UNITED STATES OF AMERICA

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of

City of Athens, Ohio

Docket No. RCRA-V-W-14-93

Respondent

Order Setting Amount of Civil Monetary Penalty
and Compliance Schedule

This matter arose with the issuance of a complaint against Respondent City of Athens, Ohio, in which violations of §3008(a)(1) of the Resource Conservation and Recovery Act of 1976 as amended ("RCRA," or "the Act"), 42 U.S.C. § 6298 (a) (1); of the implementing regulations promulgated under the Act; and violations of the Ohio Administrative Code ("OAC") were alleged *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits,* 40 C.F.R. §§ 22.1(a)(4), 22.13 and 22.37.

The four count complaint charged Respondent with numerous violations of the above in connection with the operation of its city garage, as follows:

Count I: failure to notify the EPA Administrator of the operation of a facility for treatment, storage, or disposal of a hazardous waste as identified in the regulations no later than August 18, 1980; failure to determine whether the particular solid wastes being generated were hazardous, in violation of 40 C.F.R. § 262.11 and Ohio Administrative Code 3745-11; failure to obtain an identification number for the facility in violation of 40 C.F.R. § 265.11; and treatment, storage or disposal of hazardous waste without having obtained an identification number in violation of 40 C.F.R. § 262.12.

Count II: Failing to submit Part A of a permit application by November 18, 1980; and operating the facility after that date without having secured a permit or interim status in violation of Section 3005(a) and (e), in violation of §3005 of the Act (42 U.S.C. § 6925) and OAC 3745-50-40.

Count III: Failing to perform other duties associated with the operation of a hazardous waste storage or disposal facility as set out in 40 CFR Part 265, as follows:[1]

- 40 CFR Part 265 (Subpart B) and OAC 3745-65-10 through 18 by failing to (a) obtain a general waste analysis, (b)-inspect for malfunctions and deterioration pursuant to a written schedule, and (c) train personnel and maintain records of compliance with such requirements;

- 40 C.F.R. Part 265 (Subpart C), the Act, and OAC 3745-65-30

[1]Respondent was directly subject to 40 C.F.R. Part 265, except when the State of Ohio had an authorized hazardous waste program pursuant to 40 C.F.R. Part 271 (Subparts A or B), during which time the provisions of OAC 3745-50 et seq., which are enforceable by EPA, were applicable to Respondent.

through 37 by failing to equip, test, and maintain alarm systems, fire protection equipment, spill control equipment and decontamination equipment to be used in emergencies;

- 40 C.F.R. Part 265 (Subpart D), the Act, and OAC 3745-65-50 through 56 by failing to develop and maintain a contingency plan for its facility;

- 40 C.F.R. Part 265 (Subpart E), the Act. and OAC 3745-65-70 through 77 by failing to maintain a written operating record at the facility and failing to submit a biennial report of facility activities to the U.S. EPA or to Ohio EPA, as appropriate;

- 40 C.F.R. Part 265 (Subpart F), the Act, and OAC 3745-65-90 through 94 by failing to implement a groundwater monitoring program no later than November 19, 1981 (for the disposal of waste on the ground outside of its paint shop);

- 40 C.F.R. (Subpart G), the Act, and OAC 3745-66-10 through 20 by failing to have a written closure plan for each hazardous waste management unit at the facility no later than May 19, 1981, and for failing to have a written post-closure plan no later than May 19, 1981;

- 40 C.F.R. Part 265 (Subpart H), the Act, and OAC 3745-66-40 through 48 by failing to estimate the costs of closure of the “grease pit” (storage tank) and disposal unit outside the paint shop, including estimates of costs of post-closure, establishment of financial assurance of ability to perform post-closure care, and maintenance of liability insurance for injury and property damage caused by sudden or non-sudden accidental occurrences which may arise from operation of the facility;

by failing to inspect hazardous waste storage areas (containers of hazardous waste accumulated in the paint shop) at least weekly.

