing the thinner out the back door changed at any time during this period. Finally, the record shows that at no time prior to the OEPA inspection of October 26, 1995, did respondent collect its hazardous waste for off-site disposal. Tr. 211.

Given these facts, it is held that respondent's unlawful practice of improperly disposing of hazardous waste, the subject of Count 2, began 119 days before the OEPA inspection of October 26, 1995, as alleged by the USEPA.[21]

A final consideration involves the environmental and health hazards presented by respondent's unlawful disposal of the thinner. As with many of the issues presented in this case, the evidence regarding the environmental hazard is somewhat mixed. Arguing for a low penalty, respondent points out that the water samples taken by the OEPA ultimately did not show contamination. Moreover, the soil excavated during the remediation phase of this case was "clean" and respondent was allowed to return this soil to the excavated areas of the driveway and burn area. Tr. 260, 552-562; RX-D.[22]

Nonetheless, despite these facts, the thinner that was deposited on the ground contained acetone, methyl-isobutyl-ketone, and toluene, all hazardous chemicals. The Material Safety Data Sheet for the thinner involved showed that these chemicals posed serious health risks. CX-4. In addition, the disposal of the thinner took place in a residential area, with a school and church nearby. Moreover, as discussed above, this unlawful disposal practice continued for a significant period of time. These facts underscore the potential danger presented by the improper land disposal of the thinner.

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[21] The parties are in agreement that in evaluating respondent's conduct in this case, the USEPA is restricted by the five-year statute of limitations contained in 28 U.S.C. § 2462. *3M Co. v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994). This 119-day period is the product of the application of this five-year statute of limitations.

[22] The fact that the solvent waste may have evaporated over time, and the fact that the level of contaminants in the soil may have been substantially lessened by mixture with clean soil doesn't alter the fact that respondent was permitted to return the soil to the areas from where it was excavated. Tr. 260, 568.

Accordingly, for the reasons set forth above, a civil penalty on the low end of the scale as suggested by respondent is not warranted. Rather, the facts support the assessment of a $30,000 penalty.[23]

Count 3 (Failure to Obtain Analysis of Hazardous Waste Before Disposal)

The USEPA proposes a penalty of $6,164 for this violation. In offering its explanation for this penalty proposal, the complainant in part states:

> The probability of exposure from this violation is moderate. There is no certainty that releases resulted directly from the failure of Respondent to analyze its waste lacquers and thinners. However, it is moderately probable that releases occurred that would not have had Respondent analyzed the waste and verified that it was a hazardous waste that should have been disposed of properly.

Compl. Amend. Pen. Pro. at 15-16 (emphasis deleted). *See* Tr. 392-393.

It is hard to square complainant's penalty rationale with the facts of this case. There is no evidence here that Capozzi Cabinets was unaware that its waste thinner contained hazardous chemicals. Capozzi Cabinets had to have known that the waste lacquer thinner constituted a hazardous waste. In that regard, respondent possessed an MSDS on the lacquer thinner showing that the thinner was comprised of acetone, methyl-isobutyl-ketone, and toluene. Moreover, Capozzi, the shop's owner, had 40 years experience in the carpentry business. It is reasonable to assume, therefore, that he knew the hazardous nature of this waste thinner. Tr. 611. The fact of the matter is that respondent simply tossed the solvent waste out the back door as a matter of practice. It didn't stop this practice until after the OEPA inspection of October 26, 1995. There is absolutely no evidence that had respondent conducted this pre-disposal analysis, it would not have tossed the waste thinner out the door. Indeed, even the USEPA position set forth above recognizes this fact.

Complainant also argues that "[r]espondent's failure to analyze his wastes also posed potential for harm to nearby receptor populations." *Id*. at 17. Again, while it is difficult to take issue with this proposition, there has been no showing that had respondent analyzed its waste lacquer thinner, it would not have thrown the solvent waste on the ground.

In sum, the USEPA has not offered evidence sufficient to support the penalty requested. Nonetheless, Capozzi Cabinets was required to conduct a pre-disposal analysis of the waste

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[23] This penalty assessment includes a consideration of the USEPA's suggested economic benefit to respondent of $3,702 for failing to comply. *See* Compl. Amend. Concl. at 30.

thinner. It was obliged to comply with a regulatory requirement intended to protect the environment and the health of the potentially exposed population. Its failure to do so warrants the assessment of a $2,000 penalty.

