UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 2 9 1992

REPLY TO THE ATTENTION OF:

Larry I. Sperling
U.S. Environmental Protection Agency
Office of Enforcement
RCRA Division
401 M Street, S.W.
Washington, D.C.

Re: United States v. Ekco Housewares, Inc.

Dear Larry:

In the past few weeks there has been some activity, at least on the government's end, in this case. I though you would appreciate an update.

Enclosed is a copy of a letter from John Grady, DOJ, to the attorney for Ekco and American Home Products (Ekco's former parent which has to date assumed the responsibility of defending the litigation). In this letter, Grady extends a settlement offer of $1.74 million, a reduction from the United States' original offer of $2.179 million. We have not yet received any response to this settlement offer from Ekco's attorney.

Copies of new penalty calculation summary sheets are also enclosed. These new calculations were prepared by Sally Averill of Region V's RCRA program office and reviewed by me. Before DOJ made a lower settlement offer, Sally and I decided it was necessary for new penalty calculations to be made. As you can see, the new penalty calculation--for settlement purposes and without accounting for litigation risk--is just over $1.7 million, slightly less than the recent settlement offer made by DOJ. The rationale used to reduce the penalty to this amount is the United States' consideration of the corrective action activities which Ekco has been performing at the site since approximately 1988; these activities include performing a RFI/CMS pursuant to a RCRA Section 3008(h) corrective action order, groundwater monitoring, and possibly--I cannot recall for certain--groundwater pumping to stabilize a known plume of contamination. We think that using this rationale is consistent with the RCRA Penalty Policy's stated penalty-setting factor of "efforts at remediation or the degree of cooperation evidenced by the facility" (Policy at p. 19). The practical effect was that we brought down the gravity-based and multi-day components of each of the three separate penalties to the lower range of the Major-Major matrices cells (from $22,500 down to $21,250 for the gravity-based component and from $3000 down to $2250 for the

multi-day component). This reduction also affected the dollar amount of the 10% adjustment factor. We also recalculated the economic benefit using the new WACC discount rate of 11.9%, resulting in a small reduction of the penalty.

One legal issue has arisen in the case. Owing to what I view as a mix-up between me and Grady, neither of us sent a copy of the Complaint to the State of Ohio contemporaneous with the filing of the Complaint. Yet Section 3008 of RCRA requires that, when a RCRA violation occurs in a State which has been authorized to administer a hazardous waste management program in lieu of the Federal program, the U.S. EPA shall give notice to the State in which such violation has occurred prior to commencing a civil action. Ekco's attorney has raised this notice issue with Grady, and DOJ is concerned about it. At this point our strategy is to argue that, although U.S. EPA did not send a copy of the Complaint or a formal notice of the filing of this action to Ohio prior to or contemporaneous with the filing, before the action was filed U.S. EPA personnel did have various communications with OEPA personnel to discuss the pending action and that OEPA was aware that the action was going to be filed. An OEPA employee will be able to testify to her knowledge that the United States was planning to file this action. Perhaps you can let me know whether you are aware of this notice issue arising in other cases and how it was handled. (Of course, all of this should be kept confidential.)

If you have any thoughts on any of these matters, please telephone me at (312) 886-7167.

Sincerely,

Jacqueline Kline
Assistant Regional Counsel

cc: Sally Averill, OR Region V
John Grady, DOJ

Attorney General
Lee Fisher

MEMORANDUM

TO: *PAUL VANDERMEER*
OHIO EPA/DHWM/CLOSURE PLAN REVIEW

FROM: *RETANIO Aj RUCKER* RAjR
ASSISTANT ATTORNEY GENERAL

DATE: DECEMBER 7, 1992

RE: *In the Matter of: Ekco Housewares, Inc.*, Case No. 89-HW-008; Compromise/Settlement Negotiations

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

RELEASED
DATE 10/26/16
RIN # 2016-9878
INITIALS TJC

Attached is the December 3, 1992 response of Applicant Ekco Housewares, Inc. ("Ekco") to the Ohio Environmental Protection Agency's initial offer of settlement submitted to Ekco November 20, 1992. Ekco's response involves the conditional closure plan approval attached to the November 20*th* settlement offer. Please review Ekco's response and contact me by Friday, December 11, 1992 with your concerns and/or questions.

If you have any questions prior to December 11*th*, please do not hesitate to contact me. Thank you, in advance, for your attention to this matter.

RAjR

Attachment

cc: John Mack, Ohio EPA/Legal
Randy Meyer, OEPA/DHWM/TAS
Karen Nesbit, OEPA/NEDO/DHWM

RECEIVED
DEC 14 1992
OEPA N.E.D.O.

2958E.16

ATTACHMENT

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

December 3, 1992

VIA FEDERAL EXPRESS

Retanio Aj Rucker, Esquire
Assistant Attorney General
State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410

Re: Ekco Housewares, Inc.
No. 89-HW-008

Dear Retanio:

Further to our conversation yesterday regarding OEPA's conditional approval of Ekco's closure plan, Harold Byer, Ekco's consultant, discussed OEPA's condition with Paul Vandermeer. Based upon those discussions, Ekco proposes that the following be added to the end of the language of the condition set forth on page two of Director Schregardus' letter to Pat Wells (the new language is underscored):

> Ekco shall ensure that the background clean standards presented for the fill material are applied only to fill material affected by the impoundment. If Ekco discovers natural soils (clay, till, etc.) which may be contaminated, then a background clean standard shall be determined for the natural soil. Under no circumstance shall the background clean standard for the fill be applied to non-fill (natural) soils, <u>except where intermingling of fill and natural soils is encountered. A background soil sample from the non-fill soils shall be collected on-site to assist in the development of a background clean standard for natural soils.</u>

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

This language has not been submitted to or approved by Paul Vandermeer.

Once OEPA has had an opportunity to review this proposal, please call me. Alternatively, we can set up a conference call with our respective clients at your earliest convenience.

Very truly yours,

Steve Oster

cc: Geraldine A. Moss, Esquire
Pat Wells

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

CONFIDENTIAL DOCUMENT
FOR SETTLEMENT PURPOSES ONLY

August 3, 1992

John H. Grady, Esq.
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: U.S. v. Ekco Housewares, Inc.

Dear Mr. Grady:

Further to our discussion on Friday, July 31, 1992, American Home Products Corporation ("AHP") submits the following information for your consideration in the analysis of the potential economic benefit accrued to AHP by virtue of its alleged failure to comply with financial assurance and liability requirements.

AHP's Treasury Department has confirmed that, at all relevant times from 1988 through the present, AHP has maintained cash reserves well in excess of $10 million. Such cash reserves would more than adequately cover the $8 million required to establish liability coverage and the $2 million required for closure assurances. Further, AHP routinely placed these cash reserves in low risk, low yield, liquid investments such as securities issued by the U.S. Treasury.

