UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Hall Signs, Inc.	)	**Docket No. 5-EPCRA-96-026**
	)	
Respondent	)	

INITIAL DECISION

Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §11045, the Respondent Hall Signs, Inc. is assessed a civil penalty in the amount of $18,886 for four violations of EPCRA §313, 42 U.S.C. §11023, failing to file annual toxic chemical release forms.

Appearances

For Complainant: Ignacio L. Arrazola, Esq.

Assistant Regional Counsel

U.S.E.P.A. Region 5

Chicago, Illinois

For Respondent: Sharon A. Hilmes, Esq.

Baker & Daniels

Indianapolis, Indiana

Proceedings

On June 26, 1996, the Region 5 Office of the United States Environmental Protection Agency (the "Region" or "Complainant") filed an administrative Complaint against Hall Signs, Inc., of Bloomington, Indiana (the "Respondent" or "Hall Signs"). The Complaint charged the Respondent with four violations of Section

313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §11023. The Respondent filed its Answer on July 17, 1996.

The Complaint charges Hall Signs with four failures to timely file annual toxic chemical release forms, known as "Form Rs," for listed chemicals used at its manufacturing facility in Bloomington, Indiana, in quantities exceeding the statutory threshold amount. Specifically, the Complaint charges Respondent with the following four counts of alleged violations:

- Count I: failing to file the Form R for certain glycol ethers for calendar year 1990;

- Count II: failing to file the Form R for phosphoric acid for 1990;

- Count III: failing to file the Form R for certain glycol ethers for 1991; and

-Count IV: failing to file the Form R for phosphoric acid for 1991.

The original Complaint sought assessment of a total civil penalty of $68,000 ($17,000 each) for these violations, pursuant to EPCRA §325, 42 U.S.C. §11045. On January 27, 1997, the Region was granted leave to amend the Complaint to reduce the amount of the proposed civil penalty to $57,800.

The case was reassigned to the undersigned Administrative Law Judge ("ALJ") Andrew S. Pearlstein, on February 13, 1997. After a hearing was scheduled the parties jointly moved, on June 2, 1997, to file stipulations in lieu of a hearing, and to then file briefs on the sole remaining issue in dispute, the appropriate amount for the civil penalty. The ALJ granted this motion. The parties submitted their Agreed Stipulations of Fact and Law ("Stipulations") on June 26, 1997, followed by briefs and reply briefs on the appropriate amount for the civil penalty.

The record closed on August 26, 1997, upon receipt of the parties' reply briefs. The record consists of the Stipulations, several attachments to the Stipulations and briefs, and the parties' prehearing exchanges of proposed evidence filed earlier in this proceeding.

Findings of Fact

These findings of fact are not disputed, and are adopted from the Stipulations.

The Respondent Hall Signs owned and operated a manufacturing facility in Bloomington, Indiana, in 1990 and 1991, (and continues to do so today), where it engaged in its primary business of manufacturing signs. Hall Signs employed at least 10 employees with total paid hours exceeding 20,000 hours per calendar year, during this period. In 1996, the year the Complaint was filed, Respondent had an average of 67 employees. In 1996, Hall Signs had gross sales of $10.78 million. Hall Signs' facility is covered by Standard Industrial Classification ("SIC") Code 3993, which falls within SIC Codes 20 through 39.

Respondent's manufacturing process consisted of cutting sign blanks, degreasing, cleaning and surface preparation, and painting and drying of signs. These processes used phosphoric acid and certain glycol ether category chemicals, as degreasers and drying agents. These chemicals were not incorporated into the final product.

On March 23, 1993, an EPA environmental engineer, Richard W. Sokol, conducted an inspection of the Hall Signs facility. Respondent provided Mr. Sokol with documentation of its chemical usage at the facility for 1990 and 1991. Hall Signs was cooperative throughout the inspection and in providing follow-up documentation. The next communication from the EPA to Respondent, after the 1993 inspection, was the filing of the administrative Complaint in this matter on June 27, 1996. Hall Signs remained unaware of the obligation to file Form Rs until it received the Complaint in 1996.

Hall Signs used 14,974 pounds of certain glycol ethers in its operations during calendar year 1990. Respondent did not submit the Form R for certain glycol ethers for 1990 to the EPA and the State of Indiana, until May 2, 1997.