Count 4 (Failure to Maintain Hazardous Waste Training Records)

Ohio Administrative Code Sections 3745-65-16(A) and (B) require either classroom instruction, or on-the-job training, of hazardous waste management practices. Section 3745-65-16(C) of the Code requires refresher training. In addition, Section 3745-65-16(D)(4) further requires that records of this hazardous waste training be maintained. Capozzi Cabinets failed to keep such training records and thus violated OAC Section 3745-65-16(D)(4).[24]

A review of the Ohio Administrative Code training regulations shows that they are intended for the safety of facility personnel who handle hazardous waste, including training covering emergency situations. These regulations set standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. For the period of time that respondent qualified as a hazardous waste disposal facility, it was required to maintain the training records pursuant to Section 3745-65-16(D)(4).

Training provisions for hazardous waste workers, and this includes the maintenance of training records, are an important feature of the RCRA regulatory scheme. Still, one must not loose sight of the fact that the underlying activity here involved the intermittent disposal of small quantities of spent thinner by relatively few employees. When the coffee can in the finishing room filled with waste solvent, about two times a month, it was thrown out the back door.

Thus, given these particular facts, this training records violation does not warrant the $11,575 penalty sought by USEPA. Complainant points to no facts which would support such a sanction. The supporting record evidence is simply not there. Rather, the appropriate penalty for this violation is $500.

Count 5 (Failure to Have Contingency Plan)

Ohio Administrative Code Section 3745-65-51(A) requires owners or operators of hazardous waste management facilities to have a contingency plan for the facility, designed to minimize hazards to human health and to the environment in the event of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. Capozzi Cabinets previously was held to have

[24] The order granting complainant summary judgment for Count 4 refers to 40 C.F.R. 265.16(d)(4), the Federal regulatory equivalent.

violated Section 3745-65-51(A).[25]

USEPA proposes a penalty of $14,655 for this violation, referring to the general danger present to the local population and the environment in the event of an unplanned release. USEPA's penalty rationale does not square with the facts of this case. Capozzi Cabinets employees six to seven workers. Only one worker, Garris, has been identified as working in the finishing room. In any event, she collected spent thinner in a coffee can, and twice a month the can was emptied as the solvent waste was tossed onto the driveway. Again, USEPA is unable to cite record evidence to support its rather ambitious claims. Indeed, most of its penalty explanation is based upon speculation only.

For example, the USEPA states: "The most likely transport mechanisms resulting in exposure would be from spillage within the facility, which could conceivably reach a municipal sewer, and airborne transport in the event of a fire or explosion." Compl. Amend. Concl. at 40. Yet, USEPA cites to no testimony to support this general assertion. In that regard, if any of these dangers actually existed, as complainant apparently believes they do, one would have expected Inspectors Fodo and Nesbit to have identified them while on the witness stand. They did not.

Finally, given the overall weakness of USEPA's case with respect to the penalty portion of Count 5, its assertion that respondent sustained an economic benefit as a result of non-compliance is rejected.[26]

Accordingly, a penalty of $50 is assessed for this violation.

Count 6 (Failure to Have Written Closure Plan)

This count involves a violation by respondent of Ohio Administrative Code Section 3745-65-12(A).[27] This section in part requires the owner or operator of a hazardous waste management facility to have a written closure plan. USEPA proposes a penalty of $18,855 for this violation. A summary of the complainant's penalty methodology might be helpful here.

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[25] The order granting complainant summary judgment refers to 40 C.F.R. 265.51(a), the Federal regulatory equivalent.

[26] It is not at all clear as to the dollar amount that the USEPA claims as an economic benefit under Count 5. *See* Compl. Amend. Concl. at 44-45.

[27] The order granting complainant summary judgment refers to 40 C.F.R. 265.112(a), the Federal regulatory equivalent.