EKCO closure or AHP?

During this same time period, AHP would and could easily have established trust funds to establishing financial assurances for liability coverage and closure. After September 1988, AHP could have replaced the trust fund for liability coverage with a corporate guaranty.

90-7-1-655

- 4 1992

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000
Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

Under the applicable regulations, monies held in the trusts would have been invested in low risk, low yield, liquid investments similar, if not identical, to those in which AHP routinely invested during the relevant time period. Further, to the extent monies held in the trusts exceeded their required levels, AHP would have been entitled to the accrued interest. Since AHP would have earned the same interest from the monies held in trust as it did from its cash reserves, and since it would have controlled the funds backing the corporate guarantee, AHP accrued virtually no economic benefit by not having those financial assurance mechanisms in place.

Accordingly, the economic benefit factor assigned by the Department in its penalty calculation should be reconsidered. As we discussed, should you require any further information, including a declaration as to these facts, please call me.

Sincerely,

Steven M. Oster

cc: Geraldine A. Moss, Esq.

OHIO EPA, EMERGENCY RESPONSE GROUP
DISTRICT OFFICE INVESTIGATION REPORT

SPILL #: 02-76-0576 **STATUS:** F02
DATE SUBMITTED: 02/24/92 **ON SCENE COORDINATOR:** BRUCE C. MILLER

REPORTED: 11:20 02/18 **DISCOVERED:** **OCCURRED:** 08:30 02/18
REPORTED BY: ED COX **PHONE:** 216 456 4745

------ENTITY ------

COMPANY: EKCO HOUSEWARES INC.
DIVISION:
P.O.BOX: BOX 560 359 STATE AVE EXTENSION, NW
CITY,STATE: MASSILLON,OH
ZIP CODE: 44648 **COMPANY PHONE:** 216 832 5026
SPCC PLAN REQUIRED: **SPCC PLAN IN EFFECT:**

REP. CONTACTED: TOM SHINGLETON **TITLE:** PLANT MANAGER
PHONE: 216 832 5026 **EXT:**

------ SPILL LOCATION ------

COUNTY: STARK
CITY: MASSILLON
TOWNSHIP:
STREET LOCATION: 359 STATE AVE, OFF 3RD ST.

LATITUDE: **LONGITUDE:**

------PRODUCT(S) INFORMATION ------

PRODUCT /	AMOUNT SPILLED /	AMOUNT RECOVERED
TRICHLOROETHANE	350 G	UNKNOWN

CAUSE: PIPE RUPTURE
SOURCE: AST PIPING
WATERWAY: NEWMAN CREEK
WATERSTAGE: A **LENGTH OF WATERWAY:** 0.2 (?)
LAND AREA: 600 SQFT
PRE-RESPONSE ACTION:

------ REFERRAL(S) ------

NAME: / AGENCY: / DATE:

------ EXPENSES ------

SUPPLIES:
PHOTOS:
FIELD TESTS:
LAB SAMPLES:

------ COMMENTS ------

02/18/92 MET TOM SHINGLETON, PLANT MANAGER AND JEFF BERMAN, PLANT CHEMIST ON SCENE. 6,000 GAL. A.S.T. (DIKED) WITH NEWLY INSTALLED ABOVE GROUND PLUMBING. COMPANY WAS TESTING NEW PLUMBING/PUMP. PUMP RAN 5-10 MIN. W/O ANY PRODUCT SHOWING UP AT DELIVERY POINT INSIDE BUILDING. STRONG SMELL ALERTED OPERATORS TO A POSSIBLE LEAK. A UNION IN THE NEW PLUMBING RUNNING ALONG THE OUTSIDE WALL OF THE PLANT HAD FAILED, DISCHARGING ABOUT 350 GAL. OF PRODUCT ONTO THE GROUND. SOME PRODUCT MIGRATED INTO THE DOWNSPOUT/FOOTER DRAIN SYSTEM WHICH TIES INTO THE PLANT'S NPDES OUTFALL AT NEWMAN CREEK. SPILL OCCURRED AROUND 08:30. MANAGEMENT NOTIFIED FD, LEPC, NRC, OEPA BETWEEN 10:00 AND 11:30 IN VIOLATION OF SARA III 30 MIN. REPORTING PERIOD. -
I RECOMMENDED (AND COMPANY TOOK) THE FOLLOWING EMERGENCY ACTIONS: 1. TURN OFF GROUNDWATER REMEDIATION PROJECT TO REDUCE G.P.M. AT OUTFALL. THIS ACTION TO REDUCE FURTHER PRODUCT FROM BEING FLUSHED OUT OF STORM SEWER SYSTEM AND SO THAT A CARBON FILTER DAM COULD FUNCTION. 2.

OHIO EPA, EMERGENCY RESPONSE GROUP
DISTRICT OFFICE INVESTIGATION REPORT

SPILL #: 03-76-0816 **STATUS:** F01
DATE SUBMITTED: 03/10/92 **ON SCENE COORDINATOR:** BRUCE C. MILLER

REPORTED: 15:00 03/05 **DISCOVERED:** **OCCURRED:** 11:00 03/05
REPORTED BY: ANON. **PHONE:**

------ENTITY ------

COMPANY: EKCO HOUSEWARES INC.
DIVISION:
P.O.BOX: P.O. BOX 560 359 STATE AVE. EX.,NW
CITY,STATE: MASSILLON,OH
ZIP CODE: 44648 **COMPANY PHONE:** 216 832 5026
SPCC PLAN REQUIRED: N **SPCC PLAN IN EFFECT:** N

REP. CONTACTED: THOMAS SHINGLETON **TITLE:** PLANT MANAGER
PHONE: 216 832 5026 **EXT:**

------ SPILL LOCATION ------

COUNTY: STARK
CITY: MASSILLON
TOWNSHIP:
STREET LOCATION: THIRD STREET BRIDGE OVER NEWMAN CREEK

LATITUDE: **LONGITUDE:**

------PRODUCT(S) INFORMATION ------

PRODUCT	AMOUNT SPILLED	AMOUNT RECOVERED
1,1,1 TRICHLOROETHANE	5 GAL (?)	0

CAUSE: PREVIOUS SPILL (9202-76-0576)
SOURCE: TEMPORARY CARBON DAM REMOVAL
WATERWAY: NEWMAN CREEK
WATERSTAGE: N **LENGTH OF WATERWAY:** 0.1
LAND AREA:
PRE-RESPONSE ACTION:

------ REFERRAL(S) ------

NAME: / **AGENCY:** / **DATE:**

------ EXPENSES ------

SUPPLIES: 2/ 40ML VOC VIALS
PHOTOS:
FIELD TESTS:
LAB SAMPLES: 1 - KEMRON

------ COMMENTS ------

03/05/92 CITIZEN REPORTED THAT COMPANY WAS OUT BY CREEK IN YELLOW SUITS DUMPING DRUMS OF CHEMICALS INTO THE WATER. IN REALITY, SAMSEL SERVICES WAS REMOVING A TEMPORARY CARBON FILTER DAM IN NEWMAN CREEK WHICH WAS INSTALLED TO TREAT A TCE SPILL FROM 02/18/92 (02-76-0576). A MINOR FISH KILL OCCURRED WHEN THE DAM WAS REMOVED. PROBABLY A RESULT OF A SLUG OF TCE NOT ABSORBED BY THE CARBON BEING DISCHARGED DOWN THE STREAM WHEN THE DAM WAS REMOVED. THE KILL WAS LIMITED TO A 50 FOOT LENGTH OF STREAM UNDER THE THIRD STREET BRIDGE. MOSTLY CRAYFISH WERE KILLED... SOME MINNOWS, AND TWO LARGER FISH. NOTIFIED DIV. OF WILDLIFE BY PHONE ON 03/05. SAMPLED EKCO'S OUTFALL INTO NEWMAN CREEK TO DETERMINE IF THERE WAS HIGH TCE LEVELS.

CONVERSATION RECORD

TIME: 2:00pm

DATE: Feb. 14, 92

TYPE: ☐ VISIT ☐ CONFERENCE ☑ TELEPHONE ☐ INCOMING ☑ OUTGOING

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO:
Matt Henry	AIG- National Union Fire Insurance	(312)930-5585

ROUTING

NAME/SYMBOL	INT

SUBJECT: Cost of Sudden/non-sudden Insurance

SUMMARY: I called Matt Henry to determine the average cost of obtaining sudden/non-sudden Insurance. Matt said that it varied with each facility but he would give me some examples of policies that they currently have active: 1) $36,000 for 4-8 million coverage
2) $255,000 for 5-10 million
3) $147,000 for 4-8 million
4) $231,000 for 4-8 million

As a rule of thumb use 17,500 yr per million if no known contamination exist. At a site like EKC he estimated that cost would range from 100,000 to 150,000 annually. Although Matt did say that if the groundwater had migrated off-site (as is this case) that most likely they could not get insurance.

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE
Sally Averill	Sally Averill	2/14/92

ACTION TAKEN

SIGNATURE	TITLE	DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 29 1991

MEMORANDUM

SUBJECT: Continuing Assessment of Toxicity Characteristic (TC) Land Disposal Facilities Subject to Loss of Interim Status (LOIS)

FROM: Matthew Hale, Acting Director
RCRA Enforcement Division

TO: RCRA Branch Chiefs
Regions I-X

With your assistance, we have begun assessing the TC land disposal facilities potentially subject to LOIS. The October 22, 1991 conference call with TC headquarters and regional contacts identified a time lag in collecting data to complete the assessment. This was attributed to collecting certification and Part B application submission data from States and regional offices and disputes over whether certain units were considered land disposal units.

Now that over a month has passed since the conference call, we anticipate that most of these issues have been resolved. Therefore, we are requesting that you add as much new data to the attached chart as possible. Also, please verify any existing information and revise as appropriate. We have included the data from all regions for your information.

Based on inquiries from various regional TC contacts about issues that were not specifically addressed in the September 24, 1991 LOIS Enforcement Strategy, we will issue a clarification memorandum. Topics will include acceptable certifications and financial requirements. Meanwhile, guidance on these issues is being provided verbally to the TC contacts.

We would like the completed charts by two weeks from the date of this memorandum. Please fax the information for your region to Peter Neves at (202) or FTS 260-7660. If there are any questions, please call Peter at (202) or FTS 260-9870.

Attachment

cc: Frank McAlister
Ira Feldman (OE)
TC Regional Contacts
John Gauthier

John Hanson
Betty Barnes
Judy Sophianopoulos
Sally Averill
Sam Tates
Sandy MacLeod
Marshall Fischer
Amy Sokolov
Chae Pak

EKCO HOUSEWARES

- Financial Assurance Waiver Application
- state told EKCO to apply for this.
- EKCO applied
- state did not respond, ~~however~~ instead they referred the case to us.

- Susan Prout (USEPA lawyer) is calling state to figure out why they haven't responded to request after they told them to apply.

- Doesn't feel that it would be a real good case to refer at this time.

- will call me back ~~when~~ after she talks to state about this.

State met w/ cyclops
Agreed on mon. system
Financial V.O. unresolved

Sally NOV. 19, 90 10:40

23. Section 1.4.1, Page 49, Paragraph 4

The details of well construction shown on Exhibit 1.4.1.4 do not include thickness of the bentonite seal, nor any description of packing material.

24. Section 1.4.1, Page 51, Paragraph 3

Item 3 states that should no contamination be encountered the soil gas vapor study may be discontinued. What will be considered "no contamination?"

25. Section 1.4.1, Page 52, Paragraph 1

The locations indicted in Exhibit 1.4.3 for surface water samples only show one (1) downstream sample location, not two (2), as indicated by the text.

26. Section 1.4.1.2, Page 52, Paragraph 2

The HNU reading used to select a sample point should be specified.

27. Section 1.4.1.2, Page 52, Paragraph 4

How will the information gained from the well examination be used? The paragraph says that the wells examined will subsequently be used for water level measurements and sampling.

28. Section 1.4.1, Page 53, Paragraph 3

The workplan should state the depth at which the probe will be driven.

29. Section 1.4.1, Page 58, Paragraph 2

The detection limits for the soil vapor survey discussed in the workplan indicates that detection limits range down to 0.01 ug/l and 0.0005 ug/l for soil compounds such as benzene and carbon tetrachloride respectively. Are these correct?

30. Section 1.4.1, Page 60, Paragraph 1

The workplan indicates that surface water samples will be collected from the oxbox channel. However, Exhibit 1.4.3 does not indicate that any samples will be collected from this channel.

The hydrologic study to be conducted before collecting surface water samples is not shown on the work plan timetable in Exhibit 1.4.1.

31. Section 1.4.1, Page 61, Paragraph 2

The workplan seems to indicate that four (4) surface water samples will be collected, not three (3), as shown in Exhibit 1.4.3.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: AUG 13 1990

SUBJECT: Department of Justice Referrals
Cyclops Corporation - OHD 058 842 501
Ekco Housewares - OHD 045 205 424
Scio Pottery - OHD 004 465 084

FROM: William E. Muno, Acting Associate Director
Office of RCRA

TO: Rodger Field, Acting Chief
Solid Waste and Emergency Response Branch
Office of Regional Counsel

Attached are referral packages for the above-referenced RCRA facilities. The facilities have violated existing Consent Agreement and Final Orders (CAFO) as well as RCRA interim status standards.