- 40 C.F.R. Part 265 (Subpart J), the Act, and OAC 3745-66-90 through 92 by failing to assess the integrity of its tank system, perform daily inspections, and comply with all other requirements of Subpart J;

- 40 CFR Part 265 (Subpart N), the Act, and OAC 3745-68-01 through 16 by failing to comply with special requirements which pertain to landfills, in connection with the landfill outside the paint shop.

Count IV: Violations of Section 3004(e) of RCRA [42 U.S.C. § 6924(e)], 40 CF § 268.30(a) and at least 180 days of violation of RCRA for disposal of spent solvents (EPA hazardous waste numbers F003 and F005); violations of RCRA, 40 CFR § 268.7(a), and OAC 3745-59-07 for failure to test waste to determine whether it was subject to land disposal restrictions; violations of the Act, 40 CFR §268.50(a)(2)(ii), and OAC 3745-59-50 for failures to mark the tank ("grease pit") used to store hazardous waste, and to comply with operating record requirements set forth in federal and state regulations.

Respondent denied all allegations of liability. The parties engaged in intense and prolonged settlement discussions and conferences with the presiding judge, in which the State of Ohio's views -- particularly as to the extent of appropriate compliance activities -- were frequently alluded to. While the parties believed and asserted that they were near settlement, and resolution as to the amount of the civil monetary penalty reportedly had

been achieved, their efforts were ultimately unsuccessful.[2] The matter then proceeded by way of motions for summary determination.

A decision issued in which Respondent was found liable for the violations alleged in the complaint, followed by a supplemental order and additional findings and conclusions.[3] A civil penalty was assessed against Respondent for $98,000. This amount was found to be fair and reasonable in light of facts and circumstances then of record, including the costs of compliance and the interests of fairness and justice. [4] Thereafter, upon motion of Complainant, the parties were given an additional opportunity to brief the penalty issue. Subsequent filings revealed that Complainant believes the proper assessment to be $1,297,193. Respondent asserts that the penalty should be about $10,000.

Again with attention to the entire record as thus supplemented, applicable statutory requirements, the penalty policy issued with respect to the Act, and the interests of fairness and justice, the monetary penalty assessed herein will be $111,937.00.

This Order, together with the October 8, 1999, and October 18, 1999, Orders, shall

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[2] While it is not usual for the presiding judge to be informed of the amount of a monetary settlement before total settlement has been reached, here such information ($100,000) was conveyed by the parties chiefly to demonstrate that settlement was in fact close at hand -- dollar amount frequently being the most contentious area of settlement -- and that proceeding with pretrial procedures would be both unnecessary and wasteful.

[3] *Decision and Order Following Complainant's Motions for Partial Summary Decision, Respondent's Motion to Dismiss, and Motion to Dismiss or in the Alternative for Summary Decision,* October 8, 1999 (service date October 14, 1999); *Supplemental Order and Rulings; and Additional Findings and Conclusions,* October 14, 1999. These two Orders are incorporated herein and made a part hereof.

[4] *Supplemental Order and Rulings* at 11.

constitute the Decision and Order herein.

Penalty Assessment

1. Statutory Factors

The Act authorizes a civil penalty assessment of up to $25,000 per day of non-compliance with statutory requirements, regulations promulgated pursuant to Subtitle C, and any State provision authorized pursuant to RCRA § 3006. In determining the proper penalty to be assessed, the Act requires that consideration be given to "the seriousness of the violation" and to "any good faith efforts to comply with the applicable requirements." 42 U.S.C. § 6928(a)(3).

In applying the statutory factors to the specific circumstances of this case, it is clear that the violations found are serious. Taken in their entirety they posed potential and/or actual harm to humans and the environment, as well as to enforcement objectives of the Act and similar State requirements.

