MASTER METALS, INC., 2850 W. THIRD ST., CLEVELAND, OHIO 44113 • (216) 621-2361

Lead Smelter and Refiner

27 November 1990

Kevin M. Pierard, Acting Chief
United States Environmental Protection Agency
Region 5
RCRA Enforcement Branch
230 South Dearborn St.
Chicago, Illinois 60604

RECEIVED
DEC 05 1990
OFFICE OF RCRA
Wash. Management Division
U.S. EPA Region 5

RE: Contingency Plan

Dear Mr. Pierard:

Enclosed please find a revised Contingency Plan based on a review made by U.S. EPA of the written Contingency Plan submitted January 1990 by Master Metals Inc.

The enclosed is Master Metals' Emergency Action Plan (an OSHA requirement) as amended to incorporate hazardous waste management provisions as permitted under 40 CFR Section 265.52(b). Pursuant to the Consent Decree, Master Metals is submitting this revised plan within 15 days of receipt of your comments.

Our consultant has indicated that information has been made available to all the appropriate agencies for coordination of emergency services. However, a review of our files does not contain letters from these agencies acknowledging receipt and/or acceptance of this plan. Master Metals will re-submit the revised plan to the appropriate agencies with a request for a written response.

Please be aware that Master Metals has spent a considerable amount of time and money on consultants for the sole purpose of producing an approvable Contingency Plan. We had contracted with Envisage Environmental to complete the initial contingency plan and upgrades for the past three years. In addition, we had hired Woodward-Clyde Consultants, a nationally recognized environmental consulting firm, to review the last contingency plan, which was subsequently submitted to you, in order to insure that the plan conformed to the letter of the regulations.

It is and has been our intention to provide a well thought out and complete contingency plan for Master Metals, Inc. We have endeavored to do so for the last three years. We are concerned, at this point, that any plan we submit will not meet your requiremnts. For example, Subpart (D) of 40 CFR 265.50 through 265.56 does not indicate that we must submit a map of hospital routes detailed as part of our plan. However, you have indicated that this is one of your reequirements. We would apppreciate being appraised of any further requirements for our plan which are not enumerated in the regulations.

If you have any questions please contact Rudy A. Zupan at (216) 621-2361.

Sincerely,

Douglas K. Mickey, President
Master Metals, Inc.

CONTINGENCY PLAN

MASTER METALS

2850 WEST THIRD STREET
CLEVELAND, OHIO 44113

EPA ID NUMBER: OHD097613871

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Section I - FACILITY IDENTIFICATION AND GENERAL INFORMATION

Master Metals, Inc. is located at 2850 West Third Street, Cleveland, Ohio, 44113 in Cuyahoga County. This property is located inside the city limits of Cleveland in a heavy industrial area. This location consists of both corporate offices and manufacturing facilities. The buildings at this location are primarily Type 2 and Type 3 construction. A new office building and lockerroom is being erected and will be occupied in December 1990.

Master Metals is a secondary smelter and refiner of lead. The facility receives lead by-products which are recycled through the use of a rotary furnace to produce metallic lead. Through rotary furnace technology the proper blend of lead containing materials, with appropriate fluxing agents and chemical controls, produces a very fine grade of lead. Hazardous waste materials found on site include lead containing compounds (D008), lead flue dust (K069) and acid (D002) that is left over from spent industrial batteries.

Storage areas are indicated on the site plan and includes a container storage area and steel bins for storage of bulk materials.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

BECAUSE OF THE TOXICITY OF LEAD RESPIRATORS MUST BE WORN ALL OF THE TIME.

SECTION II - EMERGENCY COORDINATORS

This list is in a priority order for being contacted in case of an emergency. If the first named person is not available, contact the second and so on down the list.

1. Douglas K. Mickey
   70 Fairway Trails
   Moreland Hills, Ohio 44022
   Home: 248-8144
   Office: 621-2361

2. Tom Helms
   201 Brookside Blvd.
   Hinkley, Ohio 44233
   Home: 273-3580
   Office: 621-2361

3. Otto Lawrence
   4066 East 153rd Street
   Cleveland, Ohio 44128
   Home: 921-0216
   Office: 621-2361

4. Doug VanBuskirk
   19200 Puritas Avenue
   Cleveland, Ohio 44135
   Home: 267-2903
   Office: 621-2361

5. Joe Seldon
   5061 Clement Street
   Maple Hts., Ohio 44137
   Home: 475-8511
   Office: 621-2361

6. Robert Smith
   912 Dresden Avenue
   Cleveland, ohio 44112
   Home: 249-7527
   Office: 621-2361
   Press: 621-2377

7. Fred Jenkins
   3429 West 46th Street
   Cleveland, Ohio 44102
   Home: 631-1039
   Office: 621-2361

SECTION III - PREPAREDNESS AND PREVENTION PLAN

This section describes the procedures at the Master Metals Company which prevent fire and spill emergency situations.

Communication System:

The facility is equipped with an intercom system, so that all employees can be notified of an emergency situation by the Emergency Coordinator. Telephones are available for notification of the proper Emergency Authorities.

Equipment Inspections:

Inspections of emergency equipment are conducted in order to insure their proper operation during an emergency situation. The following emergency equipment is inspected on a weekly basis:

- -Portable Fire Extinquishers
- -First Aid Station
- -Personal Protection Equipment
- -Intercom System (noticed daily)
- -Workstation Lighting

Aisle Spacing:

A minimum of two feet between rows of storage containers is maintained. This aisle space gives employees easy evacuation, emergency personnel easy access to the facility during emergencies, and adequate space for cleaning spills. Inspections of aisle spacing are conducted on a weekly basis.

Local Authority Notification:

The local Fire Prevention Bureau has received an Emergency Site Plan and Chemical Storage List for the Master Metals facility. This information will assist firefighters in the case of an emergency.

Emergency Site Plan:

An Emergency Site Plan is included in this Contingency Plan. This Site Plan is posted throughout the facility, at each telephone and the employee Bulletin Board, for easy access to the following information:

- -Fire Extinguisher locations
- -Telephone/Intercom locations
- -Flammable Storage locations
- -Evacuation Routes

Spill Prevention:

Spill prevention is an important aspect of the safety program, in order to prevent spills from entering the environment, or creatiing a fire hazard. The oils, flammable liquids, battery acid and lead compounds are located in secure areas and storage bins. Spent battery acid is contained in an underground wastewater treatment storage tank, lead battery plates are stored in containment bins and both materials are located on a bermed concrete pad. Lead containing materials are stored in approved containers in various areas of the facility.

SECTION IV - CONTINGENCY MEASURES

OVERVIEW

The contingency plan is to minimize hazards to human health and the environment from fire, explosion, or any unplanned sudden or non-sudden release of hazardous material(s) or hazardous material(s) constituents to the air, soil, surface of ground water. The provisions of the plan must be carried out immediately whenever a release, fire, or explosion which could threaten human health or the environment occurs.

1. IMPLEMENTATION

The contingency plan is implemented when a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents presents an actual or imminent threat to human health and/or the environment. The contingency plan will be implemented under the following criteria:

A. Fire and/or Explosion

1. An explosion has occurred.
2. An imminent danger exists when a fire could occur.
3. An imminent danger exists when a fire could result in the release of a toxic substance(s) or gas(es).
4. An imminent danger exists when a fire could cause stored materials to ignite.
5. An imminent danger exists when a fire occurs that cannot be controlled by a fire extinguisher.
6. An imminent danger exists when a fire has the possibility of spreading to other areas or causing a induced explosion with stored materials.

B. Spills

1. A spill greater than 55 gallons that results in the release of a flammable liquid(s) or flammable vapor(s) causing a fire explosion hazard.
2. A spill greater than 55 gallons that results in the release of reactive material(s) or toxic material(s) including gas(es).
3. A spill contained on-site that may potentially cause ground water and/or soil contamination.
4. A spill resulting in on-site ground water and/or soil contamination.

2. CONTINGENCY MEASURES

A. EMERGENCY IS DEFINED AS FOLLOWS:

1. An event which can or will result in the loss of life or limb to an employee or visitor.
2. An event where materials can or will cause immediate harm to the environment through being released to the air, ground, or water.
3. An event which will cause severe production interruption because of loss of equipment or building.

B. RESPONSE PROCEDURES

1. In the event of an explosion or fire, the procedure will be activated. Secondly, in the event of a person being injured, an ambulance will be called. Thirdly, the emergency coordinator will be notified. In all other cases, the emergency coordinator will be contacted first and all subsequent actions will be directed by the emergency coordinator or his appointed representative.

Facility personnel are notified first by an internal alert. The local emergency services and state and federal agencies are then notified.

2. Spill Response

a. Acid or Oil Spill
In the event of an acid or oil spill, the following procedures will be implemented:
1.) Mitigate spill cause. Determine the cause of the spill and stop any further spillage, if possible.
2.) Remove all potential fire sources.
3.) Contain the spilled material. Spill containment will be accomplished utilizing absorbents. Spills must be directed away from any potential flow into the combined sewer system. Absorbents are stored on pallets in the Shipping and Receiving Building.

b. Release of solid hazardous waste
In the event of a spill of solid lead-containing hazardous material the following procedures will be implemented:
1.) Mitigate spill cause. Determine the cause of the spill and stop any further spillage.
2.) Clean up the spill. The spilled material will be cleaned up using shovels, brooms, and other equipment as necessary. The spilled material will be removed and deposited in approved storage containers.

3. EMERGENCY RESPONSE TEAM

The Emergency Response Team will respond to an emergency involving fire, explosion, building collapse, chemical release, injuries and severe weather (tornado). The emergency response team consists of a team leader and 15 members. The Emergency Response Team is prepared to respond on all three (3) shifts and will cover the entire complex. The initial response will be by members in whose area the emergency arises. Until the emergency coordinator can be contacted, the person with the most seniority will act as the scene leader.

A. Emergency Coordinator

At all times there must be at least one employee either on the facility premises or on call with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of Master Metals contingency plan, all operations and activities at Master Metals, the location and characteristics of waste handled, the location of all records within Master Metals, and Master Metals layout.

IN ADDITION, THIS PERSON MUST HAVE THE AUTHORITY TO COMMIT THE RESOURCES NEEDED TO CARRY OUT THE CONTINGENCY PLAN.

When there is an emergency spill or release of hazardous waste or material(s) at any loction, the emergency coordinator should follow the following guidelines:

1. Whenever there is an imminent or actual emergency, Doug Mickey, (or Otto Lawrence) will immediately:

   a. Activate the internal facility alert or communiction system(s) to notify all Master Metals' personnel. This procedure could already be in process (See Section 2-B) and then it would serve to alert Doug Mickey or Otto Lawrence that there is an emergency.

   b. Notify appropriate local, state and federal agencies if their help is needed.

2. Whenever there is a release, fire, or explosion, emergency coordinator must immediately identify the character, exact source, amount, and area extent of any released materials. He may do this by observation or review the facility records.

3. Concurrently the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g.: the effects of any toxic, irritating, or asphyxiating gases that generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat induced explosions).

4. If the emergency coordinator determines that the facility has had a release, fire or explosion which could threaten human health, or the environment outside the facility, he must report his findings as follows:

a. If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify the fire department to help the appropriate officials decide whether local areas should be evacuated.

b. He must immediately notify either the government official designated as the on scene coordinator for that geographical area or the National Response Center using their 24 hour toll free number 1-800-424-8802. The report must include the following:

1. Name and telephone number of the reporter.
2. Name and address of the facility.
3. Time and type of incident.
4. Name quantity of material(s) involved, to the extent known.
5. The extent of injuries, if any.
6. The possible hazards to human health and their environment outside the facility.

5. During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other areas of the facility. These measures must include stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

6. If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

7. Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste or material(s), contaminated soil or surface water, or any other material(s) that results from a release, fire, or explosion at the facility.

8. The emergency coordinator must ensure that in the affected area(s) of the facility:

a. No waste that may be incompatible with the released material(s) is treated, stored, or disposed of until clean-up procedures are completed.

b. All emergency equipment, listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

9. The owner or operator must notify the Regional Administrator and appropriate local and state authorities that the facility is in compliance with Paragraph 8 before operations are resumed in the affected area(s) or the facility.

10. The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include the following:

a. Name, address and telephone number of the owner or operator.
b. Name, address and telephone number of facility.
c. Date, time and type of incident.
d. Name and quantity of material(s) involved.
e. The extent of injuries, if any.
f. An assessment of actual or potential hazards to human health and the environment, where this is applicable.
g. Estimated quantity and disposition of recovered material(s) that resulted from the incident.

Mail to: Director Ohio E.P.A.
1800 Watermark Dr.
Columbus, Ohio 43219
and
Regional Administrator
U.S. E.P.A. Region V
230 S. Dearborn Street
Chicago, Ilinois 60604

B. Team Leader

The team leader is capable of handling all tasks and assignments of the emergency coordinator. He takes over in the absence of the emergency coordinator.

1st and 2nd Shift - Tom Helms
2nd and 3rd Shift - James Fluker

C. Maintenance Man

Knows the location for all external gas shut-offs, electrical panels, switches and transformers. Responds to an incident prepared to shut off electrical power to, in and around the incident. He also knows how to shut down all of the air handling equipment.

Tom Helms
Fred Jenkins
Doug VanBuskirk

D. The Response Team consists of the following persons:

1. Doug Mickey, Emergency Coordinator
2. Tom Helms, Plant Manager and Team Leader
3. Otto Lawrence, Assistant Emergency Coordinator
4. Doug VanBuskirk
5. James Fluker, Team Leader
6. James Seldon, Plant Manager

7. Fred Jenkins
8. Lawrence Pulley
9. Joe Wright
10. Robert Large
11. Johnny Walker
12. Tyrone Hilton
13. Robert Smith

The following people to be called when needed:

1. Jerry Moody
2. Jimmy Ammons
3. Steve Abrams

E. Member

Trains annually in the use of all fire extinguishing means that are found at Master Metals.

a. Fire extinguishers
b.
c.
d.
e.

Knows the location of each type of fire suppression equipment and the fire alarm procedures.

4. Communication System

The telephone intercom is used to transmit the alarm because of the lack of an alarm system. To access the intercom punch the TCL button then punch 6 and speak.

A. Copies of the plan are at the main switchboard and in Doug Mickey's office.

5. Evacuation Plan

It is the policy of Master Metals, Inc. that an evacuation of employees shall be enacted whenever there is a threat to their health or a threat of injury because of an emergency condition existing at Master Metals, Inc. Doug Mickey, the emergency coordinator, is authorized to enact the evacuation plan for a particular room, building, or facility. In any evacuation, Police and Fire Departments are to be notified. The guidelines include but are not limited to the following conditions:

1. When 10 gallons or more of a flammable liquid is released in an area other than an explosion-proof room.

2. When 10 gallons or more of a flammable liquid is released in an explosion-proof room and the doors have been left open to allow the vapors to escape.

3. When 25 gallons or more of a combustible liquid is released in an area other than an explosion-proof room.

4. When 25 gallons or more of a combustible liquid is released in an explosion-proof room and the doors have been left open to allow the vapors to escape.

5. When any strong acid at the PH level of 2 or less or a strong caustic at the PH level of 12 or more is released in any quantity that could endanger personnel.

6. When any toxic material is released causing employee exposures to exceed the TLV or IDLH level as established by ACGIH or NIOSH.

7. When an explosion potential becomes evident, employees in the immediate and adjacent building(s) (if applicable) are to be evacuated.

8. When any unfriendly fire is discovered, the building must be evacuated except the emergency response team.

6. Coordination Agreements

Seven (7) organizations have been contacted for coordination agreements. All Agreements are noted herein as memorandums to file from Douglas Mickey or Charles C. Porpora. Agreements are established with:

A. Cleveland Fire Department
B. Cleveland Police Department
C. Metro General Hospital
D. Ohio EPA Air
E. Ohio EPA Solid Waste
F. State of Ohio Emergency Response Team
G. Local Emergency Response Team

Distribution of this plan in manual form is to:

A. Cleveland Fire Department
B. Cleveland Police Department
C. Metro General Hospital
D. Ohio EPA Air
E. Ohio EPA Solid Waste
F. State of Ohio Emergency Response Team
G. Local Emergency Response Team

DEFINITIONS

ACGIH:	American Conference of Governmental Industrial Hygienists
CEILING TLV:	Threshold Level Value The maximum exposure level under any conditions that a person may be exposed to at any one moment of time and is expressed in the unit of PPM or milligrams per cubic meter.
COMBUSTIBLE LIQUID:	When the flash point is between 100 degrees and 200 degrees F.
FLAMMABLE LIQUID:	When the flash point is less than 100 degrees F.
IDLH:	Immediately Dangerous to Life and Health. Levels are expressed in PPM or milligrams per cubic centimeters.
PPM:	Parts per million
TOXIC:	Any substance that is injurious to the health of a living person.

SECTION V - EMERGENCY NOTIFICATION LIST

EMERGENCY TELEPHONE NUMBERS

SERVICES	COMPANY NAME	CONTACT PERSON	TELEPHONE #
Fire			621-1234
Police			621-1212
Ambulance			771-3355
Doctor	Hilliard Medical Assoca.		241-3990
Hospital	Cleveland Metro General*		398-6000
Plumbing Contractor	Construction Manage.	Sandy Schroll	531-0161
Electrical Contractor	Aaron Electric	Jeff Prayzek	529-3104
Extinguisher Contractor	Gene Ptacek & Son Fire		651-8300
Oxygen Contractor Furnace	Airco		(419) 435-9243
Oxygen Contractor Acetylene	Welding House		524-1955
Gas Company			522-4611
Electric Company			623-1311
Water Company			664-3060
Waste Hauling Service	Browning-Ferris Industries		441-6300
Chemical Waste Hauling Service			
Ohio EPA		Mark Bergman	425-9171
Ohio Emergency Response		Ed Duffield	1-800-282-9378
Insurance Agent	J E Moenkhaus & Assoc.	Adam Grimm	861-5444

*St. Alexis

Code: Oxide Grade

Date:

SECTION V REACTIVITY DATA

Stability: Generally considered stable.
Avoid:

INCOMPATIBILITY (Materials to Avoid): Strong oxidizers, active metals, peroxide, potassium, sodium.

HAZARDOUS DECOMPOSITION OR BY-PRODUCTS

When heated to decomposition, it emits highly toxic fumes of lead.

Polymerization: Polymerization is not expected to occur.
Avoid:

SECTION VI HEALTH HAZARD DATA

ROUTES OF ENTRY

Eyes: YES Skin? YES Inhalation? YES Ingestion? YES

EFFECTS OF OVEREXPOSURE

EYE CONTACT may cause irritation.

SKIN CONTACT may cause irritation and allergic reaction.

INHALATION may cause irritation to the upper respiratory tract. Prolonged or repeated exposure from poor hygiene, housekeeping or handling practices causes lead poisoning. Early symptoms are fatigue, disturbance of sleep, and constipation with more severe exposures followed by colic, anemia and neuritis (nerve inflammation). Prolonged overexposure can severely damage red blood cell formation, kidneys, and nervous system. Other symptoms include loss of appetite, metallic taste in mouth, anxiety, nausea, pallor, headache, dizziness and hypertension. The OSHA Lead Standard reports that lead may impair the reproductive system of both men and women; damage may also be caused to the unborn fetus.

INGESTION; Same effects as inhalation.

CARCINOGENICITY

NTP? YES IARC? YES OSHA? NO

LEAD is suspected to cause lung cancer and is listed by the National Toxicology Program (NTP) and the Internal Agency for Research on Cancer (IARC).

Code: Oxide Grade

Date: _____

CHRONIC HEALTH HAZARDS

Refer to Effects of Overexposure and Carcinogenicity.

MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE

May effect existing medical conditions such as gastrointestinal, hematological, renal, hepatic, respiratory, genito-urinary, neurological and psychological disorders.

EMERGENCY AND FIRST AID PROCEDURES

EYE AND SKIN CONTACT: Immediately flush eyes with water to remove particles. Call a physician if irritation develops. Wash skin with soap and water.

INHALATION: Remove to fresh air. If breathing is difficult, give oxygen. Call a physician.

INGESTION: If swallowed, induce vomiting immediately as directed by medical personnel.

If any other harmful effects are suspected, a physician should be called promptly to determine the necessity for treatment or other testing.

SECTION VII PRECAUTIONS FOR SAFE HANDLING AND USE

EPA Waste #: N.A.
UN #: N.A.
DOT Classification: Not regulated

STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED

Contain spillage and scoop up or vacuum. Avoid creating dust. Notification of the National Response Center (800/424-8802) may be required. Refer to EPA, DOT and applicable state and local regulations for current response information. This material can be recycled.

It is recommended that each user establish a spill prevention, control and countermeasure plan (SPCC). Such plan should include procedures applicable to proper storage, control and clean-up of spills, including reuse or disposal as appropriate (see waste disposal method below).

Code: Oxide Grade

Date:

WASTE DISPOSAL METHOD

Lead alloys, if disposed of by themselves, are a hazardous waste on the basis of EP toxicity under EPA hazardous waste regulations. Waste mixtures containing this product should be tested for EP toxicity.

Federal, state and local disposal laws and regulations will determine the proper waste disposal procedure. Disposal requirements are dependent on the hazard classification and will vary by location and the type of disposal selected. Some waste materials are amenable to recycle/reuse.

PRECAUTIONS TO BE TAKEN IN HANDLING AND STORAGE

Wash thoroughly after handling.
Keep away from food and feed products.
Keep container closed.

PERSONNEL SAMPLING PROCEDURE

AIR SAMPLING FOR LEAD: Refer to NIOSH Manual of Analytical Methods, 3rd Edition, Volume 2, Method 7082.

BIOLOGICAL MONITORING FOR LEAD: Blood lead testing may be required. Consult OSHA Lead Standard 1910.1025 and your local physician for specific requirements.

SECTION VIII CONTROL MEASURES

RESPIRATORY PROTECTION

A NIOSH/MSHA-approved respirator as necessary.

VENTILATION

Local exhaust ventilation is recommended to control exposures to within OSHA limitations for lead. The ventilation systems must be evaluated quarterly.

PROTECTIVE EQUIPMENT

Chemical goggles as needed to prevent irritation.
Rubber or neoprene gloves.
Body protection as necessary to prevent skin contact.

Code: Oxide Grade

Date:

WORK/HYGIENE PRACTICES

Avoid breathing dust.
Avoid contact with eyes, skin and clothing.
Use only with adequate ventilation.
NOTE: Consult the most recent OSHA LEAD Standard (1910.1025) and its attachments, appendices, etc., for full requirements, some of which are not covered in the Material Safety Data Sheet.

SECTION IX FEDERAL AND STATE REGULATIONS

SARA HAZARD CATEGORIES

IMMEDIATE (Acute) Health Hazard: YES
DELAYED (Chronic) Health Hazard: YES
FIRE Hazard: NO
REACTIVITY Hazard: NO
Sudden Release of PRESSURE: NO

SARA SECTION 313 NOTIFICATION

This product contains a toxic chemical (or chemicals) subject to the reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR Part 372.

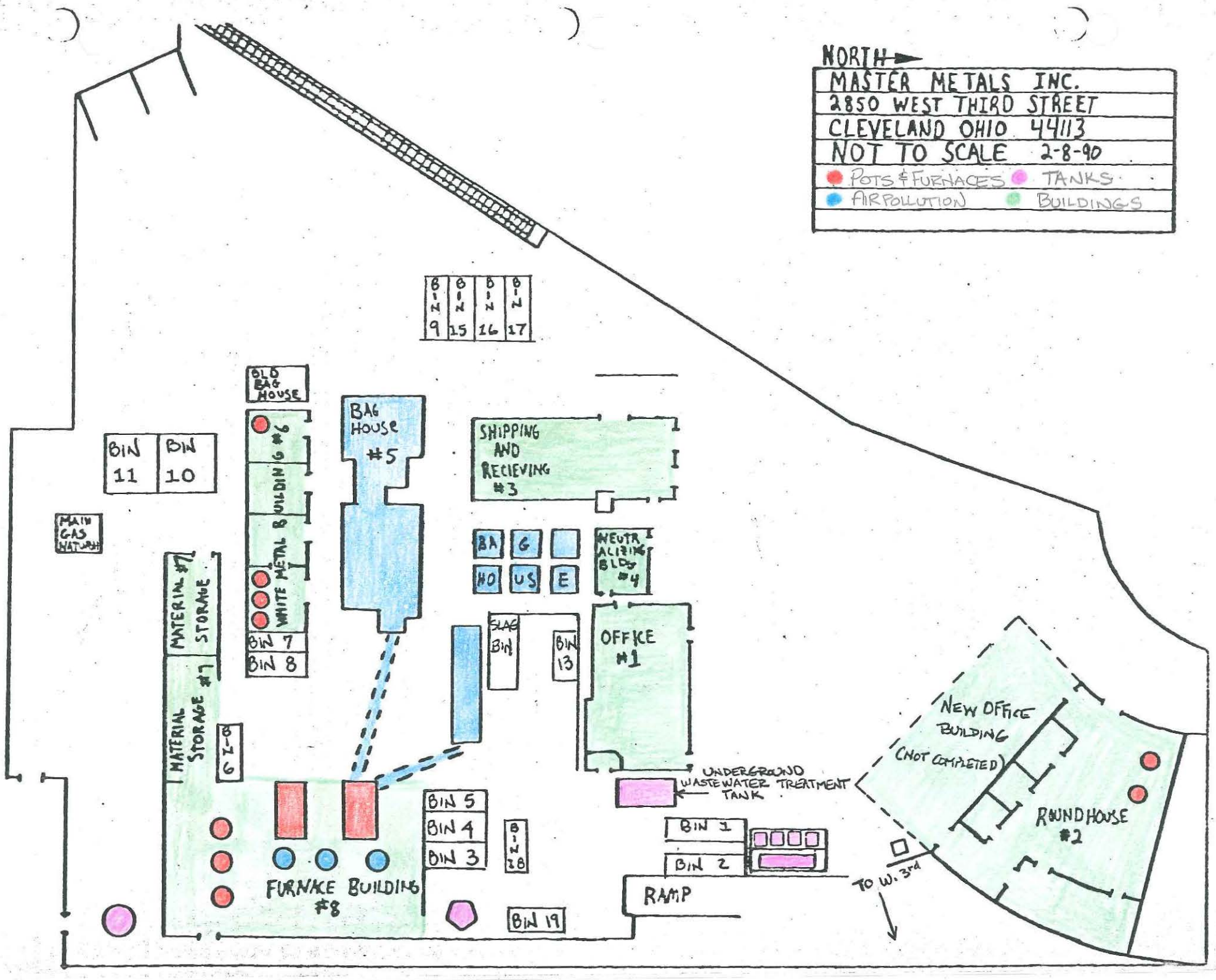
CHEMICAL NAME	CAS #	% WT.
LEAD	7439-92-1	99.5%

STATE REGULATIONS

CALIFORNIA: The State of California has a regulation (Proposition 65) which identifies specific chemicals known to the State of California to cause cancer or birth defects. Proposition 65 requires a disclosure for products sold within the State of California containing an identified chemical. The following information is required by the State of California for this product:
*
This product contains chemicals known to the State of California to cause birth defects.

Information presented herein has been compiled from sources considered to be dependable, and is accurate and reliable to the best of our knowledge and belief but is not guaranteed to be so. Since conditions of use are beyond our control, we make no warranties, expressed or implied, except those that may be contained in or written contract of sale or acknowledgment.

SECTION VI - SITE PLAN

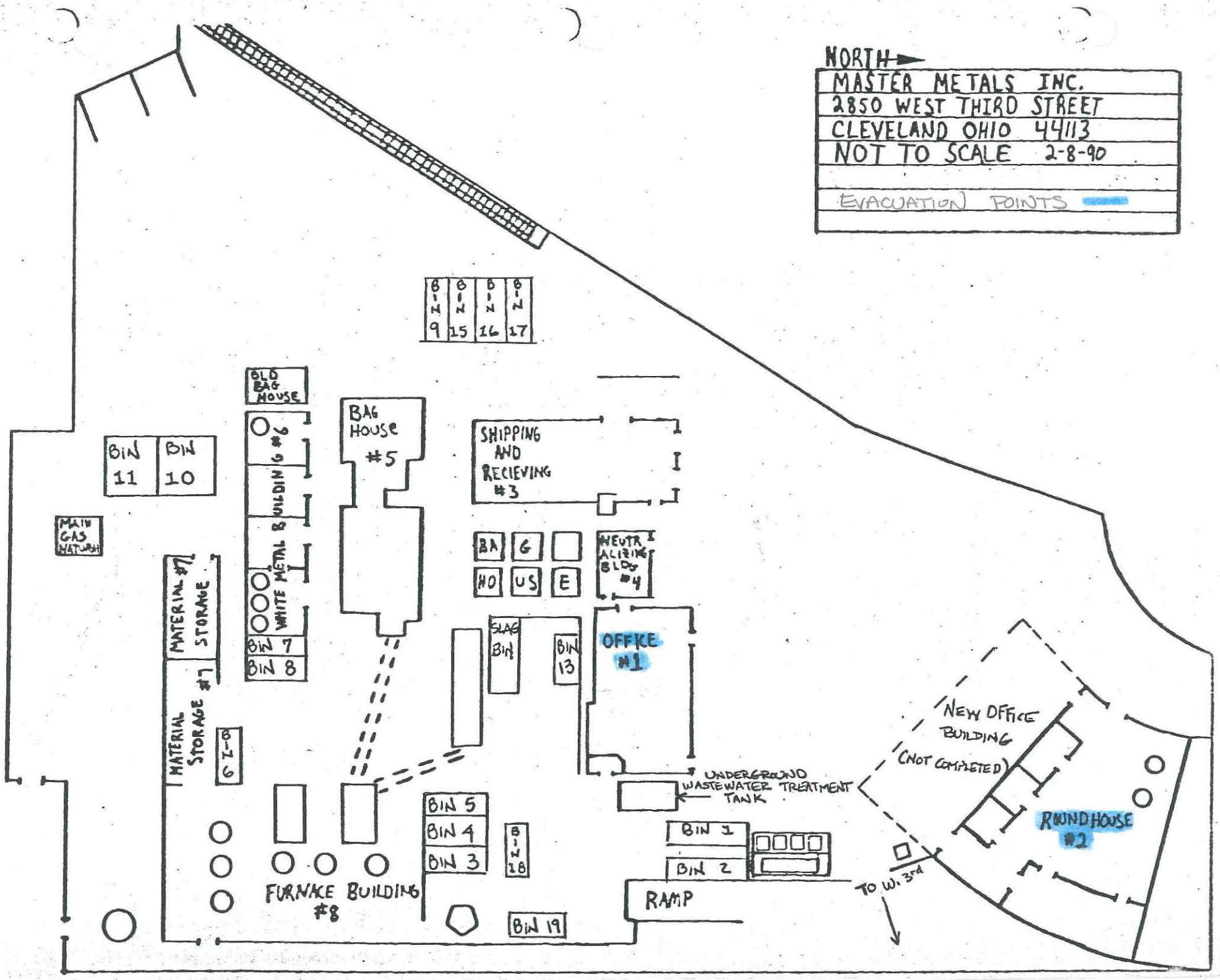

NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
POTS & FURNACES
TANKS
AIR POLLUTION
BUILDINGS
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
BIN 10
MAIN GAS NATURAL
WHITE METAL BUILDING #6
BA
G
HO
US
E
NEUTRALIZING BLDG #4
MATERIAL STORAGE #7
BIN 7
BIN 8
SLAG BIN
BIN 13
OFFICE #1
MATERIAL STORAGE #1
BIN 6
NEW OFFICE BUILDING (NOT COMPLETED)
UNDERGROUND WASTEWATER TREATMENT TANK
ROUNDHOUSE #2
BIN 5
BIN 4
BIN 3
BIN 18
BIN 1
BIN 2
FURNACE BUILDING #8
RAMP
TO W. 3rd
BIN 19

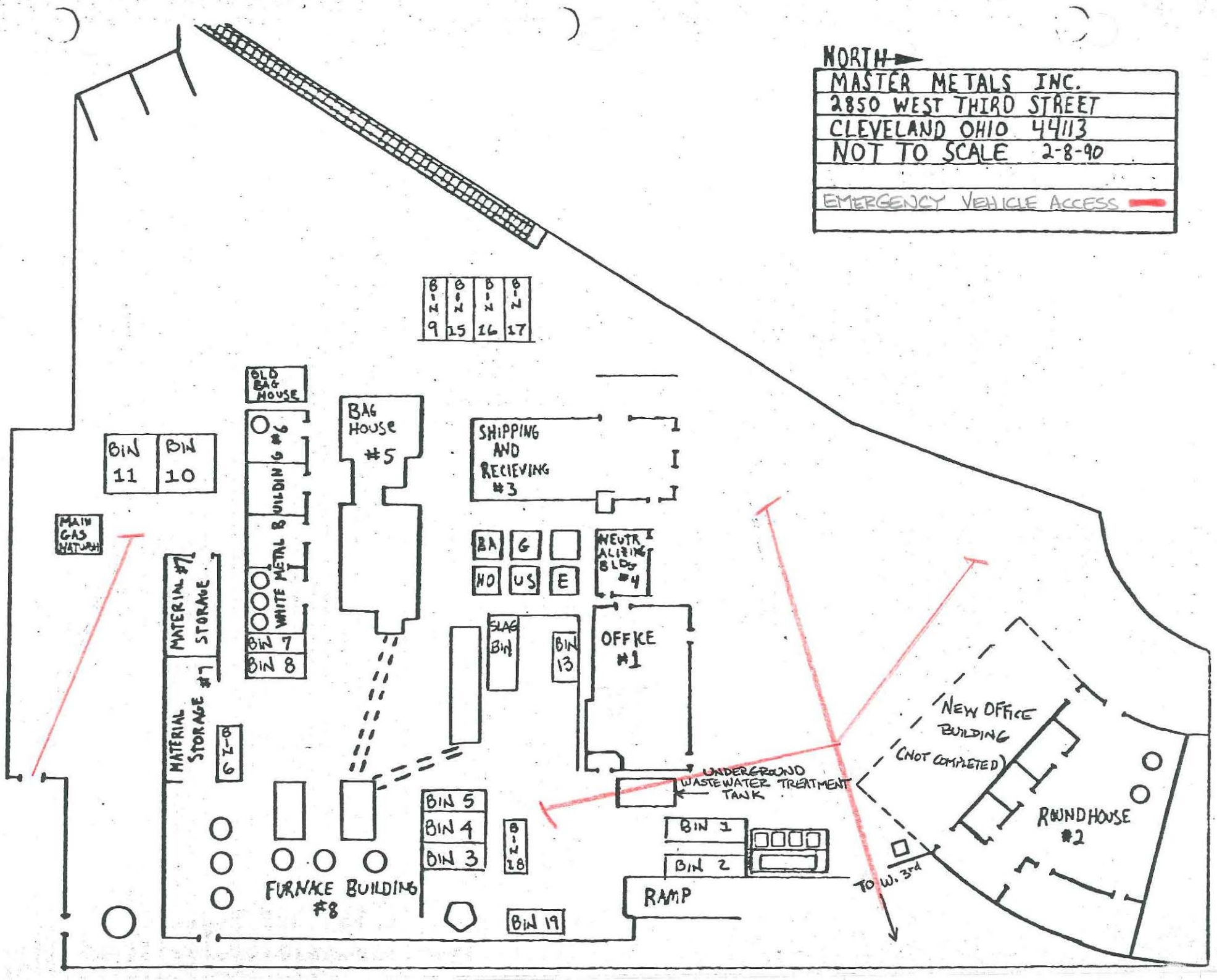
SECTION VII - EVACUATION ROUTES

If, in the event of an emergency it becomes necessary to evacuate a building or buildings, this procedure will be followed.

Building #1 (the office) will be the collection point for all employees not involved in the control of the emergency. At the assembly point, an accounting of all employees on duty will be taken. Any injuries will be treated at the assembly point. Any employees requiring medical treatment will be taken to the local hospital for examination and treatment.

Should the emergency involve Building#1 (office), the employees will assemble in Building #2 (roundhouse).


NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
EVACUATION POINTS
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
BIN 10
MAIN GAS NATURAL
WHITE METAL BUILDING #6
BIN 7
BIN 8
MATERIAL STORAGE #7
MATERIAL STORAGE #7
BIN 6
BA
G
HO
US
E
NEUTRALIZING BLDG #4
SLAG BIN
BIN 13
OFFICE #1
NEW OFFICE BUILDING (NOT COMPLETED)
UNDERGROUND WASTEWATER TREATMENT TANK
ROUNDHOUSE #2
BIN 5
BIN 4
BIN 3
BIN 18
BIN 1
BIN 2
TO W. 3rd
FURNACE BUILDING #8
RAMP
BIN 19


NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
EMERGENCY VEHICLE ACCESS
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
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MAIN GAS WATURH
WHITE METAL BUILDING #6
BIN 7
BIN 8
MATERIAL STORAGE #7
MATERIAL STORAGE #7
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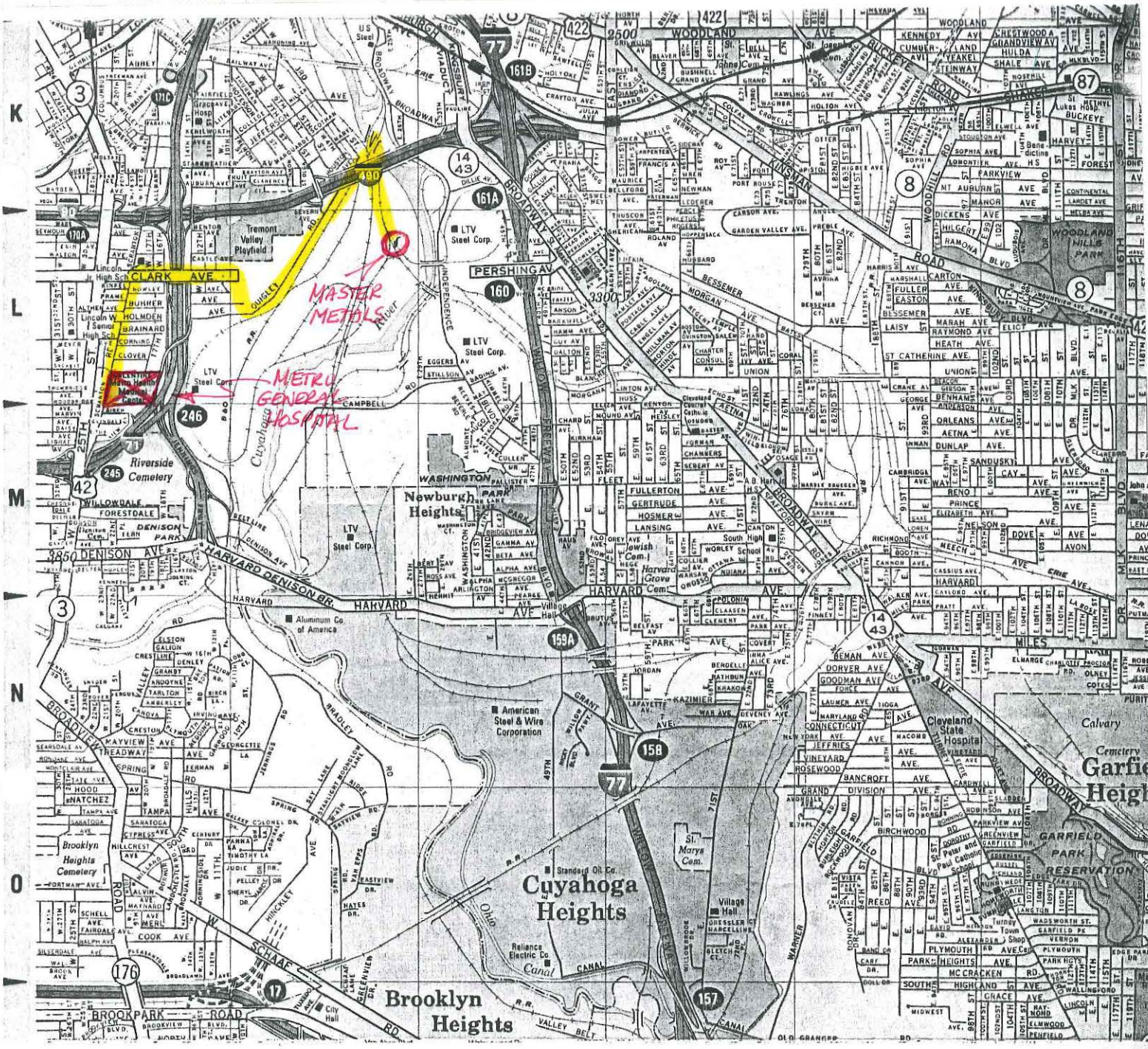
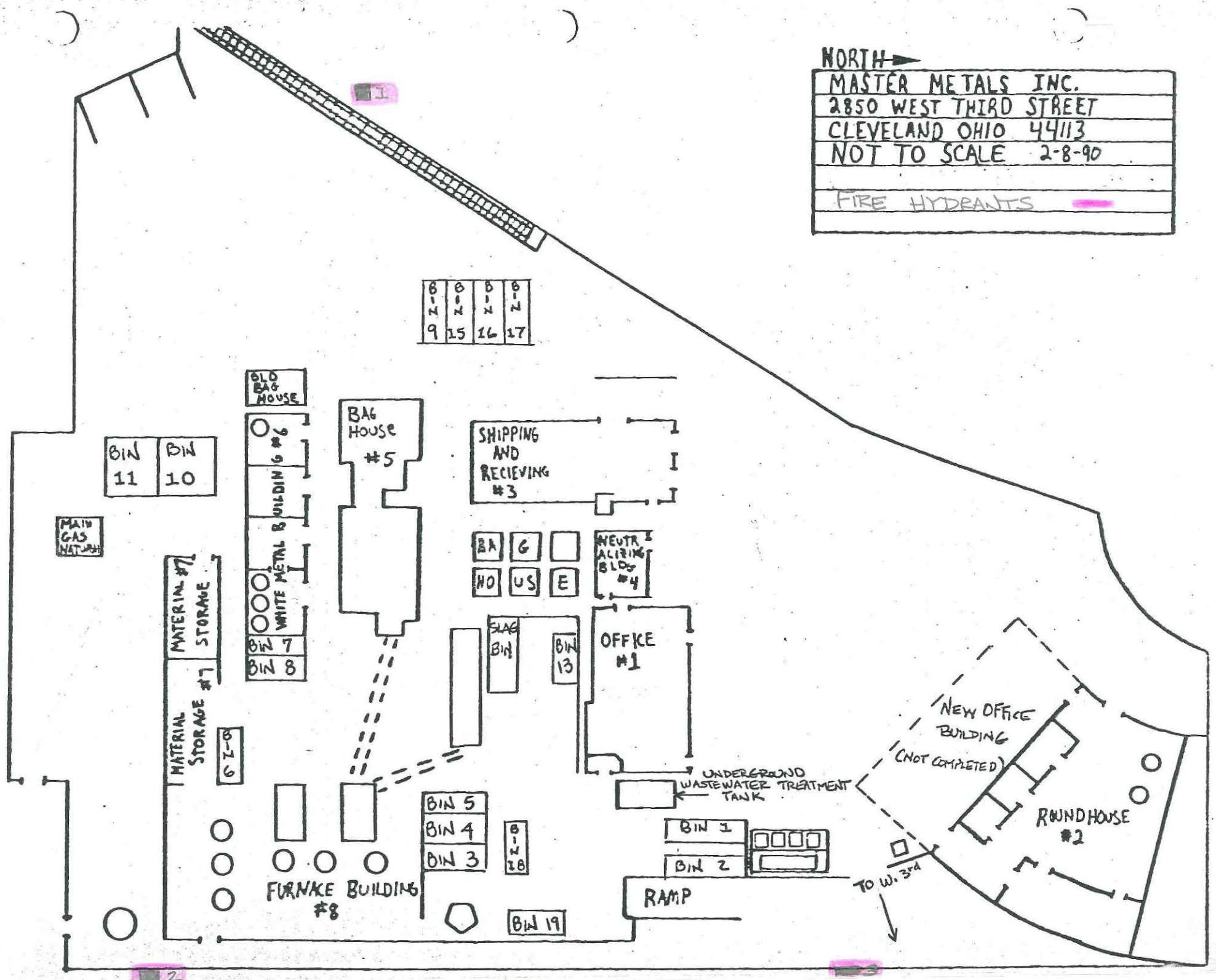
NEUTRALIZING BLDG #4
SLAG BIN
BIN 13
OFFICE #1
BIN 6
UNDERGROUND WASTEWATER TREATMENT TANK
NEW OFFICE BUILDING (NOT COMPLETED)
ROUNDHOUSE #2
BIN 5
BIN 4
BIN 3
BIN 18
BIN 1
BIN 2
FURNACE BUILDING #8
RAMP
TO W. 3rd
BIN 19


MASTER METALS
METRO GENERAL HOSPITAL
Tremont Valley Playfield
Riverside Cemetery
Newburgh Heights
Cuyahoga Heights
Brooklyn Heights
Brooklyn Heights Cemetery
American Steel & Wire Corporation
Aluminum Co. of America
Standard Oil Co.
Reliance Electric Co.
Village Hall
Cleveland State Hospital
Calvary Cemetery
Garfield Park Reservation
Woodland Hills Park
Harvard Grove Cem.
Jewish Cem.
St. Marys Cem.
Ohio Canal
Cuyahoga River
Harvard Avenue
Pershing Av
Clark Ave
Denison Ave
Brookpark Road
Schaaf Rd
Woodland Ave
Broadway
Kinsman Road
Buckeye Road
Woodhill Rd
Wilson Freeway
Harvard Denison Br.
Broadview Road
Miles

SECTION VIII - FIRE HYDRANTS

Fire Hydrant number 1 is located outside the property of Master Metals in the train switching yard. The only way this hydrant is accessable from Master Metals is to take bolt cutters and cut the fence. There is no way you can truck to the hydrant.

Fire Hydrant number 2 and 3 are located across the street on West Third. Due to the size of the map, the hydrants cannot be properly located. These two (2) hydrants are not painted and are hard to see because of the brush and garbage that surround them.


NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
FIRE HYDRANTS
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
BIN 10
MAIN GAS NATURAL
WHITE METAL BUILDING #6
BIN 7
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NEUTRALIZING BLDG #4
MATERIAL #7 STORAGE
MATERIAL STORAGE #7
SLAG BIN
BIN 13
OFFICE #1
BIN 6
NEW OFFICE BUILDING (NOT COMPLETED)
UNDERGROUND WASTEWATER TREATMENT TANK
BIN 5
BIN 4
BIN 3
BIN 18
BIN 1
BIN 2
ROUNDHOUSE #2
FURNACE BUILDING #8
RAMP
TO W. 3rd
BIN 19

SECTION IX - FIRE EXTINGUISHERS

The fire extinguishers at Master Metals are inspected weekly and cleaned monthly. The fire extinguishers are serviced by Gene Ptacek and Son Fire Equipment, located on 7316 Associate Avenue. Their phone number is (216) 651-8300.

FIRE EXTINGUISHER RECORD

FIRE EXTINGUISHER NUMBER _____

FIRE EXTINGUISHER SERIAL NUMBER _____

FIRE EXTINGUISHER TYPE _____

FIRE EXTINGUISHER SIZE _____

BUILDING LOCATION _____

LABEL CONDITION _____

GENERAL PHYSICAL CONDITION OF THE FIRE EXTINGUISHER _____

_____

_____

_____

_____

HYDROSTATIC TEST DATE(S) _____

_____

_____

YEARLY MAINTENANCE DATE(S) _____

_____

_____

_____

_____

_____

REFILL DATE(S) _____

_____

_____

_____

_____

_____

FER.809

EXTINGUISHER NUMBER	TYPE	LOCATION	ACCESSIBLE	VISIBLE	SEALS	INDICATORS	INTACT	FULLNESS	BY	WEIGHING	EXAMINE	FOR	PHYSICAL	DAMAGE	GAUGE	READING	NAMEPLATE	LEGIBLE	PASS	OR	FAIL

NOTE: If at any time an extinguisher shows evidence of corrosion or mechanical injury, it shall be hydrostatically tested.

INSPECTOR: _____ DATE: _____

EXTING.988

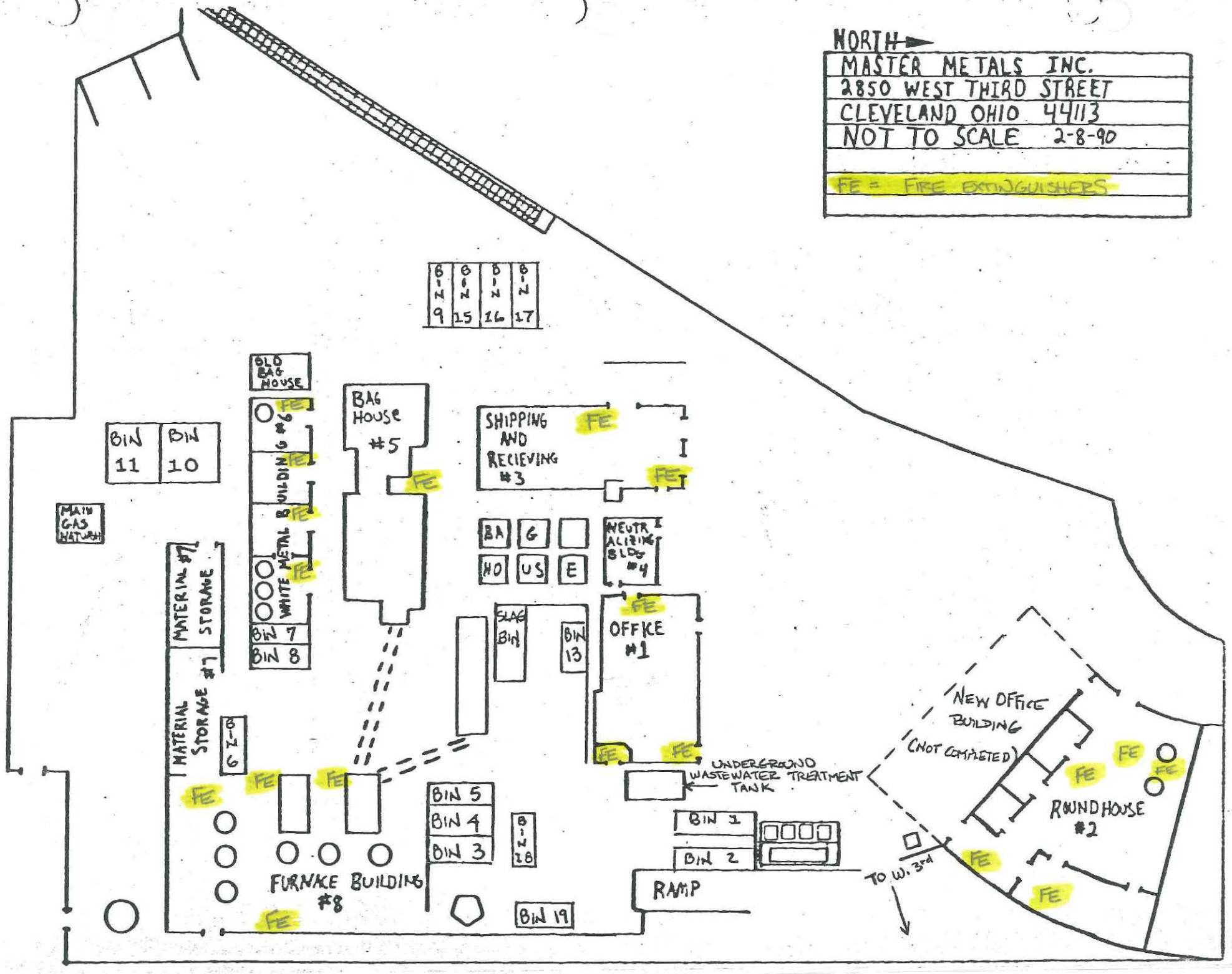
INSPECTION OF EXTINGUISHERS

1. Is the extinguisher clean and well cared for?
2. Has it been charged and hydrostatically tested within the prescribed periods and tagged to show the dates?
3. If a seal is provided, is it intact?
4. Is the discharge orifice clear and unobstructed?
5. Is there indication that the cap, If any, may be cross threaded on the collar on the collar or that threads are corroded?
6. Is the shell of the extinguisher corroded, damaged, or dented in such a way to suggest possible weakness?
7. Are connections between the hose and the shell and nozzle secure?
8. If the extinguisher is a pump operated type, does the pump shaft operate freely?
9. Is the location of the extinguisher readily accessible and plainly indicated so as to be visible from a distance?
10. If the extinguisher is subject to freezing conditions, is it protected?
11. Is the mounting bracket or hanger fastened securely so that the extinguisher is well supported?
12. Is the extinguisher located too close to the hazard, which it is to protect, so that it could not be reached in case of fire?

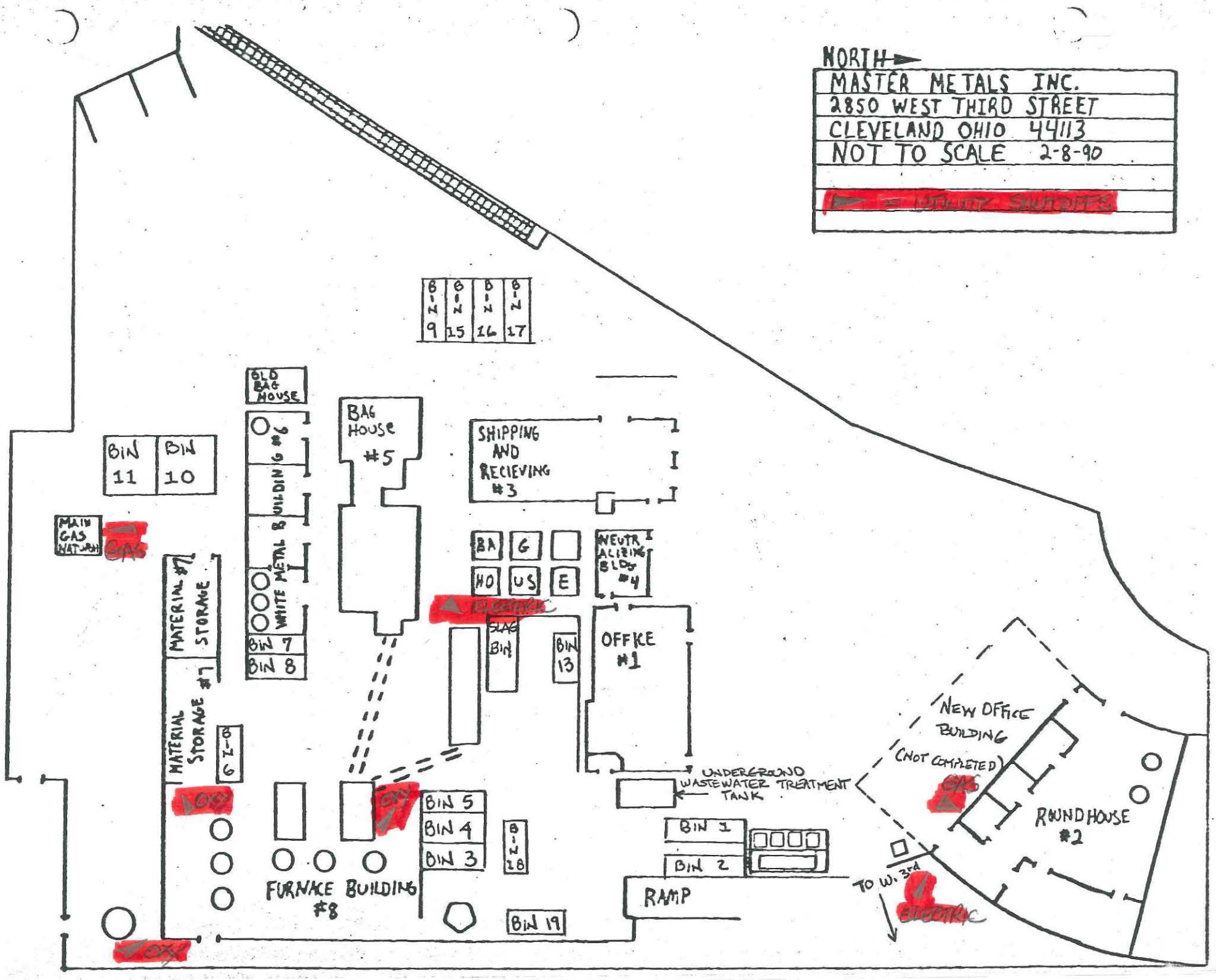
NORTH →

MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90

FE = FIRE EXTINGUISHERS



SECTION X - NATURAL GAS, ELECTRIC (SHUTOFFS)


NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
[redacted]
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
BIN 10
MAIN GAS [redacted]
WHITE METAL BUILDING #6
BA
G
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E
NEUTRALIZING BLDG #4
[redacted]
SLAG BIN
BIN 13
OFFICE #1
MATERIAL #7 STORAGE
BIN 7
BIN 8
MATERIAL STORAGE #7
BIN 6
[redacted]
[redacted]
BIN 5
BIN 4
BIN 3
BIN 18
FURNACE BUILDING #8
UNDERGROUND WASTEWATER TREATMENT TANK
NEW OFFICE BUILDING (NOT COMPLETED)
[redacted]
ROUNDHOUSE #2
BIN 1
BIN 2
RAMP
TO W. 3rd
[redacted]
BIN 19
[redacted]

SECTION XI - STORAGE TANKS

T1	LIQUID OXYGEN TANK
T2	SODA ASH SILO
T3	10,000 GALLON FUEL OIL TANK - EMPTY
T4	500 GALLON ABOVE GROUND WASTE OIL TANK
T5	250 GALLON ABOVE GROUND HYDRAULIC OIL TANK
T6	500 GALLON ABOVE GROUND GASOLINE TANK
T7	500 GALLON ABOVE GROUND DIESELFUEL TANK
T8	12000 GALLON BELOW GROUND WASTEWATER TREATMENT STORAGE TANK

SECTION XII - SPRINKLERS

None of our buildings have sprinkler systems or any other related fire suppression systems in them. We rely on our fire extinguishers to provide our fire protection. We do, however, have an outdoor sprinkler system that is designed strictly for dust control.

SECTION XIII - MATERIAL STORAGE

MATERIAL STORAGE

Because we are a lead smelter, all of our outside storage areas contain lead bearing materials. These materials are stored in bins, barrels and boxes. These materials are in the form of dust, dross, sludge, batteries, slag and scrap. These areas have portable labels stating the following:

E.P.A. Hazardous Waste
D008

Normally, these materials would not be flammable, however, some of the materials are shipped to us in combustible containers (cardboard).

CAUTION - By all standards, lead is considered toxic. Therefore, respiratory protection is required at all times on this property and in any structure other than the main office.

NOTE - On our Battery Breaking Pad, there is a drain that captures the water run-off because of the acid content of batteries. Caustic Soda is used to neutralize the acid into Sodium Sulfate.

This section also contains the Cleveland Right-To-Know which will help clarify where the materials are stored.

Basically, our materials would be classified as follows:

Compressed Gases
- Acetylene
- Propane
- Oxygen

Liquified Gases
- Liquified Oxygen

Fuels
- Gasoline
- Diesel

Oils & Lubricants

- Motor Oil
- Hydraulic Oil
- Lubricating Oil

Other Chemicals of Significant Quantities

- Arsenic
- Borax
- Hydrated Lime
- Sodium Nitrate
- Charcoal
- Sulfur
- Cement
- Lead
- Caustic Sodas Flake
- Ammonium Chloride
- Potash
- Soda Ash
- Antimony
- Sulfuric Acid

LOCATION OF ALL HAZARDOUS OR TOXIC SUBSTA LIST REGULATED BY THE RIGHT-TO-KNOW ORDINANCE

PRA _____ WORKPLACE ADDRESS 2850 West Third Street ZIP 44113

BUSINESS NAME Master Metals, Inc. PHONE (216)621-2361

1. EMERGENCY CONTACT NAME Doug Mickey PHONE 248-8144

2. EMERGENCY CONTACT NAME Otto Lawrence PHONE 921-0216

WORK AREA	CHEMICAL NAME	TRADE NAME	QUANTITY	METHOD OF STORAGE	NFPA - 704			SPEC. HAZ.	DOT ID#
					H	F	R		
Bldg. 7, 6, 8	Charcoal	Charcoal	1,000 lbs.	Pallets - Bags	2	2	0	-	1362
Bldg. 7, 6, 8	Sulfur	Sulfur	20,000 lbs.	Pallets - Bags	1	1	0	-	1350
Bldg. 7, 6, 8	Antimony	Antimony	40,000 lbs.	Pallets, Boxes, Ingots	2	0	0	-	2871
Outside Bldg. 1	Sulfuric Acid (spent)	Battery Acid	7,000 gal.	Batteries/T-8	3	0	2	-	1830
Bldg. 2,3,5,6,7,8	Lead	Lead	800 Ton	Bins, Barrels, Ingots	2	0	0	-	
Bldg. 7	Caustic Soda	Caustic Soda	1,800 lbs.	Pallets, Drums	3	0	1	-	1823
Bldg. 7, 8	Ammonium Chloride	Ammonia Salt	1,000 lbs.	Pallets, Bags	1	0	0	-	9085
Bldg. 7, 8	Potash	Potash	200 lbs.	Pallets, Bags	1	0	1	-	1813
Tank 2	Sodium Carbonate	Soda Ash	40,000 lbs.	Storage Tank	2	0	0	-	
Bldg. 1	Argon	Argon	5	Cylinder	1	0	0	-	
Bldg. 1	Silver	Silver	30 lbs.	Locked up in office					
Bldg. 2, 3, 6, 7, 8	Iron	Iron	20 tons	Pallets, Bin, Barrel, Ingots					
Bldg. 2, 3, 6, 7, 8	Aluminum	Aluminum	1,000 lbs.	Pallets, Bins, Barrel, Ingots					
Bldg. 2, 6, 8	Tin	Tin	7,000 lbs.	Barrel, Ingot, Pallet					

I, Douglas K. Mickey, being duly sworn, hereby certify, on behalf of Master Metals, Inc. (Company name), that: I have received and read the Right-To-Know Code, contained in Chapter 393 of the Codified Ordinances of the City of Cleveland, including Section 393.10(I) which provides that each employer is obligated to comply with Chapter 393, with or without an inspection by the Division of Fire; and that to the best of its knowledge and ability Master Metals, Inc. (Company) has complied with all provisions of the Code.

Signature of Officer of Company

SWORN TO BEFORE ME and subscribed in my presence this 1 day of March, 1990.

Paula A. Cook
Notary Public

PAULA COOK, Notary Public
State of Ohio
My Commission Expires May 3, 1994

LOCATION OF ALL HAZARDOUS OR TOXIC SUBSTA LIST REGULATED BY THE RIGHT-TO-KNOW ORDINANCE

PRA _____ WORKPLACE ADDRESS 2850 West Third Street ZIP 44113

BUSINESS NAME Master Metals, Inc. PHONE (216)621-2361

1. EMERGENCY CONTACT NAME Doug Mickey PHONE 248-8144

2. EMERGENCY CONTACT NAME Otto Lawrence PHONE 921-0216

WORK AREA	CHEMICAL NAME	TRADE NAME	QUANTITY	METHOD OF STORAGE	NFPA - 704			SPEC. HAZ.	DOT ID#
					H	F	R		
Outside Bldg. 8	Oxygen Liquid	LOX	9,000 gal.	Tank 1	3	0	0	OXY	1073
Bldg. 2	Oxygen Gas	Oxygen	15	Cylinder	3	0	0	OXY	1072
Bldg. 2	Acetylene	Acetylene	10	Cylinder	1	4	3	-	1001
Vehicles/Outside Bldg 3	Propane	Propane	9	Cylinder	1	4	0	-	1978
Outside In The Dike	Empty	Empty	10,000 gal	Tank 3				Empty	
Outside In The Dike	Gasoline	Gasoline	500 gal	Tank 6	1	3	0	-	1203
Outside In The Dike	Diesel Fuel	Diesel Fuel	500 gal	Tank 7	0	2	0	-	
Outside In The Dike	Motor Oil (spent)	Waste Oil	500 gal	Tank 4	0	1	0	-	1268
Outside In The Dike	Hydraulic Oil	Hydraulic Oil	500 gal	Tank 5	0	1	0	-	1268
Bldg. 3, 6	Arsenic	Arsenic	3,000 lbs.	Pallet, Metal Container	3	0	0	-	1558
Bldg. 7	Borax	Borax	15,000 lbs.	Pallet, Bags	1	0	0	-	
Bldg. 7	Hydrated Lime	Hydrated Lime	20,000 lbs.	Pallets, Bags	1	0	1	-	
Bldg. 7	Sodium Nitrate	Sodium Nitrate	20,000 lbs.	Pallets, Bags	0	0	0	OXY	1498
Bldg. 2, 3, 6, 8	Copper	Copper	25,000 lbs.	Pallets, Boxes, Pigs, Ingots					1567
Bldg. 2	Kerosene	Kerosene	165 lbs.	Drums					1223

I, Douglas K. Mickey, being duly sworn, hereby certify, on behalf of Master Metals, Inc. (Company name), that: I have received and read the Right-To-Know Code, contained in Chapter 393 of the Codified Ordinances of the City of Cleveland, including Section 393.10(I) which provides that each employer is obligated to comply with Chapter 393, with or without an inspection by the Division of Fire; and that to the best of its knowledge and ability Master Metals, Inc. (Company) has complied with all provisions of the Code.

Signature of Officer of Company

SWORN TO BEFORE ME and subscribed in my presence this 1 day of March, 1990.

Paula A. Cook

Notary Public

PAULA COOK, Notary Public
State of Ohio
My Commission Expires May 3, 1994

BULK MATERIAL STORAGE CONTAINERS

BIN #1	BATTERY PLATES	90CY
BIN #2	BATTERY PLATES	90CY
BIN #3	MISCELLANEOUS WASTES	90CY
BIN #4	MISCELLANEOUS WASTES	90CY
BIN #5	CHARGE BIN	90CY
BIN #6	LENOX	90CY
BIN #7	FLUE DUST (bagged)	-
BIN #8	PRESS CAKE	90CY
BIN #9	LENOX	90CY
BIN #10	LENOX	180CY
BIN #11	PRESS CAKE	180CY
BIN #13	LENOX, DROSS	40CY
BIN #15	LENOX, DROSS	40CY
BIN #16	LENOX, DROSS	40CY
BIN #17	LENOX, DROSS	40CY
BIN #18	LENOX, DROSS	40CY
BIN #19	LENOX, DROSS	40CY

CY= cubic yards

SECTION XIV - MAJOR WORK PLACE HAZARD

For the purpose of clarification, Master Metals is a hazardous waste recycler. Our customers lead bearing waste becomes our raw material.

Therefore, in this document, any reference to waste will be interperted as waste we generate and not he materials we store and process.

Potential Ignition Sources

1. Furnaces and pots. (See map)
2. Various Electrical malfunctions.
3. Molten metal with combustible material.
4. Water with molten metal.
5. Liquid oxygen in contact with combustible materials.
6. Welding, Cutting and Brazing.

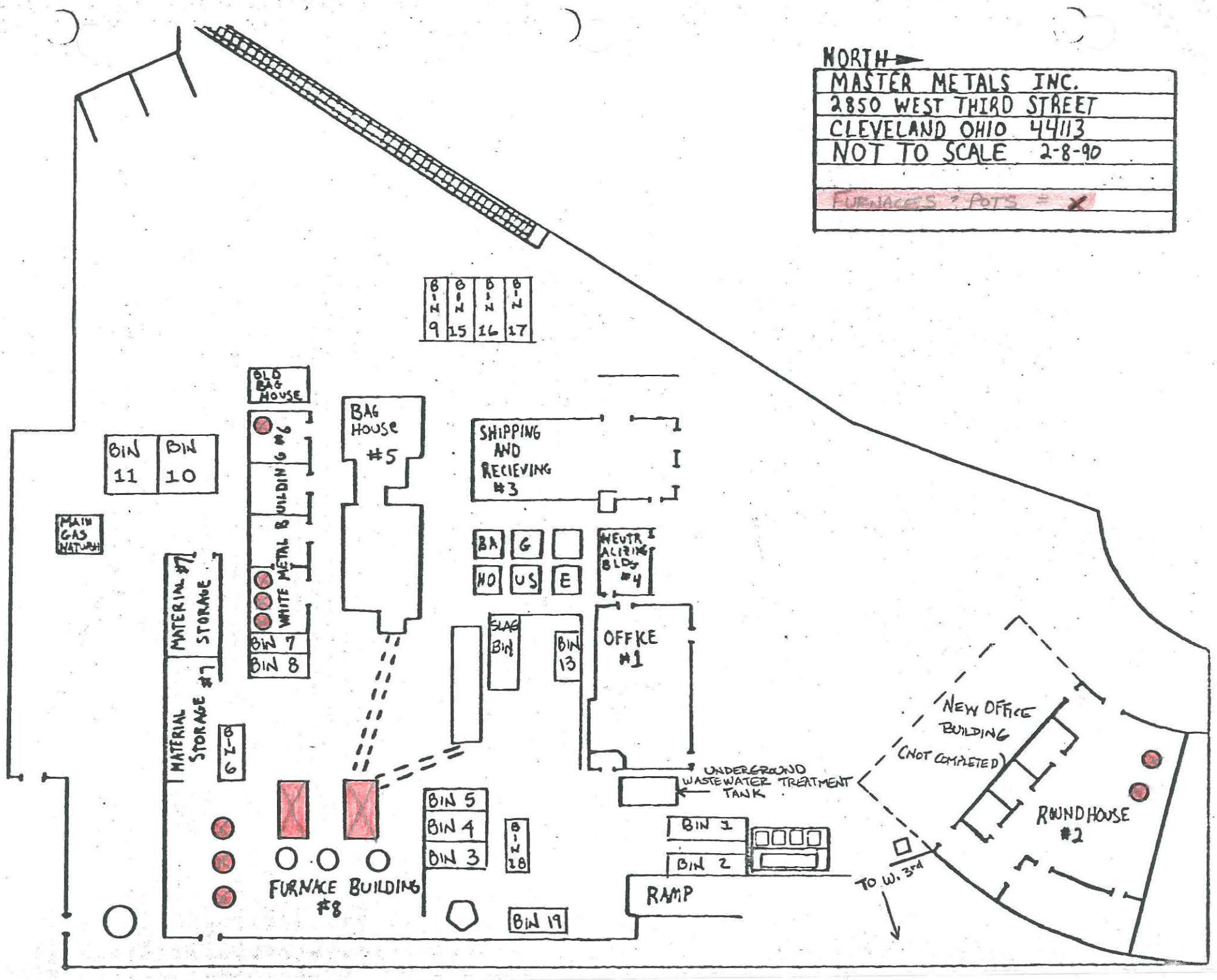
Fuel Load

1. Our waste storage area would potentially be the area of highest fuel load due to the number of stored pallets

2. Our storage areas for the compressed gasses (acetylene, propane, oxygen) would add greatly to a fire. We also use liquid oxygen and natural gas to fuel our furnaces and pots. In case of a fire these materials must be shut off at the source.

3. Sodium Nitrate Storage -

   NOTE: The amount varies day to day. We attempt to keep only what is needed for current production.


NORTH
MASTER METALS INC.
2850 WEST THIRD STREET
CLEVELAND OHIO 44113
NOT TO SCALE 2-8-90
FURNACES ? POTS = X
BIN 9
BIN 15
BIN 16
BIN 17
OLD BAG HOUSE
BAG HOUSE #5
SHIPPING AND RECIEVING #3
BIN 11
BIN 10
MAIN GAS NATURAL
WHITE METAL BUILDING #6
BA
G
HO
US
E
NEUTRALIZING BLDG #4
MATERIAL STORAGE #7
BIN 7
BIN 8
SLAG BIN
BIN 13
OFFICE #1
MATERIAL STORAGE #7
BIN 6
NEW OFFICE BUILDING (NOT COMPLETED)
UNDERGROUND WASTEWATER TREATMENT TANK
ROUNDHOUSE #2
BIN 5
BIN 4
BIN 3
BIN 18
BIN 1
BIN 2
TO W. 3rd
FURNACE BUILDING #8
RAMP
BIN 19

SECTION XV - MSDS

Code: Oxide Grade
Date:

Product: Lead Oxide Grade

SECTION I SUPPLIER INFORMATION

Chemical Name: Soft Lead
Chemical Formula: Pb
Supplier: Master Metals, Inc.
Address: 2850 West Third Street
City, St., Zip: Cleveland, Ohio 44113
Phone: 216-621-2361

EMERGENCY PHONE #: 216-621-2361
Business Hours only (EST)

SECTION II HAZARDOUS INGREDIENT INFORMATION

INGREDIENT	% Wt.	PEL-OSHA	TLV-ACGIH
LEAD CAS #: 7439-92-1	99.5%	0.05 mg/m3	0.15 mg/m3
TRACE ELEMENTS	< 1%		

INGREDIENT HAZARD STATEMENT

SUSPECT CANCER HAZARD - Risk of cancer depends on duration and level of exposure.
Repeated or prolonged inhalation and ingestion may cause delayed injury involving the kidneys and the blood, gastrointestinal, nervous and reproductive systems.
May cause eye, skin and respiratory tract irritation.
May cause allergic skin reaction.
Harmful if inhaled or swallowed.