The RCRA Enforcement Branch recommends the above-referenced facilities be referred to the Department of Justice for the existing violations.

If you have any questions regarding the above matter, please contact Kevin Pierard of my staff at 886-4448.

Attachments

cc: Kevin Pierard, REB
Sally Averill, REB
Jim Saric, REB

CYCLOPS CORPORATION
OHD 058 842 501

On October 27, 1988, the subject facility entered into a Consent Agreement and Final Order (CAFO) (attached) with the United States Environmental Protection Agency (U.S. EPA) (Docket no. V-W-87-R-002), to correct RCRA violations at their facility located in Cambridge, Ohio. The CAFO required the facility to submit a closure and post-closure plan for two surface impoundments. This included submitting closure and post-closure cost estimates and establishing financial assurance for these activities within thirty (30) days after the effective date of the CAFO. Also required was the installation of a groundwater monitoring system capable of determining the impoundments impact on the quality of groundwater in the uppermost aquifer.

The Ohio Environmental Protection Agency (OEPA) conducted financial record reviews on August 23, 1989, and February 23, 1990, and found the facility in violation of Ohio Administrative Code (OAC) Rules 3745-66-42 through 47 and Section F of the CAFO.

On March 28, 1990, the OEPA conducted a Comprehensive Groundwater Monitoring Evaluation (CME) at the facility and identified the following violations:

1) Failure to install at least one (1) monitoring well hydraulically upgradient from the limit of the waste management area, as required by OAC 3745-65-91(A)(1) and Section B of the CAFO;

2) Failure to install at least three (3) monitoring wells hydraulically downgradient at the limit of the waste management area, as required by OAC 3745-65-91(A)(2) and Section B of the CAFO;

3) Failure to obtain at least four (4) replicate measurements of indicator parameters for the background well quarterly during the initial year of sampling, as required by OAC 3745-65-92(C)(2) and Section B of the CAFO;

4) Failure to prepare an outline of a Groundwater Quality Assessment Program, as required by OAC 3745-65-93(A) and Section B of the CAFO;

5) Failure to annually evaluate the groundwater surface elevations to determine whether OAC 3745-65-91(A) has been satisfied. If the facility determines the location of their monitoring well system does not satisfy OAC 3745-65-91(A), the owner/operator must immediately modify the number, location, or depth of the monitoring wells to

bring the system in compliance with OAC 3745-85-91(A). Failure to comply with this requirement is a violation of OAC 3746-65-93(F) and Section B of the CAFO; and

6) Failure to, during the first year of sampling, determine the concentration of parameters which characterize the suitability of the groundwater as a drinking water supply, as required by OAC 3745-65-92(A)(2)(a) and Section B.

The penalty proposed in the October 20, 1986, 3008(a) Administrative Complaint (attached) was $94,700. The penalty agreed to in the CAFO was $7,500. U.S. EPA requests collection of penalties up to $25,000 per day of noncompliance with the CAFO.

The technical contact for this facility is James Saric. He may be contacted at 886-0992.

SCIO POTTERY
OHD 004 465 084

On August 10, 1987, Scio Pottery entered into a Consent Agreement and Final Order (CAFO)(attached) with the United States Environmental Protection Agency (U.S. EPA) (Docket No. V-W-85-R-23), to correct RCRA violations at their facility in Scio, Ohio.

The Ohio Environmental Protection Agency (OEPA) conducted a compliance evaluation inspection (CEI) at the facility on April 28, 1989, and again on October 31, 1989. These inspections identified violations of RCRA interim status standards including CAFO violations. Specifically, the following violations were identified:

1) Failure to file a Part A permit application for storing hazardous waste in a surface impoundment (40 CFR 265.15, OAC 3745-65-15 and Section A of the CAFO);

2) Failure to develop and follow a written inspection schedule and record inspections in an inspection log or summary (40 CFR 265.15, OAC 3745-65-15 and Section A of the CAFO);

3) Failure to implement a training program for personnel dealing with hazardous waste (40 CFR 265.16(d), OAC 3745-65-16(D) and Section A of the CAFO);

4) Failure to have an adequate contingency plan (40 CFR 265.52, OAC 3745-65-52 and Section A of the CAFO);

5) Failure to submit an annual report by March 1, 1989 (40 CFR 265.75, OAC 3745-65-75 and Section A of the CAFO);

6) Failure to provide a 24-hour surveillance system and barrier around surface impoundment (40 CFR 265.14, OAC 3745-65-14 and Section A of the CAFO);

7) Failure to have a closure plan that describes how the surface impoundment will be closed in accordance with the performance standards (40 CFR 265.112, OAC 3745-66-12 and Section B of the CAFO);

8) Failure to maintain an internal communication or alarm system capable of providing immediate emergency instructions (40 CFR 265.32, OAC 3745-65-32);

9) Failure to inspect freeboard once each operating day (40 CFR 265.226, OAC 3745-67-26); and

10) Failure to have adequate financial assurance for closure, post-closure care and liability coverage (40 CFR 265.42-47, OAC 3745-66-42 through 47).

In addition, a U.S. EPA evaluation completed on July 25, 1990, identified the following additional violations:

11) Failure to correct closure plan deficiencies within thirty (30) days from receipt of U.S. EPA's August 16, 1988, letter notifying the company of closure plan deficiencies (Section C of the CAFO); and

12) Failure to submit quarterly reports documenting best efforts to obtain the liability insurance (Section E of the CAFO);

We request that this case be referred to the Department of Justice for enforcement of the provisions of our CAFO and enforcement of the additional violations of RCRA.

The technical contact for this facility is Sally Averill, She may be contacted at 886-4439.

EKCO HOUSEWARES
OHD 045 205 424

On November 4, 1987, Ekco Housewares entered into a Consent Agreement and Final Order (CAFO)(attached) with the United States Environmental Protection Agency (U.S. EPA) (Docket No. V-W-87-R-008), to correct RCRA violations at their facility in Massillon, Ohio.

The Ohio Environmental Protection Agency (OEPA) conducted a compliance evaluation inspection (CEI) at the facility on February 29, 1988. This inspection identified the following financial violations of the RCRA interim status standards and the partial CAFO.

> Failure to establish financial assurance for closure and liability coverage in violation of 40 CFR 265.143 (OAC 3745-66-43), 40 CFR 265.147 (OAC 3745-66-147), and Section B.5 of the CAFO.