As to good faith efforts to comply, the record reflects that Respondent did in fact make significant efforts. For instance, Respondent installed a waste storage tank under the floor of the garage building in 1976; the tank was then used to accumulate waste automotive fluids and other materials generated in servicing and maintaining city vehicles. An overflow pipe built into the tank permitted the contents to flow into the storm sewer system. The record shows that the installation of the waste storage tank, a principal source of violations here, was at the outset an effort on Respondent's part to comply with existing requirements regarding waste, and to reduce or eliminate hazardous discharges to the environment. The pit was designed with three layers: the bottom layer

to hold sediments, the middle for water, and the upper layer to hold oily waste material. The design provided that only the water would be discharged into the storm water system. This arrangement was intended to correct past practice, where waste products had been hosed into the City's storm water system. While this and other efforts fell short of federal and state requirements, they do demonstrate good faith willingness and attempts to comply at that time. In addition, the record herein demonstrates clearly that Respondent cooperated with Ohio authorities throughout the investigative and later phases of the case. Accordingly, it is found that while the violations are serious, Respondent did in fact make good faith efforts to comply with applicable requirements, and was extensively cooperative with authorities. Such full cooperation in itself constitutes evidence of good faith.

2. Penalty Policy

Where, as here, civil penalty guidelines have been issued to assist enforcement personnel in calculating and proposing penalties pursuant to a particular statute, the presiding judge must consider such guidelines in connection with penalty assessments. 40 C.F.R. § 22.27(b), [64 Fed. Reg. 40138, 40186 (1999)].

In accordance with the guidelines of this policy, a proposed amount is reached by means of a gravity-based scale, with adjustments of the amount for any economic benefit realized by a violator as a result of noncompliance with the Act; and then again, adjustments of the gravity-based penalty are made (upward or downward) based upon circumstances related to the violator in question and the particular violations, such as good faith efforts to comply with the Act and cooperation with enforcement authorities.

Complainant categorized the violations here as "major" in extent of deviation from

requirements and "major" in potential for harm for the first day of violation. On the penalty matrix a "major/major" violation carries a possible penalty of between $20,000 and $25,000. In its discretion, Complainant fixed a penalty amount of $22,500 for the first day of violation. However, while "major/major" would seem not be an inappropriate conclusion to reach in view of the violations found for the first day of violation, it is found that a more appropriate penalty for the first day of violation in the circumstances of this case is $20,000.

The penalty policy again provides a matrix to aid in the analysis of the proposed penalty amount for the "multi-day" component of the total calculation. Again, in its discretion, Complainant determined that the multi-day penalties for the violations should be categorized as "major" (extent of deviation from requirements) and "major" (potential for harm), which provides a penalty of between $1,000 and $5,000. Complainant in its discretion selected a multi-day penalty amount of $3,000 for this part of the penalty analysis. However, Complainant's characterization of these violations as "major/major" is excessive, considering all of the factors of this case, and particularly considering that once the sites in question are deemed hazardous waste storage or disposal operations, most of the other violations flow from the initial failure to notify and secure a permit or interim status -- i. e. they arise almost as a matter of course. They are, in one sense, less individual violations for which full penalties might be sought than a collection of violations stemming from the original operation of the site without proper authority. It is found that the appropriate per day penalty amount is $1,000.

Accordingly, the appropriate gravity based penalty amount for the violations of the Act, its implementing regulations, and the OAC is found to be $20,000 + (179 x $1,000)

= $199,000.

3. Economic Benefit

Respondent has argued repeatedly that economic benefit is not an appropriate consideration in determining a penalty amount, on the ground that the Act does not provide for the consideration of economic benefit.