NOTE: The percentage by weight values reported for the hazardous ingredients in this product represent approximate formulation values.

Unless otherwise noted, all values are reported as 8-hour Time-Weighted Averages (TWAs) and total dust (particulates only). All ACGIH TLVs refer to the 1988-89 Standards. All OSHA PELs refer to 29 CFT Part 1910 Air Contaminants: Final Rule, January 19, 1989.

Code: Oxide Grade

Date:

SECTION III PHYSICAL/CHEMICAL CHARACTERISTICS

Boiling Point: Approximately 1740° C and 3165° F
Specific Gravity (H20=1): 11.3
Melting Point: Approximately 330° C and 625°F
Vapor Pressure (mm Hg): Not known
Vapor Density (Air=1): Not Known
Evaporation Rate (Butyl Acetate=1):
% Solubility/Water: Insoluble

APPEARANCE AND ODOR

Bluish-gray, Soft, Silvery gray metal

SECTION IV FIRE AND EXPLOSION HAZARD DATA

Flash Point: Not Known
Auto-Ignition: Not known
LEL: Not known
UEL: Not known

NFPA HAZARD CLASSIFICATION

Health: 1 Flammable: 0 Reactivity: 0

HMIS HAZARD CLASSIFICATION

Health: 2* Flammable: 0 Reactivity: 0

EXTINGUISHING MEDIA

Use water, carbon dioxide or foam.

SPECIAL FIRE FIGHTING PROCEDURES

None expected.

UNUSUAL FIRE AND EXPLOSION HAZARDS

Moderately explosive in the form of dust when exposed to heat or flame.

THOMPSON, HINE AND FLORY

1100 NATIONAL CITY BANK BUILDING

629 EUCLID AVENUE

CLEVELAND, OHIO 44114-3070

(216) 566-5500 · TELEX 980217

FAX (216) 566-5583

AKRON, OHIO
CINCINNATI, OHIO
COLUMBUS, OHIO
DAYTON, OHIO

LANDOVER, MARYLAND
PALM BEACH, FLORIDA
WASHINGTON, D.C.
BRUSSELS, BELGIUM

WRITER'S DIRECT DIAL NUMBER
(216) 566-5717

RELEASED
DATE
RIN #
INITIALS

November 27, 1990

CERTIFIED MAIL--
RETURN RECEIPT REQUESTED

Branch Chief
U.S. EPA, Region V
RCRA Enforcement Branch, 5HR-12
230 South Dearborn Street
Chicago, Illinois 60604

Section Chief
Ohio Environmental Protection Agency
Division of Solid and Hazardous
Waste Management
1800 WaterMark Drive
P. O. Box 1049
Columbus, Ohio 43265-1049

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Hazardous Waste
2110 East Aurora Road
Twinsburg, Ohio 44087-1969

United States Attorney
for the Northern District of Ohio
1404 East Ninth Street
Cleveland, Ohio 44114

Attention: Arthur Harris, Esq.

United States Department of Justice
Environmental Enforcement Section
P. O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Attention: Barbara Rogers, Esq.

RECEIVED
DEC 04 1990
OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION V

Re: U.S.A. v. Master Metals, Inc.
Case No. C87-1471
(Northern District of Ohio)

Gentlemen:

Pursuant to Section XV of the Consent Decree entered into in U.S.A. v. Master Metals, Inc., Case No. C87-1471 (Northern District of Ohio), Master Metals, Inc. hereby invokes dispute resolution for the demand by the United States to Master Metals for payment of stipulated penalties in the amount of $2,287,500. Informal negotiations to resolve this dispute are requested as provided in Section XVB. of the Consent Decree.

I look forward to your suggestions for a convenient meeting date and place. Please direct a response to the undersigned.

Very truly yours,

Michael A. Cyphert

Michael A. Cyphert

MAC/nab
cc: Douglas K. Mickey

ENFORCEMENT CONFIDENTIAL

No longer confidential
DJB 2/25/94

U.S. Department of Justice

United States Attorney

Northern District of Ohio

Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114-1704

RELEASED
DATE 5/8/98
RIN # 191-98
INITIALS hjs

November 9, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas Mickey, President
Master Metals, Inc.
2850 West Third Street
Cleveland, Ohio 44113

RE: U.S.A. v. Master Metals, Inc.,
Case No: C87-1471, N.D. Ohio, Judge Batchelder

Dear Mr. Mickey:

Under the Consent Decree entered in United States v. Master Metals, Inc., No. C87-1471 (N.D. Ohio), Master Metals must pay stipulated penalties for failure to attain the compliance requirements of Part V. This letter sets forth stipulated penalties accruing from the entry of the Consent Decree through August 17, 1990, the date of the latest U.S. EPA inspection. The penalties are based on two U.S. EPA inspections (i.e., July 16 - 17, 1990, and August 17, 1990), submissions by Master Metals, and statements made by Master Metals' employees during the two inspections.

Section VII of the Consent Decree sets forth the stipulated penalties. Specifically, Section VII.A.1 sets forth the amount to be paid per day for each failure to comply with any deadline for submitting plans, revised plans, certifications, or reports.

Period of Noncompliance	Penalty Per Day of Noncompliance
1st through 30th day	$100
31st through 60th day	$500
61st day and each day thereafter	$1,000

In addition, Section VII.A.2 sets forth the amount to be paid for each failure to comply with all the remaining requirements in the Consent Decree.

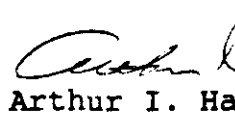
Period of Noncompliance	Penalty Per Day of Noncompliance
1st through 30th day	$1,000
31st through 60th day	$1,500
61st day and each day thereafter	$2,000

This letter constitutes a demand by the United States to Master Metals for payment of stipulated penalties in the amount of $2,286,500. The United States' calculation of the stipulated penalties and description of the violations giving rise to the stipulated penalties are enclosed with this letter. The stipulated penalties are due within fifteen (15) calendar days after Master Metals' receipt of this letter.

Payment shall be by certified or cashier's check, with reference to the Consent Decree, made payable to the "Treasurer of the United States of America", and shall be tendered to the United States Attorney for the Northern District of Ohio, at the address set forth in Section VIII of the Consent Decree. At the time of payment, a copy of such check shall be sent to U.S. EPA, at the address set forth in Section VIII.

Please note that this demand for stipulated penalties is not intended to include stipulated penalties for violations that are presently unknown to the United States or that have accrued after August 17, 1990.

Sincerely yours,



Arthur I. Harris
Assistant U.S. Attorney
(216) 363-3950

Enclosure

cc: Michael A. Cyphert, Esq.
Barbara Rogers, DOJ
Stuart Hersh, USEPA-Region V

SUMMARY OF STIPULATED PENALTIES

SECTION OF CONSENT DECREE VIOLATED	APPLICABLE SECTION FOR CALCULATING STIPULATED PENALTIES	DAYS OF VIOLATION THROUGH 8/17/90	STIPULATED PENALTIES
V.B.1	VII.A.2	184	$323,000
V.B.3	VII.A.2	3	$3,000
V.B.5	VII.A.2	1	$1,000
V.B.6	VII.A.2	184	$323,000
V.B.7	VII.A.2	33	$34,500
V.B.10	VII.A.2	3	$3,000
V.B.11	VII.A.2	51	$61,500
V.B.12	VII.A.2	33	$34,500
V.B.13	VII.A.2	154	$263,000
V.B.15	VII.A.1	214	$172,000
V.D.3	VII.A.2	2	$2,000
V.D.6	VII.A.2	169	$293,000
V.E.1	VII.A.2	33	$34,500
V.E.2	VII.A.2	3	$3,000
V.E.3	VII.A.2	184	$323,000
V.F.1	VII.A.2	33	$34,500
V.F.2	VII.A.2	3	$3,000
V.G.1	VII.A.2	154	$263,000
V.G.3	VII.A.1	154	$112,000
		TOTAL	$2,286,500

CALCULATION OF STIPULATED PENALTIES THROUGH AUGUST 17, 1990, AND DESCRIPTION OF VIOLATIONS GIVING RISE TO STIPULATED PENALTIES[1]

SECTION V.B.1: DEVELOP AND IMPLEMENT INVENTORY SYSTEM

REQUIREMENT: Section V.B.1 of the Consent Decree requires that by February 14, 1990, Master Metals develop and implement an inventory system that tracks all hazardous waste, and other material for reclamation, that is received, generated or stored at the facility, from the time of receipt until the time of ultimate disposition in the kiln. All information is required to be maintained in the operating record of the facility.

VIOLATION: U.S. EPA's July inspection of the facility revealed that Master Metals has failed to implement a system that tracks all waste that is brought to or generated at the facility. Prior to April 2, 1990, the inventory tracking system in the operating record did not include the hazardous waste piles which contain china clay waste and on the date of the inspection still did not include the hazardous waste piles which contain dross. In addition, emission control dust which is generated from secondary lead smelting operations at the Master Metals facility is not recorded in the facility's inventory tracking system. Also, the records of waste in containers and in waste piles were not complete or accurate with respect to volume, description of waste, or location. A review of the records at U.S. EPA's August inspection revealed no documentation of the relocation of the china clay waste.

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[1]For additional descriptions of the violations giving rise to these stipulated penalties, see Tabs D, E, F, and G of Filings In Support Of United States' Motion To Enforce Consent Decree And In Opposition To Defendant's Motion To Reopen And Extend Deadlines In Consent Decree (Aug. 29, 1990).

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred February 15 to August 17 totalling 184 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 184th day	$248,000
	$323,000

SECTION V.B.3: ACCEPT ONLY PERMITTED HAZARDOUS WASTE

REQUIREMENT: Section V.B.3 of the Consent Decree provides that as of the effective date of the Consent Decree (January 15, 1990), Master Metals shall not accept any hazardous waste from off-site, or manage any hazardous waste, which is not specified in Part A of the facility's Hazardous Waste Permit Application (Exhibit D of the Consent Decree), and addressed in facility's waste analysis plan.

VIOLATION: Under Exhibit D to the Decree, Master Metals is authorized to store two types of hazardous waste, designated by EPA hazardous waste codes D008 (EP toxic for lead) and K069 (emission control dust from lead smelters). Defendant violated this requirement by storing unauthorized waste. During the July inspection, U.S. EPA reviewed manifests from shipments of hazardous waste received at the facility since January 15, 1990. The manifests indicated that on at least three occasions (January 26, 1990, April 12, 1990, and July 9, 1990) hazardous wastes with the designation of D002 (corrosive hazardous waste), DOO4 (arsenic), D006 (EP toxic for cadmium), D009 (mercury), and D010 (selenium) had been accepted at the facility. Additionally, during the July inspection, employees of Master Metals indicated that nickel-cadmium batteries (U.S. EPA waste code D006) were

present at the site.

DAYS OF NONCOMPLIANCE: Noncompliance occurred on January 26, April 12, and July 9 totalling 3 days.

Period of Noncompliance	Stipulated Penalties
1st through 3rd day	$3,000
	$3,000

SECTION V.B.5: ACCEPT ONLY MANIFESTED HAZARDOUS WASTE

REQUIREMENT: Section V.B.5 of the Consent Decree forbids Master Metals, as of the effective date of the Consent Decree (January 15, 1990) from accepting hazardous waste at the facility unless it has been manifested.

VIOLATION: Review of the facility's Material Receiving Reports revealed that the defendant has accepted hazardous waste after January 15, 1990, which was not accompanied by a manifest. For example, Material Receiving Report No. 18922 indicated that Master Metals received 28 drums of lead dross without a manifest. This was confirmed by statements made during the July inspection by employees of Master Metals.

DAYS OF NONCOMPLIANCE: Noncompliance occurred on one day between January 15 and July 16.

Period of Noncompliance	Stipulated Penalties
1st day	$1,000
	$1,000

SECTION V.B.6: ACCEPT NO WASTE AND CRACK NO BATTERIES UNLESS IN COMPLIANCE WITH SECTIONS V.E.3, V.E.4, V.F.1, AND V.F.3

REQUIREMENT: Section V.B.6 of the Consent Decree provides that as of the effective date of the Consent Decree (January 15, 1990), the defendant may not accept any hazardous waste or non-hazardous material for reclamation, or crack batteries, until the facility is in full compliance with Sections V.E.3, V.E.4, V.F.1, and V.F.3 of the Consent Decree, and submits written certification to U.S. EPA of compliance with the above.

VIOLATION: As explained in the discussion concerning Sections V.E.3 and V.F.1, below, the defendant has committed daily

violations of one or both of these sections. By continuing to accept waste and crack batteries while violating Sections V.E.3 and V.F.1, defendant has also violated Section V.B.6.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred February 16 to August 17 totalling 184 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 184th day	$248,000
	$323,000

SECTION V.B.7: MINIMIZE POSSIBILITY OF FIRE, EXPLOSION, OR UNPLANNED RELEASES

REQUIREMENT: Section V.B.7 provides that by the effective date of the Consent Decree (January 15, 1990), the defendant must maintain and operate the facility to minimize the possibility of fire, explosion, or unplanned releases of hazardous waste or hazardous waste constituents to air, soil, or surface water, which could threaten human health or the environment.

VIOLATION: Conditions observed at the time of the July and August U.S. EPA inspections demonstrate that the facility is not being operated or maintained in a manner to minimize the release or possibility of the release of hazardous waste and hazardous waste constituents into the air, soil, and surface water. For example, in July U.S. EPA observed bulk loads of hazardous waste being dumped on the ground which were identified by Master Metals personnel as china clay waste and press cake (D008). U.S. EPA was informed that this activity is routine practice. In July and August, U.S. EPA observed that there were several hundred uncovered drums strewn in piles about an area along the southern

edge of the facility, near the southeast corner. Many of the 55-gallon drums were not empty and contained waste residues, and waste had spilled from the drums onto the ground. In addition, lead dust covered storm drains and unused equipment. These are unprotected from stormwater runoff and leachate. Master Metals failed to make sufficient efforts to clean up spilled waste. In August, U.S. EPA observed waste on the ground and in uncovered bulk storage bins being blown into the air.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 to August 17 totalling 33 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$30,000
31st through 33rd day	$ 4,500
	$34,500

SECTION V.B.10: SUBMIT AND IMPLEMENT CONTINGENCY PLAN

REQUIREMENT: Section V.B.10 of the Consent Decree requires the defendant to submit for approval a contingency plan by February 15, 1990. Prior to approval of the plan, the defendant must comply with all contingency plan requirements in the proposed plan.

VIOLATION: A contingency plan was submitted by the defendant in the February 17, 1990 monthly report. However, as was determined by the U.S. EPA's July and August inspections, the facility is not complying with the procedures outlined in the plan, including those concerning maintaining adequate aisle space for emergency equipment in the container storage areas and cleaning up spills.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 and 17 and August 17 totalling 3 days.

Period of Noncompliance	Stipulated Penalties
1st through 33rd day	$3,000
	$3,000

SECTION V.B.11: TRAINING OF PERSONNEL

REQUIREMENT: Section V.B.11 provides that by the effective date of the Consent Decree (January 15, 1990), the defendant must comply with training requirements and maintain at the facility a written description of personnel training records and documents.

VIOLATION: The defendant did not provide the required annual hazardous waste management training for employees. Approximately three-fourths of Master Metals' employees were due to receive annual training by June 27, 1990. Many new untrained personnel are working under the direction of those who did not receive refresher training. In addition, subcontractors are allowed to crack batteries at the facility, and there were no records indicating that these employees had ever been trained and made aware of the facility's contingency plan or hazardous waste management requirements.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred June 28 to August 17 totalling 51 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$30,000
31st through 51st day	$31,500
	$61,500

SECTION V.B.12: FACILITY SECURITY; KEEP FENCE IN GOOD REPAIR

REQUIREMENT: Section V.B.12 provides that by February 14, 1990, the defendant must provide security in accordance with the regulations, including maintenance of the fence surrounding the facility.

VIOLATION: On its July and August inspections, U.S. EPA observed that the defendant had not completed repair of the perimeter fence as required by the Consent Decree.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 to August 17 totalling 33 days

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$30,000
31st through 33rd day	$ 4,500
	$34,500

SECTION V.B.13: MAINTAIN WRITTEN OPERATING RECORD

REQUIREMENT: Section V.B.13 of the Consent Decree requires that by March 16, 1990, Master Metals maintain an operating record in accordance with 40 C.F.R. §265.73 and its Ohio counterpart and include information required by the Consent Decree.

VIOLATION: U.S. EPA's review of the facility's operating record during the July inspection established that records regarding the tracking of waste movement are not accurate and complete. The dross waste piles (U.S. EPA waste code D008) are not included in the operating record. Bulk shipments of hazardous waste received at the facility are not recorded at the time as they are received. Defendant does not have a complete inventory of what is at the facility and where it is located. Lead emission control dust (U.S. EPA waste code K069) generated at the site is not included in the operating record. The operating record does not include certifications required for waste that is brought to the facility and is subject to the land disposal restrictions. During U.S. EPA's August inspection, the facility's operating records showed no documentation regarding the relocation of china

clay waste from the waste piles to the metal storage unit. In addition, there were inconsistencies between the operating record and the information provided by the defendant concerning the volume of china clay waste at the facility. Lastly, information in the operating record regarding the volumes of china clay waste in storage is only being updated once per month, in violation of the Decree and RCRA, which require recording of each time waste is transferred within the facility.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred March 17 to August 17 totalling 154 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 154th day	$188,000
	$263,000

SECTION V.B.15: SUBMIT CERTIFICATION AND DOCUMENTATION BEFORE PLACING BATTERY CASINGS OR OTHER HAZARDOUS WASTE IN KILNS

REQUIREMENT: Section V.B.15 of the Consent Decree requires that prior to placing any battery casings or other hazardous waste or hazardous waste constituents in the rotary kilns, Master Metals must submit to U.S. EPA a certification and documentation that this practice does not violate any permit requirement for the facility under the Clean Air Act, 42 U.S.C.§7401 *et seq.*, and regulations promulgated thereunder, equivalent state law requirements, or 40 CFR Part 266, Subpart D, or any other Federal or State law, regulation, or permit.

VIOLATION: Master Metals certified in its February 17, 1990, monthly report that placing battery casings and other waste into the rotary kiln does not violate the Clean Air Act, but it did not submit the documentation also required by this section of the

Consent Decree.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred January 16 to August 17 totalling 214 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 3,000
31st through 60th day	$ 15,000
61st day through 214th day	$154,000
	$172,000

SECTION V.D.3: STORE SLAG AND REFRACTORY BRICK IN CONTAINERS

REQUIREMENT: Section V.D.3 of the Consent Decree requires that by the effective date of the Decree (January 15, 1990), Master Metals store all slag generated at the facility and all refractory brick removed from furnaces in containers which meet RCRA's container storage requirements. These wastes are required to be managed as hazardous waste unless and until analyses required under Sections V.D.4 and V.D.5 establish that the wastes are not a hazardous waste. Section V.D.4 of the Consent Decree provides that each time refractory brick is removed from the furnace, defendant must test the waste for the EP toxicity hazardous characteristic, and submit the results to U.S. EPA within 20 days of receipt of results, and not more than 75 days after sampling. The defendant is required to maintain the analytical results in the facility's operating record.

VIOLATION: At the time of the July inspection, slag and refractory brick were being stored on the ground, not in accordance with container storage requirements. U.S. EPA observed some refractory bricks in a waste storage unit just south of office building, mixed in the slag.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 and 17 totalling 2 days.

Period of Noncompliance	Stipulated Penalties
1st and 2nd days	$2,000

-	$2,000

SECTION V.D.6: TESTING OF BATTERY CASINGS

REQUIREMENT: Section V.D.6 of the Consent Decree requires that by March 1, 1990, Master Metals test a representative sample of each type of battery casing for EP-toxicity and corrosivity. The results are required to be submitted to U.S. EPA and recorded in the facility's operating record.

VIOLATION: Master Metals tested metal casings, but failed to test the other types of battery casings, which consist primarily of different types of plastic casings, and are commonly known to be EP toxic for lead. As of August 17, 1990, plastic battery casings were still in waste piles in the southwest corner of the facility, even though defendant failed to conduct the required analyses.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred March 2 to August 17 totalling 169 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 169th day	$218,000

	$293,000

SECTION V.E.1: NO ADDING TO OR CREATING NEW WASTE PILES

REQUIREMENT: Section V.E.1 provides that as of the effective date of the Consent Decree (January 15, 1990), the defendant shall not add, place, treat, store, or dispose of hazardous waste or solid waste in waste piles at the facility. Waste in piles at the time the Decree was entered may remain in those piles until July 31, 1990 (china clay piles) or February 14, 1990 (all other waste piles), by which time they must be removed.

VIOLATION: U.S. EPA observed numerous violations of this requirement during both the July and August inspections. Master Metals dumped bulk loads of hazardous waste, primarily EP toxic press cake (D008), on the ground. New waste piles are routinely created from the china clay waste piles or in front of the bulk storage units. Second, many of the facility's storage units of the type shown in Exhibit E to the Decree are no longer offering "containment" of the hazardous waste inside. These storage units are no longer containers within the meaning of RCRA, but rather fit RCRA's definition of waste piles due to modifications of the storage units by the defendant. In addition, the defendant has allowed hazardous waste to spill on the ground and has not cleaned it up promptly, thus causing the waste to be disposed and creating additional land disposal units. Finally, upon receipt at the facility, bulk hazardous waste (i.e., not in containers) is routinely dumped on the ground, thus creating additional waste piles.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 to August 17 totalling 33 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$30,000
31st through 33rd day	$ 4,500
	$34,500

SECTION V.E.2: KEEPING WASTE PILES COVERED

REQUIREMENT: Section V.E.2 of the Consent Decree requires that by the effective date of the Consent Decree (January 15, 1990), Master Metals manage waste piles to prevent and control wind dispersal, leachate creation, and run-on and run-off of leachate.

VIOLATION: During U.S. EPA's July and August inspections, waste piles were observed to not be covered, or were insufficiently covered. A portion of the dross and china clay hazardous waste piles were in standing water which appeared to contain significant amounts of waste material. Run-off and leachate was flowing off some of the waste piles, and could flow off-site, directly or through the storm drains. Many of the facility's storage units of the type shown in Exhibit E to the Decree are no longer offering "containment" of the hazardous waste inside, and these storage units are no longer containers within the meaning of RCRA, but rather fit RCRA's definition of waste piles.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred on July 16 and 17 and August 17 totalling 3 days.

Period of Noncompliance	Stipulated Penalties
1st through 3rd day	$3,000

	$3,000

SECTION V.E.3: REMOVAL OF ALL WASTE PILES

REQUIREMENT: Section V.E.3 of the Consent Decree requires that by February 14, 1990, Master Metals remove all hazardous waste (other than china clay waste, which must be removed by July 31, 1990), solid waste, and other material from all waste piles, and forbids defendant from storing any other waste in waste piles or other land disposal units thereafter.

VIOLATION: U.S. EPA observed during both the July and August inspections that Master Metals has not removed the dross or the battery casing waste piles at the south end of the facility, as required by this section. Also, as stated above with respect to Section V.E.1, the defendant has transformed the bulk storage units into waste piles and has created several new waste piles.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred February 15 to August 17 totalling 184 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 184th day	$248,000
	$323,000

SECTION V.F.1: PROPER CONTAINER STORAGE

REQUIREMENT: Section V.F.1 of the Consent Decree provides that by February 14, 1990, Master Metals must store all hazardous waste (except the china clay waste) and all non-hazardous waste in containers. As of July 31, 1990, all china clay waste was required to be stored in containers. All containers must be managed in accordance with 40 CFR Subpart I. Exhibit E of the Consent Decree depicts a manufactured bulk container that may be used at the defendant's facility. All containers must be in good condition or over-packed. The containers must not have any leaks, holes, bulges, deterioration, or appear unsound. Containers with liquids must be on pallets. All containers must be labelled, and closed except when waste is being transferred. Also, Section V.A.3 and Exhibit D to the Consent Decree identify the authorized locations for storage of waste.

VIOLATION: Master Metals is not maintaining the container storage areas and containers in accordance with RCRA and the Consent Decree. The boundaries of the individual storage units and waste management areas are not distinct, and drums are located outside of areas authorized under Exhibit D. One area flows into the next because of waste on the ground. In addition, the majority of the containers do not have lids, or have lids that are not or cannot be secured because of their bad condition. The majority of the larger bulk storage units are not stored closed; they are not covered, and the doors have been torn off or removed. Portions of the bottoms of at least two of the bulk storage units

were cut away. Drums are stacked on top of each other in an unstable manner. The aisle space is inadequate for movement of spill equipment or to perform inspections. Lead emission control dust is not adequately stored. Waste samples are stored outside authorized container storage areas, are not labelled, and have no aisle space between them. Cardboard/fiber containers were sitting in standing water.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 to August 17 totalling 33 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$30,000
31st through 33rd day	$ 4,500
	$34,500

SECTION V.F.2: WASTE MUST BE PLACED INTO CONTAINERS UPON ARRIVAL AT FACILITY

REQUIREMENT: Section V.F.2 of the Consent Decree requires that Master Metals not accept at the facility any hazardous waste or non-hazardous waste that exhibits a characteristic of hazardous waste unless it arrives in containers that are in good condition, or is placed into containers in good condition immediately upon arrival at the facility.

VIOLATION: On both the July and August inspections, U.S. EPA observed violations of this requirement. As noted above, uncontainerized bulk waste is routinely placed directly on the ground upon arrival at the facility. In addition, batteries, battery casings, slag, and refractory bricks are not in containers. The majority of containers are open and in very poor condition. Cardboard/fiber containers were sitting in standing water.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred July 16 and 17 and August 17 totalling 3 days.

Period of Noncompliance	Stipulated Penalties
1st through 3rd day	$3,000
	$3,000

SECTION V.G.1: LIABILITY COVERAGE

REQUIREMENT: Section V.G.1 of the Consent Decree requires that by March 16, 1990, the defendant submit to U.S. EPA a written certification of compliance with liability requirements. Section VII.E. provides that no stipulated penalties will be payable for failure to comply with this requirement if defendant exercises best efforts to satisfy this requirement and submits certification and specified documentation of best efforts to EPA within sixty days and one-hundred and twenty days after entry of the Decree and every six months thereafter.

VIOLATION: In its filings with the court and submissions to U.S. EPA, defendant has conceded that, thus far, it has been unable to comply with the liability coverage requirements of 40 C.F.R. §265.147 and its Ohio counterpart. Thus, the only way to avoid stipulated penalties for violation of Section V.G.1 of the Consent Decree is: (1) to "exercise best efforts to obtain and maintain liability coverage," and (2) to satisfy the other requirements of Section VII.E of the Consent Decree. Moreover, notwithstanding the defendant's compliance with Section VII.E, Section VII.F of the Consent Decree dictates that stipulated penalties shall accrue beginning 180 days following entry of the Consent Decree, unless the Court has granted relief pursuant to Section V.G.2.

A review of the defendant's submittals reveals that such submittals do not meet the minimum requirements of Section VII.E.

For example, the defendant's 60-day certification failed to include any of the five items listed in Section VII.E, including: copies of each application for liability coverage, copies of all responses to the applications, and a detailed description of measures taken by the defendant to meet any preconditions to eligibility. Accordingly stipulated penalties are due from March 17, 1990, through August 17, 1990.

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred from March 16 to August 17 totalling 154 days.

Period of Noncompliance	Stipulated Penalties
1st through 30th day	$ 30,000
31st through 60th day	$ 45,000
61st day through 154th day	$188,000
	$263,000

SECTION V.G.3: FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE

REQUIREMENT: Section V.G.3 of the Consent Decree requires Master Metals to implement and submit to U.S. EPA and Ohio EPA by March 16, 1990, certification that financial assurance mechanisms for the closure of the facility have been established.

VIOLATION: Through at least August 17, 1990, the defendant did not submit any certification of financial assurance mechanisms simultaneous with the submittal of any closure or post-closure plans as required by the Consent Decree. (U.S. EPA and OEPA will discuss, under separate cover, the specific deficiencies of thefinancial assurance mechanisms received by U.S EPA on September 9, 1990.)

DAYS OF NONCOMPLIANCE: Daily noncompliance occurred March 17 to August 17 totalling 154 days.

Period of Noncompliance	Stipulated Penalties
1st through 30st day	$ 3,000
31st through 60th day	$15,000
61st day through 154th day	$94,000
	$112,000

TOTAL STIPULATED PENALTIES THROUGH AUGUST 17, 1990 = $2,286,500

NOV 09 1990

5HR-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas Mickey, President
Master Metals, Inc.
2850 West Third Street
Cleveland, Ohio 44113

Re: Contingency Plan
Comments
Master Metals, Inc.
OHD 097 613 871

Dear Mr. Mickey:

The United States Environmental Protection Agency (U.S. EPA) has completed a review of the written contingency plan dated January 1990 submitted to U.S. EPA by Master Metals. The plan described above was required by the January 15, 1990, Consent Decree (Case No. C87-1471).

In accordance with Paragraph V.B.10 of the Consent Decree, the plan must satisfy the requirements of 40 Code of Federal Regulations (CFR) 265.50 through 265.56 and Ohio Administrative Code Rules (OAC) 3745-65-50 through 3745-65-56. U.S. EPA's comments on the contingency plan are indicated in the enclosure. Pursuant to the Consent Decree, Master Metals must submit a revised plan to U.S. EPA within fifteen (15) days of receipt of this letter.

If you have any questions or comments regarding the letter, please contact Sheri L. Bianchin of my staff at (312) 886-4446.

Sincerely yours,

Kevin M. Pierard, Acting Chief
RCRA Enforcement Branch

Enclosure

cc: Michael Savage, OEPA-CO
Paul Anderson, OEPA-NEDO
Mark Bergman, OEPA-NEDO

bcc: Catherine McCord, 5HR-12
Barbara Rogers, U.S. DOJ
Arthur Harris, Assistant U.S. Attorney
Stuart Hersh, ORC

ENCLOSURE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S
COMMENTS ON CONTINGENCY PLAN

General Comments

1. Contingency plan must satisfy each of the requirements of 40 CFR 265.50 through 265.56.

2. The exact contingency measures are not clear from the report. This must be specified. Specifically, describe the measures used and how the measures are carried out.

3. The plan must describe arrangements made with local police departments, hospitals, and State and local response teams to coordinate emergency services.

4. Pages should be numbered for easy reference.

5. Indicate whether an emergency drill is or will be part of the Contingency Plan. The drill should be part of the Contingency Plan.

6. U.S. EPA I.D. Number should be placed into the plan in a conspicuous place.

Specific Comments

7. Under the Aisle Space Section, the minimum required aisle space and the frequency of inspections should be indicated.

8. Under the Consent Decree, Master Metals must implement its contingency plan as proposed until it is approved, and then implement the approved plan. Under the Spill Prevention Section of the proposed plan, the procedures, while they may be effective if properly carried out, some of the procedures have not been carried out.

   Examples are as follows:

   - Not all spent battery acid is contained in the underground storage tank. Puddles of acid were observed on the ground on U.S. EPA's July 16 - 17, 1990, inspection. Furthermore, the drain was silted with solids and not working effectively.

   - The berms are not completed. The bermed concrete pads are not adequate since they are located near the street and do not contain the acid. The pad is not graded such to cause the acid to flow into the drain.

- Lead battery plates are placed in bins which are in a state of disrepair and are not containing the waste.

- Not all lead compound piles are covered.

9. Under the Spill Response Section, define "spill". Second, indicate where the absorbents are located. Third, indicate the company's policy regarding timeframes to initiate and complete spill response. Last, the plan only mentioned response to acid and oil spills at the facility. The plan must include response to spills of all types of hazardous wastes handled at the facility.

10. The chart on Chemical Inventory is not correct and should be updated. Furthermore, the locations of each hazardous waste management unit must be specifically indicated.

11. Is the list of contingency plan team members updated given the recent hiring of new employees? If it has not been, it should be. In addition: a) indicate what the training is that is referred to; b) when the members were trained; and c) how often the refresher courses are provided.

12. The contingency plan must include a map with a route to the hospital detailed.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

SEP 18 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
SEP 27 1990
OHIO EPA
Waste Management Division
U.S. EPA, REGION V

Mr. Douglas Mickey, President
Master Metals, Inc.
2850 W. Third Street
Cleveland, Ohio 44113

Re: Notice of Violation

Dear Mr. Mickey:

The enclosed Notice of Violation is issued this date pursuant to Section 113(a)(1) of the Clean Air Act (the Act) as amended, 42 U.S.C. §7413(a)(1), to notify Master Metals, Incorporated, that the Administrator of the United States Environmental Protection Agency (U.S. EPA) finds Master Metals, Incorporated, located at 2850 West Third Street, Cleveland, Ohio, in violation of the applicable Ohio State Implementation Plan.

Section 113 of the Clean Air Act provides U.S. EPA with several enforcement options if the violations extend beyond the 30th day after the date of this notification. Those options include the issuance of an Administrative Order or the commencement of civil or criminal actions. In addition, Section 120 of the Act provides for assessment and collection of noncompliance penalties, and Section 306, as implemented by Executive Order 11738 and 40 C.F.R. 15, provides that facilities in noncompliance with the Act may become ineligible for Federal contracts, grants, or loans.

We are offering you an opportunity for a conference to discuss the violations that are the subject of this Notice. The conference will afford you an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take.

The U.S. EPA contact in this matter is Mr. Richard Edmonds, Acting Chief, Compliance Section II. Please contact Mr. Edmonds at (312) 353-2086 to request a conference. Such a request should be made as soon as possible, but in any event, no later than ten (10) days after receipt of this Notice.

Sincerely yours,

David Kee, Director
Air and Radiation Division

Enclosure

cc: Patricia P. Walling, Chief
Division of Air Pollution Control

Ed Fasko, Chief
Field Services Bureau
Cleveland Dept. of Air Pollution Control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF	)	
	)	
Master Metals, Incorporated	)	Notice of Violation
Cleveland, Ohio	)	
	)	EPA-5-90-A-79
Proceedings Pursuant to Section	)	
113(a)(1) of the Clean Air Act, as	)	
amended, 42 U.S.C. §7413(a)(1)	)	

STATUTORY AUTHORITY

This Notice of Violation is issued pursuant to Section 113(a)(1) of the Clean Air Act, as amended, 42 U.S.C. §7413(a)(1).

FINDINGS OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) by authority duly delegated to the undersigned, finds:

1. Ohio Air Pollution Control Rule AP-3-07* regulates the control of emissions of particulate matter and is part of the applicable implementation plan for the State of Ohio, approved by U.S. EPA on April 15, 1974, at Fed. Reg. 13541. This Rule establishes visible emission standards applicable to Master Metals, Incorporated (Master Metals), Cleveland, Ohio.

2. Pursuant to AP-3-07, Master Metals shall not discharge into the atmosphere, from any single source of emission, any air contaminant with visible emissions greater than or equal to 20 percent opacity for a period of more than 3 minutes in any 1 hour, nor discharge at any time, any air contaminant with visible emissions greater than 60 percent opacity.

3. Specifically, Master Metals' secondary lead smelting facility is in violation of AP-3-07, based upon visible emission observations listed below. The opacity readings have been reduced to 6-minute average opacities by summing the cumulative observed opacities of 24 consecutive individual visible emission observations recorded at 15 second intervals and dividing by 24. A 3 minute period was

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* The State of Ohio has recodified Rule AP-3-07 as 3745-17-07.

exempted from the 1 hour period of observations for average opacities greater than or equal to 20 percent but less than 60 percent.

Secondary Lead Smelting Operation:

Observation Date	Observation Period	Six-Minute Average** (Percent Opacity)
January 19, 1990	1:20 to 1:26 pm	61%
	1:26 to 1:32 pm	52%

Total observation time = 12 minutes
Total time exceeding standard from 1:20 to 1:32 pm = 9 minutes***

Observation Date	Observation Period	Six-Minute Average** (Percent Opacity)
May 18, 1990	2:18 to 2:24 pm	21%
	2:24 to 2:30 pm	27%
	2:30 to 2:36 pm	23%

Total observation time = 18 minutes
Total time exceeding standard from 2:18 to 2:36 pm = 15 minutes***

Observation Date	Observation Period	Six-Minute Average** (Percent Opacity)
June 13, 1990	7:46 to 7:52 pm	28%
	7:54 to 8:00 pm	40%

Total observation time = 13.5 minutes
Total time exceeding standard from 7:46 to 8:00 pm = 9 minutes***

Pot Furnace Area:

Observation Date	Observation Period	Six-Minute Average** (Percent Opacity)
January 22, 1990	9:08 to 9:14 am	46%
	9:14 to 9:20 am	43%
	9:45 to 9:51 am	47%

Total observation time = 20 minutes
Total time exceeding standard from 9:08 to 9:51 am = 15 minutes***

** Readings immediately preceding and following interrupted readings were deemed consecutive.

*** Three minute exemption has been subtracted.

4. Ohio Administrative Code (OAC) 3745-35-02 establishes operating permit requirements. This rule is a part of the applicable implementation plan for the State of Ohio, approved by U.S. EPA on June 10, 1982, at 47 Fed. Reg. 25144. This rule applies to Master Metals located in Cleveland, Ohio.