In addition, on March 17, 1988, September 22, 1989, and March 12, 1990, the OEPA informed Ekco Housewares of the following additional financial violation:

> Failure to have adequate financial assurance for post-closure care and liability coverage for sudden and non-sudden accidental occurrences in violation of 40 CFR 265.145 (OAC 3745-66-45) and 40 CFR 265.147 (OAC 3745-66-47).

On April 3, 1990, Ekco Housewares submitted certification of liability coverage resolving the violation of 40 CFR 265.147 (OAC 3745-66-47).

The technical contact for this facility is Sally Averill. She may be contacted at 886-4439.

5HR-13
Solid Waste & Emergency Response Branch Scheduling

AMERICAN HOME PRODUCTS CORPORATION

EXECUTIVE OFFICES

685 THIRD AVENUE
NEW YORK, N.Y. 10017
(212) 878-5000

August 15, 1989

CERTIFIED MAIL

Susan Prout, Esq.
U.S. EPA
Region V
P.O. Box 70753
Chicago, Illinois 60673

Re: Ekco Housewares, Inc.
P.O. Box 560
Massillon, Ohio 44646
EPA I.D. No. OHD 045-205-424

Docket No.
V-W-R-87-008
Partial Consent Agreement and Final Order - Penalty

Dear Ms. Prout:

Enclosed please find American Home Products Corporation's check number 009432 in the amount of $55,478.50, payable on behalf of Ekco Housewares, Inc. to the Treasury of the United States, pursuant to the above-referenced Partial Consent Agreement and Final Order in settlement of a Complaint filed in this matter on November 6, 1986, pursuant to Section 3008 of the Resource Conservation and Recovery Act as amended, 42 U.S.C. Section 6928, and the United States Environmental Protection Agency's Consolidated Rules

of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.

Very truly yours,

Geraldine A. Moss

Geraldine A. Moss
Attorney

GAM/tb
w/enc.

CC: Regional Hearing Clerk,
Planning and Management Division

Solid Waste and Emergency Response
Branch Secretary

Cameron Kerry, Esq.

AMERICAN HOME PRODUCTS CORPORATION

REMITTANCE STATEMENT - DETACH BEFORE DEPOSITING CHECK

DESCRIPTION / INVOICE #	DATE	$ AMOUNT	VOUCHER #	COMMENTS
P. EKCO FEES 06/12/9	06/18	55,478.50	06-1584	2315-01 -02
				G. Moss X6132
TOTAL		$55,478.50		

CR 010208 VT1189 CK# 009432

AMERICAN HOME PRODUCTS CORPORATION

685 THIRD AVENUE, NEW YORK, NY 10017

1-30 / 210 3 | 19

009432

DATE 6/18/89 AMOUNT $ $55,478.50**

PAY DESCRIPTIVE AMOUNT

**********FIFTY-FIVE THOUSAND FOUR HUNDRED SEVENTY-EIGHT** AND 50/100 DOLLARS

PAY TO THE ORDER OF

TREASURY OF THE UNITED STATES
ADFM ROOM 356
US CONSUMER PRODUCT
WASHINGTON DC 20207

GENERAL ACCOUNT

TWO SIGNATURES REQUIRED ON AMOUNTS OVER $5,000.00

MANUFACTURERS HANOVER TRUST COMPANY
405 LEXINGTON AVENUE, NEW YORK, NY 10017

⑈00009432⑈ ⑆021000306⑆0123 9 19738⑈

ATTY WORK PRODUCT - NOTES ON CLOSURE FILE

1988 + '89 OEPA was critiquing closure plan submittals

Time to submit Closure Plan was 1st extended to 7/19/88, then to 8/15/88 by EPA

2/28/86 letter from OEPA to Ekco, Shingleton, stating that Ekco has been found to be storing haz. wastes in the surface impoundment & is a High Priority Violator

- was then referred to USEPA 1/3/88

12/91 Draft Lagoon Closure Plan submitted to OEPA

- Plan reflects joint OEPA/AHP decision to classify lagoon residuals as characteristic waste / 40CFR 261.24

8/88 - 1st Draft Closure Plan

5/91 - OEPA disapproved closure plan

12/91 Plan - washing & waste materials (aluminum frit, etc.) was discharged to lagoon - w/ OEPA permit - in early '70s

1977 - '80 - lagoon not used.

1980 - mid '84, alkaline wash degreaser filter water was discharged to lagoon occassionally.

Jan. 1985 - all discharges to lagoon were diverted to a NPDES permitted discharge.

Because sludge exhibited haz. char. as defined in 261.24 & discharges to lagoon continued after May 1980 (RCRA's date), OEPA classified the lagoon as a haz. w. surf. imp.

1984 water & sludge samples taken of lagoon & showed high concentration of VOCs & cadmium.

1991 Plan's Closure Cost Estimate in '91 Dollars - $950,000

1988 Closure Plan - included post-closure care

Plan written to fulfill rqmts of 40CFR Subp. G (Closure & P-Care), & Subp. K (Surf. Imps.) Written to meet rqmts for interim status facilities that haven't obtained final determination of necessary RCRA permit & have rcvd RCRA waste & meet definition of a surf. imp.

Aug. 1988 Closure Plan - 40CFR 265.228(a)(2) requires that the lagoon be closed as a landfill

(265.228 specifies methods for closing surface impoundments: can either clean close, 265.228(a)(1), or close as a landfill & undertake post-closure care (265.228(a)(2))

Plan contemplates p-c care

Plan provide closure cost estimate ($999,700)

§5 - Post-Closure Care Plan - Aug. 1988

Description

P-C Care Cost Estimate set forth (in accordance w/ 265.144)

: $747,000, w/ notation of necessity to ↑ annually for inflation & any changes made.

Contaminated soil, non contact cooling water, known or contaminated soil

Table B-1 reviews past pollutant investigations/sampling at Ekco

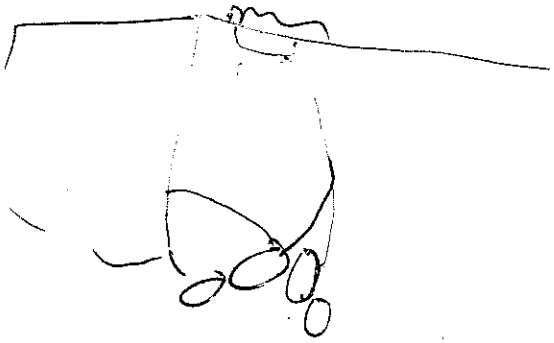
App. G-2 Correspondence Related to Past Releases

Inspection report by Bill Miller, Ohio, in June '84 states that "scrubber waters" are dumped in lagoon 2-3 times/yr. & is the plant's only process water.

8/9/84 OEPA letter Pre-1984, Ekco discovered GW contamination w/ VOCs from an unknown source & was found when Ekco performed a rqd VOC analysis of its non-contact cooling water being discharged to Newman Creek under a NPDES permit.