However, it is well established that the economic benefit of failure to comply with requirements, if reliably shown to exist and reliably quantified -- and particularly if such failure is shown to be a factor in the decision not to comply -- may be calculated because of the deterrent effect upon would-be violators. United States v. Municipal Authority of Union Townshin; and Dean Dairy Products Company, Inc., 929 F.Supp. 800 (M.D.Pa., 1996), aff'd 150 F.3d 259 (3rd Cir. 1998) (economic benefit component is appropriate to ensure that a violator does not benefit from noncompliance). See also United States v. Smithfield Foods. Inc., 982 F.Supp 373 (E.D. Va. 1997). The Fourth Circuit Court of Appeals upheld this approach, and stated that “(T)he rationale for including this measure as part of the violators’ fine is to remove or neutralize the economic incentive to violate environmental regulations.” No. 97-2709, slip op. At 20 (4th Cir. Sept. 14, 1999), citing United States v. Municipal Authority of Union Township; and Dean Dairy Products Company, 150 F.3d 259, 264 (3d Cir. 1998). It is found, therefore, that determining the amount of economic benefit, if any, to Respondent as a result of failure to comply with the applicable statutory and regulatory requirements is permissible.

Two types of economic benefit from noncompliance are examined: (1) benefit of delaying costs; and (2) benefit of avoiding costs. The record contains a report prepared by Complainant’s consultant entitled “Expert Report on Economic Benefit” (hereafter

"Shefftz report," or "the analysis"). The Shefftz report considers a number of factors in arriving at the purported economic benefit to Respondent, and concludes that the benefit of failing to comply with federal and state requirements in this case was $1,172,104.[5]

Respondent urges that even assuming economic benefit to be an appropriate consideration in a penalty determination, the economic benefit of noncompliance in this case was not more than $85,613[6].

By far the largest component in EPA's economic benefit analysis is the cost associated with the maintenance of adequate liability coverage as required by 40 C.F.R. §265.147. It is asserted that Respondent saved $1,019,144 by failing to have such coverage. Respondent terms this number "preposterous" and "not in accordance with the facts of this case or the reality of the environmental insurance market."

40 C.F.R. § 265.147 sets forth several means of meeting liability requirements under RCRA for sudden and nonsudden accidental occurences. The requirements can be met by one or any combination of the following: obtaining private insurance, passing a financial test, obtaining a guarantee, obtaining a letter of credit or by obtaining a surety bond. 40 C.F.R. §§ 265.147(a)(1) through (6); 40 C.F.R. §§ 265.147(b)(1) through (6).

The maximum amount of coverage specified under this section for both sudden and nonsudden accidental occurrences is $4 million per occurrence with an annual aggregate of $8 million. 40 C.F.R. § 265.147(a), (b). Respondent asserts that by utilizing a combination of the above described methods for meeting the coverage requirements, it could have met, or nearly met (with the difference being made up with private insurance)

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[5] *Brief in Support of Complainant's Recommended Penalty* at 30.

[6] *Respondent's Supplemental Brief on Economic Benefit* at 14.

the liability requirements of this section. Respondent also argues that it was at most a small quantity generator of hazardous waste and as such would probably have qualified for a reduction in the maximum liability requirements had that been sought.

Whether or not such a reduction would have been granted by the Administrator, it is clear that Complainant's $1,019,144 is based upon the use of only one means (the most expensive) of meeting the liability requirements of this section. Since the regulations provide multiple and/or combinations of possibilities for meeting liability requirements, and there is no showing or no reason to suppose that Respondent would not or could not have utilized this flexibility to its advantage, it is found that the economic benefit of $1,019,144 for this part of the analysis has not been established sufficiently and is too speculative to warrant adding such an amount to the gravity-based penalty.