5. Pursuant to OAC 3745-35-02, no person shall operate a stationary source of air contaminants without first applying for and obtaining a permit to operate from the appropriate Ohio Environmental Agency.

6. Secondary lead smelting furnaces P009 and P010 are sources of air contaminants subject to the requirement of OAC 3745-35-02. Master Metals has been operating and continues to operate its secondary lead smelting furnaces P010 and P009 without permits to operate, in violation of OAC 3745-35-02.

NOTICE OF VIOLATION

The Administrator of the U.S. EPA, by authority duly delegated to the undersigned, notifies the State of Ohio and Master Metals, that the facility described above is in violation of the applicable implementation plan as set forth in the Findings of Violation.

Date: SEP 18 1990

David Kee, Director
Air and Radiation Division

standard bcc's: official file copy w/attachment(s) ✓
originator's file copy w/attachment(s)
originating organization reading file w/attachment(s)

other bcc's: branch reading file w/attachment(s)
Ohio State Team
Woolums
Edmonds
Assadi

5ARD:ACB:SECTION II:ASSADI/ar:nw:7-11-90
Saved: a:novmmi.fa

8/2/90

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:

5HR-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas Mickey, President
Master Metals, Inc.
2850 West Third Street
Cleveland, Ohio 44113

Re: Facility Inspection Plan
Disapproval
Master Metals, Inc.
OHD 097 613 871

Dear Mr. Mickey:

The United States Environmental Protection Agency (U.S. EPA) has reviewed Master Metals' January 1990 submittal of the facility inspection form.

The submittal is not a written inspection plan as is required by the January 15, 1990, Consent Decree (Case No. C87-1471). U.S. EPA, therefore, disapproves the submittal.

Specifically, while the inspection forms were to be included in the facility inspection plan, the Consent Decree also requires a comprehensive plan be submitted in accordance with the regulations. Enclosed are specific comments.

Paragraph V.B.8 of the Consent Decree, required Master Metals to submit to U.S. EPA a plan, for approval and to implement an inspection plan and schedule for the facility. Per the Consent Decree, the inspections shall be conducted in accordance with 40 Code of Federal Regulations (CFR) 265.15(a) and Ohio Administrative Code (OAC) Rule 3745-65-15(a). In addition, the inspection should be recorded in accordance with 40 CFR 265.15(b) and (d) and OAC Rule 3745-65-15(b) and (d) and problems should be corrected immediately in accordance with 40 CFR 265.15(c) and OAC 3745-65-15(c).

Printed on Recycled Paper

Pursuant to the Consent Decree, Master Metals must submit a revised plan to U.S. EPA within fifteen (15) days of receipt of this letter.

If you have any questions or comments regarding the letter, please contact Sheri L. Bianchin of my staff at (312) 886-4446.

Sincerely yours,

Kevin M. Pierard, Acting Chief
RCRA Enforcement Branch

Enclosure

cc: Mike Savage, OEPA-CO
Paul Anderson, OEPA-NEDO
Mark Bergman, OEPA-NEDO

bcc: Catherine McCord, 5HR-12
Barbara Rogers, U.S. DOJ
Arthur Harris, Assistant U.S. Attorney
Stuart Hersh, ORC

5HR-12:SBIANCHIN:fh:ao:6-4446:8/2/90:SHERI'S DISK:MICKEY.ip

ENCLOSURE

SPECIFIC COMMENTS ON FACILITY INSPECTION PLAN

The submittal by Master Metals failed to comply with 40 CFR 265.15(b)(1) because it did not include a written schedule for inspecting all monitoring equipment, and operating and structural equipment that are important in preventing, detecting and responding to environmental emergencies or human health hazards. The schedule must be kept at the facility and must identify types of problems which the facility should be aware and for which the facility will look.

In accordance with 40 CFR 265.15(c), the facility must remedy any deterioration or malfunction of equipment or structure which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

June 25, 1990

Ms. Sherry Bianchin
USEPA - Region V
RCRA Enforcement Branch
5HR-12
230 S. Dearborn Street
Chicago, Illinois 60604

Re: Master Metals, Cleveland, Ohio

Dear Ms. Bianchin:

Please find enclosed a copy of the OEPA response report submitted to Mr. Mark Bergman of OEPA, NEDO, on May 31, and June 25, 1990. This report was in response to the violations and recommendations that were generated as a result of the OEPA site inspection of March 26 & 27, 1990.

If you have any questions or comments, or require additional information, please contact either Mr. Mickey of Master Metals, or myself at 216-526-0990.

Respectfully,

ENVISAGE ENVIRONMENTAL INC.

Thomas J. Monito
Regulatory Compliance Manager

Encl. OEPA Inspection Response Report

cc. Doug Mickey, Master Metals Inc. (Letter Only)
Mark Bergman, OEPA, NEDO (Letter Only)

CMC

07/25/90

~~ENFORCEMENT CONFIDENTIAL~~

MASTER METALS
2850 W. Third Street
Cleveland, Ohio 44113

CONSENT DECREE COMPLIANCE REQUIREMENTS
Docket: C87-1471
OHD 097-613-871

INSPECTION: 07/16/90 1:45 - 4:00
07/17/90 8:30 - 3:30

PARTICIPANTS:

Doug Mickey - President
Tom Helms - Plant Superintendent
Bob Miladie - Environmental Coordinator
Jim Ammons - Lab Technician
Rudy Zupan - Woodward Clyde

A. IDENTIFICATION OF CLOSING AND OPERATING WASTE UNITS

A1. Ex. B identifies all areas where hazardous waste was T,S,D up to lodging. Include location, nature of activity, ID, type of unit. Must give notice whether additional information or inaccuracies were found. Exhibits C and D area based on B. USEPA may require revisions to C and D, based on changes to B.

FINDINGS:

-Defendant did not propose any changes to CD exhibits.

-Partial closure plan and facility closure plan does not coincide with exhibits B and C. (GIVE SPECIFIC DIFFERENCES)

-Current waste activity at site does not coincide with Exhibits C and D. Facility is using waste management units not currently included on diagram or Part A. These units include multiple container storage areas (S01) and waste piles (S03).

A.2 Ex. C is all areas that must close because of LOIS.

FINDINGS:

-Additional land disposal units, waste piles (SO3) identified at facility. Exhibit C is does not currently reflect units that must close.

-Facility representatives said that all bulk waste received at the facility is dumped on ground and later moved into storage unit #4. For example press cake is delivered in bulk and dumped on ground. Facility uses 10,000 pounds per day. Loads were dumped both days of the inspection.

A.3 Ex. D is corrected Part A that is to include operating units.

FINDINGS:

-Part A does not include the "operating" waste management units currently at facility.

-Facility submitted Part B application on April 9, 1990. Debby Berg of Ohio EPA said that facility's Part B application is not on the list of facility's that is to be reviewed by 1992. No liability insurance for operating units will not be pressed by permit review process until initial review of application is completed.

-Not all current operating units are included in Part B application, including some container storage areas and waste piles.

B. GENERAL FACILITY STANDARDS

B.1 By 02/15/90 (30), develop and implement inventory system that tracks all HW, and other material for reclamation, that is received, generated, or stored from time of receipt to ultimate disposition. Tracking includes container labelling and tracking. Put all information in operating record.

FINDINGS:

-Tracking system documentation submitted 02/20/90 monthly report; Should have submitted by 2/15. Documentation included copy of the log entry forms.

-The procedures outlined in the "Daily Tracking Procedure" is not being followed. Not every shipment has a manifest. A few manifests had waste codes other than K069 and D008 (other metals). Material handling procedures outlined in the submittal are not being followed. Containers are stored outside of container storage area and bulk loads are dumped upon ground upon arrival at facility.

-Inspection revealed that inventory tracking system is inadequate to track shipments of waste into facility (and generated at facility) and storage of hazardous waste at facility until placement of waste into rotary kilns.

-Operating records do not indicate true quantity of waste brought into facility.

-There are weight discrepancies between inventory sheets and manifest waste weights.

-The waste tracking system in operating record did not include china clay waste piles until 04/02/90. Records do not include new china clay pile created near the kilns.

B.2 By 02/15/90 (30 days), to extent not provided in A.1, submit an inventory of all HW and non-HW that is currently at facility or has T,S,D in closing HWM units. Include nature, volume, type of activity, type of unit, and diagram showing location.

FINDINGS:

-Information was provided in first monthly report dated 2/17. A separate submittal was not provided by the required 2/15/90 date.

- A diagram was provided. No volumes, nature, types were specified.

B.3 By 01/15/90, shall not accept any off-site HW or manage any HW except that specified in Part A (Ex. D) and addressed in facility's waste analysis plan.

FINDINGS:

-Manifests indicate that waste with waste codes in addition to D008 and K069 (those listed on Part A) were accepted at facility since effective date of CD. These were primarily waste with other EP tox metals. NiCd batteries were also accepted. The batteries can not be processed at MM. Batteries are not being stored within a designated container storage area.

B.4 By 02/15/90 (30), submit to OEPA and USEPA annual reports for 1986, 1987, and 1988, and years after.

FINDINGS:

-Reports were submitted in 2/20 monthly report; beyond deadline. Annual reports were submitted to OEPA with the monthly report. Nothing submitted under separate cover to OEPA or USEPA.

-Mr. Mickey said that he submitted 1989 annual report on time.

-***USEPA should verify submission of 1989 annual report to OEPA.

B.5 Acceptance of only manifested HW.

FINDINGS:

-MM has accepted hazardous waste without manifests. Evidence in documents reviewed as part of operating record.

-Acme Steel waste is never manifested.

-Material Receiving Report #18991, no manifest (06/13/90).

-Other shipments of unmanifested shipments. Mr. Mickey said that no unmanifested shipment reports were ever submitted.

-Tom Helms commented that he did not known how to make generators manifest their waste.

B.6 By 01/15/90 no acceptance of HW and non-HW reclamation material or cracking of batteries until full compliance with E.3, (remove all waste from piles by 2/15 except china clay), E.4 (do not accept additional china clay, reclaim china clay at optimum rate), F.1 (store all waste in containers in good condition), F.3 (remove containers of all ignitable and corrosive waste) and written certification to USEPA.

FINDINGS:

-MM has accepted NiCd batteries, accepted Pb-waste, batteries, and have cracked batteries without complying with E.3 and F.1. Waste piles other than china clay are still at facility. New waste piles have been created. All waste is not stored in containers and is not stored in containers in good condition.

-Facility is not on schedule to consume all china clay by July 31, 1990.

-Facility certified in 2/17/90 monthly report that they are in compliance with above provision.

By 02/15/90, submit a plan for approval to USEPA that describes proposed location and method for cracking, safeguards, and methods for collection, storage, and neutralization of acid. Submit revision within 15 days of notice of any deficiencies. Upon approval, implement approved plan.

FINDINGS:

-In 02/17/90 monthly report, MM provided diagrams (appendix D) for battery decasing area. No plan was submitted. Documents do not demonstrate compliance with this requirement. Observations during inspection indicate that operating practices do not comply with the above requirements.

-**USEPA needs to comment formally on plan.

-MM has subcontractors at the facility that do cracking.

After July 31, 1990, do not accept any HW or other reclamation non-HW for reclamation or storage, or crack batteries unless in compliance with E.5 (remove all china clay).

FINDINGS:

-Deadline has not passed yet

B.7 By 01/15/90 maintain and operate facility to minimize the possibility of fire, explosion, or unplanned releases of HW or HW constituents to air, soil, SW, which could threaten human health or the environment.

FINDINGS:

-Facility is not being operated to minimize the release of HW into air, soil, and surface water. Storm drains covered with lead dust. Lead dust covering ground and equipment. No efforts observed to clean up spilled waste. Drums leaking. Appeared to be acid on ground.

-Concrete is cracked in drum storage area.

B.8 By 01/15/90, conduct regular inspections, to discover deterioration of equipment, releases, malfunctions in monitoring, safety, or emergency equipment, and any other condition or event which may cause or lead to the release

FINDINGS:

-There were inspection records at site in operating log, but no indication that any remedial action is taken when problem exists. Records indicate that there is no problem with containers, eventhough majority were in terrible condition at the time of the inspection. Records do not reflect conditions at facility.

By 02/15/90 (30) submit to U.S. EPA for review and approval, and implement, an inspection plan and schedule. Modify within 15 days after receipt of comments. Record observations from inspections and immediately upon detection, correct any problems or potential problems.

FINDINGS:

-Inspection forms were submitted in 02/17/90 monthly report (appendix G). An "inspection plan" was not submitted.

-***USEPA did not comment on forms.

B.9 By 02/15/90 (30) submit to U.S. EPA certification that facility contains all equipment required under 40 CFR 265.32, an inventory of the equipment, and a diagram of the facility that shows the location of each piece of equipment.

FINDINGS:

-Information submitted as part of 02/17 monthly report.

B.10 By 02/15/90 (30) submit for approval a contingency plan. Also submit to authorities. Modify with 15 days of comments. Prior to approval, must still comply with all contingency plan requirements.

FINDINGS:

- A contingency plan was submitted with 02/17/90 monthly report (appendix E).

-***USEPA has not provided comments to MM on contingency plan. The plan does not include an accurate list of contingency team members. It does not show the location of all hazardous waste at the facility.

-The facility is not complying with all requirements of the contingency plan, including aisle space, notification of releases.

B.11 By 01/15/90, comply with training requirements and maintain at the facility a written description of personnel training records and documents.

FINDINGS:

-The facility did not provide annual training. Three-quarter of the employees were due to receive annual training in June 1990 (6/27). Many new untrained personnel are working under the direction of those who did not receive refresher training. New employees are required to be trained within six months of their employment.

-The facility did have training records at the facility. Records copied during inspection.

-Envisage provided some training in the past. Insurance application says that other firm is providing training.

-It is not clear whether contract workers who are involved with battery cracking are being trained. It does not appear so.

B.12 By 02/15/90, provide facility security, including maintenance of fence.

FINDINGS:

-MM has not completed repair of perimeter fence. Mr. Mickey said that they have not gotten completion of the work.

-MM certified compliance in 02/17/90 monthly report.

-MM has security guard until 6 PM. A mobile patrol stops by in the evenings. On the weekend there is a security guard from 8 PM to 8 AM.

B.13 By 03/15/90 (60) maintain operating record, including information required by CD. Provide upon request.

FINDINGS:

-***USEPA never requested copy of operating record.

-Portions of operating record reviewed during inspection indicate that records regarding waste movement are not accurate and complete.

- MM certified compliance in 3/17/90 monthly report.

B.14 Retain a consultant or employee qualified to oversee the implementation of the requirements of this Consent Decree.

FINDINGS:

Monthly report and Mr. Mickey indicated that Woodward-Clyde and Envisage are being retained as consultants.

B.15 Prior to placing any battery casings or other hazardous waste or hazardous waste constituents in the rotary kilns, submit to USEPA certification and documentation that this practice does not violate any permit requirement for the facility under the Clean Air Act, 42 U.S.C.7401 et seq., and regulations promulgated thereunder, equivalent state law requirements, or 40 CFR Part 266, Subpart D or any other Federal or State law, regulation, or permit.

FINDINGS:

-MM certified in 02/17/90 monthly report that placing casings and other waste does not violate CAA.

-Cleveland Air Agency shut down one kiln during inspection because of SO_2 and particulate violations.

-One stack test performed in September 1989, with okay results. Mr. Mickey does not think that facility can achieve these results during normal operations. Facility was adding extra lime, but this causes slag to be EP toxic. Mr. Mickey is going to appeal air requirements.

C. CLOSURE

C.1 By 03/15/90 (60), submit to OEPA and USEPA a closure plans for closing units identified in A.2 and Ex. C. Revise within 30 days notice of deficiencies.

FINDINGS:

-MM submitted partial closure plan as attachment to 3/17/90 monthly report. They did not submit the closure under separate cover to OEPA. OEPA has not public noticed or reviewed closure plan because they did not known that it was attached to monthly report.

-USEPA spoke with OEPA to straighten out matter regarding closure plan review.

-The partial closure plan does not include all necessary waste units. Needs to be revised to include dross, battery casings, additional container storage areas, etc...

-***USEPA to review CD exhibits and compare to units in partial closure plan.

C.2 By 05/15/90 (120), maintain full facility closure plan, and, if necessary, post-closure plan, which provides for closure of all hazardous waste management units which have not been closed or are not included in the closure plan submitted under Section V.C.1. above.

FINDINGS:

-MM submitted closure plan under separate cover to OEPA. Plan did get kicked into review process by enforcement personnel who looked over monthly report. Closure plan rec'd by OEPA 05/21/90, public notice 6/11 to 7/17. This closure plan should not have been public noticed. OEPA informed on 7/16 by USEPA.

C.3 Within 60 days after completion of closure of any hazardous waste management unit at the facility, submit to U.S. EPA and OEPA certifications of closure for such waste pile or other unit, from the facility owner or operator and an independent engineer.

FINDINGS:

-closure not complete yet. Requirement has not gone into effect.

D. WASTE CHARACTERIZATION

D.1 Complete waste determinations of all solid waste generated (other than waste analyzed in paragraphs D.4-6 below) including sludge from drains, piping, catch basins, and sumps. Maintain results in operating record. Submit results to U.S. EPA within 30 days after conducting waste determinations.

FINDINGS:

-MM has not made waste determinations on all waste streams. Through use of knowledge, above waste streams and waste left on and around old blast furnace, MM says material is HW - flue dust that is EP toxic for Pb.

-Results were not submitted to USEPA.

D.2 By 03/15/90 (60), develop and submit to USEPA a plan for analysis of all HW except lead acid batteries, that is generated, received, or stored at facility. Implement plan for all waste generated or received after entry. Modify WAP within 15 days of comments.

By 03/15/90 (60), of USEPA approval or modification of WAP, submit all information developed under WAP for waste currently at facility.

FINDINGS:

-MM submitted waste analysis plan (WAP) with 02/17 monthly report.

-***USEPA needs to review and comment/approve WAP.

CM DO QUICK REVIEW OF WAP SUBMITTED**********

D.3 By 01/15/90, store all slag generated and all refractory brick removed from furnaces in containers in accordance with container requirements. Manage as HW until analysis conducted in D.4 an D.5 established material is not HW.

FINDINGS:

- 02/17/90 monthly report stated that all slag and refractory were being stored in containers that met container storage requirements of Subpart I. The report indicated that the analysis had not been completed.

-

D.4 Each time refractory brick removed from furnace, test waste for EP-tox and submit results to USEPA within 20 days of receipt of results, within 75 days of sampling. Maintain results in operating record.

FINDINGS:

-Mr. Mickey said that the refractory brick is removed from the furnace approximately every five months, but that bricks occasionally fall out of the kiln. The bricks were removed in December 1989 and May 1990.

-No samples results were submitted. Mr. Mickey presented a copy of a 02/13/90 analysis of bricks that were sampled on 01/22/90 that should the bricks to be EP toxic for Pb (230 ppm; 5 is standard) and Cd (1 ppm; 1 is standard). Results were a part of an Envisage report.

-Mr. Mickey said that the refractory brick is EP toxic. Some bricks were observed to be in waste storage unit just south of office building. Some waste was on the ground in front of this storage unit at the beginning of the inspection and was being moved forward into the storage unit. This area is just south of the new china clay waste pile.

-Mr. Mickey said that bricks from May 1990 brick removal are still at the facility.

-Mr. Mickey said that the refractory is being stored with the slag.

D.5 Test slag at a minimum of once per month, or every time different waste stream placed in kiln. Submit results within 20 days after test results, 75 days from sampling. Maintain results in operating record.

FINDINGS:

-Slag test results were submitted with some monthly reports.

02/17 report sampled 12/28/89 analysis 01/16/90 OK
03/17 01/22/90 02/13/90
in a March 15, 1990 letter from Envisage to MM
04/17 04/02/90
in an April 11, 1990 letter from Envisage to MM
05/17 ???
in a May 11, 1990 letter from Envisage to MM
06/17 included, but need to review

07/17 ???
included in a July 3 letter from Envisage to MM

-Mr. Mickey said that slag tested to be EP toxic last fall. He said that the amount of lime influences whether the slag becomes EP toxic. The kilns have SO_2 problems and adding extra lime helps that problem, but causes slag to become EP toxic.

-Testing needs to continue. Mr. Mickey is not demonstrating that the sample is representative of all slag generated.

D.6 By 03/01/90 (45), test a representative sample of each type of battery casing for EP-tox and corrosivity. Submit results to USEPA and put results in operating record.

FINDINGS:

-MM only tested metal battery casings and said that they are not EP toxic. Analysis results for EP tox was submitted in 03/17 monthly report. He did not make a separate submittal by 03/01.

-MM did not test a representative sample of each type of casing. Mr. Mickey said that he has been putting all types of casings into kiln, with the exception of the steel ones. Battery casings are still in waste piles in the southwest corner of the facility, near the china clay piles.

-MM did not submit pH analysis.

E. WASTE PILES

E.1 By 01/15/90 No addition, placement, T,S,or D in waste pile of any HW or SW, except as provided below and only for waste in piles on 01/15/90.

FINDINGS:

-MM has created new waste piles since the effective date of CD. They have failed to move dross piles, use metal storage units as waste piles, placement of bulk hazardous waste on ground that is brought to facility, battery casings are still in waste piles, and movement of china clay pile to new pile near kilns.

-A load of EP toxic press cake was dumped in southeast corner of facility during the first day of inspection. I informed Tom Helms that hazardous waste should not be placed on ground and that the CD requires the material go into containers. He told me that they always dump bulk loads received at the facility into waste piles within this general area. This particular load had covered piles of pallets that were on the ground in this area. Workers were using shovels to try to clean waste from around pallets. During the second day of the inspection, another load was observed to have been dumped on the ground. Tom said that this material was also press cake, approximately 30,000 pounds and was dumped around 11:00 AM.

E.2 By 01/15/90, manage waste piles to prevent and control wind dispersal, leachate creation, and run-on and run-off of leachate.

FINDINGS:

-Standing water around north side of dross and china clay piles in southwest corner of facility.

-Piles are not completely covered. Plastic cover is not in good condition over dross pile. Covers are not over entire piles.

-Standing water is being contaminated by waste piles and waste on ground.

-Leachate and run-off is going off the facility property through storm drains and direct run-off.

E.3 By 02/15/90 (30), remove all waste piles (HW and non-HW) other than china clay wastes described in E.4 and E.5 (Ex. C). Move material into containers in accordance with Subpart I and Part A application; use them in the reclamation; or remove them from the facility. Except as provided in E.4 and E.5, no other waste in any waste pile or in any other land disposal unit.

FINDINGS:

-Violation of this provision. See E.1, above.

E.4 By 01/15/90, shall not add, place, accept, or dispose of any china clay waste, and shall not treat or store any china clay waste not present on 01/15/90.

FINDINGS:

-MM has moved material out of china clay piles in the southwest corner to a new waste pile in a location closer to kilns.

By 01/15/90 shall reclaim china clay waste at the optimum rate, as defined by 1988 Hazen report, in kiln, in accordance with all applicable regulations.

FINDINGS:

-***USEPA Check rate in Hazen report, at prescribed rate?

E.5 No later than July 31, 1990, remove all china clay wastes from waste piles, by transfer into containers (with Subpart I and in Part A - Ex. D), use in reclamation, or dispose off-site.

FINDINGS:

-MM will not make 7/31/90 deadline for consumption of piles into kilns.

-Facility did not keep operating records for china clay until 04/02/90.

04/02/90 estimated	1,170,000 lbs remaining
05/09/90	800,000
05/29/90	700,000
06/30/90	600,000

using approximately 100,000 pounds per month

-02/17/90 monthly report indicated that 750 tons remained.

-One other monthly report said that the schedule for consumption of material or movement to containers was on schedule.

-Mr. Mickey said that the facility will not consume china clay piles before deadline. They will move waste into empty storage unit, but the unit is not in the location designated in CD exhibits. Dross waste piles remain in this area.

F. CONTAINERS

F.1 By 02/15/90, all HW (except china clay) and non-HW, shall be stored in containers.

By 07/31/90, all china clay waste into containers.

All containers in accordance with Subpart I. Ex. E is a container.

HW and non-HW in containers should be in containers that are in good condition or over-packed. No leaks, holes, bulges, deterioration, or appears unsound. Containers with liquids should be on pallets. All containers closed, except when transferring waste. Label all containers.

FINDINGS:

-The requirement for china clay is not triggered until 07/31

-Inadequate aisle space.

-MM has cut away bottoms from storage units # 1 and #7 and doors ripped off most units. MM is using these units as waste piles not containers.

F.2 Shall not accept any HW or non-HW that exhibits characteristic at facility unless it arrives in containers which are in good condition, or is placed into containers in good condition immediately upon arrival at facility.

FINDINGS:

-Significant violation of this requirement. Batteries are not in containers; Casings are not in containers. Majority of containers are open and in very poor condition. Fiber containers are sitting in water.

F.3 By 01/30/90 (15) all containers of ignitable and corrosive HW (D001 and D002) removed from facility in accordance with all applicable requirements. Copies of all manifests submit to USEPA.

FINDINGS:

- 02/17 monthly reports certifies compliance with this requirement (6), but no manifests were submitted.

- Corrosive waste is currently being accepted inside batteries.

G. CLOSURE

G.1 By 03/15/90 (60) submit to USEPA written certification of compliance with liability requirements or demonstration of best efforts in accordance with Section VII.E (page 25).

FINDINGS:

-In 03/17/90 monthly report, MM submitted one page letter, dated March 13, from insurance agent that they have submitted the completed applications to two companies (Planet and National Union). Requirements for demonstration of Section VII.E were not fulfilled.

-Mr. Mickey said that he first contacted an insurance agent in January or February 1990. He was told by insurance agent to have a risk assessment performed. MM paid Environmental Strategies, Inc to perform assessment.

MM must demonstrate best efforts by 07/15/90 (120 days after 60), and for every 180 days there after.

FINDINGS:

-In MM 07/17/90 monthly report, an application signed by Mickey on 01/31/90. Another copy of March 13 insurance agent letter saying that applications were forwarded to two carriers.

-MM also submitted a 02/27/90 letter from underwriter to insurance agent saying that an engineering survey is required prior to evaluation of application. A second letter dated 03/06/90 (from American International) to agent said that a risk assessment is required, along with financial audits for last three years.

-??Did MM submit financial information to American International??

-MM entered into contract with Environmental Strategies on April 18, 1990 for completion of risk assessment/ engineering survey. We do not have this report, but the project was fully invoiced by 06/05/90. (CONFIDENTIAL: MM asked Environmental Strategies to reconsider the risk rating that they gave MM in the report).

-Mr. Mickey said that Environmental Strategies report recommends soil and groundwater testing prior to consideration for policy. Mr. Mickey said that he has not gotten around to finalizing arrangement for this work. He indicated that probably Woodward-Clyde would perform work. He asked if sampling could be applied towards closure and I responded that it may be possible depending on the sampling, but that Ohio EPA would decide that under approval of closure plan.

-Carolyn Rierson (sp?) of Ohio EPA (she review financial information) said (7/16) that there are several companies providing liability coverage, including Planet and National Union (also known as Fire Insurance Co) of Philadelphia.

-A friend at Environmental Strategies confirmed that Environmental Impairment Liability Insurance policies are being written. He thinks that three companies are currently providing coverage: American International Group (AIG), also known as American House; EPIC; and a ? third company. He said that his company is one of approximately five firms that do assessments for these insurance carriers.

G.2 If fails to obtain liability coverage for all operating units by 07/15/90 (120) shall: immediately cease operating units (including adding waste to), removal HW from units within 60 days (by 09/15/90 240 days from entry), and commence closure plan approved in C.2; Unless by 07/15/90, Defendant petitions court for relief.

FINDINGS:

-MM filed motion on July 9, 1990, for 180 additional days.

G.3 Simultaneous with any closure or post-closure plan pursuant to C.1, by 07/15/90 (120) (pursuant to C.2), shall implement and submit to USEPA and OEPA certification that assurance mechanisms for C and P-C has been established. Separate financial assurance mechanisms may be established for closing units (A.2) and operating units (A.3). Closing units assurance may be an escrow account. Each certification shall include detailed assurance mechanism. Make best efforts to fully fund financial assurance mechanism as expeditiously as practicable. USEPA shall approve or disapprove. Correct deficiencies within 15 days.

FINDINGS:

-Nothing on assurance submitted.

-Mr. Mickey said that he has not done anything about the assurance requirements for either the partial or facility closure plans. "I never gave it any thought".

-OEPA reviewed old assurance info and determined that it was inadequate. OEPA 06/29/90 Letter to Muno, no financial assurance established. Review did not include new closure plans submitted in 1990. NOVs sent from OEPA on 08/30/88 and 08/29/89.

-Closure cost estimates in closure plans are inadequate because the plans do not address all hazardous waste management units. Closure cost estimates are currently $67,000 for partial and $93,000 for entire facility.

VI. CIVIL PENALTY

Defendant shall pay a civil penalty of $20,000. Three payments

$6,900	one month DUE	02/15/90	PAID
6,900	seven months	08/15/90	---
6,900	thirteen months	02/15/91	---

IX. ACCESS TO FACILITY AND SAMPLES

Provide USEPA 10 days notice prior to any sampling related to closure.

Except as provided otherwise, provide USEPA copy of analysis within 15 days of receipt.

FINDINGS:

No notice provided; closure activities have not been initiated.

X. REPORTING

A. Beginning the 15th day of the month following entry, and every 30 days submit report of CD activities during previous thirty 30 days. Mail by 15th.

01/17/90 to 01/31/90	Rec'd	02/20/90
02/17/90 - 03/17/90		03/ /90 *wrong 2/1-2/28
03/17/90 - 04/17/90	dated 4/17	04/ /90 *
04/17/90 - 05/17/90	05/17	05/21/90 *
05/17/90 - 06/17/90	06/21	06/ /90
06/17/90 - 07/17/90		066/17/90 hand delivered

-Late submissions and wrong time periods were discussed with Mr. Mickey during inspection.

B. Within 30 days after completion of requirement, other than requirement to submit a document, MM shall notify in writing of compliance or non-compliance.

No submissions other than monthly reports
Sign all submittal with certification.

COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS:

-MM has failed to implement contingency plan to respond to releases.

-LDR ??? CAMc to follow up

ORDER TRACKING BY FACILITY

DATE OF THIS RUN: 06/27/90

FACILITY: MASTER METALS
LOCATION: CLEVELAND, OHIO
RES. CONTACT PERSON: BIANCHIN
ORC ATTORNEY: HERSCH
STATE CONTACT PERSON:

DOCKET NUMBER: C87-1471
ID NO.: OHD
SECTION: OH/MN
SNC: T LDF: T
RTC: F

STATUTORY AUTHORITY: 3008(A)
EFFECTIVE DATE: 01/15/90
ESTIMATED COMPLETION DATE: / /
JUDICIAL CASE: T
ADMINISTRATIVE CASE: F

REQUIREMENTS OF THIS ORDER	DUE DATE	COMPLIANCE DATE	CONFIRM DATE	AMENDED DATE	RTC DATE
1 . IMPLEMENT INVENTORY, CONTAINER LABELLING AND WASTE TRACKING SYSTEM COMMENTS: (V.B.1) MAINTAIN IN OPERATING RECORD	02/15/90	02/15/90	/ /	/ /	/ /
2 . SUBMIT INVENTORY OF 1) HAZ WASTE AND 2) ALL NON-HAZ WST RECLAMATION MATERIA COMMENTS: (V.B.2)	02/15/90	02/15/90	/ /	/ /	/ /
3 . ONLY ACCCEPT PART A WASTE COMMENTS: (V.B.3)	01/15/90	01/15/90	/ /	/ /	/ /
4 . SUBMIT 1986-1988 ANNUAL REPORTS COMMENTS: (V.B.4)	02/15/90	02/15/90	/ /	/ /	/ /
5 . ONLY ACCEPT OR SHIP PROPERLY MANIFESTED WASTE COMMENTS: (V.B.5)	01/15/90	01/15/90	/ /	/ /	/ /
6 . NOT ACCEPT OFF-SITE HAZ WASTE UNTIL COMPLY WITH V.E. 3-4, F1 & 2 COMMENTS:	01/15/90	01/15/90	/ /	/ /	/ /
7 . NOT CRACK BATTERIES COMMENTS: (V.B.6(II)) UNTIL COMPLY WITH VE 3-4, F1 & 2	01/15/90	01/15/90	/ /	/ /	/ /
8 . SUBMIT PROPOSED CRACKING PLAN COMMENTS: (V.B.6)	02/15/90	02/15/90	/ /	/ /	/ /
9 . MINIMIZE POSSIBILITY OF FIRE, EXPLOSION OR UNPLANNED RELEASE OF HAZ WASTE COMMENTS: (V.B.7)	01/15/90	01/15/90	/ /	/ /	/ /
10 . SUBMIT PLAN TO CONDUCT REGULAR INSPECTIONS TO DISCOVER HAZ WASTE PROBLEMS COMMENTS: (V.B.8)	02/15/90	02/15/90	/ /	/ /	/ /
11 . SUBMIT CERTIFICATION THAT FACILITY HAS OBTAINED ALL REQUIRED EQUIPMENT COMMENTS: (V.B.9)	02/15/90	02/15/90	/ /	/ /	/ /
12 . SUBMIT CONTINGENCY PLAN COMMENTS: (V.B.10)	02/15/90	02/15/90	/ /	/ /	/ /
13 COMPLY WITH TRAINING REQUIREMENTS; MAINTAIN PERSONNEL TRAINING RECORDS COMMENTS: (V.B.11)	01/15/90	01/15/90	/ /	/ /	/ /
14 . PROVIDE FACILITY SECURITY COMMENTS: (V.B.12) INCLUDES A FENCE IN GOOD REPAIR.	02/15/90	02/15/90	/ /	/ /	/ /

(continued)

REQUIREMENTS OF THIS ORDER	DUE DATE	COMPLIANCE DATE	CONFIRM DATE	AMENDED DATE	RTC DATE
15 . MAINTAIN AND MAKE AVAILABLE UPON REQUEST WRITTEN OPERATING RECORD COMMENTS: (V.B.13)	03/17/90	03/17/90	/ /	/ /	/ /
16 . RETAIN CONSULTANT TO OVERSEE CONSENT DECREE COMMENTS: (V.B.14)	01/15/90	01/15/90	/ /	/ /	/ /
17 . PRIOR TO PLACING HAZ WASTE IN KILNS, SUBMIT CERTIF. OF COMPLIANCE W/ AIR REGS COMMENTS: (V.B.15) UNDER INVESTIGATION	01/15/90	02/15/90	/ /	/ /	/ /
18 . SUBMIT CLOSURE PLAN FOR CLOSING HAZ WASTE UNITS (1.D IN A.2 & EXHIBIT C) COMMENTS: (V.C.1)	03/17/90	03/17/90	/ /	/ /	/ /
19 . MAINTAIN FULL FACILITY CLOSURE PLAN COMMENTS: (V.C.2) 120 DAYS AFTER REQ.18	05/15/90	05/17/90	/ /	/ /	/ /
20 . SUBMIT CERTIFICATION OF CLOSURE COMMENTS: (V.C.3) WITHIN 60 DAYS OF CLOSURE	12/31/91	/ /	/ /	/ /	/ /
21 . COMPLETE WASTE DETERMINATIONS FOR ALL SOLID WASTES ON-SITE COMMENTS: (V.D.1)MAINTAIN ONSITE,SUBMIT EPA W/IN 30 DAYS	07/31/90	/ /	/ /	/ /	/ /
22 . SUBMIT PLAN FOR ANALYSIS OF ALL HAZ WASTE EXCEPT LEAD ACID BATTERIES COMMENTS: V.D.2) PLAN TO BE APPROVED BY U.S. EPA	03/17/90	03/17/90	/ /	/ /	/ /
23 . STORE ALL SLAG AND REFRACTORY BRICK IN CONTAINERS COMMENTS: (V.D.3)	01/15/90	02/15/90	/ /	/ /	/ /
24 . AFTER REMOVAL OF REFRACTORY BRICK, PRIOR TO DISPOS., TEST FOR METALS EP TOXIC COMMENTS: (V.D.4) SUBMIT RESULTS WITHIN 20 DAYS	01/15/90	02/15/90	/ /	/ /	/ /
25 . TEST SLAG GENERATED FOR METALS EP TOXIC COMMENTS: (V.D.5) SUBMIT RESULTS W/IN 20 DAYS OF TEST RESULT	01/15/90	02/15/90	/ /	/ /	/ /
26 . TEST REPRESENTATIVE SAMPLE OF BATTERY CASING FOR METALS EP TOXIC CORROSIVE COMMENTS: (V.D.6) 45 DAYS AFTER REQ. 25	03/02/90	03/02/90	/ /	/ /	/ /
27 . DO NOT ADD TO WASTE PILES, EXCEPT STIPULATED COMMENTS: (V.E.1)	01/15/90	02/15/90	/ /	/ /	/ /
28 . MANAGE WASTE PILES TO PREVENT WIND DISPERSAL, LEACHATE CREATION, & RUNON/OFF COMMENTS: (V.E.2) STATE NOV 4/11/90	01/15/90	02/15/90	/ /	/ /	/ /
29 . REMOVE ALL HAZ. WASTE OTHER THAN CHINA CLAY WASTE FROM WASTE PILES COMMENTS: (V.E.3)	02/15/90	02/15/90	/ /	/ /	/ /
30 . RECLAIM CHINA CLAY WASTE AT OPTIMUM RATE (HAZEN RESEARCH) COMMENTS: (V.E.4)	01/15/90	02/15/90	/ /	/ /	/ /

(continued)

REQUIREMENTS OF THIS ORDER	DUE DATE	COMPLIANCE DATE	CONFIRM DATE	AMENDED DATE	RTC DATE
31 . NOT ACCEPT/DISPOSE CHINA CLAY WASTE AT FACILITY COMMENTS: (V.E.4)	06/15/90	02/15/90	/ /	/ /	/ /
32 . NOT TREAT/DISPOSE CHINA CLAY WASTE NOT AT FACILITY COMMENTS: (V.E.4)	01/15/90	02/15/90	/ /	/ /	/ /
33 . REMOVE CHINA CLAY WASTE FROM WASTE PILES UNTIL DEPLETED ACCORDING TO STUDY— COMMENTS: (V.E.5)	07/31/90	~~02/15/90~~	/ /	/ /	/ /
34 . ALL HAZARDOUS WASTE EXCEPT CHINA SHALL BE STORED IN CONTAINERS AND STAGED COMMENTS: CONTAINERS MUST BE IN GOOD CONDITION	02/15/90	02/15/90	/ /	/ /	/ /
35 . SHALL ONLY ACCEPT HAZ WASTE IN CONTAINERS WHICH ARE IN GOOD CONDITION COMMENTS: (V.F.2)	01/15/90	02/15/90	/ /	/ /	/ /
36 . ALL CONT. OF IGNITABLE & CORROSIVE WASTE SHALL BE REMOVED FROM FACILITY COMMENTS: (V.F.3) WASTE CODES D001 AND D002	02/01/90	02/15/90	/ /	/ /	/ /
37 . SUBMIT CERTIFICATION OF LIABILITY AND INSURANCE COVERAGE COMMENTS: (V.F.4) APPLICATION FOR INSURANCE MADE	03/17/90	/ /	/ /	/ /	/ /
38 . OF $20,000 PENALTY, PAY $6,900 COMMENTS: (VI.)	02/15/90	02/15/90	/ /	/ /	/ /
39 . OF $20,000 PENALTY OF $6,900 COMMENTS: (VI.)	08/15/90	/ /	/ /	/ /	/ /
40 . OF $20,000 PENALTY, PAY $6900 COMMENTS: (VI.)	02/15/91	/ /	/ /	/ /	/ /

If ~~he~~ fails to obtain liability coverage, cease operating h.w. units, ~~remove waste~~ ~~Cease~~ Comments (V.G.2) unless satisfactory

If no liab. coverage Submit to USEPA certification of best efforts for liability coverage

(VII ~~4~~. [otherwise civil penalty]

Submit certification 60 days 3/17/90
120 days ~~5/17/90~~
+ 180 days thereafter

Protection Agency
Office
Road
Ohio 44087
-9171

RECEIVED
APR 1 1 1990
OFFICE OF RCRA
WASTE MANAGEMENT DIVISION
EPA, REGION V

Richard F. Celeste
Governor

April 11, 1990

RE: MASTER METALS
CUYAHOGA COUNTY
OHD 097-613-871
GEN/TSD

CERTIFIED MAIL

Mr. Douglas Mickey
Master Metals
2850 West Third Street
Cleveland, Ohio 44113

Dear Sir:

On March 26 and 27, 1990, I conducted a hazardous waste inspection of your facility located at 2850 West Third Street in Cleveland, Ohio. Mr. Rudy Zupan, Mr. Tom Helms and you represented this facility during my inspection. The facility was inspected for compliance with Ohio Hazardous Waste Regulations. A copy of the RCRA Inspection Report is enclosed for your information. These following violations noted in my report will require prompt attention:

Description of Violation

1. **Satellite Accumulation Containers - OAC 3745-52-34**

   The baghouse dust collection containers qualify as satellite accumulation containers. Each container must be marked with the words "Hazardous Waste" or other words which identify the contents.