OEPA understands that at least since 1979 the lagoon was receiving solvent-cont. water primarily from degreaser units

Lagoon may be considered a haz. waste s. imp. by OEPA because it received & stored listed haz. waste.



§2 of 1988 Cl. Plan - alkaline cleaning rinse waters, boiler blowdown & deionizer water containing heavy metals & alkalines discharged to lagoon until Nov '78

also other process waters & rinsate & residues from chemical oxides from cookware cleaning discharged to the lagoon (may've contained cadmium, etc.)

Early '70s washings w/ alum frit & alkaline washers were discharged to lagoon.

1980-'84 - used only for occassional degreaser filth water

1/7/85 OEPA letter to Ekco (Shingleton) discussing contamination at Ekco & possible sources
- unless it can be proved that lagoon is not a source of contamination, surf. imp. should be closed per RCRA closure stds. This will require Ekco to submit a RCRA closure plan meeting closure stds (OAC 3745-66-11)

App H-1 RCRA Exposure Information Report

§1.5 - Waste streams in past included TCE & TCA & other wastes used to wash alum, & s. steel cookware, and metals in those wastestreams included cadmium, lead, chromium. Hydrochloric acid & alkali wastestreams were also discharged. All above wastestreams were discharged to the lagoon, except for noncontact cooling water which went to creek & evaporation

Certification letter signed by Shingleton, 12/19/88, stating that info in Plan was prepared under his direction & is to best of his belief true & accurate & complete.

1/4/89 OEPA letter, eff. 2/6/89, disapproved Ekco's submitted closure plan as not meeting perf. stds. of 3745-66-11 & 12
informed Ekco that it also had to submit closure plan to USEPA
Informed that OEPA's decision will become final unless Ekco appeals & requests adjudication hrg. w/in 30 days
Or, a modified closure plan addressing stated deficiencies can be submitted to OEPA.
Letter addresses issue of P-C care - if surf. imp. to be closed as a landfill p-c care is rqd.
Letter states that closure as a landfill is basically impossible - Ekco must clean close or construct a special landfill that separates waste from the water table

RCRA Post-Closure Permit Application
6/27/88 USEPA ltr. stated that because surf. imp. was being closed as a landfill, post-c. Part B Permit App. was needed.

§A-1 - CAO rqd Ekco to submit a closure plan to USEPA - because of closure method chosen, p-c permit app. is needed.

Post-C Permit App.

§A-2 : 40 CFR 270.1(c) requires that land disposal facilities handling haz. waste ~~& that didn't close before 1/83~~ have a permit for the surf. imp's active life (includes closure period) Content of Part B for surf. imps. is discussed at 270.17 and includes, as specified at 270.14, a copy of closure & p-c plan (where needed) (13), most recent closure cost est. & copy of documentation reqd to demonstrate fin. ass. under 264.143 (15), where applicable the most recent p-c cost estimate for the facility w/ documentation reqd to demonstrate fin. ass. under §264.145(16), and where applicable a copy of ins. policy or other documentation comprising compliance w/ §264.147 (17)

§270.1(c) - RCRA requires permits for trt, st, or dis. of any haz. waste identified or listed in 40 CFR Part 261 (terms defined at §270.2)

* * O/O of surf. imps. that certified closure after 1/26/83 must have p-c permits unless they clean close

* §270.1(c) - "O/O of haz. waste mgmt units must have ~~permits during the active life (including the closure period) of the unit.~~"

+ p-c permits if closure after 1/26/83 unless clean closure.

* So Ekco was reqd to ~~have~~ submit a Part A w/in 6 mos. of 261's promulgation (Nov. 19, 1980) (or notify w/in 90 days of May 19, 1980) in order to gain IS under §3005e and to be treated as having a RCRA permit.

So Ekco, by not submitting a Part A permit by Nov. 19, 1980, stored haz. waste in the SI illegally - 270.1(c) requires a RCRA permit (or IS) during HWMU's "active life", which includes during the closure period.

"Active life" - "of a facility means the period from the initial receipt of haz. waste at the facility until the RA receives certification of final closure." (40 CFR 260.10)

Sandy Leibritz 614-644-
Ed Kitchen →

§270.10(e) O/O of HWM facilities in existence on eff. date of statute or regulatory amendments must submit a Part A w/in 6 mos. (for Ekco by Nov. 19, 1980)

§270.17 - Specific Part B rqmts for SI.

§265.1 - Stds of this part apply to O/O of facilities in existence on Nov. 19, 19 who failed to provide timely notification or failed to file a Part A as rqd by 40 CFR 270.10(e) & (g).
Stds apply to all T, S, & D of haz. waste at the facilities after eff. date of regs.

§3005(e) - 2015 provisions expressly apply only to those facilities that have been "granted IS".

§265.110 - Regs. 265.111-115, (dealing w/ closure) apply to O/O of all HWM facilities
Regs. 265.116-120, (dealing w/ p-c care) apply to O/O of surf. imps. if O/O intends to remove wastes at closure but SI will still be subject to 265.228 & 258 (p-c. care necessary for a landfill)

§265.112 - By 5/19/81 (or 6 mos. after eff. date of rule subjecting a facility to its provs.) O/O of a HWM facility must have a written cl. plan

§265.118 - same as above for p-c plan.

§265.140 - §265.143 & .147 apply to all O/O of all haz. waste facilities
§265.144 & .146 apply only to those facilities rqd to meet landfill rqmts of 265.197 - 265.197 applies to tank systems only

§265.143 - by the eff. date of these regs., O/O of each facility must est. fin. ass. for closure, choosing from avail. options
(b) - provisions for adjusting the estimate

§265.144 - although reg. doesn't say it explicitly, would seem to apply only if p-c care (as specified in 265.228 for SI closings as landfills) is going to be necessary.
throughout "active life" of facility, p-c care cost est. must be updated.

§265.145 - Expressly applies to all O/O of facilities w/ haz. waste disposal units. - by eff. date of regs., O/O must est. FA for p-c care of those disposal units

* - 265.118 says that written p-c plan must be submitted w/in 90 days of when O/O or RA decides that a SI will be closed as a landfill - so it would seem that as of the date that such a p-c plan is submitted identifying a disposal unit, then FA for p-c

§265.147- a) "O/O of a haz. w. tr., st, or disp facility . . . must demonstrate fin. resp. for bodily injury & prop. damage caused by sudden acc. occurrences arising from operations of the facility. . . "

* b) - "An O/O of a surf. imp. . . . which is used to manage haz. waste must dem. fr esp. for bodily injury & prop. damage to 3d parties caused by nonsudden acc. occ.