Further, Respondent contends that Complainant included items in the fit analysis which should not have been included. While it is unnecessary to enumerate specifically each of the alleged errors in Complainant's analysis, it is fair to say that a thorough examination of the record suggests that some major items included in the analysis were wrongly included. It is found, for instance, that Complainant wrongly included as avoided costs amounts paid to Safety Kleen for the years 1990 through 1993. These were not avoided costs, but rather costs incurred by Respondent to manage its hazardous wastes. It is further found that Complainant included in the analysis items and costs that are unrelated to Respondent's waste management at the city garage. The inclusion of such costs inaccurately and unfairly inflated the economic benefit figure proposed by Complainant. In short, it is found that the analysis as a whole is problematical, and that it is based upon a large number of assumptions which have not been or are not capable of

being fully developed, such as Respondent's insurance rating during the period in which such costs would have been added; or how such insurance would have been computed against the city's tax base, or even how or to what extent competition among contractors who would bid for Respondent's business would have affected the cost. Consequently, it is found further that (1) the analysis does not constitute a sufficient basis for, i. e. does not support, the imposition of large additional penalties; and (2) in the absence of more credible evidence as to what the benefit was in this case, it is found that Respondent's estimate of the benefit of delayed or avoided costs of compliance is $85,613.

Inasmuch as Respondent is not a large municipality authority, and since nothing in the record suggests either that the violations were deliberate or that Respondent was motivated by the possibility of benefitting economically from noncompliance, it is determined that economic benefit should not be added to the $111,937 gravity based civil penalty to be imposed herein. To do so would unjustly penalize Respondent's taxpayers and divert resources needed for correcting the violations and maintaining compliance. This finding is based upon, and limited to, the specific facts of this case including the Respondent's good faith efforts to comply, and cooperation with federal and state authorities. See U.S. v. City of Providence, 492 F. Supp. 602(D. RI 1980) and similar cases brought pursuant to the Clean Water Act.

4. Adjustment Factors

The final area of consideration in the determination of the penalty is the "adjustment factors." Complainant determined that no adjustment factors were applicable here and made none up or down in reaching a recommended penalty. An examination of the record reveals that adjustment factors should be applied here.

The penalty policy permits an adjustment as to any given violation for the gravity-based and multi-day penalties by "as much as 25% of that sum for ordinary circumstances or. . . from 26% to 40% of that sum in unusual circumstances." In the instant case, it is determined that two of the adjustment factors listed in the penalty policy are applicable.

The first such factor is the Respondent's good faith effort to comply. As found above, Respondent's efforts to comply were not insubstantial. Further, the record contains substantial evidence of Respondent's full cooperation with Ohio EPA authorities. In 1990, Ms. Gossett of Ohio EPA stated that "Athens has been cooperative"[7]; in 1993, Mr. Bruny, Ohio EPA Southeast District Chief, stated in a letter to Respondent's Mayor and City Counsel that "Athens has always been up-front with Ohio EPA on this issue, and our Logan Office in particular appreciates the good working relationship we have shared."[8] Moreover, Respondent retained an outside contractor, Safety Kleen, to manage its waste streams which constitutes further evidence of good faith and effort to comply with environmental requirements.

It is found that this penalty adjustment factor should be applied for a reduction of 25%, given compliance efforts of record and admissions as to Respondent's cooperation.

A second adjustment factor is "degree of willfulness and/or negligence." While RCRA is a strict liability statute, the penalty policy does allow for downward adjustment of the penalty in certain instances "based on the lack of willfulness and/or negligence." The record is devoid of evidence to suggest that the violations were willful or the result of reckless disregard for the requirements. On the contrary, Respondent did attempt to

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[7] Complainant's Prehearing Exchange 1.

[8] Respondent's Supplemental Pretrial Exchange 4.

implement new strategies for managing its hazardous waste, worked closely and cooperatively with Ohio EPA officials, and even notified authorities when water analysis results showed possible contamination. It is found, therefore, that downward adjustment is warranted.

The penalty policy contains specific guidance for the use of applicable adjustment factors. They are:

- how much control the violator had over the events constituting the violation;
- whether events which constituting the violation could be foreseen;
- whether the violator took reasonable precautions against the events constituting the violation;
- whether the violator knew or should have known of the hazards associated with the conduct; and
- whether the violator knew or should have known of the legal requirements which were violated.[9]

In light of the facts in this case and with consideration for the penalty policy guidance in the application of the above factors, it is found that an additional 25% reduction in the penalty is reasonable and proper.