2. **Signs for Bins - OAC 3745-65-14**

   Each bin must have appropriate signs. The signs must indicate "Danger - Unauthorized Personnel Keep Out". Attached signs would be less likely to become unreadable due to rusting of the bin sides.

3. **Contingency Plan Agreement Refusals - OAC 3745-65-37/OAC 3745-65-52**

Some of the emergency service authorities did not sign documented agreements or arrangements. If they refuse to sign the written agreement then the refusal must be documented.

4. **Operating Record - OAC 3745-65-73**

The operating record does not include the quantities of lead contaminated fire brick, lenox waste pile or the old battery case waste pile. The operating record must be revised to include the common names of these wastestreams, the EPA Hazardous Waste Identification Number, physical state of the waste, the EPA handling codes and the physical location of each hazardous waste stored at your facility.

5. **Condition of Portable Bins - OAC 3745-65-31/OAC 3745-66-73 OAC 3745-66-71**

The battery waste bins did not have tarps to prevent precipitation from contacting their contents. Bin #6 had a small amount of material in the bin, however, there was no tarp over this bin. The two bins closest to the rotary furnaces had partial tarps covering their contents. The two press cake bins had a tarp over half of one bin, the other was totally unprotected from precipitation. Bin #9, which contains D008 flue dust, had a liquid leaking from two holes rusted in the side of this bin. Tom Helms admitted that the flue dust was placed in this bin when water was puddled in the bottom. Bins #6 and #9 had lead contaminated waste residues behind and beside them. Leakage from the battery cracking storage bins have created a large puddle, in a traffic area, with a ph of less than 2. All bins must be completely tarped at all times. Any uncontained residues surrounding the bins must be placed in appropriate containers and the underlying surfaces cleaned completely. The battery cracking puddle must be eliminated, including future puddling of low ph wastes. The leaking bin must be repaired or replaced and employees instructed to refrain from placing waste materials into ponded waters.

Draft AJB

Compliance Status of Master Metals in Cleveland, Ohio as of July 17, 1990
Consent Decree entered 1/15/90; Docket C87-1471
****

U.S. EPA conducted an on-site inspection on July 16-17, 1990.

U.S. EPA was represented by Catherine McCord and Sheri L. Bianchin.

Master Metals was represented by Doug Mickey, President; Tom Helms, Plant Superintendent and Bob Miladie, Environmental Coordinator. Also present was Rudy Zupan of Woodward Clyde, consultant for Master Metals.

Note: For the purposes of this report:

. the first monthly report is the one for the period January 1 -31, which was postmarked on 2/17/90
. the second monthly report is the one for the period 2/17 - 3/17, which was postmarked on 3/17/90
. the third monthly report is the one for the period 3/17 - 4/17, which was postmarked on 4/17/90
. the fourth monthly report is the one for the period 4/17 - 5/17, which was postmarked on 5/17/90
. the fifth monthly report is the one for the period 5/17 - 6/17, which was postmarked on 6/17/90

[On U.S. EPA's July 16-17 inspection, the company was informed that the intent of the CD was for the company to submit a monthly report by the 15th of the monthly following the month to be reported on. Therefore, the second monthly report should have been for the period 2/1 - 2/28, and under the terms of this CD, the company had until the 15th to submit the report, and so on. The company informed U.S. EPA that it would correct this problem]
****

1. Implement inventory, container labelling and waste tracking system by 2/15/90.

CD provision: V.B.1

Compliance Status:

. Company certified compliance in first monthly report
. Pursuant to the U.S. EPA inspection on July 16-17, 1990, the system was found to be inadequate in that it was not possible to determine the amount of regulated waste on-site at any one time and therefore whether the amount exceeds the maximum amount of waste indicated on the Part A.

2. Submit inventory of 1) hazardous waste and 2) all non-hazardous waste reclamation material by 2/15/90.

CD provision: V.B.2

Compliance Status:

. Company submitted in the first monthly report by 2/17/90
. Areas other than indicated in the monthly report were found on U.S EPA's July 16-17, 1990 inspection. [Elaborate]

3. Accept only part A waste by 1/15/90 (i.e., upon entry of the CD)

CD provision: V.B.3

Compliance Status:

. Company certified compliance in the first monthly report
. Manifests for wastes other than Part A wastes were found in company's files on U.S. EPA's July 16-17, 1990 inspection. [See Attached]

4. Submit 1986 - 1988 annual reports by 2/15/90.

CD provision: V.B.4

Compliance Status:

. Company submitted reports in first monthly Report

5. Only accept or ship properly manifested waste by 1/15/90.

CD provision: V.B.5.

Compliance Status:

. Company certified compliance in first monthly report
. Pursuant to U.S. EPA's July 16-17, 1990 inspection, some of unmanifested waste was accepted. [See manifests]

6. As of 1/15/90 (effective date of CD), do not accept off-site hazardous waste (until compliance with V.E.3., V.E.4. and V.F.1. and V.F.2.) and has provided written certification of compliance.

CD provision: V.B.6.(i)

Compliance Status:

. Company certified compliance is first monthly report.
. Pursuant to U.S. EPA's inspection, Company is not in compliance with other provisions of the CD and continues to accept waste. [Elaborate]

7. As of 1/15/90 (effective date of CD), do not crack batteries (until compliance with V.E.3., V.E.4. and V.F.1. and V.F.2.) and has provided written certification of compliance.

CD provision: V.B.6.(ii):

Compliance Status:

. Company certified compliance in first monthly report.
. Pursuant to U.S. EPA's inspection, Company is not in compliance with other provisions of the CD and continues to crack batteries. [Elaborate]

8. Submit proposed battery cracking plan for U.S. EPA approval by 2/15/90

CD provision V.B.6.:

Compliance Status:

. Company submitted plan in the first monthly report. Plan is under review by U.S. EPA; however it appears from U.S. EPA's inspection that the Company is not following the terms of the proposed plan.

9. Minimize possibility of fire, explosion or unplanned release of hazardous waste by 1/15/90.

CD provision: V.B.7.

Compliance Status:

. Company certified compliance in first monthly report.
. It appears from U.S EPA's and OEPA's 3/90 inspection that company is not minimizing unplanned releases of hazardous waste since the containers are in poor shape, and material was being placed onto ground. Circumstantial evidence of releases are documented by OEPA air program and North East Ohio sewer district. [Call fire department]

10. Submit plan to conduct regular inspections to discover hazardous waste problems by 2/15/90.

CD provision: V.B.8.

Compliance Status:

. Company submitted plan in first monthly report
. U.S. EPA inspection discovered daily and weekly inspections are conducted however the company's inspections are not effective. [Elaborate]

11. Submit certification that facility has obtained all required equipment by 2/15/90.

CD provision: V.B.9.

Compliance Status:

. Company certified in first monthly report that all required equipment has been obtained.

12. Submit contingency plan for OEPA and U.S. EPA approval by 2/15/90.

CD provision: V.B.10.

Compliance Status:

. Plan submitted in first monthly report (appendix E). Plan is under review by U.S. EPA.

13. Comply with training requirements; maintain personnel training records by 1/15/90.

CD provision: V.B.11.

Compliance Status:

. Company submitted certification in first monthly report.
. Pursuant to U.S. EPA's July 16-17, 1990 inspection of training records, it was discovered that many employees are overdue for safety training. Training is reportedly conducted by Envisage.

14. Provide Facility security which include a fence in good repair by 2/15/90.

CD provision: V.B.12.

Compliance Status:

. Company certified compliance in first monthly report.
. Pursuant to U.S. EPA's July 16-17 inspection, it was discovered that the fence was not in good shape although it did completely surround the facility. In addition, a guard was posted at the fence for the entire period and signs indicating that hazardous materials are handled onsite were hung on the fence near the guard.

15. Maintain and make available upon request written operating records by 3/17/90.

CD provision: V.B.13.

Compliance Status:

. Company certified compliance in the second monthly report.
. U.S. EPA inspected the operating record on the July 16-17 inspection.

16. Retain consultant to oversee CD by 1/15 90 (entry of the CD)

CD provision: V.B.14.

Compliance Status:

. Company certified compliance in the first monthly report
. At U.S. EPA's July 16-17 inspection, company reiterated that it retained both Envisage and Woodward Clyde as consultants.

17. Prior to placing haz waste in kilns, submit certification of compliance with air regulations by 1/15/90

CD provision: V.B.15.

Compliance Status:

. Company certified compliance in the first monthly report (appendix I).
. U.S. EPA discovered that while Master Metals did comply with a stack test for both particulate [check status of compliance with SIP] and sulfur dioxide (SO2) emissions as required by the New Source Performance Standards promulgated under the Clean Air Act, the company is appealing the SO2 standard because during the stack test it was not running the kiln in a representative fashion (i.e., using excessive amount of soda ash which causes the slag to be come EP toxic). Furthermore, the company is subject to recent enforcement actions for violations of the nuisance ordinance for fugitive emissions from its furnace.

18. Submit closure plan for closing haz waste units (as is described in 1. D and A.2 and Exhibit C) by 3/17/90 for OEPA approval.

CD provision: V.C.1.

Compliance Status:

. Closure plan submitted in second monthly report
. Closure plan is deficient in that it does not include all units described in 1.D. and A. 2, although it does include all units indicated in Appendix C which are to be closed. Appendix C of the CD, indicating closing units, is not drawn correct. [See attached map]

19. Maintain full facility closure plan by 5/15/90

CD provision: V.C.2.

Compliance Status:

. Closure plan submitted in 4th monthly report.

20. Submit certification of closure within 60 days of closure.

CD provision: V.C.3.

Compliance Status: Requirement not yet due.

21. Complete waste determination for all solid wastes on site . This must be maintained on-site and be submitted to U.S. EPA within 30 days of testing.

CD provision: V.D.1.

Compliance Status:

. Company has not yet fulfilled this requirement.

22. Submit plan for analysis of all haz waste except lead acid batteries by 3/17/90. Plan is to be approved by U.S. EPA.

CD provision: V.D.2.

Compliance Status:

. Company submitted waste analysis plan in first monthly report (appendix J) for incoming waste. Plan is under review by U.S. EPA.
. U.S. EPA was informed that for the batteries going off-site were tested, none were hazardous waste. Furthermore, U.S. EPA was informed that nickel/cadmium batteries were brought and presently remain on-site for resale.

23. Store all slag and refractory brick in containers by 1/15/90

CD provision: V.D.3

Compliance Status:

. On U.S. EPA's July 16-17 inspection, the company submitted proof of brick testing to determine if EP toxic and therefore a characteristic hazardous waste. Although the brick was tested in ?, it was not included in the monthly rep[rot as proof of compliance. [Company informed U.S. EPA that brick is removed approximately every 5 months; brick was removed in approximately December, 1989 and May, 1990. The December brick has been shipped of-site and the May brick is still stored on-site. Also, company informed U.S. EPA that the brick has always been EP-toxic].

24. As of 1/15/90 (effective date of CD), after removal of refractory brick, test for metals by EP toxicity, prior to disposal. Results must be submitted within 20 days of testing.

CD provision: V.D.4

Compliance Status:

25. Test slag generated for metals by EP toxicity by 1/15/90 and on-going. Results are to be submitted to U.S. EPA within 20 days of testing.

CD provision: V.D.5

Compliance Status:

. Results submitted in each monthly report.

26. Test representative sample of battery casings for metals by EP toxicity and for corrosivity by 3/03/90. In no event later than 45 days after req. 25.

CD provision: V.D.6

Compliance Status:

27. As of 1/15/90 (effective date of CD), do not add to waste piles (except as is stipulated).

CD provision: V.D.6.

Compliance Status:

. Company was observed creating temporary waste piles on U.S. EPA's inspection in 2 separate areas.

28. Manage waste piles to prevent wind dispersal, leachate creation and run on and off by 1/15/90 and on-going.

CD provision: V.E.2

Compliance Status:

. Company certified compliance in first monthly report
. U.S. EPA observed that the material from the dross waste pile (NW side of site) and battery casings pile (NW corner of site) had not been removed. Company officials claimed that they did not know that these were considered waste piles.

29. Remove all haz waste (other than china clay wastes) from waste piles by 2/15/90.

CD provision: V.E.3

Compliance Status:

. U.S. EPA observed that all waste from waste piles had not been removed.

30. Reclaim china clay waste at optimum rate per the Hazen Research study by 1/15/90 and ongoing until depleted [by 7/31/90].

CD provision: V.E.4

Compliance Status:

. Company has certified that it is reclaiming china clay waste such that it will be used by 7/31/90 (or containerized).

31. Do not accept or dispose china clay waste at the facility by 6/15/90

CD provision: V.E.4

Compliance Status:

32. As of 1/15/90, do not treat or dispose of china clay waste from other facilities.

CD provision: V.E.4

Compliance Status:

. Company certified to this in first monthly report.

33. Remove all china clay waste from waste pile by 7/31/90.

CD provision: V.E.5

Compliance Status: Requirement not yet due; however, U.S. EPA noted that volume of pile had decreased since previous inspection. Company officials stated that the pile will be removed and contents containerized by 7/31/90 if contents are not depleted by 07/31/90.

34. All hazardous waste (except china clay waste) shall be stored in containers and staged by 2/25/90 and on-going. The containers must be in good condition.

CD provision:

Compliance Status:

. Company certified compliance in monthly report.
. U.S. EPA observed that some of the drums were not in good condition. Furthermore, most of the storage bins were in poor condition [See photographs]. Most were open to the atmosphere in that the front and top were not covered and the floor had been partially cut away on two of the bins.

35. Only accept hazardous waste in containers which are in good condition by 1/15/90 and on-going.

CD provision: V.F.2.

Compliance Status:

. On July 16, 1990, U.S. EPA noted that many of containers were not in good condition. [See photographs]

36. Remove all containers of ignitable and corrosive wastes from the facility by 2/01/90. This includes haz waste codes D001 and D002

CD provision: V.F.3.

Compliance Status:
. Company certified compliance in monthly report.
. On U.S. EPA's 7/16/90 inspection, no containers or ignitable or corrosive wastes were noted.

37. Submit certification of liability and insurance coverage by 3/17/90

CD provision: V.G.1.

Compliance Status:

If not able to obtain liability insurance, company must show best efforts by 1/15/90 and then 7/15/90 in order to avoid stipulated penalties.

38. Implement and submit certification of financial assurance mechanisms for closure and post-closure care. Separate financial assurance mechanisms may be established for closing units (Section V.A.2) and operating units (Section V.A.3.). Each certification shall include a detailed description of the proposed financial assurance mechanism.

CD provision: V.G.3.

Compliance Status:

. Company has not submitted financial assurance mechanism; however, U.S. EPA was informed that $20,000 had previously been placed into a trust fund. [Also, see OEPA inspection reports.]

39. Of $20,000 civil penalty, pay $6900 by 2/15/90

CD provision: VI.

Compliance Status: Payment received on time.

40. Of $20,000 civil penalty, pay $6900 by 8/15/90

CD provision: VI.

Compliance Status: Note yet due

41. Of $20,000 civil penalty, pay $6900 by 2/15/91

CD provision: VI

Compliance Status: Not yet due

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

June 25, 1990

Ms. Sherry Bianchin
USEPA - Region V
RCRA Enforcement Branch
5HR-12
230 S. Dearborn Street
Chicago, Illinois 60604

Re: Master Metals, Cleveland, Ohio

Dear Ms. Bianchin:

Please find enclosed a copy of the OEPA response report submitted to Mr. Mark Bergman of OEPA, NEDO, on May 31, and June 25, 1990. This report was in response to the violations and recommendations that were generated as a result of the OEPA site inspection of March 26 & 27, 1990.

If you have any questions or comments, or require additional information, please contact either Mr. Mickey of Master Metals, or myself at 216-526-0990.

Respectfully,

ENVISAGE ENVIRONMENTAL INC.

Thomas J. Monito
Regulatory Compliance Manager

Encl. OEPA Inspection Response Report

cc. Doug Mickey, Master Metals Inc. (Letter Only)
Mark Bergman, OEPA, NEDO (Letter Only)

February 27, 1990

ECS
One East Uwchlan Avenue
Suite 300
Exton, PA 19341
(215) 269-5378
800-858-0853
(outside Pennsylvania)

Mr. R. O. Churchill
J. E. Moenkhaus and Associates
Band Court Building, Suite 1600
1300 East Ninth Street
Cleveland, OH 44114

Re: Master Metals, Inc.

Dear Mr. Churchill:

Thank you for your submission on the above captioned account. After a careful review of the submitted material, I find I will need a satisfactory engineering survey conducted at the 2850 W. 3rd Street, Cleveland, Ohio, location prior to providing an indication on this account. This survey is needed because of the type of facility, lead smelting with its associated air and soil contamination concerns.

I have enclosed a list of our approved engineering firms. Please feel free to call if you have any questions.

Sincerely,

Steven R. Goebner

Steven R. Goebner
Underwriter

SRG:aes

Enclosure

cc: Paul Murdoch

ENVIRONMENTAL
COMPLIANCE
SERVICES, INC.

5. Section V.B.6

All china clay waste has been removed from waste piles and containerized. Because of the amount of china clay waste at the facility, additional storage containers have been installed in the areas detailed and enumerated on the facility map contained in Appendix D.

Battery casings stored in the southwest corner of the facility were assumed to be hazardous and consumed in the rotary furnaces.

Inspections are conducted daily to locate deteriorated containers that may have a potential for leakage and to insure that hazardous waste is properly containerized with secured lids or tarps. Damaged containers are immediately removed from storage areas and the material is consumed in the rotary furnaces for reclamation.

Bulk storage containers are covered with tarps when load-in or load-out activities are not being conducted.

6. Section V.B.7

A crew has been detailed to maintain the cleanliness of the grounds and to clean up spills of solid materials as soon as possible. At least one vacuum/sweeper is utilized on a continuous basis. Additional personnel will be hired if needed.

A transfer container has been constructed to receive bulk loads of press cake so that this material is not deposited on the concrete pad prior to loading into the bulk containers. In addition, arrangements have been made to coordinate the shipment of press cake with the customer to insure that storage capacity is not exceeded.

Empty drums, as defined by 40 CFR 261.7, are stored on the grounds at the southeast property line. All wastes are removed that can be removed at the time the material is being prepared for charging into the rotary furnace. Hazardous waste labels are removed or spray painted prior to transportation off-site.

7. Section V.B.8

Regular inspections are conducted (on either a weekly or daily basis) to discover deterioration of equipment, malfunctions of safety or emergency equipment, and any other condition which may cause or lead to the release of hazardous waste into the environment.

8. Section V.B.10

Adequate aisle space is being maintained in the container storage areas for clean up of spills.

9. Section V.B.11

RCRA refresher training and initial training for new employees was conducted by a consulting firm on 7 September 1990. Another training course is scheduled for the week of 17 September 1990. In addition, all new employees are given on-the-job training by their supervisors.

Supervisors of the battery cracking operation have taken the appropriate RCRA training course and have provided on-the-job training for their employees.

10. Section V.B.12

Security of the premises is being maintained in accordance with this section of the Consent Decree.

11. Section V.B.13

See Appendix A for an explanation of the new computerized tracking and labeling system.

12. Section V.B.15

Rotary furnaces at Master Metals are charged with lead battery plates for lead reclamation. Each charge of the furnace includes the addition of battery plates and incidental plastic battery cases. Previous stack tests, which included the charging of battery plates and plastic cases, indicated that the furnaces meet the requirements of the Clean Air Act. See Appendix E for a copy of the Test Results Summary conducted 21 September 1989 for lead, particulate, and sulfur dioxide emissions.

<u>Closure</u>

13. Consent Decree Section V.C.1

A partial closure plan dated 16 March 1990 was submitted to U.S. EPA in accordance with Section V.C.1 of the Consent Decree. Although no written comments have been received from U.S. EPA, an updated plan will be submitted to include: an extension of the boundary of the closing hazardous waste unit south of the main office building designated as Area 6 in the partial closure plan; and the former battery case storage area at the southwest corner of the facility.

14. Consent Decree Section V.C.2

A full facility closure plan dated 17 May 1990 was submitted to U.S. EPA in accordance with Section V.C.2 of the Consent Decree. Although no written comments have been received from U.S. EPA, an updated full facility closure plan will be submitted to include the area immediately to the south and east of the Shipping and Receiving Building, where storage of containers has occurred in the past.

Waste Characterization

15. Section V.D.1

Sludge from catch basins and sumps are cleaned out periodically. The sludge is assumed to be hazardous and consumed in the rotary furnace on the same day that it is removed. Quantities and charging data will be kept in the operating record in the future. Results of hazardous waste analysis will be submitted in the next monthly status report.

16. Section V.D.2

A waste analysis plan was submitted with the initial status report, submitted on 15 February 1990.

Hazardous waste received at the facility is inspected to insure that the identity of the material matches the identity of the waste specified on the manifest. All waste received or stored on the facility has been analyzed based on the methods as specified in Page 1 of the waste analysis plan and in accordance with 40 CFR 265.13.

17. Section V.D. 3

Refractory bricks removed from the furnace in May 1990 are currently stored on site in 55-gallon drums with secured lids and are being handled as hazardous waste. Results of hazardous waste analysis of the refractory bricks will be submitted in the next monthly status report.

18. Section V.D.6

Plastic battery casings have been removed from waste piles and consumed in the rotary furnaces. All plastic battery casings obtained from the battery cracking operation are assumed to be hazardous and are stored in containers with the battery plates near the battery cracking area prior to consumption in the furnaces. Results of a hazardous waste analysis of each type of plastic battery casings will be submitted in the next monthly status report.

Waste Piles

19. Section V.E.1

All waste piles at Master Metals have been removed and either consumed in the rotary furnaces or containerized.

Floors of two bulk containers have been damaged due to heavy load-in and load-out activities. Master Metals is not satisfied with the operation of these containers, including the design of the doors, and is currently evaluating additional engineering improvements.

Master Metals will notify U.S. EPA for approval prior to any alterations that will substantially change the structure of the containers.

No new hazardous waste piles are being created. The cleaning crew is instructed to clean all spills immediately.

As was indicated in Item 6, a transfer container has been constructed to insure that bulk shipments of press cake are not dumped on the concrete pad prior to loading of the material into storage containers.

20. Sections V.E.2 and V.E. 3

All waste piles have been removed and either consumed in the rotary furnaces or containerized.

Containers

21. Sections V.F.1 and V.F.2

Inspections are conducted daily to insure that any drums or other containers are secure and not leaking. Leaking containers are removed for consumption in the rotary furnace and any spills are cleaned up.

Shipping and receiving personnel have been instructed on the procedures for accepting hazardous waste. Containers that are damaged or with lids not secured are not transferred to the storage areas until the problem has been rectified by overpacking or installation of properly secured lids.

Master Metals is currently removing five-gallon containers of waste samples. This waste is being consumed in the furnaces.

Cardboard/fiber containers are stored on pallets to insure that surface water run-off and run-on does not adversely impact the integrity of these containers.

Financial Assurance and Insurance

22. Section V.G.1

Despite the best efforts of Master Metals, the facility has not been able to obtain the required liability coverage in accordance with Section V.G.1 of the Consent Decree. Therefore, Master Metals has submitted a request for an extension to continue its due diligence in obtaining the necessary coverage.

23. Section V.G.3

An escrow account for funding the partial closure plan was established on 19 October 1987. A copy of the certificate of deposit was submitted to U.S. EPA 24 August 1990. At present U.S. EPA has not provided written comments on the establishment of this account.

A Trust Agreement between Master Metals and The Central Trust Company of Northeast Ohio was established 15 May 1990 to fund the closure as contained in the Full Facility Closure Plan. U.S. EPA has not commented on the establishment of this fund.

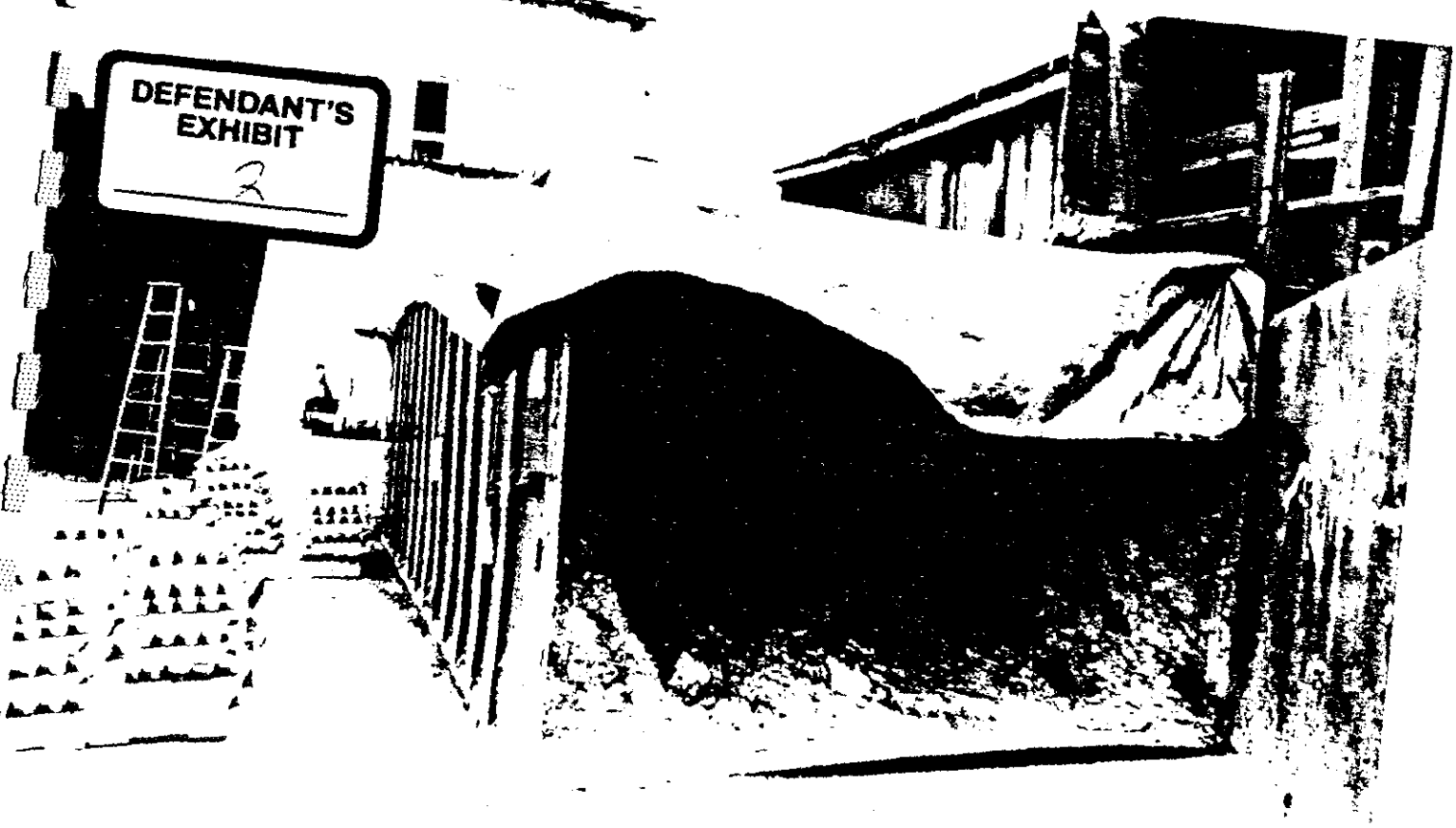
Certification:

I certify that the information explained in or accompanying this document is true , accurate and complete.

Very truly yours

Jerry L. Moody
Vice-President

DEFENDANT'S
EXHIBIT
1


DEFENDANT'S
EXHIBIT
2

Date: February 13, 1990
Report #: 90-1051

Client Name: MASTER METALS INC

Sample Description: #1: FURNACE SLAG #2:

Date Sampled: 1/22/90
Location: #1: SPENT FURNACE SLAG #2:

Extraction Procedure Toxicity Analytical Results

Sample Description:>	1	2
Parameter:		
Metals-		
Arsenic(As)	0.05 ppm	
Barium(Ba)	1.5 ppm	
Cadmium(Cd)	< 0.01 ppm	
Chromium(Cr)	12 ppm	
Lead(Pb)	< 0.05 ppm	
Mercury(Hg)	< 0.05 ppm	
Selenium(Se)	< 0.05 ppm	
Silver(Ag)	0.05 ppm	

ppm = parts per million = milligrams per Liter(aq)

Federal Regulation Limits (40 CFR 261.24)

Arsenic(As)	5.0 ppm
Barium(Ba)	100.0 ppm
Cadmium(Cd)	1.0 ppm
Chromium	5.0 ppm
Lead(Pb)	5.0 ppm
Mercury(Hg)	0.2 ppm
Selenium(Se)	1.0 ppm
Silver(Ag)	5.0 ppm

Envisage
Environmental
Incorporated

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN STATES OF AMERICA,	)	CIVIL ACTION NO. C-87-147
Plaintiff,	)	JUDGE ALICE BATCHELDER
vs.	)	
MASTER METALS, INC.,	)	
Defendant.	)	**AFFIDAVIT OF R.O. CHURCHILL**

R.O. CHURCHILL, being first duly sworn according to law deposes and says that:

1. I initially began working with Mr. Douglas Mickey, President of Master Metals, in 1989 to begin the process of investigating potential insurance carriers and submitting applications.

2. It has been my experience that there are only two stable markets for the Environmental Impairment Liability Insurance, commonly known as EIL or pollution liability insurance. The two companies that I contacted are both "A" rated by AM Best Company, and were selected by me as the most stable and reliable companies in this market.

3. I also contacted Hypercept Insurance, only to discover that they are not currently in the position to issue EIL policies.

4. Other insurance companies may come and go, for example Environmental Protection Insurance Company, ("EPIC"), now out of business, but I felt it was not in my client's best interest to pursue less financially stable companies, even if available.

Administrator will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its service as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot

14

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN STATES OF AMERICA,	)	CIVIL ACTION NO. C87-147
Plaintiff,	)	JUDGE ALICE M. BATCHELDER
vs.	)	
MASTER METALS, INC.,	)	**AFFIDAVIT OF RUTH MILNE**
Defendant.	)	

RUTH J. MILNE, being first duly sworn according to law, deposes and says that:

1. On September 4, 1990, I telephoned the companies identified in the U.S.E.P.A. docket as offering EIL coverage as of March 17, 1989 and as agreeing to be listed in the docket. I discovered that three of the six companies identified by U.S.E.P.A. no longer issue Environmental Impairment Liability ("EIL") policies and that, of the remaining three companies, only two would consider an application from an Ohio secondary lead smelting operation. The specific results of my survey are as follows:

2. According to Patty Fish at North Star Risk, Environmental Protection Insurance Company (EPIC) closed down on January 1, 1990. North Star Risk is administering the EPIC policies, but is not currently issuing additional EIL policies.

3. According to Linda Monje at Frontier Insurance Co., the Hypercept Outlet of Hypercept Insurance, Aralie Incorporated and the Rhulen Agency was suspended a year ago because they were unable to get an affiliation with an insurance carrier. As a result, they are not currently in a position to issue EIL policies.

4. According to Suzanne Sforzo at the Ohio District Office of Liberty Mutual Insurance Co., Liberty Mutual Insurance Co. does not offer EIL coverage--only auto, home, and life insurance.

5. According to Tammy Metzler and Kathleen Lackey at Environmental Compliance Services, Inc. (ECS), ECS offers EIL coverage and would consider an application from a secondary lead smelter. They require a risk assessment, resumes, and numerous financial documents. Master Metals has submitted an application to this company.

6. According to Art Davis at Environmental Insurance Management, Inc. (EIM), Front Royal Insurance Co., Front Royal Insurance Co. only offers EIL for under or above ground storage tanks that contain petroleum products. They do not offer insurance to sites in Ohio.