RCRA Post-Closure Permit Application -
submitted by Elkco in Dec. 1988 - both Part A & Part B

§B-1a - spray degreasers at plant currently generate large amounts of spent TCE & concentrated TCE still bottoms

until '78, wastewater w/ heavy metals, solids & alkalines were discharged to lagoon

§C - has been found that lagoon sludges are characteristic for cadmium & so is a haz. waste under 40 CFR 261.24.

§D - in '50s lagoon was constructed to be an evaporation lagoon w/o discharges

'67-'78 lagoon rcvd. mfg process waters, waste rinsate, & residues from chem. oxides in cookware cleaning (containing cobalt, lead, cadmium, selenium, toluene) - a permitted discharge

early '70s, lagoon rcvd. washing & waste materials from teflon coating process consisting of alum. frit & alkaline washers - also permitted.

'80-'84 - occassionally degreaser filter water was sent to lagoon

Jan '85 - no more discharges to lagoon - diverted to Creek

EPA classified lagoon as haz w. surf. imp. because it rcvd. discharges after 1/26/83 (eff. date of RCRA regs) & because sludges are haz.

* §F - Weston says that a Closure Plan was submitted to USEPA on 1/19/88! per CAO, but it was incomplete & a revised Cl. Plan was submitted in Aug. '88.

* §.F-6- submissions for fin. reqs. are being prepared for the facility, but aren't ready as of 12/88.

App. A-4 - RCRA Part A Application

<u>Dec. 1991 Closure Plan</u>

Plan provides for tr. & removal of sludges & oils in lagoon to the water table, w/ clean closure the goal.

§1.2 In Jan. '88, a Closure Plan was submitted to USEPA
In May '91, OEPA disapproved the Closure Plan, AHP appealed but has now decided to submit this revised closure plan.

Summary of fin. ass. submittals that may be req'd will be forwarded separately by AHP.
Plan meets rqmts for IS facilities that rcvd a RCRA haz. waste & met definition for a SI.

§2.1. - Repeats info in '88 plan - large amount of spent TCE & TCE stillbottoms are generated by spray degreasers
that alkaline clg. wastewaters, etc. containing metals & alkalines were discharged to lagoon until '78
that in '71 & '72 mfg wastewaters & rinsate from clg were discharged & this may've contained cadmium & cobalt, etc.
that in early '70s washing & wastes w/ alum fit were sent to lagoon
that from '80 - mid '84 occasional alk. wash degreaser filter water was all that was discharged.

Because sludge is characteristic & discharges to lagoon occurred after eff. date of RCRA, OEPA classified lagoon as a SI

§4.7 Closure Cost Estimate is $950,000, in 1991 Dollars

Eval. of Stabilization Processes for Closure, Draft June '90 submitted as addendum to Closure Plan submitted on 7/23/92

§1.1 As of June '90, closure method was still to close as a disposal unit meeting rqmts of a landfill closure

PENALTY COMPUTATION WORKSHEET

(1)

Company Name: ECKO HOUSEWARES CO. OHD 045 205 424

Regulation Violated: 270.10 STORING HAZ. WASTE WITHOUT A PERMIT

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: $20 → 25K

   Penalty Amount Chosen: $22,500

   Justification for Penalty Amount Chosen: MID POINT OF RANGE

4. Per-Day Assessment: $22,500

Part II - Penalty Adjustments

	Percentage Change	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	N/A	
2. Degree of willfulness and/or negligence:	N/A	
3. History of Noncompliance:	N/A	
4. Other Unique Factors:	N/A	
5. Justification for Adjustments:		
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		22,500
7. Number of Days of Violation:		
8. Multi-day Penalty (Number of days X Line 6, Part II):		
9. Economic Benefit of Noncompliance:	<$2,500	N/A
Justification:		
10: Total (Lines 8 + 9, Part II):		
11. Ability to Pay Adjustment:		
Justification for Adjustment:		
12. Total Penalty Amount (must not exceed $25,000 per day of violation):		$22,500

Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR 270.10 - STORAGE OF HAZ WASTE WITHOUT A PERMIT.

POTENTIAL FOR HARM CATEGORY: MAJOR THIS VIOLATION POSES A SUBSTATIAL LIKELIHOOD OF EXPOSURE TO HAZARDOUS WASTE AND MAY HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE REGULATORY PURPOSES FOR IMPLEMENTING THE RCRA PROGRAM. ANALYSES OF SOIL SAMPLES COLLECTED FROM THE IMPOUNDMENT ON 7-1-85 INDICATED THE PRESENCE OF VOC'S RANGING FROM 14-71 ppm AND 2 OF THE FIVE SAMPLES EXHIBITED CHARACTERISTICS OF EP TOXICITY FOR CADMIUM. THIS IMPOUNDMENT IS DEFINITELY ONE OF THE SOURCES RESPONSIBLE FOR THIS FACILITIES GROUNDWATER CONTAMINATION SITUATION.

EXTENT OF DEVIATION CATEGORY: MAJOR! THIS FACILITY DEVIATED FROM THE REQUIREMENTS OF THIS REGULATION TO SUCH AN EXTENT THAT THERE IS SUBSTANTIAL NON COMPLIANCE.

PENALTY ASSESSED THIS VIOLATION: $22,500

PENALTY COMPUTATION WORKSHEET

(2)

Company Name: EKCO HOUSEWARES OHD 045 205 424

Regulation Violated: 265.90 → 94 GROUNDWATER MONITORING REQUIREMENTS

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: $20 → 25K

   Penalty Amount Chosen: $22,500

   Justification for Penalty Amount Chosen: MIDPOINT OF RANGE

4. Per-Day Assessment: _____

* 8-22 Replaced / BEN Cal. E.B TOTAL $37,755

Part II - Penalty Adjustments

	Percentage Change	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	N/A	
2. Degree of willfulness and/or negligence:	N/A	
3. History of Noncompliance:	N/A	
4. Other Unique Factors:	N/A	

5. Justification for Adjustments:

6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): _____
7. Number of Days of Violation: _____
8. Multi-day Penalty (Number of days X Line 6, Part II): _____
9. Economic Benefit of Noncompliance: $17,313 ← SEE ATTACHED E.B. CALCULATION SHEET FOR DETAILS

   Justification: GROUNDWATER MONITORING SYSTEM ~~COMPLETED~~ INSTALLED 6-85

10: Total (Lines 8 + 9, Part II): _____
11. Ability to Pay Adjustment: CONSIDER A DELAYED PAYMENT SCHEDULE