4. Other Unique Factors

In addition to the above factors, the penalty policy provides for consideration of such "other unique factors" as may arise on a case-by-case basis.

Respondent makes an impassioned plea for a reduced penalty based in part upon the belief that at most it was a small quantity generator of hazardous waste and, as such, the penalty sought by Complainant is excessive. Further, it is argued that Athens, Ohio, is

[9] This last factor is not to be used as the basis for a reduction in penalty, as it would encourage ignorance of the law.

a small rural city in one of the poorest areas of Ohio.[10] It has a population of only about 21,000 individuals. Athens County is believed to have the sixth highest child poverty rate in the state, or 42.7%. In 1993, Respondent had a median household income of $14,350 with 44.7% of its population below the poverty line.[11]

While these factors might be compelling if adequately established, the record as it stands presently does not provide an adequate basis for further reductions to the penalty. In any case, this Respondent's status as a municipality has been taken into account generally in the finding which addresses the reasons why economic benefit should not be added to the gravity based penalty.

4. Summary of Penalty Calculation

It is found that a civil monetary penalty must be assessed as follows:

$20,000 First day of violation (major/major)
$179,000 Subsequent days of violations (major/major)
($1,000 x 179 = $179,000)

$199,000
-25% Good faith efforts to comply, cooperation, and self-reporting

$149,250
-25% lack of willfulness and/or negligence

$111,937 Civil penalty amount

Therefore, in light of all facts and circumstances relevant to this case, it is determined

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[10] *Brief in Support of Respondent's Recommended Penalty* at 7.

[11] Id.

that a fair and reasonable monetary civil penalty to be assessed for violations found herein is $111,937.

As stated in the October 8, 1999, Decision and Order, the compliance order attached to the complaint is appropriate in all respects except as noted (with the exception of the word "approvable," which was removed from all paragraphs in which it appeared; and the provision that Respondent shall have sixty (60) days instead of forty-five (45) days to comply). For convenience, the Compliance Order will be set out below.

Order

It is hereby ORDERED that Respondent City of Athens, Ohio, shall pay a civil monetary penalty of $111,937 for violations of federal and state requirements as set forth herein.

The penalty shall be paid within ninety (90) days of the effective date of this Order, by mailing a certified check for the assessed amount, made payable to Treasurer of the United States to:

U. S. Environmental Protection Agency
Region 5 Hearing Clerk
First National Bank of Chicago
Post Office Box 70753
Chicago, Illinois 60673

Compliance Order

Based on the foregoing findings and pursuant to the authority of § 3008 of RCRA, 42 U.S.C. § 6828, it is FURTHER ORDERED that:

A. Respondent shall, immediately upon the effective date of this Order, cease treatment, storage or disposal of any hazardous waste except such treatment, storage or disposal as shall be in compliance with the Standards Applicable to Generators of Hazardous Waste as set forth in OAC 3745-52 and the Interim Status Standards for Owners and Operators of the Hazardous Waste Treatment, Storage and Disposal Facilities as set forth in OAC 3745-65 through 69, except as provided below:

1. Within sixty (60) days of the effective date of this Order, Respondent shall submit to OEPA (with a copy to the U.S. Environmental Protection Agency) an plan for a groundwater monitoring program for the landfill outside the paint shop at the City Garage which meets the requirements of OAC 3745-65-90 through 94. Upon OEPA approval or approval with modifications of the plan, the plan shall be incorporated by reference into this Order and Respondent shall implement activities specified in the plan in accordance with the schedule contained therein. Failure to meet any of the dates specified in the schedule shall constitute a violation of this Order subject to the penalties set forth in paragraph E below.