Hall Signs used 15,179 pounds of phosphoric acid in its operations in 1990. Respondent did not submit its Form R for its use of phosphoric acid in 1990 until January 6, 1997.

Hall Signs used 14,593 pounds of certain glycol ethers in its facility in 1991. Respondent did not submit its Form R for its use of certain glycol ethers in 1991 until May 2, 1997.

Hall Signs used 17,453 pounds of phosphoric acid in its facility in calendar year 1991. Respondent did not submit its Form R for

phosphoric acid to the EPA and the State of Indiana until January 6, 1997.

The Respondent has expended considerable resources, over the past eight years, in an effort to reduce the chromium content in its wastewater sludge and effluent. The current system is a five-stage precipitation system that is expected to be fully effective in preventing excursions in Respondent's effluent released to the Bloomington wastewater treatment plant.

Discussion

- Liability

In the Stipulations, Hall Signs has admitted the jurisdictional elements that render it a covered facility, subject to the EPCRA §313 reporting requirements. Hall Signs had 10 or more employees during the period of the violations, and is in SIC Code 20 through 39. The two subject chemicals, certain glycol ethers and phosphoric acid, are listed toxic chemicals pursuant to EPCRA §313(c) and 40 CFR §372.25(b). The threshold reporting amount for such chemicals used at a facility is 10,000 pounds, pursuant to EPCRA §313(f)(1)(A).

EPCRA §313(a) requires that the forms reporting the use of listed toxic chemicals in excess of the threshold amount in each calendar year must be submitted to the Administrator (of the EPA) and the appropriate State official by July 1 of the following year. The Respondent used more than 10,000 pounds each of certain glycol ethers and phosphoric acid in both 1990 and 1991. Hall Signs was thus required to submit two Form Rs for its 1990 and 1991 use of those chemicals by July 1, 1991, and July 1, 1992, respectively. The forms were not submitted until 1997, after Respondent received the Complaint in this proceeding. As stipulated, Hall Signs is thus liable for the four alleged violations of EPCRA §313(a), failing to file toxic chemical release forms, as alleged in the Complaint. Respondent is therefore subject to assessment of a civil penalty for these violations, under EPCRA §325(c), 42 U.S.C. §11045(c).

- Amount of Civil Penalty

The assessment of civil and administrative penalties for violations of the reporting requirements of EPCRA §313 is governed by EPCRA §325(c)(1), 42 U.S.C. §11045(c)(1). That subsection simply provides that a person who violates §313 "shall be liable to the United States for a civil penalty in an

amount not to exceed $25,000 for each such violation." Subsection (4) then provides that the penalty may be assessed by administrative order or an action in federal district court. The statute does not enumerate any factors for consideration by the Administrator or Court in determining an appropriate civil penalty for violations of the §313 reporting requirements.

However, prior EPA administrative decisions on penalties for violations of EPCRA §313 have looked to the preceding enforcement subsections, EPCRA §§325(b)(1)(C) and 325(b)(2), 42 U.S.C. §§11045(b)(1)(C) and 11045(b)(2), for guidance.[(1)] Those subsections govern the assessment of civil penalties for Class I and Class II violations of EPCRA's emergency notification requirements. In determining the amount of a penalty, EPCRA §325(b)(1)(C) requires the Administrator to consider "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." EPCRA §325(b)(2) incorporates by reference the penalty assessment procedures and provisions in the Toxic Substances Control Act ("TSCA") §16, 15 U.S.C. §2615. The penalty factors listed there, at 15 U.S.C. §2615(a)(2)(b), are virtually identical to those in EPCRA §325(b)(1)(C), except "effect on ability to continue to do business" is substituted for economic benefit.

The Region calculated its proposed penalty by following the guidelines in the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990), dated August 10, 1992 (the "ERP," Exhibit 3 in Complainant's prehearing exchange). The ERP was promulgated by the EPA's Office of Compliance Monitoring of the Office of Prevention, Pesticides and Toxic Substances, in order to ensure that the Agency's enforcement responses to violations of EPCRA §313 are conducted in a fair, uniform and consistent manner. (ERP, p. 1). The ERP does not refer to the statutory penalty factors enumerated in EPCRA §325(b)(1)(C) or §325(b)(2) applicable to violations of the emergency notification requirements. However, to at least some degree, the ERP incorporates those factors into its guidelines for the assessment of penalties for violations of the EPCRA toxic chemical release reporting requirements.