7. According to Julie Hespe and Jeff Gardner of the American International Group, The American International Group offers EIL coverage and will consider an application for secondary lead smelter, after considering problems at the site, but after close scrutiny of all facility conditions and circumstances. An application and Environmental

Risk Assessment are required. Master Metals has submitted an application to this company.

FURTHER AFFIANT SAYETH NAUGHT.

Ruth J. Milne

Ruth J. Milne

SWORN TO BEFORE ME and subscribed in my presence at Cleveland, Ohio, this 5th day of October, 1990.

Mary Ellen Schmitt

Notary Public

MARY ELLEN SCHMITT, Notary Public
State of Ohio
My commission expires Jan. 26, 1993

15

MASTER METALS INC.

BALANCE SHEET

ASSETS

(Unaudited)

LINE NO.		7/31/90
1	CURRENT ASSETS	
2	Cash	1236565
3	Accounts receivable, less allowance for	
4	doubtful receivables of $	1302752
5		
6		
7	Inventories	
8	Finished products	13462
9	Work in-process	3687
10	Raw Materials	214965
11		232114
12		
13		
14	Prepaid expenses	
15		
16		
17		
18	Total current assets	[illegible]4
19		
20		
21	PROPERTY, PLANT AND EQUIPMENT - AT COST	
22	Buildings and Improvements	188894
23	Machinery and equipment	1608674
24	Transportation equipment	238108
25	Office Furniture and fixtures	29207
26	PPA Improvements	187262
27	Vehicle under Capital lease	195463
28		2447608
29		
30	Less Accumulated Depreciation	1084336
31		1363272
32	Land	123980
33		
34		
35	OTHER ASSETS	185692
36		
37		
38		
39		$4632868
40		

FORM 7-574 N. POST RITE SYSTEMS LITHO IN U.S.A.

GENCY JOB FUNCTION + TRAINING RECORD

	Initials	Date
Prepared By		
Approved By		

2/20/89 6/27/89

EMPLOYEE	PRIMARY JOB FUNCTION	CONTINGENCY JOB FUNCTION #	TRAINED YES	TRAINED NO	HOUSE SAFE PARTIALLY	NEXT SESSION DUE
OUGLAS MICKEY	PRESIDENT	#7	✓			AUG 1989 — NOT REQUIRED
ERRY MOODY	VICE PRESIDENT			✓		— NOT REQUIRED
JOSEPH SELDON	PLANT MANAGER	#4+3	✓		✓	JUNE 1990
JAMES FLUKER	FOREMAN	#4	✓		✓	~~AUG 1989~~ FEB 1991
OTTO LAWRENCE	FORE 11 SHIPPING & RECEIVING	#3#4#7+#6	✓		✓	JUNE 1990
UG VAN BUSKIRK	FOREMAN	#4+3	✓✓		✓	~~AUG 1989~~ JUNE 1990
AMES AMMONS	CHEMIST	#2	✓			~~SEPT 1988~~ JUNE 1990
ATHY ZENKERT	ACCOUNTANT	#1	✓			~~10/20/88~~ ~~10/20/89~~ FEB 1991
TEVE ABRAMS	BUYER	#4	✓			OCT 1988 — NOT REQUIRED
ULA COOK	OPR - CLERK	#1	✓			~~10/20/88~~ ~~10/20/89~~ FEB 1991
~~AMARA MILLER~~	~~CLERK~~	~~#1~~	✓			~~10/20/88~~ ~~TERMINATED~~
~~LLY KITKO~~	~~TRAFFIC CLERK~~	~~#4+#6~~		✓		~~TERMINATED~~
M HELMS	ASST. PLANT MGR.	#4+#5	✓		✓	~~JAN 1990~~ JUNE 1990
LLARD WENNERS	ALLOY & REFINING	#3+#4	✓		✓	JUNE 1990
EE CAMPBELL	" + "	#3+#4			✓	JUNE 1990
HICKERSON	PRESS OPERATOR	#3+#4			✓	~~AUG 1989~~ JUNE 1990
HILTON	" "	#3+#4			✓	~~AUG 1989~~ JUNE 1990
SMITH	" "	#3+#4			✓	JUNE 1990
AY BROWN	ROTARY OPER	#3+#4				JUNE 1990
AN WALKER	" "	#3+#4				JUNE 1990
ERT ROBINSON	" "	#3+#4				JUNE 1990
E WRIGHT	CLEAN UP	#3+#4				~~AUG 1989~~ FEB 1991
REET LARGE	ROTARY OPER	#3+#4				~~AUG 1989~~ JUNE 1990
ED JENKINS	MAINTENANCE	#3+#4				JUNE 1990
WRENCE PULLEY	SHIPPING & RECEIVING	#3+#4+#6				~~AUG 1989~~ JUNE 1990
VIN BLAZETIC	MAINTENANCE	#3+#4	✓			JUNE 1990
CHARLES BAILEY	ROTARY OPER & POTS	#3+#4	✓			JUNE 1990
NRE LANKIN	" " "	#3+#4	✓✓		✓	~~AUG 1989~~ JUNE 1990
~~NATE HOLMES~~	~~" " "~~	~~#3+#4~~	✓			~~AUG 1989~~ ~~TERMINATED~~
NNIS HANKISH	" " "	#3+#4		✓	✓	LEAVE ABSENCE FROM JULY 89 - MARCH 90.
IN BILLINGSLEY	" " "	#3+#4		✓	✓	
ED BOLTON	" " "	#3+4		✓	✓	~~TERMINATED~~
NRY STUMP	" " "	#3+4		✓	✓	
NDY URBANIC	CLERK	#3+4	✓			JUNE 1990
GINNED THROWER	SHIPPING & RECEIVING	#3+4+6	✓			JUNE 1990
NK WILLIAMS	ROTARY OPER & POTS	#3+#4	✓	✓		FEB 1991
TIS BROWN	" " "	#3+#4	✓	✓		FEB 1991
RS RONNEY	" " "	#3+#4		✓		
N HICKS	ALLOY & REFINING	#3+#4	✓			FEB 1991
IS SIMS	ALLOY & REFINING	#3+#4				

PV (?) KMH

No 4 ✓

7) Master Metals is monitoring and operating the facility to minimize the possibility of further explosion of any unplanned release of hazardous waste into the air, soil or water which could threaten the environment. (See Appendix H).

8) Master Metals, Inc., is conducting regular inspection of the enter facility in accordance with 40 CFR 265.15 (a) and OAC Rule 3745-65-15 (a) to discover deterioration of containers or equipment, releases, malfunctions in monitoring, safety, or emergency equipment, and any other condition or event which may cause or lead to the release of hazardous waste or hazardous constituants into the environment. Included in Appendix G are copies of these inspection reports for your review and approval.

9) Master Metals certifies that all equipment required under 40 CFR 265.32 and OAC Rule 3745-65-32, and inventory of the equipment and a diagram of the facility that shows the location of each piece of equipment is included. (See Appendix F).

10) A written Contingency Plan which satisfies the re[illegible]nt of 40 CFR 265.50 through 265.56 and OAC Rules 3745[illegible]5-65-56 is included (Appendix E). Copies of this plan [illegible]tted to both emergency authorities. We are compl[illegible] requirements.

11) Master Metals is in compliance with the t[illegible] of 40 CFR 265.16 (a) (b) and (c) and OAC R[illegible] and (c) and maintains at the facility a wr[illegible] personnel training records as required by 40 CFR [illegible] and OAC Rule 3745-65-16 (d) and (e).

12) Master Metals has provided for facility security [illegible] cordance with the requirement of 40 CFR 265.14 and OAC Rule 3745-[illegible]-14 including maintenance of a good fence.

13) Master Metals, Inc., has retained Woodward-Clyde Consultants, 122 South Michigan Avenue, Suite 1920, Chicago, IL 60603 and Envisage Environmental Inc., 6940 Miller Road, Brecksville, OH 44141 as its consultants.

14) Master Metals, Inc., certifies that placing battery cassings and other hazardous waste does not violate any permit requirements for the facility under the Clean Air Act 42. USC 7401 et sea., and regulations 40 CFR Part 266, subpart D, or OAC Rules 3745-58-40 through 3745-58-46 or any other Federal, State Law regulation or permit. (See Appendix I).

File: ~~FILE: ENFORCEMENT~~ POLICY PROCEDURES

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

FEB 6 1990

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS DN

SUBJECT: Manual on Monitoring and Enforcing Administrative and Judicial Orders

FROM: James M. Strock JMS
Assistant Administrator

TO: Assistant Administrators
Regional Administrators, I-X

This memorandum transmits the EPA Manual on Monitoring and Enforcing Administrative and Judicial Orders. The Manual provides general guidance to EPA enforcement staff on their roles and responsibilities in monitoring and enforcing final order requirements. The Manual applies to all regulatory enforcement programs with the exception of the CERCLA (Superfund) Program. The term "order" includes judicial consent decrees and administrative consent orders. The Manual also outlines a process for working with the EPA Financial Management Offices (FMOs) and the Department of Justice for monitoring and collecting penalties.

The Manual was prepared in response to recommendations in several Office of Inspector General (OIG) audit reports that OE, the Program Offices and the OARM Financial Management Division (FMD) develop clearer guidance and management systems for ensuring that administrative and judicial order requirements are aggressively monitored until compliance is achieved. A major concern of the OIG was the failure of enforcement staff to notify the Regional Financial Management Offices (FMOs) when administrative or judicial penalties have been assessed so that these "accounts receivables" can be entered into and tracked in the Agency's Integrated Financial Management System (IFMS).

2/14 Cir to all attorneys

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MANUAL ON MONITORING AND ENFORCING ADMINISTRATIVE AND JUDICIAL ORDERS

SUMMARY OF PROVISION AND RESPONSE TO COMMENTS

Chapter 1 - Monitoring and Reporting the Status of Orders.

Roles and Responsibilities

The Regional Program Office (RPO) is responsible for monitoring (i.e. routinely checking) compliance with the technical requirements in administrative and judicial orders. The Regional Financial Management Office (FMO) is responsible for monitoring and collecting administrative penalties as "accounts receivables". The Department of Justice (DOJ) is responsible for monitoring and collecting judicial penalties and for reporting the status of penalty collection to the EPA Headquarters Financial Management Division (HQ-FMD).

Reporting on Penalty Payments

While the RPO is not responsible for monitoring collection of administrative or judicial penalties, RPO is responsible for verifying that penalties have been paid before terminating an order or reporting a violator in full compliance. Therefore, RPO data systems should include the amount of penalties assessed in a final order and be able to report on a "yes/no" basis whether the total amount of the administrative or judicial penalty has been collected. The OE Docket also will report the amount of the judicial penalty assessed and contain a yes/no statement on whether the total amount assessed has been collected. The Integrated Financial Management System (IFMS) maintained by the Headquarters and Regional FMOs will be the official EPA system for reporting the numerical (dollar) amounts of enforcement penalties collected.

EPA Enforcement Payment Accounts Receivable Control Number

In order to cross-walk between program office systems and the IFMS, the Manual recommends that all programs enter into their program data system the assigned IFMS accounts receivable control number for the penalty assessed in each final order. When the Regional FMO receives a copy of a final order and establishes the accounts receivable in IFMS, the FMO will provide the RPO, the ORC and the Regional Hearing Clerk with the accounts receivable control number. The goal is to have the IMFS accounts receivable control number be the common identifier number in all data systems that report penalty information.

receivable control number should be included in the case file available for review in the context of an audit.

Collecting, Enforcing and Terminating Administrative Penalty Payments

The procedures for coordinating among the FMO, RPO and ORC in collecting, enforcing and terminating administrative penalty payments also have been refined. At the request of FMD, the time frames have been added for ORC review of enforcement options regarding penalties that have not been paid within 120 days. The process for collecting, enforcing or terminating orders is as follows:

Once the FMO receives a copy of the final order and establishes the accounts receivable, the FMO will monitor and collect the receivable using standard debt collection practices. The FMO will send the RPO, ORC and Regional Hearing Clerk a copy of payments received. These payments will be identified by the IFMS Accounts Receivable Control Number.

Uncollected penalties, at the end of 120 days and after three demand letters have been issued, will be referred by the FMO to the ORC for review and option selection. The ORC, after consulting with the RPO, must notify the FMO, in writing within 30 days from receipt of debt from the FMO, of the collection option the ORC will pursue. Options include referring the penalty debt to DOJ for judicial collection, pursuing additional FMO collection activities such as outside collection agencies, or requesting termination of the debt. However, to uphold EPA's enforcement authority, administrative penalty debts should be terminated only under exceptional circumstances. The ORC's written response to the FMO should be included in the official case file.

Several reviewers of the draft Manual suggested that EPA and DOJ institute a direct referral process from the ORC to the U.S. Attorneys' Office (USAO) for administrative penalty debt collection. The current delegation of authority by the Attorney General to the Land and Natural Resources Division precludes a direct referral to the USAO of EPA enforcement cases including administrative penalty collection cases.

Chapter 3 - Collecting Judicial Penalties.

Roles and Responsibilities

The Manual recognizes that the DOJ Land and Natural Resources Division, Environmental Enforcement Section, hereinafter referred to as LNRD-EES, is responsible for

of EPA penalty payments using the IFMS number. The Headquarters FMD will distribute copies of these reports to the Regional FMOs. The FMOs will update the IFMS with the data received from LMPD-EES. The IFMS will be the official EPA system for reporting the dollar amounts of judicial enforcement penalties collected. Other EPA data systems will, as with administrative penalty payments, provide information on judicial penalty collection in a "yes/no penalty paid" format only. To interface with the IFMS, other EPA program offices can include the IFMS accounts receivable control number in their data systems.

Chapter 4 - Enforcing Orders.

This chapter remains unchanged and contains existing guidance on available enforcement tools such as motions for specific enforcement, contempt actions, contractor listing, etc. The Appendix contains procedures for working with DOJ Land and Natural Resources Division on modifying judicial orders or collecting stipulated penalties under judicial consent decrees.

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:
(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: _____ _____
[Name of contact person] [Date]

in the _____ at _____
[office] [phone number]

☐ Non-SF Jud. Order/Consent Decree. **USAO COLLECTS.**

☐ Administrative Order/ Consent Agreement **FMO COLLECTS PAYMENT.**

☐ SF Jud. Order/Consent Decree. **FMO COLLECTS.**

☐ This is an original debt

☐ This is a modification

Name of Person and/or Company/Municipality making the payment

---

The Total Dollar Amount of Receivable _____
(If in installments, attach sch. of amounts and respective due dates)

The Case Docket Number _____

The Site-Specific Superfund (SF) Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
[Name of Contact] [Date]

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Debt Tracking Officer
   Environmental Enforcement Section
   Department of Justice/Rm. 1647D
   P.O.Box 7611, Benjamin Franklin Station
   Washington, DC 20044
2. Originating office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel

MANUAL ON MONITORING AND ENFORCING ADMINISTRATIVE AND JUDICIAL ORDERS

January 1990

Office of Enforcement
U.S. Environmental Protection Agency

ACKNOWLEDGEMENTS

This manual is the end result of several management studies conducted by the Office of Enforcement (OE) and the Office of Administration and Resources Management (OARM) in FY 1987 and 1988. Acknowledgement for their contribution to this Manual goes to Renelle Rae, Project Leader; Lisa Nelson and Linda R. Thompson, OE Program Development and Training Branch; Robert Banks, Eloise Furbush and Bill Watt, OE Compliance Evaluation Branch; Lisa Fiely, Jo Cohen, Melvin Visnick, and Ivy Jacobs, OARM Financial Management Division; Ray Spears, Office of General Counsel (OGC); Ross Coneally, Ellen Stough, Dodie Steemland and Rosemarie Pacheco, Department of Justice; and the Headquarters and Regional staff who commented on the draft Manual.

Questions concerning this Manual or requests for additional copies should be directed to:

Chief, Program Development and Training Branch
Office of Compliance Analysis and
Program Operation
Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

U.S. EPA Mail Code LE-133

INTRODUCTION

This Manual provides guidance to EPA enforcement staff on monitoring and enforcing administrative and judicial orders. The procedures described in this Manual apply to all EPA statutes that provide authority to issue administrative and judicial orders requiring compliance with Agency requirements with the exception of the CERCLA (Superfund) program. The procedures set forth herein will supersede general guidance in program case development manuals that address the topics in this Manual. Each program, however, may have more specific guidance on monitoring and tracking orders that supplements this manual.

The Manual focuses on the activities of Regional Offices in monitoring and enforcing penalties since the majority of the cases are initiated by the Regional programs. Some Headquarters offices, such as the Office of Toxic Substances, have national programs where enforcement cases are initiated, concluded and settlements monitored by Headquarters staff. These Headquarters offices have program, legal, administrative hearing clerk and financial management functions comparable to the Regional structure described in this Manual. Headquarters offices involved in monitoring and enforcing orders should substitute their office functions for the comparable Regional functions described and follow the guidance set forth in this Manual.

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CHAPTER ONE

MONITORING AND REPORTING THE STATUS OF FINAL ORDERS

Final Administrative and Judicial Orders (Decrees)

This chapter provides general guidance on the roles and responsibilities in monitoring (i.e. routinely checking) of compliance with EPA administrative and judicial order requirements and reporting the status of the orders in Agency reporting systems. EPA National Program Managers may have additional guidance for their program on monitoring and reporting that supplements this general guidance.

Because EPA statutes vary on the type of administrative and judicial authority available to address violations, program specific guidance should be referred to for information on the type and process for reaching a final administrative or judicial order. Once a final order has been issued, it must be monitored until compliance with the terms of the order has been achieved.

In this chapter and for the remainder of the Manual, the term "final order" refers to all types of orders including consent orders and consent decrees issued or entered [1] as final under the appropriate EPA administrative or judicial statutory authority. In addition, this manual will use the term "violator" [2] to refer to the party which must comply with an administrative or judicial order.

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1 Judicial consent decrees are first "lodged" with the court and published by the DOJ in the Federal Register for public review and comment. Unless challenged by the public, at the end of the 30-day review period the consent decree normally is entered as a final order (judgment) by the court (See 28 C.F.R. 50.7).2 Judicial enforcement actions refer to the violator as the "Defendant" and administrative actions refer to the violator as "Respondent".

Drafting Enforceable Orders

Clarifying Acceptable Verifications of Compliance

Development of an effective post-litigation/settlement monitoring program should begin at the time a settlement agreement and/or when the order is drafted. The final order must state the required activity clearly and precisely. Any work plans and schedules referenced and appended to the orders must also be clearly and precisely drafted with notice to the violator of what constitutes acceptable verification of compliance with terms and milestones.

Certification of Compliance

Where appropriate, a well-drafted agreement should include provisions for self-monitoring and self-reporting by the violator and instructions for penalty payments. The "responsible corporate or municipal officer" should be required to sign these self-monitoring reports to ensure that high-level management attention of the company or municipality is focused on complying with the order. Although such self-monitoring provisions do not obviate the need for periodic post-settlement monitoring by the Agency, they enable EPA to utilize its limited resources in a more efficient manner. See Appendix 1 of this chapter for guidance on self-monitoring and verification requirements.

Stipulated Penalty Provisions

Stipulated penalty provisions can be included in final orders to provide additional incentive for compliance. These are penalties agreed upon by the parties, at the time of entering into settlement, as being payable in the event that the violator does not comply with specified terms of the agreement. Appendix 2 of this chapter provides guidance on the use of stipulated penalties in EPA settlement agreements (administrative or judicial). Chapters Two (administrative) and Four (judicial) discuss the procedures for collecting stipulated penalties.

Ensuring Penalties Are Not Tax Deductible

To ensure that violators do not treat penalties as a business expense (i.e., pay to pollute), up-front and stipulated penalties clauses in settlement orders should inform the violator that penalties <u>are</u> <u>not</u> tax deductible. Under a Memorandum of Understanding with the IRS, EPA program offices and OE send to the IRS quarterly data on the names of violators and the amounts of penalties assessed.

Monitoring Systems

To be effective, a post-litigation/settlement enforcement program must be able to routinely track and identify violations of final order requirements and quickly take action to address the violations. Tracking compliance with technical (non-penalty) requirements of administrative and judicial orders is the responsibility of the Regional Program Offices (RPOs). Each National Program Manager is responsible for establishing oversight mechanisms (reporting, annual program audits or special management reviews) for ensuring that the RPOs have systems in place for following through on administrative and judicial orders. Each RPO is responsible for implementing, under its national program guidance, a specific system for monitoring compliance with the technical (non-penalty) requirements of judicial and administrative orders. Each RPO system should at a minimum include three elements: (1) an automated tracking system, (2) regular supervisory review of the status of active orders, and (3) maintenance of the case file. These elements are described in detail below.

Automated Tracking

An easily accessed automated data base is the first element of a sound monitoring system. To do this, three specific activities must occur. First, all judicial and administrative order requirements are entered into the system. Second, a "tickler system" is established that alerts the user to the order milestones due in each reporting period so that compliance can be verified. Third, the system must be routinely updated with compliance information.

All technical (non-penalty) compliance schedules and reporting requirements set forth in judicial decrees and administrative orders must be entered into the system in order for it to be used as a "tickler". When all requirements and due dates are entered into the system, the system should allow easy retrieval of requirements and due dates.

Some programs have national automated data systems designed for reporting national compliance information. These systems provide data fields for reporting compliance with technical and penalty milestones. These systems may or may not provide "tickler" monitoring system capability. Where national data bases are not available, RPOs can develop their own personal computer (PC)

"tickler" system. However, to minimize resources, PC "tickler" programs for monitoring compliance also should be designed for reporting purposes to provide the minimal national administrative enforcement data requirements established by each program.

The National Enforcement Investigations Center (NEIC) has an automated system that can be used as a tickler monitoring system for judicial orders (primarily consent decrees). The NEIC system can be used as a supplement to program office systems. As of October 1989, administrative orders can now be added and tracked in the NEIC data base. The Regional data clerks in the Office of Regional Counsel can access this system from Regional terminals. (See the ORC for more information on the services the NEIC system can provide.)

Routine updating must be made a high priority for the automated tracking system to be useful. Most programs with national automated data systems have requirements on the frequency of data updates for reporting compliance status under the Strategic Targeted Activities for Results System (STARS) and other management accountability systems. To obtain maximum effectiveness in using these data bases as "tickler" monitoring systems, RPOs should strive to update order milestones no less than quarterly, so that current information is available to engineers, project managers and supervisors concerning order requirements.

Regular Supervisory Review of the Status of Active Orders

Regular supervisory review is the second element for maintaining an effective monitoring system. Supervisors should routinely review the status of all cases with the engineer or project manager. This will help to ensure that all milestones set forth in the judicial and administrative orders are being met in a timely fashion and that office policy is being carried out effectively on discretionary issues. Given the low visibility of settled cases versus ongoing cases, it is essential that the supervisor conduct this type of review on a regular basis.

Maintenance of the Case File

The third element of an effective system for monitoring and enforcing orders is the maintenance of the files. Successful enforcement of order violations often hinges on the establishment of a "good paper trail", i.e., factual information that describes the type of violation(s), the frequency of violations and the

actions EPA has taken to address the violations. The file, therefore, should contain all documentation of efforts to verify compliance, such as routine company self-reporting and efforts to address noncompliance, EPA contacts with the company, telephone calls, meetings and letters.

Two important elements are necessary for ensuring the integrity of the documentation in the case file. First, each Region should strive to maintain a complete and up-to-date official file. (The official file can be a separate RPO file, ORC file or a common RPO-ORC file depending on the Region.) All documentation regarding compliance with order requirements should be in the designated official file.

Second, one person should be responsible for ensuring that all pertinent documents are in the official case file. This will ensure that all incoming documents are added to the file and that when a case file has been borrowed that all documents are still in the file when it is returned. Standard borrowing procedures allow only office personnel to remove the file. Monitoring "checked out" files is usually initiated by requiring borrowers to turn in a "check out slip" for all materials leaving the file room or file storage area. Supervisory oversight and routine file reviews should be utilized to ensure all pertinent documents are in the official file and that the integrity of the case file is subsequently maintained. Also, case files should not be archived until full compliance with any order has been verified.

Reporting Requirements

For reporting (not monitoring) purposes, RPO automated data systems should maintain a data field for recording penalty payments. While RPOs are not responsible for monitoring and collecting penalties, RPOs are responsible for verifying that all penalties, including assessed stipulated penalties [3], have been

[3] Stipulated penalties are considered "assessed" and should be entered into the RPO data base when the responsible EPA (administrative) or DOJ (judicial) official sends the violator a "bill for stipulated penalties". See Chapter Two (administrative penalties) and Chapter three (judicial penalties) for additional guidance.

paid before terminating or closing out a judicial and administrative order, or reporting the violator as "in compliance" in its data systems. RPO data systems should provide the amount of penalty assessed and a "yes or no" field on whether penalties have been paid.

Chapter Two of this manual describes the procedure for collecting administrative penalties through the financial management offices of EPA. The Integrated Financial Management System (IFMS) (automated data base) will provide the numerical data on the status of each penalty debt and the total amount of penalties collected. Chapter Three describes the monitoring and collection of judicial penalties by DOJ and the reporting of penalty collection information to the IFMS.

Additional Oversight Requirements for Administrative Orders

[Note: Based on a recommendation of the Enforcement Management Council, an OE work group is currently developing a set of minimum data requirements that each national program manager should maintain on administrative enforcement actions from initiation to compliance with all final order requirements. This manual will be revised to include those requirements when they become final.]

Some program offices such as the OPTS-Office of Compliance Monitoring require the Regional Offices to submit final civil administrative orders to Headquarters for inclusion on a central listing, so that a history of nationwide non-compliance can be documented.

Additional Oversight Requirements For Judicial Orders (Consent Decrees)

Judicial Consent Decree Tracking and Follow-up Directive

This Directive contained in Appendix 3 of this chapter outlines the basic requirements for effective management of Agency consent decree tracking and follow-up responsibilities and supplements this manual's guidance.

STARS Consent Decree Tracking Measure

Under the STARS consent decree tracking measure, each Region is responsible for quarterly reporting of compliance status of its active judicial orders to OE. See the Directives in Appendix 3 of this chapter.

NEIC Central Repository

Under EPA guidance issued on December 20, 1983, each Region must send to the National Enforcement Investigations Center (NEIC) - Lakewood, CO, a copy of all judicial orders to which EPA is a party. This includes State court orders where EPA is a party. All subsequent modifications of judicial orders approved by a court also must be forwarded. The ORC is responsible for sending judicial orders to NEIC unless the Region has officially designated the Regional Program Office as the responsible office.

The NEIC maintains a central (hard copy) repository for all EPA judicial orders and an automated management information system that stores summaries of each decree. It is essential that the EPA have a complete file on all orders. EPA's enforcement program is decentralized and defendants can use that to their advantage in negotiating settlements with EPA Regions. The NEIC Central Repository enables the Agency to exchange information across Regions on the scope and type of language provided in orders. For example, a defendant may assert that EPA has provided a certain type of relief for a similarly-situated company in another Region. The NEIC repository provides a tool for enforcement staff to verify that assertion and to determine the context for that provision. (Obviously, use of a provision in one case does not necessarily make it appropriate in a different case.)

The NEIC data analyst who maintains the OE Docket in each Office of Regional Counsel (ORC) can access the NEIC data base for judicial order information. Regions also can use the NEIC automated system as a "tickler" system and as a means of reporting the compliance status of judicial orders under the STARS consent decree tracking measure mentioned above.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

JUL 25 [redacted]

MEMORANDUM

SUBJECT: Guidance on Certification of Compliance with Enforcement Agreements

FROM: Thomas L. Adams, Jr.
Assistant Administrator for Enforcement and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
Regional Counsels

I. BACKGROUND

Over the past several years, EPA has initiated record numbers of civil judicial and administrative enforcement actions. The vast majority of such actions have been resolved by judicial consent decree or administrative consent order.

The terms of many of these settlements require the violator to perform specific tasks necessary to return to or demonstrate compliance, to accomplish specific environmental cleanup or other remedial steps, and to take prescribed environmentally beneficial action.

Settlement agreements typically specify that the violator perform certain required activities and thereafter report their accomplishment to EPA. Verification that the required activities have actually been accomplished is an essential element in the overall success of the Agency's enforcement program.

II. PURPOSE

The focus of this advisory guidance is on verification of compliance with settlement agreements which require specific performance to achieve or maintain compliance with a regulatory standard. EPA has ongoing responsibility for ensuring that settling parties are in compliance with the terms of their negotiated agreements. To this end, the Agency may require that a responsible official (as that term is defined herein) personally attest to the accuracy of information contained in compliance documents made available to EPA pursuant to the terms of a settlement agreement.

The inspection programs of EPA and other federal regulatory agencies are based of necessity on the concept that a limited number of regulated facilities will be inspected each year. Conversely, this means that a large number of regulated parties can operate for extended periods of time without being the subject of an on-site inspection by EPA staff. Hence, it is crucial to ensure that all required compliance reports are received from the regulated facility in a timely manner. In addition--and equally as important--timely review of such reports must be undertaken by EPA to ensure that the reports are adequate under the terms of the settlement agreement.

EPA experience shows that the majority of regulated parties make good faith efforts to comply with their responsibilities under the environmental laws and regulations. Nevertheless, the Agency must have effective monitoring procedures to detect instances of noncompliance with a settlement agreement. A vital component of these procedures will be to ensure that the environmental results obtained in the enforcement action are indeed achieved and that criminal sanctions, where appropriate, are available to respond to instances of intentional misrepresentation or fraud committed by such violators.

EPA will ensure that all responsible officials entering into settlement agreements with the Agency are held accountable for their subsequent actions and the actions of any subordinates responsible for the information contained in compliance reports submitted to the Agency.

III. GUIDANCE

A. Certification by Responsible Corporate Official

The terms of settlement agreements, as well as any certification language in subsequent reports to the Agency, should be drafted in a manner to trigger the sanctions of 18 U.S.C. §1001, [1/] in the event that false information is knowingly and willfully submitted to EPA. Submission of such false information

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1/ United States Code, Title 18, Section 1001 provides:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be

may also expose the defendant to an judicial consent decree falsification incidents to both civil and criminal contempt proceedings.

This provision of law is a key sanction within the federal criminal code for discouraging any person from intentionally deceiving or misleading the United States government.

1. Signatories to Reports

Settlement agreements should specify that all future reports by the settling party to the Agency, which purport to document compliance with the terms of any agreement, shall be signed by a responsible official. The term "responsible official" means as follows:2/

a. For a corporation: a responsible corporate officer. A responsible corporate officer means: (a) A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

2. When to Require a Certification Statement

The requirement for an attestation by a responsible official is always useful as a matter of sound regulatory management practice. Such a requirement is more urgent,

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(Note 1, cont'd)

fined not more than $10,000 or imprisoned not more than five years, or both."

There are four basic elements to a Section 1001 offense: (1) a statement; (2) falsity; (3) the false statement be made "knowingly and willfully"; and (4) the false statement be made in a "matter within the jurisdiction of any department or agency of the United States". United States v. Marchisio, 344 F.2d 653, 666 (2d Cir. 1965).

2/ For NPDES matters, the definitions of "responsible official" and "certification", as set forth in 40 CFR §122.22, may be used as alternative language to this guidance.

However, where a regulated party has a history of noncompliance or where prior violations place one's veracity into question [illegible]

3. Terms of a Certification Statement

An example of an appropriate certification statement for inclusion in reports submitted to the Agency by regulated parties who are signatory to a settlement agreement is as follows:

> "I certify that the information contained in or accompanying this (submission) (document) is true, accurate, and complete.
>
> "As to (the) (those) identified portion(s) of this (submission) (document) for which I cannot personally verify (its) (their) truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete." 4/

B. Documentation to Verify Compliance

Typical settlement agreements require specific steps to be undertaken by the violator. As EPA staff members engage in settlement negotiations and the drafting of settlement documents, they should identify that documentation which constitutes the

3/ While personal liability is desirable to promote compliance, it should be noted that corporations may be convicted under 18 U.S.C. §1001 as well. A corporation may be held criminally responsible for the criminal acts of its employees, even if the actions of the employees were against corporate policy or express instructions. See U.S. v. Automated Medical Laboratories, 770 F.2d 339 (4th Cir. 1985); U.S. v. Richmond, 700 F.2d 1183 (8th Cir. 1983). Moreover, both a corporation and its agents may be convicted for the same offense. See U.S. v. Basic Construction Co., 711 F.2d 570 (4th Cir. 1983).

4/ It is inevitable that in negotiating consent agreements, counsel for respondents will seek to insert language in the certification statement as to the truth of the submissions to be to the "best information" or to the "fullest understanding" or "belief" of the certifier. Such qualifiers should not be incorporated, since the provisions of 18 U.S.C. §1001 provide for prosecution for making false statements knowingly and willfully--not for forming erroneous beliefs, etc.

most useful evidence that the action required has actually been undertaken. The most useful evidence would be that information or documentation that best and most easily allows the Agency to verify compliance with the terms (including milestones) of a settlement agreement. Examples of documentation to substantiate compliance include, but are not limited to, invoices, work orders, disposal records, and receipts or manifests.

Attachment A is a suggested type of checklist that can be developed for use within each program area. 5/ The checklist includes examples of specific documentary evidence which can be required to substantiate that prescribed actions have, in fact, been undertaken.

IV. SUMMARY

This guidance is to provide assistance to EPA employees who negotiate and draft settlement documents. It is appropriate when circumstances so dictate that such documents contain sufficient certification language for ensuring, to the maximum extent possible, that all reports made to EPA, pursuant to the terms of any settlement agreement, are true, accurate, and complete, and that such reports are attested to by a responsible official.

The Agency must incorporate within its overall regulatory framework all reasonable means for assuring compliance by the regulated community. The inclusion of compliance certification language, supported by precise documentation requirements, in negotiated settlement agreements may, in appropriate instances, mean the difference between full compliance with both the letter and the spirit of the law, and something less than full compliance. In the case of the latter, the violating party is then subject to the sanctions of the federal criminal code.

Attachment A

5/ EPA or a State may be unable to confirm the accuracy of certifications for an extended period of time. Therefore, it is suggested that, whenever certification by a respondent/defendant is required, the order/decree provide that "back-up" documentation--such as laboratory notes and materials of the types listed in the examples in the text above--be retained for an appropriate period of time, such as three years. See, for example, the 3 year retention time in 40 CFR §122.41(j)(2).

MEANS OF CERTIFYING COMPLIANCE
WITH CONSENT AGREEMENTS
(Examples)

Action Required by Consent Agreement	Violator's Official Certifies That:	Documents Accompanying Certification:
*Purchase pollution control equipment.	*Equipment purchased	*Invoice
*Installation	*Equipment installed and tested	*Invoice for work with photographs
*Ongoing operation and maintenance	*Operating as required	*Continuous monitoring tapes *Periodic sample results *Maintenance of records
*Meet discharge levels	*Discharge levels have been met	*Continuous monitoring tapes *Periodic sample results
*Labeled transformers	*Transformers have been labeled	*Photographs
*Do risk study	*Study has been completed	*Study report and recommendations
*Hire employees	*Employees have been hired	*Personnel records *Position descriptions *Entry on duty dates *Salary data
*Use complying coatings	*Verifying complying coatings are used	*Documents to verify VOC content
*Train employees (e.g., work practices)	*Employee training has been completed	*Educational materials and records of employee attendance at training session
*Set up environmental auditing unit	*Unit has been established *Orientation and instruction completed	*Same as above re: personnel *Charter of audit group

(continued on next page)

MEANS OF CERTIFYING COMPLIANCE
WITH CONSENT AGREEMENTS
(Examples)

(continued from previous page)

Action Required by Consent Agreement	Violator's Official Certifies That:	Documents Accompanying Certification:
*Dispose of PCBs	*PCBs disposed of in lawful manner	*Copies of manifests
*Replace PCB transformers	*New transformers installed	*Copies of purchase and installation receipts
*Maintain pesticide certification of applicator	*Applicator certification has been accomplished	*Copies of certificates
*Remove cancelled product from the market	*Removal has been accomplished	*Copies of correspondance with customers and documentation of removal *Copies of customer lists for independent verification by EPA and states
*Comply with asbestos removal and disposal regulations	*Compliance with asbestos removal and disposal regulations on a job-by-job basis	*List of locations of all jobs
*Monitor waste stream	*Waste stream has been properly monitored	*Discharge Monitoring Report
*Sludge removal	*Sludge removed by milestone deadline	*Copies of invoices on sludge removal
*Conduct groundwater monitoring	*Groundwater monitoring accomplished in appropriate manner	*Q/A (quality analysis) tests; certification by laboratory
*Collect and analyze soil samples	*Soil samples collected and analyzed in specified manner	*Same as above
*Remove contaminated soils and dispose of in compliance with RCRA	*Contaminated soils removed and disposed [illegible] compliance with RCRA	*Copies of contract [illegible] and manifests

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

JAN 24 1990

OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Use of Stipulated Penalties in EPA Settlement Agreements

FROM: James M. Strock JMS
Assistant Administrator

TO: Addressees

This memorandum provides guidance on the use of stipulated penalties in settlement of enforcement actions. For each issue discussed, a preferred approach is stated along with its rationale. These preferred approaches should be followed absent unusual circumstances dictating an alternative approach. The guidance applies to judicial settlements except that it does not supersede the September 21, 1987 Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees. It also applies to administrative cases where EPA has legal authority to assess stipulated penalties.