2. Within sixty (60) days of the effective date of this Order, Respondent shall submit to OEPA (with a copy to the U.S. Environmental Protection Agency) a closure and post-closure plan for the landfill outside the paint shop of the City Garage which meets the requirements of OAC 3745-66-10 through 3745-66-20. Upon OEPA approval or approval with modifications,- the plan shall be incorporated by reference into this Order and Respondent shall implement activities specified in the plan in accordance with the schedule contained therein. Failure to meet any of the dates specified in the schedule shall constitute a violation of this Order subject to the penalties set forth in Paragraph E below.

3. Within sixty (60) days of the effective date of this Order, Respondent shall demonstrate to OEPA (with a copy to the U.S. Environmental Protection Agency) financial assurance for closure and post-closure activities and liability coverage for sudden and nonsudden accidental occurrences' at the landfill outside the paint shop of the City Garage in accordance with the requirements specified in OAC 3745-66-40 through 48.

4. Within sixty (60) days of the effective date of this Order, Respondent shall submit to OEPA (with a copy to the U.S. Environmental Protection

Agency) a closure plan for the tank (grease pit) at the City Garage which meets the requirements of OAC 3745-66-10 through 20. Upon approval or approval with modifications of the plan, the plan shall be incorporated by reference into this Order and Respondent shall implement activities specified in the plan in accordance with the schedule contained therein. Failure to meet any of the dates specified in the schedule shall constitute a violation of this Order subject to the penalties set forth in Paragraph E below.

B. Respondent shall notify the U.S. Environmental Protection Agency in writing upon achieving compliance with this Order and any part thereof including interim schedule dates of approved plans. Notification shall be sent to the U.S. EPA at the address specified below within ten (10) days of the date compliance is achieved. If any required action has not been taken or completed in accordance with any requirement of this Order or approved schedule, Respondent shall notify the U.S. Environmental Protection Agency of the failure, its reasons for the failure and the proposed date for compliance.

Notices, copies of correspondences with OEPA and copies of documents required to be sent to the U.S. EPA pursuant to Paragraph A above shall be sent to:

U.S. EPA, Region 5
Waste Management Division
Attn: RCRA Enforcement Branch
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

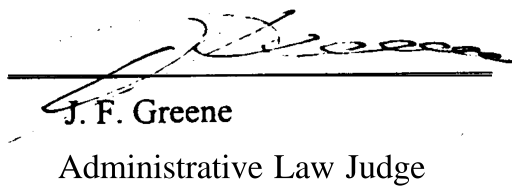
C. All documents required to be ‘submitted to OEPA pursuant to Paragraph A and copies of any notices or correspondence sent to the U.S. Environmental Protection Agency shall be sent to:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43266-1049

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

E. Failure to comply with any provision of this Order or to pay the civil penalty assessed herein shall subject Respondent to liability for a civil penalty of up to twenty-five thousand dollars ($25,000) for each day of continued noncompliance pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

It is so ordered.



J. F. Greene
Administrative Law Judge

Washington, D. C.
April 23, 200l

In the Matter of City of Athens
Respondent Docket No. RCRA-V-W-14-93

CERTIFICATE OF SERVICE

I certify that the foregoing **ORDER SETTING AMOUNT OF CIVIL MONETARY PENALTY AND COMPLIANCE SCHEDULE** dated April 30, 200l sent in the foregoing manner to the addressees listed below:

Original by regular mail:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

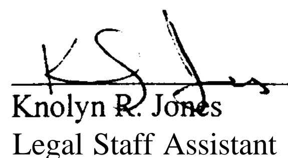
Copy by regular mail:

Attorney for Complainant:

Jacqueline Kline, Esq.
Assistant Regional Counsel
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Attorney for Respondent:

Robert J. Shostak, Esq.
18 West State Street
P.O. Box Drawer 748
Athens, Ohio 45701-0748



Knolyn R. Jones
Legal Staff Assistant

Dated: April 30, 200l
Washington, D.C.