The EPA Rules of Practice require the Administrative Law Judge to consider such civil penalty guidelines as the EPCRA §313 ERP, and to state specific reasons for deviating from the amount of

the penalty recommended in the Complaint. 40 CFR §22.27(b). The ALJ "has the discretion either to adopt the rationale of an applicable penalty policy where appropriate or to deviate from it where the circumstances warrant." *In re DIC Americas, Inc.*, TSCA Appeal No. 94-2, p. 6 (EAB, Sept. 27, 1995).

-- Extent Level

The ERP establishes a penalty matrix to be used in assessing civil penalties where that is the appropriate enforcement response. (ERP, p. 7-12). Each violation is assigned a "circumstance level" and "extent level." The circumstance level depends on the nature of the violation. The extent level is dependent on two factors: the amount of unreported chemical used above the threshold, and the size of the violator's business. The size of the violator's business is, in turn, determined with reference to two parameters: annual sales and number of employees. (ERP, pp. 9-10). After deriving a gravity-based penalty from the matrix, it may be adjusted upwards or downwards by applying various "adjustment factors," such as whether the violator voluntarily disclosed the violation, the violator's cooperative attitude, history of prior violations, and other factors as justice may require. (ERP, pp. 14-18).

In this case, the Region assigned Hall Signs' violations of failing to report in a timely manner to circumstance level 1, category I, for reports filed more than one year late. (ERP, p.12). The Region then assigned the violations to extent level B, for a facility that used less than ten times the threshold amount of chemical, with $10 million or more in sales and 50 employees or more. (ERP, p. 9). In accord with the matrix, all four violations were then assigned a penalty of $17,000 each, for a total of $68,000. (ERP, p. 11). The Region then reduced this amount by 15% on the basis of Respondent's cooperative attitude, resulting in a proposed penalty of $57,800.

Respondent's chief argument is that the application of the ERP in this case results in an unduly large penalty, for relatively small amounts of chemicals involved in the violations, because Hall Signs barely exceeds the ERP's thresholds that distinguish between gravity-based penalties of $5000 and $17,000 per violation. Respondent has made a persuasive argument for deviating from the ERP's guidelines in this case. For a circumstance level 1 violation with extent level C, the penalty would only be $5000. If Hall Signs had 8% less in corporate sales in 1996, it would have qualified for extent level C, and a penalty, under the matrix, of $5000 per violation. The ERP does

not explain why such slight differences between a company's sales or number of employees should result in such a great difference in the amount of the penalty -- varying it by a factor of more than three. I find the ERP's drastic increase in penalty from extent level C to B, based on stark distinctions based on a violator's sales or number of employees to be arbitrary on this record.

Enforcement response policies are useful for their stated purpose -- to foster a fair and consistent enforcement response and penalty assessment program throughout the country. The EPCRA §313 ERP certainly includes appropriate discussion of the penalty factors to be applied. However, there is no explanation in the ERP or on the record of this proceeding of the basis for the particular choices of penalty amounts in the matrix -- particularly the one at issue here. Where the penalty can vary by such a large magnitude, due to very small differences among violators, unrelated to the gravity of the violation itself, that portion of the policy is inconsistent with its own stated purpose to impose penalties in a "fair" manner and to ensure "that the enforcement response is appropriate to the violation committed." (ERP, p. 1).

While there is nothing inherently arbitrary in constructing a penalty matrix based on the factors concerning the amount of chemical involved and size of the violator's business, some explanation of the reasoning behind the matrix is warranted. For example, why didn't the EPA choose some type of sliding scale based on these factors? Intuitively and logically, the ability to assess penalties between the chosen values of $5000 and $17,000, for gradations of "extent level" would seem to be considerably more equitable. It would be a simple matter to construct a matrix or sliding scale with greater flexibility, based primarily on the amount of chemical involved in the violation, and perhaps secondarily, on the size of the violator's business.