Stipulated penalties are penalties agreed to by the parties to a settlement agreement for violation of the agreement's provisions. These penalties are then made a part of the agreement, and are enforceable if it is violated. In EPA settlement agreements, the primary goal of a stipulated penalty is to act as an effective deterrent to violating the settlement agreement.

I. Types of Requirements to Which Stipulated Penalties Should Apply

Any clearly definable event in a settlement agreement may be appropriate for stipulated penalties in a given case. Such events include testing and reporting requirements, interim and final milestones in compliance schedules, and final demonstration of compliance. The government litigation team assigned to a case should carefully consider which

consent agreement provisions are appropriate for stipulated penalties and be prepared to vigorously enforce them. Stipulated penalties can even be attached to consent agreement provisions requiring payment of up-front penalties so long as the stipulated penalties are higher than the interest, computed at the statutory interest rate, on the underlying amount. Every consent agreement requirement to which stipulated penalties are attached should be drafted to ensure that the standards for determining compliance are clear and objective, and that any information required to be submitted to EPA is clear and unequivocal.

In general, stipulated penalties are particularly important for requirements of the consent agreement which do not represent regulatory or statutory violations for which the agency could potentially get statutory maximum penalties. Such provisions may include a requirement to install specific control equipment where the regulations and statute involved require only compliance with a discharge or emissions standard, or environmental auditing or management requirements designed to ensure future compliance. Without stipulated penalty provisions, penalties for violation of such provisions in judicial cases are only available at the judge's discretion in a contempt action under the court's inherent authority to enforce its own order.

Attaching stipulated penalties to violations of consent agreement provisions which are also violations of a statute or regulation with a specified statutory maximum penalty has advantages and disadvantages which Agency attorneys should consider carefully in the context of a particular case. The advantage is ease of enforcement. The Agency can pursue violations without having to bring a new enforcement action or, in the judicial context, a contempt action. The disadvantage is where stipulated penalties for such violations are set at less than the statutory maximum, parties may argue that the government has bargained away some of its enforcement discretion.

If a particularly egregious statutory or regulatory violation occurs for which the government feels the applicable stipulated penalties are not adequate, sources may claim the government is equitably estopped from pursuing other enforcement responses. Sources may argue in the context of a contempt action or new enforcement action that the government has already conceded in the consent agreement that a fair penalty for this type of violation is the stipulated penalty, and therefore, the court should not require any

additional penalty. Sources may make this argument even if the government has reserved all rights to pursue various enforcement responses for consent agreement violations.[1]

II. Level of Stipulated Penalties

Because the statutes EPA is charged with enforcing vary so widely, penalty schedules for all media or types of violations are not practical. There are, however, several important criteria which should always be considered in setting stipulated penalty amounts. Each program office, in concert with the appropriate OECM Associate Enforcement Counsel, may want to consider providing further, more specific guidance on appropriate levels or ranges for stipulated penalties based on the criteria below.

One key element which applies to setting the levels of all stipulated penalties for violation of a consent agreement provision is that the defendant is by definition a repeat offender when the provision is violated. For this reason, such stipulated penalties should be higher on a per day basis than the initial civil penalties imposed. See Guidelines for Enforcing Federal District Court Orders in Environmental Cases (GM-27).

The economic benefit accruing to a source due to a violation should be recovered in order for the stipulated penalty to be an effective deterrent. For some types of violations, such as notice provisions, the economic benefit of noncompliance may be minimal, though significant stipulated penalties may be appropriate based on other criteria as discussed below. For these types of violations, no formal BEN analysis is necessary. For violation of provisions which involve quantifiable delayed or avoided costs, such as installation of control equipment as part of a compliance schedule, the minimum stipulated penalty should be the economic benefit of noncompliance. However, the recidivism factor will nearly always justify a penalty well above this minimum, which often serves as the point of departure for a minimum initial penalty.

The source's ability to pay can be another important criterion to consider. How much of a deterrent a stipulated penalty is will depend on how financially significant it is to the source. The same stipulated penalty may be

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[1] In considering whether to attach penalties to violations uncovered by an environmental audit, the November 14, 1986 Final EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements (GM-52) should be consulted.

financially crippling to one source, while merely a routine business expense for another. However, the burden is always on the defendant to raise such issues during negotiations and to justify lower stipulated penalties than the government has proposed. Financial ability to pay a penalty can be determined using the ABEL computer program for corporate violators and the MABEL computer program for municipal violators.

It should be emphasized that this factor should not be considered a reason for lowering the level of stipulated penalties below the level equal to the economic benefit. It would mainly affect the degree to which this base minimum amount is increased to account for the recidivist nature of the violation. The key concern is that stipulated penalties should be set at levels which are significant enough to deter violations rather than resulting in a "pay-to-pollute" scheme.

Another criterion which should be considered in setting stipulated penalty amounts is the gravity of the violation, i.e., how critical is the requirement to the overall regulatory scheme and how environmentally significant is the violation. The environmental significance factor should include consideration of potential and actual harm to human health and the environment. In general, consent agreement provisions which are central to a particular regulatory scheme should have higher stipulated penalties than provisions that are considered less significant. It is up to each enforcement program to make judgments about the relative importance of respective requirements. As previously noted, some consent agreement requirements such as notice provisions may have little or no associated economic benefit, but may nevertheless be critical to the regulatory program in question and would warrant high stipulated penalties.

Another consideration related to the gravity component is the source's history of compliance. If the source has a record of previous violations, a higher stipulated penalty may be necessary because earlier enforcement responses were ineffective in deterring subsequent violations.

Another option to consider whenever setting stipulated penalty levels is an escalating schedule, in which the stipulated penalty increases with the length of the violation. For example, violations of up to two weeks might have stipulated penalties of $1000 per day while violations of two to four weeks might have stipulated penalties of $2000 per day, and so on.

III. Method of Collection

Settlement agreements should state the method by which stipulated penalties will be collected. Two options are for the settlement agreement to provide that the penalty is automatically due upon the occurrence or non-occurrence of a specified event, or it may make the penalty payable only on demand by the government.

Automatic payment is the preferred approach. It saves resources which would otherwise be devoted to making demands for payment and may put the government in a more advantageous position should the source declare bankruptcy. If payment is made on demand, the consent agreement should make it clear that the legal liability of the source for the stipulated penalty attaches immediately upon violation, and it is only payment of the penalty to the Agency which is not due until demand is made.

Settlement agreements should always state where and how the penalty should be paid and how the check should be drafted. See EPA Manual on Monitoring and Enforcing Administrative and Judicial Orders for additional guidance. In addition, settlement agreements should not agree to pre-enforcement review of accrued stipulated penalties.

IV. Timing of Enforcement Responses

Prompt action to collect stipulated penalties due under any consent agreement is crucial. If stipulated penalties are due on demand, it is very important such demands be timely. The government encounters significant difficulty collecting stipulated penalties if it sits on its rights. Delay allows penalties to increase to levels parties may argue are inequitable. Sources may also raise equitable defenses such as laches or estoppel, arguing that the government cannot fail to exercise its rights for extended periods of time allowing stipulated penalties to continue to accrue and then move to collect unreasonably high penalties. The government, of course, can and should always rebut such claims by arguing it is simply enforcing the decree or agreement as agreed to by defendant, and is not subject to such equitable defenses. However, this unnecessary complication should be avoided.

A cap on the amount of stipulated penalties which can accrue is generally not a preferred solution to this problem. The stipulated penalty would lose its deterrent value once the cap is reached. Also, the main goal of any enforcement action must be compliance with the law so that public health and welfare is protected. If consent agreement provisions

are allowed to be violated long enough for a cap to be reached, serious environmental consequences may have occurred.

Providing that stipulated penalties only apply for a specific, reasonably short period of time in conjunction with reserving to the government all available enforcement responses for violation of the consent agreement, however, solves many of the problems mentioned above. By its own terms, stipulated penalties will not accrue to levels defendants can argue are inequitable. The government will be in a strong position when it pursues other enforcement options, such as contempt actions or a new enforcement action to get additional penalties, because it can argue that the penalties in the original consent agreement were not enough to deter the defendant from further violations and the possibility of additional penalties was clearly contemplated.

V. Reservation of Rights

All consent agreements must contain a provision which reserves to the government the right to pursue any legally available enforcement response for violation of any consent agreement provision. These enforcement responses would include civil contempt proceedings and injunctive relief, and criminal contempt proceedings for particularly egregious violations. However, for provisions mandated by statute or regulation and which have stipulated penalties attached, a reservation to pursue statutory penalties is suggested but not required. For model language, see the October 19, 1983 Guidance for Drafting Judicial Consent Decrees (GM-17).

VI. Collection of Stipulated Penalties

The government should be prepared to collect the full amount of stipulated penalties due under a consent agreement. No agreement should ever anticipate compromise by specifying instances where it will be allowed, aside from a standard force majeure clause. In rare, unforeseeable circumstances, however, the equities of a case may indicate that the government may compromise the amount it agrees to collect. For penalties payable on demand, the government may also exercise prosecutorial discretion by declining to proffer a demand for stipulated penalties for minor violations of a consent agreement.

It may also be appropriate to provide that stipulated penalties for violation of interim milestones in a compliance schedule will be forgiven if the final deadline for achieving compliance is met. This is clearly inappropriate where there is significant environmental harm caused by the defendant missing the interim deadlines. If such a provision is used,

the defendant should generally be required to place accrued penalties in an escrow account until compliance by the final deadline is achieved.

In judicial cases, the Attorney General and his delegatees in the Department of Justice (DOJ) have plenary prosecutorial discretion to compromise stipulated penalties. This authority stems from 25 U.S.C. § 516, which reserves to DOJ authority to conduct the litigation of the United States, including cases in which an agency of the United States is a party, and the cases and regulations broadly interpreting this authority.

In administrative cases handled solely by EPA, stipulated penalties should be collected pursuant to the enforcement authority granted to EPA under the statute governing the case. This authority to collect and compromise stipulated penalties varies from statute to statute.

Separate from the process for collecting stipulated penalties, EPA must keep track of money owed the federal government (accounts receivable) resulting out of the activities of the Agency, including administrative penalty assessments. [redacted] Under Agency financial regulations and policies for monitoring accounts receivable, stipulated penalties due and owing must be reported within three days to the Regional Financial Management Office (FMO). The FMO is responsible for entering the stipulated penalty as an accounts receivable into the Agency's Integrated Financial Management System (IFMS). The "appropriate agency official" who determines the existence of a stipulated penalty account receivable is responsible for keeping the FMO updated on the status of enforcement penalty collection efforts. A more detailed account of these procedures is included in the Manual on Monitoring and Enforcing Administrative and Judicial Orders.

Addressees:

Regional Administrators
Regions I-X

Deputy Regional Administrators
Regions I-X

Regional Counsels
Regions I-X

E. Donald Elliott
General Counsel

Headquarters Compliance Program Divisions Directors

Mary T. Smith, Acting Director
Field Operations and Support Division
Office of Mobile Sources

David Buente, Chief
Environmental Enforcement Section
U.S. Department of Justice

Associate Enforcement Counsels

Workgroup Members

MEMORANDUM

SUBJECT: Agency Judicial Consent Decree Tracking and Follow-up Directive

FROM: James M. Strock
Assistant Administrator

TO: Assistant Administrators
Regional Administrators, I-X

This memorandum transmits the Agency Judicial Consent Decree Tracking and Follow-up Directive. The Directive specifies Agency requirements for how EPA Regional Offices track compliance with judicial consent decree requirements and for how Regions select and document decisions on appropriate Agency follow-up responses to consent decree violations (for the purposes of this Directive, the use of the term "consent decree" also includes judicially imposed court orders). Each Region should develop and execute a plan to implement this Directive so that all elements will be in place by April 30, 1990. By no later than May 30, each Region should submit to me a memorandum detailing the steps they have taken to implement the Directive. In addition, we intend to review its implementation during this year's audits of the Offices of Regional Counsel.

The Directive was developed after an extensive review of current Agency requirements and practices conducted, over the last nine months, in consultation with the Enforcement Management Council and the Enforcement Office Directors. We appreciate the efforts of the Regional and Headquarters offices, which made significant contributions to the study and to the development of the requirements outlined in this Directive. The resultant Directive outlines the basic requirements that are necessary to effectively manage our consent decree tracking and follow-up responsibilities and should be used as a supplement to the Agency "Manual on Monitoring and Enforcing Administrative and Judicial Orders", which OECM will soon be publishing.

There are a few requirements from the Directive that I would like to highlight: The Directive emphasizes the need for adequate documentation of each violation and the selection of the Agency's enforcement response in response to a violation. The documentation requirement is handled through the use of a form which has been kept basic so as to not cause a resource drain on Regional resources. The Directive also lays out a requirement for database management but provides each Region with maximum flexibility on selecting the appropriate method of maintaining its database based on its caseload and computer capabilities. Finally, the Directive requires that the Regional Program Division and the Office of Regional Counsel jointly select the Agency response to a consent decree violation, with the decision made at the Branch Chief or higher level in keeping with the seriousness associated with consent decree violations.

Fulfilling the requirements of the Directive should allow us to successfully address the increasing workload associated with the growing number of judicial consent decrees. We will soon be discussing with the Headquarters Enforcement Office Directors the appropriateness of applying elements of these judicial Directive requirements to at least some classes of administrative enforcement orders.

Each Region currently reports quarterly on the status of each active consent decree as part of the Agency's STARS system. OECM would like to move to oversight of Regional consent decree tracking and follow-up implementation through our existing Regional audits, rather than through the STARS system. We will assess the Regions' success in implementing this Directive with the goal of dropping this activity as a STARS reporting measure in FY 1992. We will also be working with the Headquarters Enforcement Office Directors to include consent decree tracking and follow-up activity in their Regional audit programs. As we move to drop the STARS reporting requirements, Regions must assure that their consent decree tracking systems have the capacity to provide timely information or reports on the compliance status of their consent decrees to respond to information requests that might occasionally be made by Agency management or in response to outside inquiries.

OECM is available to provide assistance to you in implementing this Directive. Rick Duffy, Chief of the Compliance Evaluation Branch, or Bill Wam of his staff are available to assist the Regions on the technical and management requirements and can be reached at 382-3130. Regions interested in exploring the option of using the consent decree tracking database management system developed by the National Enforcement Investigation Center (the NEIC-CDETS) should contact Rob Laidlaw at 776-3210.

Attachment

cc: Headquarters Enforcement Office Directors
Deputy Regional Administrators, I-X
Regional Counsels, I-X
Associate Enforcement Counsels
Acting Director, NEIC
Regional Program Division Directors, I-X

Judicial Consent Decree Tracking and Follow-up Directive

January 1990

Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency

Questions concerning this Directive or requests for additional copies can be directed to:

Chief, Compliance Evaluation Branch
Office of Compliance Analysis and Program Operations
Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency

401 M Street S.W.
Washington, D.C. 20460
(202 - 382-3130)

U.S. EPA Mail Code LE-133

JUDICIAL CONSENT DECREE TRACKING AND FOLLOW-UP DIRECTIVE

PURPOSE

This directive is provided to clarify and supplement existing Agency requirements and guidance for judicial consent decree tracking and follow-up. Agency managers responsible for consent decree tracking and follow-up activities must implement the requirements of this directive. Managers are also responsible for fulfilling any additional requirements for consent decree tracking and follow-up that are issued by National Program Managers. This Directive is effective April 30, 1990. For purposes of this Directive, the term "consent decree" includes judicially imposed court orders.

This directive prescribes judicial consent decree tracking and follow-up requirements for the following areas:

1. Implementing the Agency Guidance on Certification of Compliance with Enforcement Agreements
2. Regional consent decree tracking and follow-up database management
3. File documentation of consent decree violations
4. Decisions on Agency follow-up to violations
   A. Responsibility for decision
   B. General criteria for making follow-up decisions
   C. File documentation of follow-up decisions
5. Maintaining data on the current status of EPA consent decrees
6. Termination of consent decrees and closing cases

BACKGROUND

Consent Decree Tracking Responsibilities:

Consent decree tracking and follow-up is conducted by each Regional Office under the direction of the Regional Administrator. Within each Region, most responsibilities are shared between the Office of Regional Counsel (ORC) and the Regional Divisions responsible for program compliance activity. Generally, the responsibilities are divided within each Region as follows:

Regional Program Divisions

Regional Program Divisions are responsible for the overall management and direction of the Regional compliance program in accordance with the policies and procedures of the Agency and each National Program Office. In that role, they are responsible for the following regional consent decree tracking and follow-up activities:

1. Assuring, along with ORC, that proposed consent decree agreements contain provisions/milestones that maximize the Region's ability to determine compliance status.

2. Determining compliance with the consent decree requirements [illegible] use of announced and unannounced inspections and the receipt and [illegible] deliverables.

3. Determining whether there are violations of the consent decree and notifying the ORC of each violation.

4. Maintaining a database of consent decree status which tracks completion of consent milestones and denotes violations. (*Can be a component of a Region-wide consent decree database system.*)

5. Determining (jointly with the ORC) the appropriate Agency response to each violation.

6. In concert with the ORC, maintaining complete file documentation of consent decree violations and the subsequent follow-up activity, including documentation of all consent decree violations and follow-up decisions. (File documentation must be maintained in whatever file or files the Region uses as the official case file, whether in a separate Program file, ORC file or a common Program-ORC file.)

7. Notifying the ORC when all the requirements of the consent decree have been met so that the ORC can track and assist in the termination of the decree according to the terms of the decree.

Offices of Regional Counsel:

The Office of the Regional Counsel in each Region is responsible for the following Regional Office consent decree tracking and follow-up activities:

1. Assuring that each settlement agreement complies with the "Guidance on Certification of Compliance with Enforcement Agreements" (July 25, 1988 memorandum from Thomas L. Adams to AAs, RAs, and RCs).

2. Obtaining a copy of the entered decree and providing it to the appropriate regional program compliance office and to the NEIC Central Depository in a timely manner. A copy must also be provided to the Financial Management Office (FMO) in the Region when the decree requires a penalty payment.

[The regional FMO, after receiving a copy of the entered decree, will enter the penalty amount into the Integrated Financial Management System (IFMS). EPA policy requires that all judicial penalty amounts be recorded in the IFMS as "accounts receivable" and that they be tracked as receivables until collected or terminated. The Land and Natural Resources Division at DOJ is the responsible entity for monitoring judicial penalty debts and notifying EPA's Financial Management Division of the status of penalty payments. This information is placed in the IFMS so that Regions can determine if penalties requirements of the decree have been met. The program database as well as the Enforcement DOCKET database should contain a milestone/requirement for tracking penalty payment.]

3. Determining jointly with the Regional Program Divisions the appropriate follow-up action the Region will take in response to a violation of the decree.

4. Providing legal support and services to the programs, as necessary to enforce the consent decree.

5. In concert with the Program Division, maintaining complete file documentation of consent decree violations and the subsequent follow-up activity, including documentation of all consent decree violations and follow-up decisions. (File documentation must be maintained in whatever file or files the Region uses as the official case file, whether in a separate ORC file, Program file, or a common Program-ORC file.)

6. Maintaining and reporting data on the status of active consent decrees as might be required by the Agency management and accountability systems.

7. Assisting in obtaining the termination of consent decrees which have been successfully fulfilled, including updating the Agency DOCKET database to reflect current status.

CONSENT DECREE TRACKING REQUIREMENTS

1. IMPLEMENTING THE AGENCY GUIDANCE ON CERTIFICATION OF COMPLIANCE WITH ENFORCEMENT AGREEMENTS

Background:

Certification requirements were prescribed in the July 25, 1988 memorandum from Thomas L. Adams Jr. to Assistant Administrators, Regional Administrators and Regional Counsels, "Guidance on Certification of Compliance with Enforcement Agreements." This Guidance addresses the inclusion of compliance certification language (in which a responsible official personally attests to the accuracy of information contained in compliance documents made available to EPA pursuant to the terms of a settlement agreement) and the need for including precise documentation requirements for self-certifying provisions of the decree.

Requirements:

Each Region must take steps to insure that all staff involved in drafting and negotiating consent decrees are fully aware of the requirements of the July 25, 1988 guidance memorandum and this Policy. (While that guidance applies more broadly than to consent decrees, the discussion in this Policy will refer only to consent decrees, consistent with the scope of the rest of the document.)

Staff involved in drafting consent decrees must incorporate the guidance for documentation of compliance and for certification by a responsible official unless

[illegible] affirmatively determine and document that the policy is not applicable [illegible] specific case. Therefore, each consent decree should specify that all [illegible] the settling party to the Agency which purport to document compliance with the terms of the decree, shall be signed by a responsible official. The need [illegible] certification and documentation requirements should be raised early in the negotiation and drafting process.

Regional managers who review and approve drafted consent decrees must assure that the Guidance has been adequately incorporated or determine that the Guidance is not applicable for the specific case.

Staff and managers within the OECM Associate Enforcement Counsel Offices must also review drafted consent decrees for inclusion and/or applicability of the Guidance. Implementation of the certification and documentation requirements will be a component of the ongoing oversight and periodic reviews conducted by OECM.

2. REGIONAL CONSENT DECREE TRACKING DATABASE MANAGEMENT

Background:

Regional Program Divisions are responsible for tracking compliance with active consent decrees once the decree has been entered by the Court. The ORC is responsible for obtaining a copy of the entered decree and providing it to the Program Division and the Financial Management Office (for penalty tracking). If the decree has been entered but a copy has not yet been made available, the program can use the lodged decree during the interim, if it is known that the final decree was not changed.

Compliance tracking is accomplished through the receipt of reports and other deliverables from the consent decree parties and through the use of announced and unannounced inspections. In order to determine whether a party is currently in compliance with the consent agreement, the program compliance staff must compare the requirements of each decree with the information gathered through inspections and deliverables. In the case of deliverable items, the compliance staff should determine if the submission adequately meets the decree requirements.

Good database management is an important element for effective and timely tracking and reporting of case status. This policy outlines requirements for the consent decree databases that are used to track consent decrees for each Regional program. Additional elements may be required by each of the National Program Offices.

Requirements:

Each program responsible for tracking consent decree compliance status must maintain a consent decree database (file/record). Each program database must

include the following information for each active decree: case name and enforcement civil judicial docket number, statute/program, all required milestones and their due dates, and a block for inserting the date each milestone was completed.

The consent decree database can be manual, on a personal computer or included as a part of a national compliance database such as the CDS of the Air Program. The database could also be maintained centrally, as in Region II, where the ORC maintains a database of all regional consent decrees using the NEIC - CDETS capability. Each Region can choose what database type system(s) to use. For programs with only a few consent decrees to track, a manual system may be sufficient. Regional programs may opt to use the national compliance database depending on its specific capabilities.

The consent decree database must be maintained in three ways for it to be used effectively. Milestones for all decrees must be entered (and revisions, if applicable, in the case of amended decrees). On a regular schedule (not less than quarterly), all currently due (and overdue) milestones must be extracted from the system and made available to staff and supervisors. This use as a tickler system will alert staff as to what actions are required to be checked on. Finally, the dates for completed milestones must be put into the database on a regular basis (suggested monthly updates).

Maintaining this database in a central location will allow a program easy access to the status of all its decrees, the ability to retrieve all due milestones and a complete historical record of each decree as staff turnover and assignment changes occur. It will also provide documentation of case history for audits or other oversight activity.

3. FILE DOCUMENTATION OF VIOLATIONS

Background:

Program Divisions are responsible for determining if a consent decree violation has occurred. Any milestone not complied with by the due date of the consent decree constitutes a violation, regardless of the substantive impact of the deviation from the consent decree requirement. In certain cases, Program Divisions may need to consult with the ORC in determining whether a violation has occurred (e.g., where a claim of force majeure has been made).

Requirements:

Regional Program Divisions must notify the ORC of each violation of an active consent decree. A violation occurs when any milestone is missed (i.e. a report that is one day late is a violation), although there may be instances where, as a matter of priority, no formal enforcement action is taken. In addition, a record of the violation must be placed in the official Regional case file (see copy of form attached).

+ DECISIONS ON AGENCY FOLLOW-UP TO VIOLATIONS

Background.

When a violation occurs, the Region must determine the appropriate Agency response. In some cases, the violation may not pose a threat to public health or the environment or jeopardize the party's ability to meet subsequent milestones or the final compliance date. In such instances, after a review including the criteria discussed in subsection C below, the program office and ORC may jointly decide that no follow-up action is required or that a non-formal response may be appropriate. Other violations will be more serious and the program and ORC may decide to take a formal enforcement action such as seeking stipulated penalties or initiating a contempt action. For all violations it is important for the Agency to document the decision process within the case record. For all violations, the responsibility for determining the appropriate response action is shared by the Regional Program Division and the Office of Regional Counsel.

Requirements:

A. Responsibility for decision:

Once a violation occurs, the Program and the ORC must jointly determine the Agency response. Given the seriousness of consent decree violations, concurrence must occur at no lower than the Branch Chief level in both Offices. Disagreements should be elevated to senior management. On the rare occasion when the two offices cannot agree, the issue will be resolved at the RA or DRA level.

B. File documentation of follow-up decisions:

The decision concerning how the Agency will respond to a violation must be documented in the official Regional case file. The documentation (copy of form attached) must include the decision made and the reason for the decision. The documentation must also include the signatures of the responsible Program Office and ORC Branch Chiefs (or higher level).

C. General Criteria for follow-up decisions:

When the Agency enters into a consent decree we expect the defendant to comply. We take compliance with the decree very seriously and expect all parties to take all steps necessary for timely compliance. As a result, if they are in violation, we will normally respond for the purpose of remedying the violation, obtaining a penalty, or both. However, given the need to set priorities, we may not choose to take a formal action in every instance. The Region is delegated authority to decide what follow-up action, if any, to take. The decision not to take a formal action is a serious judgment required to be made jointly by the Regional Program Division and the Office of Regional Counsel at the Branch Chief or higher level.

In selecting the appropriate response the following factors should be considered.

Environmental Harm Caused by Violation: What is the level of risk to human health and to the ambient surroundings for continuing noncompliance?

Duration of the Violation: How long has the violation continued? Has the violation been continuous or interrupted? Has the violation been corrected?

Good Faith/Bad Faith (Compliance history): Was the violation deliberate? Has the party been notified that it was in violation and continued to violate? Has the party demonstrated good or bad faith in its past efforts to comply or respond to Agency efforts? Is there a pattern of violations which suggests inattention to its compliance obligations, even though the individual violations are not, in themselves, of major concern?

Deterrence Value: Will an action deter future violations?

Ability to Respond: Will the enforcement action result in compliance? Will the facility meet its final compliance date, even though it missed an interim date?

Economic Gain: Has the violator gained an economic advantage over its competitors as a result of the violation?

Violations for which a decision not to take a formal action based on competing priorities might be appropriate would generally find the party on the positive side of the factors above (i.e. no or limited environmental harm from the violation, good compliance record, etc.). Situations where the Agency might exercise its discretion not to take an action might include:

- Late reporting with no environmental consequence and without a past pattern of delay or noncompliance.

- Missed milestone, not a major requirement, with expectation they will be in compliance with/by the next milestone.

- Violation of an interim limit, magnitude of the exceedence is minor, with compliance now achieved or anticipated shortly.

5. MAINTAINING REGIONAL CONSENT DECREE TRACKING STATUS

Background:

Currently, each ORC is responsible for providing consent decree status reports each quarter to OECM as part of the Agency SPMS system. In most Regions, the information for this report is collected from each program and combined into a Regional report.

Requirements

The ORCs will continue to be responsible for maintaining information on regionwide status of consent decrees and providing Regional reports to OECM as required. The specific nature of these reports may change from the current STAR measure. Regional Program Divisions are responsible for supplying program-specific information or reports to ORC that might be needed to fulfill national reporting requirements in addition to meeting the requirements of their National Program Office.

6. TERMINATION OF CONSENT DECREES AND CLOSING OF CASES

Background:

A judicial enforcement case with a consent decree is successfully completed when all the requirements of the consent decree, including penalty payments, have been met and the termination clause satisfied. At that point, the consent decree should be terminated in accordance with the terms of the decree. Agency databases and status reports need to accurately reflect the current status of cases (including cases where the requirements of the decree have been fully met, cases for which termination of the decree is due, and cases which have been closed after consent decree termination). Accurate data are needed to report the status of active decrees and for planning, budgeting and other management purposes.

Requirements:

Program Divisions, as part of their responsibility for tracking consent decree compliance status, must notify the ORC when all the requirements of the consent decree have been satisfied.

The ORC is responsible for working with DOJ to effect the termination of the consent decrees, in accordance with the termination clause of the decree (timeframe, automatic, plaintiff or defendant motion). The ORC is responsible for tracking the termination status of inactive decrees and assisting the completion of plaintiff responsibilities, as appropriate. The ORC is responsible for maintaining the current status of these decrees in the Agency DOCKET system and closing cases after termination.

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:
(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: _____ _____
(Name of contact person) (Date)

in the _____ at _____
(office) (phone number)

☐ Non-SF Jud. Order/Consent Decree. USAO COLLECTS.

☐ Administrative Order/ Consent Agreement FMO COLLECTS PAYMENT.

☐ SF Jud. Order/Consent Decree. FMO COLLECTS.

☐ This is an original debt

☐ This is a modification

Name of Person and/or Company/Municipality making the payment

---

The Total Dollar Amount of Receivable _____
(If in installments, attach sch. of amounts and respective due dates)

The Case Docket Number _____

The Site-Specific Superfund (SF) Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
(Name of Contact) (Date)

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Debt Tracking Officer
   Environmental Enforcement Section
   Department of Justice/Rm. 1647D
   P.O. Box 7611, Benjamin Franklin Station
   Washington, DC 20044
2. Originating office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel

GLOSSARY

Below are key terms for filling out the EPA Enforcement Payment Account Receivable Control Number Form.

EPA Originating Office - In the case of administrative orders, the EPA office that originates and sends a copy of the signed final order and the transmittal letter to the defendant/respondent is responsible for filling out the top half of the Form. In the case of judicial orders, the U.S. Attorneys' Office (USAO) will in most cases be the entity that sends a copy of the final (entered) order or consent decree to the defendant with a transmittal letter. By Directive, the USAO will send to the appropriate Office of Regional Counsel (ORC), a copy of the entered order and transmittal letter. Unless otherwise designated in a Region, the ORC will be the EPA originating office responsible for filling out the Form and sending a copy of the entered order to the FMO.

Designated Regional Headquarters Program Office - This is the Office responsible for enforcing the statutory program (e.g., CAA, CWA, TSCA, RCRA, FIFRA, Superfund, etc.) that governs the violation. The designated program office is responsible for tracking the technical (non-penalty) requirements of the order. This program will use the IFMS accounts receivable number to check with the FMO on the status of payment of the administrative or judicial penalty.

Case Docket Number - This is the number in the upper right hand corner of the final order that is provided by the Regional Hearing Clerk (administrative) or the Clerk of the Court (judicial).

Site-Specific Superfund Account Number - The ten digit number used in the Superfund Program to identify a particular site so that monies can be tied to specific sites and activities.

IFMS Accounts Receivable Control Number - When the FMO is provided documentation (final order) on the creation of a debt, the FMO enters the debt into the Integrated Financial Management System (IFMS) and creates a new accounts receivable. If there are several violators under the same case that will be making a payment, then each "payee" receives a different control number. The FMO will fill out a separate copy of the Form for each payee and accounts receivable control number.

The completed version of the Form with the EPA Originating Office and the FMO portions of the form filled in should be included in the enforcement case official file as a record for audit purposes that the final order was sent to the FMO and that an accounts receivable control number was provided.

EPA Regional Counsels, I-X

Regional Counsel
EPA - Region I
JFK Fed Bldg Rm. 2203
Boston, MA 02203

Regional Counsel
EPA- Region II
JKJ Fed Bldg/26 Fed Plaza
New York, NY 10278

Regional Counsel
EPA - Region III
841 Chestnut Bldg
Philadelphia, PA 19107

Regional Counsel
EPA - Region IV
345 Courtland St., NE
Atlanta, GA 30365

Regional Counsel
EPA- Region V
230 South Dearborn Street
Chicago, IL 60604

Regional Counsel
EPA - Region VI
1445 Ross Ave,
12th Floor Suite 1200
Dallas, TX 75202

Regional Counsel
EPA - Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Regional Counsel
EPA- Region VIII
999 18th St., Suite 50
Denver, CO 80202-2405

Regional Counsel
EPA - Region IX
1235 Mission Street
San Francisco, CA 94103

Regional Counsel
EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

CHAPTER FOUR

ENFORCING FINAL ORDERS

Enforcing Administrative Orders

Each program has guidance for taking timely and appropriate responses on violations of administrative orders. Some programs provide for the use of stipulated penalties to address certain types of violations of administrative orders such as self-reporting. Chapter Two, Collection of Administrative Penalties, provides guidance on assessing and collecting stipulated penalties.

For violations of statutory or regulatory requirements such as permit discharge limits, Agency policy is to escalate enforcement response by issuing a second order with higher penalty assessments or by filing a judicial case to enforce the order. Judicial referrals to enforce violations of administration orders require the development of a litigation referral package and are referred to OE or directly to DOJ depending on the statute and issues involved in the case. Appendix 1 of this chapter describes the direct referral requirements.

"Contractor Listing" which is described at the end of this chapter is available as an enforcement remedy for administrative order violations under the CWA and CAA. (Appendix 5 of this chapter describes procedures for listing a violator.)

Enforcing Judicial Orders

EPA may use a variety of actions to enforce violations of judicial orders. Any such response, however, must be prompt and firm to reflect the importance the Agency attaches to such agreements. Informal actions include warning letters and compliance conferences with the violator. Formal enforcement of judicial orders includes modifications of the terms of an order, invoking stipulated penalties, motions to enforce the decree, civil and criminal contempt of court motions, and contractor listing under the CAA and CWA. The Judicial Consent Decree Tracking and Follow-up Directive issued in January 1990 supplements this Manual's guidance and can be found in Appendix 3 of Chapter One. The April 18, 1984 Guidelines for Enforcing Federal District Court Orders (GM 27), contained in Appendix 2 of this chapter provides additional information on judicial order enforcement. This Manual supersedes any inconsistencies between the April 1984 Guidelines and practices set forth in this Manual.

Modifications

Either the Federal government or the defendant can request that the Court grant a modification to an existing order, or both parties can jointly propose a modification to the court. Modification of the existing terms of a judicial order must be consistent with each program's guidance on what warrants granting the defendant relief from the original terms of the order.

Modifications usually address circumstances which have arisen since the entry of the consent decree (such as force majeure events or other unanticipated circumstances).

Modifications require the signature of the Assistant Administrator for OE and the Assistant Attorney General for the Land and Natural Resources Division (LNRD) of DOJ, consistent with the requirements for the original decree. Appendix 3 of this chapter describes procedures for modifying judicial orders and obtaining OE and DOJ concurrence. Modifications approved by the court must be sent to the NEIC Central Repository, (see Chapter One).

Stipulated Penalties (Judicial Decrees)

Most judicial consent decrees contain provisions for stipulated penalties (i.e., penalties that are agreed upon by the parties, at the time of entering into settlement, as being payable in the event that the defendant violates a provision of the decree). Any stipulated penalties in judicial orders or consent decrees, whether automatic or upon notice, should be paid to the DOJ Lockbox. Appendix 2 in Chapter One provides guidance concerning the use of "automatic" versus "on demand" stipulated penalties in EPA settlement agreements.

While LNRD has the overall responsibility for enforcing judicial judgments and collecting outstanding penalties, DOJ rarely will know, independently of EPA, when the underlying technical conditions of an EPA consent decree have not been met. DOJ relies on EPA to monitor the technical requirements of an order and notify DOJ staff when stipulated penalty provisions (automatic or on demand) have been triggered.

[redacted] As with the initial litigation governing the consent decree, LNRD works with EPA on developing

the documents to collect stipulated penalties and keeps EPA informed of the status of the action. Appendix 4 of this chapter describes the procedures for informing DOJ that a stipulated penalty provision has been triggered.

Motions to Enforce the Consent Decree and Contempt of Court

For serious violations of a settlement agreement, the Agency may seek to enforce the terms of the agreement by requesting that LMRD file a "Motion to Enforce the Judgment". Such a motion is filed with the same court that had originally issued the consent decree and requests the court to exercise its authority to ensure compliance.