    Justification for Adjustment: _____

12. Total Penalty Amount (must not exceed $25,000 per day of violation): $39,813

Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR 265.90 → 94

POTENTIAL FOR HARM CATEGORY: MAJOR - THIS VIOLATION POSES A SUBSTANTIAL LIKELIHOOD OF EXPOSURE TO HAZARDOUS WASTE AND MAY HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE REGULATORY PURPOSE FOR IMPLEMENTING THE RCRA PROGRAM. THIS FACILITY HAS CONTAMINATED THE GROUNDWATER WITH VARIOUS VOLATILE ORGANIC CHEMICALS AND HAS IMPACTED NEWMAN CREEK. ASO, THIS FACILITY MAY BE RESPONSIBLE FOR THE RECENTLY DETECTED PRESENCE OF VINYL CHLORIDE IN THE CITY OF MASSILON'S WELL #4. BEGAN PUMPING CONTAMINATED GROUNDWATER AND TREATING WITH AN AIR STRIPPER UNIT ON 3-86. FOURTH MONITORING WELL TO COMPLETE SYSTEM WAS DRILLED IN JUNE, 1985

EXTENT OF DEVIATION CATEGORY: MAJOR: THIS VIOLATOR DEVIATED FROM THE REQUIREMENTS OF THIS REGULATION TO SUCH AN EXTENT THAT THERE IS SUBSTANTIAL NON-COMPLIANCE.

[illegible] ASSESSED THIS VIOLATION:

EKCO HOUSEWARES OHD045 _05 424 7-18-86

ECONOMIC BENEFIT CALCULATION - NO GROUNDWATER MONITORING

(DETAILED IN RCRA CIVIL PENALTY POLICY - MAY 8, 1984)

E.B. = AVOIDED COST (1 - T) + (DELAYED COSTS X INTEREST RATE)

E.B. (11-81 → 2-82) = 0 + (\$27,200 (1) × 12% (2) × 3/12) = \$816

E.B. (2-82 → 12-82) = 0 + (\$27,200 × 20% × 11/12) = \$4,987

E.B (1-83 → 6-83) = (1,900 (3) [1 - .46 (4)]) + (27,200 × 16% × 6/12) = \$3,202

E.B. (7-83 → 12-84) = \$1,026 + (\$27,200 × 11% × 18/12) = \$5,514

E.B (1-85 → 6-85) = 1,026 + (\$27,200 × 13% × 6/12) = \$2,794

INSTALLED GROUND MON. SYSTEM

TOTAL ECONOMIC BENEFIT → \$17,313

BEN

(1) - ESTIMATED FIRST YEAR COSTS FROM 1982 GERAGHTY & MILLER INC. REPORT

(2) - I.R.S. INTEREST RATE

(3) - COST OF ANALYSIS (ASSUMING NO CONT. DETECTED)

(4) - ASSUME COMPANY'S MARGINAL TAX RATE IS 46%

Replace/ Ben derived computer program E.B. amount of 15,275

PENALTY IMPUTATION WORKSHEET

Company Name: ECKO HOUSEWARES OHD 045 205 424

Regulation Violated: CLOSURE 265.112

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MODERATE
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: $8,000 → 10,999

   Penalty Amount Chosen: $9,500

   Justification for Penalty Amount Chosen: MID POINT OF RANGE

4. Per-Day Assessment: $9,500

Part II - Penalty Adjustments

	Percentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	N/A	
2. Degree of willfulness and/or negligence:	N/A	
3. History of Noncompliance:	N/A	
4. Other Unique Factors:	N/A	
5. Justification for Adjustments:		
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		9,500
7. Number of Days of Violation:		
8. Multi-day Penalty (Number of days X Line 6, Part II):		
9. Economic Benefit of Noncompliance:		
Justification:		
10: Total (Lines 8 + 9, Part II):		
11. Ability to Pay Adjustment:		
Justification for Adjustment:		
12. Total Penalty Amount (must not exceed $25,000 per day of violation):		9,500

Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR 265.112 CLOSURE PLAN

POTENTIAL FOR HARM CATEGORY: MODERATE - THIS VIOLATION POSES A SIGNIFICANT LIKELIHOOD OF EXPOSURE TO HAZ. WASTE BECAUSE AT THIS POINT IN TIME THE UNPERMITTED SURFACE IMPOUNDMENT IS ONLY ONE OF THREE POTENTIAL SOURCES FOR THIS FACILITIES GROUNDWATER CONTAMINATION PROBLEM.

EXTENT OF DEVIATION CATEGORY: MAJOR - THIS FACILITY DEVIATED FROM THE REQUIREMENTS OF THIS REGULATION TO SUCH AN EXTENT THAT THERE IS SUBSTANTIAL NONCOMPLIANCE. RECENTLY, THIS FACILITY HAS RECEIVED ESTIMATES FROM TWO GEOLOGICAL CONSULTANT COMPANIES FOR ANALYSIS AND SUBSEQUENT CLOSURE OF THEIR LAGOON IN ACCORDANCE WITH RCRA REGS

PENALTY ASSESSED THIS VIOLATION: $ 9,500

PENALTY COMPUTATION WORKSHEET

Company Name: EKCO HOUSEWARES OHD 045205424

Regulation Violated: 265.90 → 94 GROUNDWATER MONITORING REQUIREMENTS

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: $20 → 25K

   Penalty Amount Chosen: $22,500

   Justification for Penalty Amount Chosen: MIDPOINT OF RANGE

4. Per-Day Assessment: _____

Part II - Penalty Adjustments

	Percentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	N/A	
2. Degree of willfulness and/or negligence:		
3. History of Noncompliance:		
4. Other Unique Factors:		
5. Justification for Adjustments:		
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		22,500
7. Number of Days of Violation:		
8. Multi-day Penalty (Number of days X Line 6, Part II):		
9. Economic Benefit of Noncompliance:		15,256 - SEE ATTACHED BEN PRINTOUT
Justification: G.W.M. SYSTEM NOT INSTALLED UNTIL 6-85.		
10: Total (Lines 8 + 9, Part II):		
11. Ability to Pay Adjustment: CONSIDER A DELAYED PAYMENT SCHEDULE.		
Justification for Adjustment:		
12. Total Penalty Amount (must not exceed $25,000 per day of violation):		$37,755

Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR 265.90 → 94

POTENTIAL FOR HARM CATEGORY: MAJOR – This Violation poses a substantial Likelihood of exposure to hazardous waste and may have a substantial adverse effect on the regulatory purpose for implementing the RCRA program. This facility has contaminated the groundwater with V.O.C.'s and has impacted a nearby creek. This facility began pumping and treating its contaminated groundwater with an air-stripping column on 3-86. A fourth G.W.M. well was installed in June, 1985 to complete, to the O.EPA's satisfaction, its G.W.M. system

EXTENT OF DEVIATION CATEGORY: MAJOR - This violator deviated from the requirements of this regulation to such an extent that there is substantial non-compliance.

PENALTY ASSESSED THIS VIOLATION: $37,755