The application of this portion of the penalty matrix is also inconsistent with the ERP's own reasoning explaining the determination of extent level. The ERP (p. 9) states that "EPA believes that using the amount of the §313 chemical involved in the violation as the *primary factor* in determining the extent level underscores the overall intent and goal of EPCRA §313 to make available to the public on an annual basis a reasonable estimate of the toxic chemical substances emitted into their communities from these regulated sources." (Emphasis added). On page 10, the ERP continues: "[t]en times the threshold for

distinguishing between extent levels was chosen because it represents a significant amount of chemical substance." Under the ERP's matrix, a company nearly the same size as Hall Signs (or even larger by some measures), but with slightly lower sales or fewer employees, that failed to report the use of six or seven times the amount of toxic chemical than used by Hall Signs, would be penalized only $5000 per violation, rather than $17,000.

In its determination of "extent level," the ERP in effect considers the size of the violator's business as at least as significant a factor as the amount of chemical involved in the violation. The ERP expressly assigns the same extent level for violations involving more than ten times the threshold reporting amount, as it would for violations involving amounts only slightly more than the threshold, if the violator had sales below $10 million or fewer than 50 employees. (ERP, p. 9). This is hardly consistent with considering the amount of unreported chemical as the "primary factor" in determining the extent of a violation and assessing a penalty.

In support of this factor, the ERP states only that "the deterrent effect of a smaller penalty upon a small company is likely to be equal to that of a large penalty upon a large company." (ERP, p. 10). Again, the ERP does not explain why it did not use some sort of sliding scale based on the size of the violator, rather a single stark separation that varies the penalty by more than a factor of three. The ERP also does not explain how the size of the violator's business relates to the gravity of the violation. This is the type of factor that concerns the *violator* rather than the *violation*. This suggests that, if the size of the violator's business is to be automatically factored into the penalty, it should more appropriately be considered a percentage adjustment factor, rather than a major component of the violation's gravity determination. A sufficient deterrent for all violators can be set by establishing an appropriate minimum penalty, subject to the statutory or the ERP's adjustment factors.

There is nothing in EPCRA that indicates that the size of the business of the violator should be a significant penalty factor. If the factors cited under EPCRA §325(b)(1)(C) or §325(b)(2), for violations of the emergency notification requirements, are to be considered as guidance, the most closely related factors are the violator's ability to pay, ability to continue in business, and any economic benefit. Generally, a violator's ability to pay a penalty may be presumed unless and until it is

put at issue by the respondent. *In re New Waterbury, Ltd.*, TSCA Appeal No. 93-2, 5 E.A.D. 529, 541 (EAB, October 20, 1994).[(2)] The ERP does in fact consider a violator's ability to pay under this standard as a penalty adjustment factor. (ERP, pp. 19-20). Neither party has raised the Respondent's ability to pay, ability to continue in business, or economic benefit as issues in this proceeding. It would be more consistent with the EPCRA §325(b) penalty factors to consider the size of the violator's business only in the context of one of those economic issues, if they are raised in the proceeding. Alternatively, a more flexible formula for considering the size of the violator's business as a percentage adjustment factor would be more equitable. I find the ERP's automatic consideration of the size of a violator's business as a major factor in determining the violation's extent level and gravity-based penalty, as applied in this case, arbitrary and unauthorized by the statute, EPCRA.

It is a straightforward exercise to derive a mathematical formula for assessing the extent level of penalties on a sliding or proportional scale, based on the primary factor of amount of chemical involved. Several simple schemes come readily to mind. For example, accepting the ERP's figure of $5000 as the minimum penalty for failure to timely report, it would be simple to assess a proportionally higher penalty that depends on the amount of unreported chemical over the threshold. The amount could be arithmetically parallel, such as $1000 for every 10,000 pounds of unreported chemical above the threshold. The penalty would thus be $14,000 for a violation involving 10 times the threshold amount (100,000 pounds), and the maximum of $25,000 for a violation involving 210,000 pounds. Alternatively, other formulas could be derived based on the amount of chemical involved as a percentage of a selected "significant" amount, such as ten times the threshold.