In the reaching its proposed penalty for this count (as with all other five counts), the USEPA followed somewhat of a rigid, technical approach that was quite difficult to understand. Complainant concluded that with respect to the Count 6 violation, the "Potential for Harm" was "minor," the "Potential Seriousness of Contamination" was "minor," the "Harm to the [R]egulatory [P]rogram" was "substantial," and the "Extent of Deviation" was "major." Complainant also offered its position in a conclusory fashion under the headings "Penalty Assessment Matrix," "Multiple/Multi-day Penalties," "Adjustment Factors," and "Economic Benefit." *See* Compl. Amend. Concl. at 45-50. This penalty presentation is difficult to interpret.

What is missing here is an evidentiary-based explanation by USEPA as to why it seeks a substantial penalty from a small cabinet-maker like respondent for failing to have a written closure plan. Indeed, to resolve matters with the OEPA, all that Capozzi Cabinets had to do was to containerize its waste (roughly two gallons a month) and to arrange for its proper disposal. The size of the penalty sought by complainant is inconsistent with these facts, as well as the fact that after the inspection of May 23, 1995, the OEPA accepted a "Remediation Plan" from respondent to remedy any possible contamination, and not a "Closure Plan." *See* RX-D. Like Count 5, the violation here is a technical one which warrants a minimal penalty. Accordingly, respondent is assessed a $50 civil penalty for this violation.

C. Compliance Order

In its Second Amended Complaint, the USEPA requests the issuance of a compliance order directing that "Respondent shall, immediately upon the effective date of this Order, cease all treatment, storage, or disposal of any hazardous waste, except such treatment, storage, or disposal as is in compliance with the standards applicable to Generators of hazardous waste as set forth at OAC [Section] 3745-52." Compl. Br. at 12.[28]

Given the fact that Capozzi Cabinets has been found to have committed six RCRA violations, the basis for USEPA's compliance order request has been established. Accordingly, Capozzi Cabinets is directed to immediately comply with the order as set forth above, and to properly furnish the USEPA with notification of such compliance.

V. Order

Pursuant to Section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(3), John A. Capozzi, d/b/a Capozzi Custom Cabinets, is ordered to pay a civil penalty of $37,500 for the six RCRA violations found in this case. The payment of this

[28] In this requested compliance order, the USEPA also instructs respondent in the manner in which it is to provide notification of compliance.

penalty shall be made within 60 days of the date of this order.[29]

Respondent also is directed to satisfy the terms of the Compliance Order sought by the USEPA. In that regard, "Respondent shall, immediately upon the effective date of this Order, cease all treatment, storage, or disposal of any hazardous waste, except such treatment, storage, or disposal as is in compliance with the standards applicable to Generators of hazardous waste as set forth at OAC [Section] 3745-52."

This decision shall become a final order 45 days after its service on the parties, unless any of the actions specified in 40 C.F.R. 22.27(c) occur.

Carl C. Charneski
Administrative Law Judge

[29] Payment shall be made by mailing, or presenting, to the Regional Hearing Clerk, USEPA, Region V, P.O. Box 70753, Chicago, Illinois, 60673, a cashier's or certified check, made payable to the Treasurer of the United States.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of	)	
	)	
Capozzi Custom Cabinets,	)	Docket No. RCRA-5-2000-005
	)	
Respondent	)	

ERRATUM

V. Order

Pursuant to Section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(3), John A. Capozzi, d/b/a Capozzi Custom Cabinets, is ordered to pay a civil penalty of $37,600 for the six RCRA violations found in this case. The payment of this penalty shall be made within 60 days of the date of this order.[1]

Respondent also is directed to satisfy the terms of the Compliance Order sought by the USEPA. In that regard, "Respondent shall, immediately upon the effective date of this Order, cease all treatment, storage, or disposal of any hazardous waste, except such treatment, storage, or disposal as is in compliance with the standards applicable to Generators of hazardous waste as set forth at OAC [Section] 3745-52."

This decision shall become a final order 45 days after its service on the parties, unless any of the actions specified in 40 C.F.R. 22.27(c) occur.

Carl C. Charneski
Administrative Law Judge

Issued: February 13, 2002
Washington, D.C.

[1] Payment shall be made by mailing, or presenting, to the Regional Hearing Clerk, USEPA, Region V, P.O. Box 70753, Chicago, Illinois, 60673, a cashier's or certified check, made payable to the Treasurer of the United States.