In its brief, Respondent proposes a proportional penalty based on the amount of chemical, starting from zero, as a percentage of 100,000 pounds, which would be assigned the maximum penalty of $25,000. This resulted in Hall Signs' proposed penalty of $9090. Complainant points out that this formula does not take into account the size of the business of the violator. As discussed above, I find that the size of the violator's business should not be a major penalty factor in the way proposed by the ERP. However, I accept the ERP's figure of $5000 as an appropriate minimum gravity-based penalty for the "circumstance level 1" violation of failure to timely report toxic chemical usage. This is a sufficient amount to act as a deterrent, for relatively minor violations by businesses of any size. The

amount of the penalty would rise proportionally with the amount of chemical involved in the violation. This type of scheme would more fairly assess penalties commensurate with the degree to which the violation actually impaired EPCRA's mission to inform the community of facilities' release or use of toxic chemicals.

In summary, I find the application of the ERP extent level determination arbitrary as applied to the facts in this case. Respondent's unreported chemicals averaged about 5000 pounds above the 10,000 pound threshold, far below the amount the EPA considered "significant" for the purpose of increasing the extent of the violation. These violations should fall much closer to the $5000 penalty in the matrix for extent level C, than to the $17,000 figure for extent level B. This would be consistent with the ERP's own directive that the amount of chemical involved should be considered the primary factor in the gravity of the violation. Under the formula described above, Respondent's total gravity-based penalty for its four violations would be $22,219.[(3)] This amount would not be altered by considering the size of Respondent's business.

-- Adjustment Factors

After determining a violation's gravity-based penalty from the matrix, the ERP requires consideration of several "adjustment factors" that could increase or reduce the gravity-based amount. These include the violator's voluntary disclosure of the violation, degree of cooperation, good faith attempts to comply, history of prior violations, ability to pay, and "other factors as justice may require." (ERP, pp. 14-20). The Region here applied a 15% reduction to the penalty amount for Respondent's violations as authorized by the ERP (p. 18), based on Respondent's cooperative attitude.

I agree that this is the only applicable penalty adjustment factor in this proceeding. It is not disputed that Hall Signs was unaware of its obligation to file Form Rs for glycol ethers and phosphoric acid, until after it received the Complaint in this proceeding. Respondent did not use those or any other listed chemicals in amounts exceeding the threshold in any years before or since 1990 and 1991. As stated in the ERP (p. 14), ignorance of the law should not be encouraged by considering that a factor to reduce a violator's culpability and the amount of the penalty.

Respondent also argues that its efforts in reducing its chromium wastewater effluent should be considered an environmentally

beneficial project that merits a further reduction as another factor as justice may require. However, as Complainant argues, Respondent has not shown that its chromium effluent control system protects the environment beyond what is required in order to meet applicable legal standards under the Clean Water Act and local industrial pretreatment regulations. In order for past environmental projects to be considered under the "justice factor" for a penalty reduction, "the evidence of environmental good deeds must be clear and unequivocal, and the circumstances must be such that a reasonable person would easily agree that not giving some form of credit would be a manifest injustice." *In re Spang & Company*, EPCRA Appeals Nos. 94-3 and 94-4, p. 28 (EAB, October 20, 1995). Here, the submissions indicate only that the new precipitation system is expected to render 1997 a "zero excursion year."[(4)] This does not meet the standard articulated in *Spang.*

In addition, Hall Signs' pretreatment processes have no apparent nexus with the EPCRA violations at issue here. Finally, in view of the other reductions in the penalty based on this decision's analysis of the ERP extent level matrix, further reductions are not necessary to achieve justice. (*Spang*, *supra*, pp. 27-29). Therefore, no reduction in the penalty will be afforded Respondent on the basis of its efforts to improve its pretreatment processes and wastewater discharges.

Further discussion of the ERP's adjustment factor for "other factors as justice may require" (the "justice factor") is warranted, however. (ERP, p. 18). The ERP provides for an additional reduction of up to 25% of the penalty in the "rare" circumstances supporting use of the justice factor. Two of the examples cited under this factor are violations close to the borderline separating minor and significant violations, and close to the borderline separating noncompliance from compliance. Respondent would seem to qualify under either or both of these examples for a penalty reduction. Hall Signs barely exceeded the threshold for extent level B due to the amount of its corporate sales. And its violations, although several thousand pounds above the threshold, were relatively minor compared to the ERP's own distinction of ten times the threshold for more serious violations. Respondent would qualify for a 25% reduction by virtue of the closeness of its violations to these borderlines. This would reduce the penalty a total of 40% (including a 15% reduction for cooperative attitude) from $68,000, to $40,800.

Hall Signs argues, however, that this reduction is not sufficient to redress the injustice imposed by application of the ERP's matrix. I agree, for the reasons outlined at length above in this decision. The gravity of Hall Signs' violations, based on the amount of chemical involved, supports a penalty much closer to $5000 per violation than to $17,000, or even to $10,000 under this additional reduction. The ALJ does presumably have discretion to reduce the penalty more than 25% under the justice factor in these circumstances. A 50% reduction (combined with 15% for cooperative attitude) would result in a total penalty of $23,800, similar to the figure of $22,219 arrived at by recalculating the gravity of the violations based on the amount of chemicals involved.[(5)] However, this would extend the ERP's justice factor far beyond its stated numerical limit. A mathematical formula as the basis for the gravity-based penalty, based on the amount of chemical involved in the violation, can be applied more fairly and objectively than the justice adjustment factor, which depends purely on the reviewer's discretion.

For these reasons, I decline to rely on the adjustment for other factors as justice may require, and instead will use the alternative mathematical formula for assessing a gravity-based penalty based on the amount of chemical involved in the violations. This penalty will not be adjusted based on the size of the Respondent's business. It will be reduced by 15% on the basis of Hall Signs' cooperative attitude, resulting in a total penalty for the four violations of $18,886. This penalty is within the range of penalties for these violations contemplated by the ERP, and is more appropriate to the violations in this case than the much higher penalty proposed by the Region under the ERP's existing penalty matrix.

Conclusions of Law

1. The Respondent, Hall Signs, Inc., committed four violations of EPCRA §313(a), 42 U.S.C. §11023(a), by failing to timely file toxic chemical release forms for its use of certain glycol ethers and phosphoric acid for the years 1990 and 1991.

2. Pursuant to EPCRA §325(c)(1), an appropriate civil penalty for these four violations is $18,886.

Order

1. Respondent, Hall Signs, Inc., is assessed a civil penalty of $18,886.

2. Payment of the full amount of this civil penalty shall be made within 60 days of service of this order by submitting a certified or cashier's check in the amount of $18,886, payable to the Treasurer, United States of America, and mailed to:

EPA - Region 5

P.O. Box 70753

Chicago, IL 60673

3. A transmittal letter identifying the subject case and docket number, and Respondent's name and address, must accompany the check. Respondent may be assessed interest on the civil penalty if it fails to pay the penalty within the prescribed period.

Appeal Rights

Pursuant to 40 CFR §22.27(c) and §22.30, this Initial Decision shall become the final order of the Agency, unless an appeal is filed with the Environmental Appeals Board within 20 days of service of this order, or the Board elects to review this decision *sua sponte.*

Andrew S. Pearlstein

Administrative Law Judge

Dated: October 30, 1997

Washington, D.C.

1. See *In re Apex Microtechnology, Inc.*, 1993 EPCRA LEXIS 79, pp. 6-8 (Initial Decision, May 7, 1993); *In re TRA Industries, Inc.*, 1996 EPCRA LEXIS 1, p. 6 (Initial Decision, October 11, 1996).

2. Although *New Waterbury* concerned a penalty assessed under TSCA §16(a)(2)(B), 15 U.S.C. §2615(a)(2)(B), that statute and those penalty factors are actually incorporated by reference into EPCRA §325(b)(2) for the assessment of Class II administrative penalties for violation of EPCRA's emergency notification requirements. See page 4 above. This TSCA, as well as the EPCRA §325(b)(1)(C) penalty factors both include ability to pay, but neither mentions the size of the respondent's business.

3. The penalty would increase $1000 for each 10,000 pounds of chemical used above the threshold, starting from a minimum of $5000. Employing this formula, the penalties are: Count I - $5497; Count II - $5518; Count III - $5459; and Count IV - $5745.

4. Respondent's Exhibit 3, Letter from John N. Langley, Industrial Pretreatment Program Coordinator, City of Bloomington Utilities Department, December 5, 1996.

5. The $22,219 figure does not however include the 15% reduction for a cooperative attitude. That would reduce the penalty to $18,886.