A Motion to Enforce the Judgment may assert that the defendant has failed to comply with the consent decree provisions that relate to the agreed-upon compliance schedule or operation and maintenance requirements and that no provision of the decree for excusing noncompliance (e.g., a force majeure clause) is applicable. The motion may also request that th[redacted] uncollected stipulated [redacted]

A Motion to Enforce [redacted] may be accompanied by a "Motion to Show Cause Why Defendant Should Not Be Held In Contempt". Such a contempt motion is usually reserved for the most serious violations of a consent decree[redacted] The ORC should request DOJ assistance on filing the above motions through the direct referral process outlined in Appendix 1 of this chapter.

Contractor Listing (Air and Water Violations Only)

EPA has the authority to prohibit a facility from participating in Federal contracts, grants or loans, where that facility has a record of continuing or recurring noncompliance with clean air or clean water standards, and where that facility is subject to a prior or ongoing enforcement action. Established guidance on the use of this authority notes that violations of judicial consent decrees, administrative orders and notices of noncompliance are prime examples of cases where the "contractor listing" prohibition should be strongly considered. (See "Guidance on Implementing the Discretionary Contractor Listing Program", November 26, 1986). This is an administrative procedure and does not require the assistance or concurrence of DOJ. However, if the case has been filed or referred to DOJ for filing, EPA should notify DOJ before initiating or disposing of a contractor listing action.

Procedures for listing a violator are set forth at 40 C.F.R. Part 15. OE has designated a "Listing Official" to implement the process required by 40 C.F.R. Part 15. Listing actions are formally commenced by submitting to the Listing Official a "Recommendation to List" which has been signed by either the Regional Administrator or the OE Associate Enforcement Counsel for Air or Water, or the Assistant Administrator for Air and Radiation or Water. Appendix 5 of this chapter describes the process for submitting a "Recommendation to List".

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

NOV 23 [illegible]

OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Implementation of Direct Referrals for Civil Cases Beginning December 1, 1983

FROM: Courtney M. Price
Assistant Administrator for Enforcement and Compliance Monitoring

TO: Regional Administrators, Regions I - X
Regional Counsels, Regions I - X
Associate Enforcement Counsels
OECM Office Directors

I. BACKGROUND

On September 29, 1983, the Environmental Protection Agency (EPA) and the Land and Natural Resources Division of the Department of Justice (DOJ) entered into an agreement which, beginning on December 1, 1983, allows certain categories of cases to be referred directly to DOJ from EPA Regional offices without my prior concurrence. A copy of that agreement is attached to this memorandum.

This memorandum provides guidance to EPA Headquarters and Regional personnel regarding procedures to follow in implementing this direct referral agreement. Additional guidance will be issued as required.

II. PROCEDURES FOR CASES SUBJECT TO DIRECT REFERRAL

The attached agreement lists those categories of cases which can be referred directly by the Regional Administrator to DOJ. All other cases must continue to be reviewed by Headquarters OECM and will be referred by me to DOJ. Cases which contain issues which could be directly referred and issues which require Headquarters concurrence should be referred to EPA Headquarters. If you are uncertain whether a particular case may be directly referred, you should contact the appropriate Associate Enforcement Counsel for guidance.

Many of the procedures for direct referral cases are adequately explained in the September 29th agreement. However, there are some points I want to emphasize.

Referral packages should be addressed to Mr. F. Henry Habicht, II, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, Attention: Stephen D. Ramsey. The time limitations set forth in the agreement for review and initial disposition of the package will commence upon receipt of the package in the Land and Natural Resources Division, and not at the DOJ mailroom. Delivery of referral packages to the Land and Natural Resources Division will be expedited by use of express mail, which is not commingled with regular mail in DOJ's mailroom.

The contents of a referral package (either direct to DOJ or to EPA Headquarters) should contain three primary divisions: (1) a cover letter; (2) the litigation report; (3) the documentary file supporting the litigation report.

The cover letter should contain a summary of the following elements:

(a) identification of the proposed defendant(s);

(b) the statutes and regulations which are the basis for the proposed action against the defendant(s);

(c) a brief statement of the facts upon which the proposed action is based;

(d) proposed relief to be sought against the defendant(s);

(e) significant or precedential legal or factual issues;

(f) contacts with the defendant(s), including any previous administrative enforcement actions taken;

(g) lead Regional legal and technical personnel;

(h) any other aspect of the case which is significant and should be highlighted, including any extraordinary resource demands which the case may require.

A referral to DOJ or to Headquarters EPA is tantamount to a certification by the Region that it believes the case is sufficiently developed for the filing of a complaint, and that the Region is ready, willing and able to provide such legal and technical support as might be reasonably required to pursue the case through litigation.

As provided in the September 19, 1983, agreement, information copies of the referral package may be provided to the U.S. Attorney for the appropriate judicial district in which the proposed case may be filed. These information packages should be clearly labelled or stamped with the following words: "Advance Copy -- No Action Required At This Time". Also, information copies should be simultaneously provided to the appropriate OECM division at Headquarters. It is important that the directly referred cases be tracked in our case docket system and Headquarters oversight initiated. Copies of the referral cover letter will be provided to OECM's Office of Management Operations for inclusion in the automated case docket system when Headquarters informational copy is received at OECM's Correspondence Control Unit.

Department of Justice Responsibilities

DOJ shares our desire to handle these cases as expeditiously as possible. To that end, DOJ has agreed that, within thirty days of receipt of the package in the Land and Natural Resources Division at DOJ Headquarters, it will determine whether Headquarters DOJ or the U.S. Attorney will have the lead litigation responsibilities on a specific case. DOJ will notify the Regional offices directly of its determination in this regard, with a copy to the appropriate OECM division. Although USA offices will have lead responsibilities in many cases, the Land and Natural Resources Division will continue to have oversight and management responsibility for all cases. All complaints and consent decrees will continue to require the approval of the Assistant Attorney General for the division before the case can be filed or settled.

DOJ has reaffirmed the time frame of the Memorandum of Understanding, dated June 15, 1977, for the filing of cases within 60 days after receipt of the referral package, where possible. Where it is not possible, DOJ will advise the Region and Headquarters of any reasons for delays in filing of the case. However, when DOJ determines that the USA should have the lead responsibilities in a case, DOJ will forward the case to the USA within thirty days of referral to the extent feasible.

DOJ can request additional information from a Region on a case or return a case to a Region for further development. In order to avoid these delays, referral packages should be as complete as possible and the Regions should work closely with DOJ to develop referral packages.

The Deputy Administrator has expressed concern in the past on the number of cases returned to the Regions or declined by EPA or DOJ. I have assured the Deputy Administrator that I will closely track the number of cases declined by DOJ or returned to the Regions and the reasons for the declination or return as indications of whether direct referrals are a feasible method of handling EPA's judicial enforcement program.

Headquarters OECM Responsibilities

Although OECM will not formally comment on cases direct referred to DOJ, OECM will still review these packages and may offer comments to the Regions and DOJ. DOJ is free to request EPA Headquarters assistance on cases, as DOJ believes necessary. EPA Headquarters review will help to point out potential issues and pinpoint areas where future guidance should be developed. OECM will also be available as a consultant to both DOJ and the Regions on these cases. OECM will be available to address policy issues as they arise and, as resources permit, may be able to assist in case development or negotiation of these cases. Any request from a Regional office for Headquarters legal assistance should be in writing from the Regional Administrator to me, setting forth the reasons for the request and the ty of assistance needed.

OECM also maintains an oversight responsibility for these cases. Therefore, Regional attorneys must report the status of these cases on a regular basis through use of the automated case docket. All information for the case required by the case docket system must appear in the docket and be updated in accordance with current guidance concerning the automated docket system.

Settlements in Cases Subject to Direct Referral

I will continue to approve and execute all settlements in enforcement cases, including those in cases subject to direct referral and concurrence to consent decrees in these cases. This is necessary to ensure that Agency policies and enforcement activities are being uniformly and consistently applied nationwide. After the defendants have signed the settlement, the Regional Administrator should forward a copy of the settlement to me (or my designee) with a written analysis of the settlement and a request that the settlement be signed and referred for approval by the Assistant Attorney General for the Land and Natural Resources Division and for entry. The settlement will be reviewed by the appropriate OECM Enforcement Division for consistency with law and Agency policy.

Within twenty-one days from the date of receipt of the settlement by the appropriate OECM division, I will either sign the settlement and transmit it to DOJ with a request that the settlement be entered, or transmit a memorandum to the Regional Office explaining factors which justify postponement of referral of the package to DOJ, or return the package to the Region for changes necessary before the agreement can be signed.

Obviously, we want to avoid the necessity of communicating changes in Agency settlement positions to defendants, especially after they have signed a negotiated agreement. To avoid this, the Regional office should coordinate with Headquarters OECM and DOJ in development of settlement proposals. A copy of all draft settlement agreements should be transmitted by the Regional Counsel to the appropriate Associate Enforcement Counsel for review before it is presented to the defendant. The Associate Enforcement Counsel will coordinate review of the settlement with the Headquarters program office and respond to the Regional office, generally, within ten days of receipt of the draft. The Regional office should remain in contact with the Headquarters liaison staff attorney as negotiations progress. Failure to coordinate settlement development with appropriate Headquarters offices may result in rejection of a proposed settlement which has been approved by the defendant(s) and the Regional office.

I will also continue to concur in and forward to DOJ all requests for withdrawal of cases after referral. In addition, I will review and concur in any delay in the filing or prosecution of a case after referral. This is appropriate because cases which are referred to DOJ should be expeditiously litigated to conclusion, unless a settlement or some other extraordinary event justifies suspending court proceedings. The review of reasons for withdrawal or delay of cases after expenditure of Agency and DOJ resources is an important function of OECM oversight. Therefore, should the Regional offices desire to request withdrawal or delay of a case which has been referred to DOJ, a memorandum setting forth the reasons for such a request should be forwarded to the appropriate OECM division, where it will be reviewed and appropriate action recommended to me.

III. CASES NOT SUBJECT TO DIRECT REFERRAL

These cases not subject to direct referral will be forwarded by the Regional Administrator to the Office of Enforcement and Compliance Monitoring for review prior to referral to DOJ. OECM has committed to a twenty-one day turn-around time for these cases. The twenty-one day review period starts when the referral is received by the appropriate OECM division.

Within this twenty-one day period, OECM will decide whether to refer the case to DOJ (OECM then has fourteen additional days to formally refer the case), to return the case to the Region for further development, or to request additional information from the Region.

Because of this short OECM review period, emphasis should be placed on developing complete referral packages so that delay occassioned by requests for additional information from the Region will be rare. OECM may refer a case to DOJ which lacks some information only if the referral can be supplemented with a minimum of time and effort by information available to the Regional office which can immediately be gathered and transmitted to DOJ. However, this practice is discouraged. In the few instances in which a case is referred to DOJ without all information attached, the information should, at a minimum, be centrally organized in the Regional office and the litigation report should analyze the completeness and substantive content of the information.

A referral will be returned to the Region, with an explanatory memorandum, if substantial information or further development is needed to complete the package. Therefore, the Regions should work closely with OECM attorneys to be certain referral packages contain all necessary information.

IV. MEASURING THE EFFICACY OF THE DIRECT REFERRAL AGREEMENT

I will use EPA's case docket system, OECM's quarterly Management Accountability reports and DOJ's responses to the referral packages to review the success of the direct referral agreement. OECM will review the quality of the litigation reports accompanying directly referred cases and discuss the general quality of referrals from each Regional office at case status meetings held periodically with DOJ's Environmental Enforcement Section.

If you have any questions concerning the procedures set out in this memorandum, please contact Richard Mays, Senior Enforcement Counsel, at FTS 382-4137.

Attachment

Honorable P. Henry Habicht, II
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Hank:

As a result of our meeting on Thursday, September 8, 1977 and the subsequent discussions of respective staffs, we are in agreement that, subject to the conditions set forth below, the classes of cases listed herein will be referred directly from EPA's Regional Offices to the Land and Natural Resources Division of the Department of Justice in Washington, D.C.

The terms, conditions and procedures to be followed in implementing this agreement are:

1. The Assistant Administrator for Enforcement and Compliance Monitoring will waive for a period of one year the requirement of the Assistant Administrator's prior concurrence for referral to the Department of Justice for the following classes of judicial enforcement cases:

   (a) Cases under Section 1414(b) of the Safe Drinking Water Act which involve violations of the National Interim Primary Drinking Water Regulations, such as reporting & monitoring violations, or minimum contaminant violations.

   (b) The following cases under the Clean Water Act:

      (i) cases involving discharges without a permit by industrial dischargers;

      (ii) all cases against minor industrial dischargers;

      (iii) cases involving failure to monitor or report by industrial dischargers;

(iv) referrals to collect stipulated penalties from industrials under consent decrees;

(v) referrals to collect administrative spill penalties under Section 311(j) of the CWA;

(c) All cases under the Clean Air Act except the following:

(i) cases involving the steel industry;

(ii) cases involving non-ferrous smelters;

(iii) cases involving National Emissions Standards for Hazardous Air Pollutants;

(iv) cases involving the post-1982 enforcement policy.

2. Cases described in Section 1, above, shall be referred directly from the Regional Administrator to the Land and Natural Resources Division of DOJ in the following manner:

(a) The referral package shall be forwarded to the Assistant Attorney General for Land and Natural Resources, U.S. Department of Justice (DOJ), with copies of the package being simultaneously forwarded to the U.S. Attorney (USA) for the appropriate judicial district in which the proposed case is to be filed (marked "advance copy-no action required at this time"), and the Assistant Administrator for Enforcement and Compliance Monitoring (OECM) at EPA Headquarters. OECM shall have the following functions with regard to said referral package:

(i) OECM shall have no responsibility for review of such referral packages, and the referral shall be effective as of the date of receipt of the package by DOJ; however, OECM shall comment to the Region upon any apparent shortcomings or defects which it may observe in the package. DOJ may, of course continue to consult with OECM on such referrals. Otherwise, OECM shall be responsible only for routine oversight of the progress and management of the case consistent with applicable present and future guidance. OECM shall, however, retain final authority to approve settlements on behalf of EPA for these cases, as in other cases.

(ii) The referral package shall be in the format and contain information provided by guidance memoranda as may be promulgated from time to time by OECM in consultation with DOJ and Regional representatives

(iii) DOJ shall, within 30 days from receipt of the referral package, determine (1) whether the Lands Division of DOJ will have lead responsibility for the case; or (2) whether the USA will have lead responsibility for the case.

While it is agreed that to the extent feasible, cases in which the USA will have the lead will be transmitted to the USA for filing and handling within this 30-day period, if DOJ determines that the case requires additional legal or factual development at DOJ prior to referring the matter to the USA, the case may be returned to the Regional Office, or may be retained at the Lands Division of DOJ for further development, including requesting additional information from the Regional Office. In any event, DOJ will notify the Regional Office, OECM and the USA of its determination of the lead role within the above-mentioned 30-day period.

(iv) Regardless of whether DOJ or the USA is determined to have lead responsibility for management of the case, the procedures and time limitations set forth in the MOU and 28 CFR §0.65 et seq., shall remain in effect and shall run concurrently with the management determinations made pursuant to this agreement.

3. (a) All other cases not specifically described in paragraph 1, above, which the Regional Offices propose for judicial enforcement shall first be forwarded to OECM and the appropriate Headquarters program office for review. A copy of the referral package shall be forwarded simultaneously by the Regional Office to the Lands Division of DOJ and to the USA for the appropriate judicial district, the USA's copy being marked "advance copy-no action requir at this time."

(b) OECM shall review the referral package within twenty-one (21) calendar days of the date of receipt of said package from the Regional Administrator and shall, within said time period, make a determination of whether the case should be (a) formally referred to DOJ, (b) returned to the Regional Administrator for any additional development which may be required; or (c) whether the Regional Administrator should be requested to provide any addition material or information which may be required to satisfy the necessary and essential legal and factual requirement for that type of case.

[illegible] to the Region shall be transmitted by appropriate letter or memorandum signed by the AA for OECM (or her designee) within the aforementioned twenty-one day period. [illegible] OECM concur in the proposed referral of the case to DOJ the actual referral shall be by letter from the AA for OECM (or her designee) signed within fourteen days of the termination of the aforementioned twenty-one day review period. Copies of the letters referred to herein shall be sent to the Assistant Attorney General for the Lands Division of DOJ.

(d) Upon receipt of the referral package by DOJ, the procedures and time deadlines set forth in paragraph No. 8 of the MOU shall apply.

In order to allow sufficient time prior to implementation of this agreement to make the U.S. Attorneys, the Regional Offices and our staffs aware of these provisions, it is agreed that this agreement shall become effective December 1, 1983. Courtney Price will distribute a memorandum within EPA explaining this agreement and how it will be implemented within the Agency. (You will receive a copy.)

I believe that this agreement will eliminate the necessity of formally amending the Memorandum of Understanding between our respective agencies, and will provide necessary experience to ascertain whether these procedures will result in significant savings of time and resources. In that regard, I have asked Courtney to establish criteria for measuring the efficacy of this agreement during the one year trial period, and I ask that you cooperate with her in providing such reasonable and necessary information as she may request of you in making that determination. At the end of the trial period—or at any time in the interval—we may propose such adjustments in the procedures set forth herein as may be appropriate based on experience of all parties.

It is further understood that it is the mutual desire of the Agency and DOJ that cases be referred to the MA for filing as expeditiously as possible.

I appreciate your cooperation in arriving at this agreement. If this meets with your approval, please sign the enclosed copy in the space indicated below and return the copy to me for our files.

Sincerely yours,

Alvin L. Alm
Deputy Administrator

Approved:

F. Henry Habicht, II
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

APR 18 1984

MEMORANDUM

SUBJECT: Guidelines for Enforcing Federal District Court Orders

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
General Counsel
Inspector General
Regional Administrators
Regional Counsels

Attached please find the most recent addition to the General Enforcement Policy Compendium entitled "Guidelines for Enforcing Federal District Court Orders in Environmental Cases." The document emphasizes the very high priority we attach to preserving the integrity of court orders to enable the Agency to maintain its credibility with the courts, the public, and the regulated community so as to achieve environmental objectives. If you have any questions concerning this guidance, please contact Glenn Unterberger Director of the Office of Legal and Enforcement Policy. He may be reached at (FTS) 382-4341.

Attachment

cc: Assistant Attorney General for Land and Natural Resources
Chief, Environmental Enforcement Section, DOJ

GUIDELINES FOR ENFORCING FEDERAL DISTRICT COURT ORDERS IN ENVIRONMENTAL CASES

Purposes

This guidance emphasizes the importance of enforcement of Federal district court orders that embody either consensual or nonconsensual resolutions of environmental enforcement litigation. It establishes uniform Agency objectives in preparing for and in responding to violations of court orders. The goal of this initiative is to minimize the number of violations of court orders and to facilitate enforcement efforts when such violations are detected. Recently, the Agency developed the Consent Decree Tracking System which will provide a centralized data base and reporting system to upgrade consent decree enforcement. Ultimately, the lists of "significant violators" maintained in each program area should include all significant violations of court orders.

Policy

EPA places a very high priority on enforcement of court orders. This policy ensures that defendants meet the requirements of each court order in order to achieve the objectives of the underlying civil action. Moreover, vigorous enforcement of court orders is essential to enable the Agency to maintain its credibility with the courts, the public, and the regulated community, and to achie the desired environmental objective.

Scope

This guidance specifically applies to the enforcement of consent decrees and nonconsensual orders entered in Federal district court that remedy violations of any of EPA's laws or regulations. It also covers the following areas:

- Drafting court orders to ensure enforceability.[1]
- Selecting responses to violations of consent decrees and other court orders.
- Considering other procedures in implementing an enforcement response.

1/ Additional guidance on drafting enforceable consent decrees can be found in Agency policy entitled, "Guidance for Drafting Judicial Consent Decrees" (General Enforcement Policy Compendium, GM-17, dated 10/19/83).

Drafting Orders to Ensure Enforceability

EPA should obtain terms that are legally enforceable in negotiating a consent decree or writing an order at the request of the court. The order should provide for reasonable methods for monitoring compliance with the order's requirements and should establish adequate incentives for compliance.

Careful elimination of areas for future dispute can facilitate enforceability. Requirements in the order should be clear, understandable, and should avoid any possible ambiguities. The order should both clearly require compliance with the applicable regulations and establish the method or procedure that will be used to determine compliance. In some cases, it may be appropriate to specify the pollution control technology to be used. In no event, however, should the order deem compliance to mean anything but compliance with the applicable legal requirement.

In every case, the obligation to comply must rest solely with the defendant. Provisions that operate to "excuse" non-compliance, e.g., a force majeure clause, should be narrowly and explicitly drawn.[2] The order should avoid any ambiguities regarding the defendant's compliance obligations associated with revisions to the underlying requirements. If the litigants expect future legislative or regulatory changes to the underlying requirements, the court order must clearly establish the procedures that would change the order's compliance obligations. The order should provide that revision to the underlying requirement does not excuse noncompliance with the terms of the order unless and until the court amends the order.

The order should establish explicit compliance verification procedures. Because inspections are likely to be more objective than self-monitoring, the order should provide authority for EPA to conduct inspections at reasonable times. If resources will not permit detailed inspections by EPA or State or local authorities, some alternative form of compliance verification (e.g., self-monitoring, self-reporting, third-party verification) should be required. In such cases, the order should require the defendant to conduct compliance tests at its own expense on the basis of the test methods established in the order. In addition,

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2/ Economic hardship should not be established as a force majeure event. Instead, the defendant suffering the hardship should petition the court for a modification of the order. See, Federal Rules of Civil Procedure Rule 60. EPA should oppose such petitions unless the defendant convincingly demonstrates extreme circumstances that justify modifications to the order.

the order should provide for prior notice to EPA to enable the Agency to observe the test or other critical event. However the order should always preserve EPA's authority to inspect or otherwise obtain information on its own, and should also provide for inspections by EPA contractors.

Compliance verification requirements should not be more burdensome to the defendant than is necessary to determine compliance. EPA should carefully review each report that the defendant submits to verify that it includes all of the information that the order requires. The order should provide that the information used by defendants to generate self-reports must be retained for a reasonable period of time, and that EPA must have access to such information during that period of time. A provision which establishes that self-monitoring and third party verification information is admissible in proceedings to enforce the order is highly desirable.

To facilitate verification of compliance with penalty payment provisions, the Regional Office must ensure that, at a minimum, it receives notice when penalties that are due have been paid. The Regional Office should maintain organized records indicating penalty collection dates.

It is essential to include in court orders the mechanisms necessary to assure compliance with the terms of those orders. Such mechanisms may include stipulated penalties, posting and forfeiture of performance bonds or letters of credit, suspension of operation, increased reporting requirements, and advance approval from EPA for certain activities. Regional Offices should determine appropriate mechanisms on a case-by-case basis taking into account the factors described below.

The compliance mechanisms should be strong enough to deter noncompliance by, for example, removing the economic incentives for noncompliance, yet flexible enough to deal equitably with the possible range of future violations. The force majeure clause and prudent exercise of prosecutorial discretion are the proper mechanisms for providing flexibility. In addition, the compliance incentive provisions should not be excessive although stipulated penalties should permit assessments which are large enough to take into account that the violator of a court order is, by definition, a recividist or a recalcitrant and, therefore, in need of more serious incentive to comply.

The order should expressly provide that the compliance mechanisms therein are not the exclusive remedies available to the government. This type of provision preserves the government's ability to seek civil or criminal contempt penalties, specific performance of compliance provisions, and such other relief as the government may deem appropriate to obtain final compliance or to provide adequate deterrence against future violations.

Court orders should generally require the defendant to maintain and be able to demonstrate compliance for a specified period of time after the initial demonstration of compliance. This requirement ensures that the defendant is likely to remain in compliance. This provision should be consistent with the order's termination clause.

Finally, the order should explicitly state that it is binding on subsequent owners, operators, assignees, and other successors in interest in the facility. The order should require that these successors, etc., receive notification of the existence of the court order. The order should also require notification to EPA of any transfer of interest.

Selecting Responses to Violations of Court Orders

The primary objectives of enforcement of court orders are to correct the violation expeditiously, deter future violations by the defendant and by the regulated community, and preserve the integrity of court ordered remedies so as to achieve the desired environmental protection objective. Responses to violations must be prompt and firm to reflect the importance which EPA attaches to the court ordered requirements.

The government may pursue a range of remedies to address violations of court orders. These remedies include specific performance of the order's requirements (e.g., through a motion to enforce the order), additional specific performance requirements stipulated monetary penalties, civil and criminal contempts, contractor suspension and debarment proceedings in appropriate cases involving the Clean Air Act or the Clean Water Act, and revised or extended compliance schedules (in the limited circumstan described below). These remedies may be used individually or in combination.

The government must weigh several factors in deciding upon the type and extent of relief to pursue. The chief factors are the environmental harm or risk caused by the violation, the degree of willfulness or negligence displayed by the defendant, the degree of economic benefit accruing to the defendant from the noncompliant behavior, any attempts to mitigate the violation, the deterrent value of the response, and the likelihood that the response will remedy the violation. It is also appropriate to consider the defendant's history of noncompliance and any extraordinary costs borne by the public. In addition, and as a secondary consideration, the government must assess the resource implications of the enforcement response.

All responses must require compliance with the order's terms as quickly as possible. This requirement includes initiation of postjudgment proceedings to collect civil penalties originally imposed in the decree for the underlying violation if the defendant has failed to pay such penalties. Collection should be for the full penalty amount.

Responses to violations of court orders typically should be more severe than those which the government normally would seek for a comparable initial violation of a statute, regulation, or administrative order. Absent a convincing demonstration by the defendant of mitigating circumstances, the government typically should pursue significant monetary penalties unless the violations are clearly de minimis. Penalties must remove any appreciable economic benefit accruing to the violator. In addition to recouping economic benefit, the penalties should reflect the recidivistic or recalcitrant behavior of the defendant. The case file must include an explanation of why the case managers have decided to pursue a particular penalty figure or no penalty.

The government should seek imposition of specific relief beyond that already required in the court order when necessary to provide adequate assurances of future compliance. Factors to consider in determining the need for such assurances are the likelihood of future violations, the environmental harm or risk which a future violation would be likely to pose, and the government resources involved in monitoring compliance with the additional requirements. Examples of further specific relief include more stringent reporting requirements, advance EPA approval of relevant activities by the defendant, temporary or permanent shutdown of violating facilities, more stringent operation and maintenance obligations, and posting of revocable or irrevocable letters of credit or performance bonds.

Normally, the government should avoid agreeing to extensions of compliance schedules without pursuing significant monetary penalties. Extensions without penalties typically should be limited to cases in which the defendant can prove that the violation was caused by circumstances falling squarely within the force majeure clause of the order. Moreover, an extension without penalties is permissible only if the extension poses limited environmental harm or risk, and a substantial public interest basis exists for extending the deadline. Extensions of compliance schedules must set realistic timetables for compliance aimed at securing compliance as quickly as possible. In any event, the defendant must continue to otherwise comply with the order.

The government should also consider the possibility of criminal contempt under the provisions of 18 U.S.C. § 401(3) in situations of aggravated noncompliance with consent decrees for which punishment is a legitimate objective of an enforcement

response. Factors to be considered in determining the appropriateness of criminal sanctions include: (1) the scope and duration of the noncompliance involved in the violation of the consent decree; (2) the environmental contamination or human health hazard resulting from that noncompliance; (3) the willfulness of the violation (in a criminal contempt action the government must show that the violation was willful and deliberate); (4) any falsification activity involved in the noncompliance (i.e., misrepresentation by the party subject to the consent decree concerning compliance with that consent decree); (5) the ability of the party that is subject to the consent decree to achieve compliance; and (6) the evidence of motivation for the noncompliance.

When dealing with deliberate noncompliance with a civil consent decree, one is by definition dealing with a corporation or individual that has already gone through less severe enforcement actions which have proven ineffective. The potential for using criminal contempt should, therefore, be considered in all significant cases of noncompliance with judicial consent decrees.

Other Matters To Consider In Implementing An Enforcement Response

The government should make every effort to coordinate enforcement responses with any governmental co-plaintiff. If no satisfactory agreement is possible, EPA must still fulfill its mandate to enforce environmental laws. Similarly, the government should give careful consideration to the enforcement concerns of private co-plaintiffs, particularly regarding final settlements. Even if the private party's role is limited to commenting on the settlement, the government should carefully consider such comments.

The government should establish a timetable for responding to a violation which reflects the high priority EPA places on enforcement of court orders. The timetable should take into consideration the nature of the violation, the need, if any, to take immediate action, the sufficiency of the available proof, and the complexity of the potential enforcement litigation. In uncomplicated cases that do not present an emergency to the public health or environment and, absent time requirements specifically imposed by the court order, the Regional Office should attempt to develop and refer the case to Headquarters within 45 days from the date the violation was detected. Headquarters and the Justice Department should process cases according to the timetable established in the September 29, 1983, agreement between the EPA Deputy Administrator and the Assistant Attorney General for Land and Natural Resources.

Any consent decrees and modifications to consent decrees must be in writing and signed by the Assistant Administrator for the Office of Enforcement and Compliance Monitoring and the Assistant Attorney General for Land and Natural Resources. Attorneys must

make clear to the defendant that the government requires such signatures to legally bind the United States notwithstanding recommendations of acceptance of the terms of the document by the government negotiators.

The policies and procedures set forth in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

PROCEDURES FOR MODIFYING JUDICIAL DECREES

Definition

Consent decree "modifications" are changes to a consent decree proposed jointly to the court by the Federal government and a defendant, largely to address circumstances which have arisen since the entry of the consent decree (such as force majeure events or other unanticipated circumstances). Thus, these "modifications" are distinct from Federal government unilateral enforcement actions requiring the violator to comply with the terms of the decree and imposing sanctions. Consent decree modifications should be addressed as follows:

Concurrence Process

- As soon as the need to modify a consent decree is discovered, the Region should send a letter to the appropriate OE-AEC and DOJ-Environmental Enforcement Section Chief notifying them of the intent to open negotiations with the defendant. The letter should contain summary information sufficient to apprise OE and DOJ of relevant facts, issues, and proposed solutions.

- Consistent with appropriate consultation procedures with OE or DOJ, the Region (along with OE or DOJ, as appropriate) may proceed to negotiate a modification of the consent decree in the manner described in the letter.

- OE retains authority for approving any modifications on behalf of EPA unless the underlying settlement authority of the original order has been delegated to the Regions. If delegated, then the modification does not bring the settlement within the scope of OE authority. DOJ retains authority for approving any modifications on behalf of the United States.

- [redacted] and DOJ officials have approved the modifications, [redacted] attorney will present the proposed consent decree [redacted]ication to the appropriate court for approval.

STARS Consent Decree Tracking Measure

A consent decree violation handled through modification will be considered addressed under the STARS consent decree tracking measure when a modified consent decree is signed by the AA-OE (or, in the case of delegated settlements, the Regional Administrator) and the appropriate DOJ manager. Until these officials approve the modification, the Region will report the consent decree in the "in violation with action planned" category.

PROCEDURES FOR NOTIFYING DOJ OF STIPULATED PENALTIES

The procedure described below will be used for notifying the Department of Justice (DOJ) Land and Natural Resources Division (LNRD) of the need to initiate the collection of stipulated penalties. DOJ has the authority and responsibility to enforce judicial judgments and can also initiate collection of stipulated penalties without EPA's notification or request. However, DOJ rarely will know, without EPA notification, of the occurrence or non-occurrence of a specified event that triggers a stipulated penalty provision.

Definition

Stipulated penalties are penalties agreed to by the parties to a consent decree for violation of the agreement's provisions. These penalties are made a part of the consent decree and are enforceable if violated.

Notification Process

Unless the consent decree specifies otherwise, notification to defendants on the collection of stipulated penalties should be sent by DOJ-LNRD. Unless the consent decree specifies otherwise, all judicial stipulated penalties should be paid to the DOJ lockbox. The following procedures apply for enlisting DOJ's assistance:

- The Region sends a letter to DOJ (copy to AA-OE) requesting DOJ to pursue collection activities. The letter to DOJ should contain summary information sufficient to apprise DOJ of relevant facts, issues and proposed solutions.

- DOJ copies the Region and AA-OE with a copy of the notice letter sent to the defendant and any response to the notice letter.

- If the response is unsatisfactory, the Region will send a direct referral package to DOJ (copy to AA-OE). The referral package should request that DOJ enforce against the unresolved consent decree violations, include any relevant new

information arising since the notice letter request, and specify the extent of the relief which EPA wishes to pursue.

- DOJ takes appropriate action to enforce the original consent decree with full participation by the Region.

- When the defendant automatically pays stipulated penalties to the Federal government through any means, including the DOJ or EPA lockbox systems, the RPO, or the ORC, the office receiving the payment should immediately send a copy to the ORC, AA-OE, DOJ-ENRD and the EPA Local Financial Management Office (FMO). This includes the U.S. Attorneys' Offices.

STARS CONSENT DECREE TRACKING MEASURE

Under the STARS consent decree tracking measure, a demand letter or a notice to the defendant to pay a stipulated penalty is not considered a "formal enforcement response". A penalty payment must be received or a direct referral package sent to DOJ (copy to OE) before the violation is considered addressed. Where a demand or notice letter has been sent, the Region should report the decree in the "in violation with action planned" category. When a direct referral is sent to DOJ to address the non-payment of a stipulated penalty, the Region should report the decree in the "in violation with action commenced" category.

CONTRACTOR LISTING IN CASES OF NONCOMPLIANCE WITH ADMINISTRATIVE OR JUDICIAL ORDERS

Guidance

EPA has authority to prohibit facilities which have a record of continuing or recurring noncompliance with Clean Air Act or Clean Water Act standards, and which are the subject of a prior or ongoing enforcement action, from participating in federal contracts, grants, or loans. (Clean Air Act §306, Clean Water Act §508, Executive Order 11738, 40 CFR Part 15). Established guidance on the use of this authority notes that violations of consent decrees, administrative orders, and notices of noncompliance are prime examples of cases where this prohibition, referred to as "Contractor Listing", should be strongly considered (See "Guidance on Implementing the Discretionary Contractor Listing Program", November 26, 1986).

Procedures

The process for listing a violator, set forth at 40 CFR Part 15 and in the November 26, 1986 Guidance, should begin with a determination that the "continuing or recurring noncompliance" involves clearly applicable Clean Air Act or Clean Water Act standards. If there is a pending judicial action against a party, such as an outstanding consent decree, there should be coordination with the appropriate DOJ attorney to ensure that the listing proceeding will not compromise the litigation posture and will complement a motion to enforce the decree. The listing action can then be formally commenced by a "Recommendation to List" signed by a Regional Administrator, the AEC for Air or Water, or the Assistant Administrator for Air and Radiation or Water and sent to the Listing Official in OE. The recommendation must include:

(1) The [redacted] address, and telephone number of the Recommending Per[redacted]

(2) A description of the facility in question and its owner or operator.

(3) A description of the alleged continuing or recurring Clean Air Act or Clean Water Act noncompliance and the evidence thereof.

(4) A description of the prior or ongoing enforcement action against the facility (such as an outstanding consent decree or administrative order).

If these requirements are met, the Listing Official notifies the facility of the recommendation and transmits it to the Assistant Administrator for Enforcement. The owner or operator of the facility then has 10 calendar days to request a listing proceeding. If such request is made, EPA and the requesting person may present oral or written evidence relevant to the proposed listing to an appointed Case Examiner at an informal proceeding, "without formal rules of evidence or procedure", and the Case Examiner decides whether or not to list the facility. If the Case Examiner decides to list the facility, the owner or operator may ask the General Counsel to review the Case Examiner's decision. The General Counsel's decision would then constitute final Agency action. If there is no request to present evidence, the Assistant Administrator for Enforcement the matter. These procedures and the provisions for review of a listing decision are set forth at 40 CFR Part 15.

CONSENT DECREE VIOLATION AND FOLLOW-UP FORM

PART A: REPORT OF VIOLATION

Case Name _____ Program Statute _____
EPA Docket # _____

Requirement(s) in violation: _____

Requirement due date: _____
Requirement was completed late: _____ (when) Requirement not completed: _____ (check)

Comments: _____

Violation documented by: Signature/date: _____
Print name: _____
Title/organization: _____

PART B: DECISION ON RESPONSE TO VIOLATION (check appropriate box)

☐ Type of enforcement action planned: _____

☐ Enforcement action determined not to be appropriate for the following reason(s): _____

Concurrences by:

	Program Division	Office of Regional Counsel
Name/signature:		
Organization title:		
Date:		

EPA-OECM Form

CHAPTER TWO

COLLECTING ADMINISTRATIVE PENALTIES

This chapter describes the roles and responsibilities of EPA offices (Regions and Headquarters) in collecting penalties (initial and stipulated) assessed under administrative penalty programs with the exception of the CERCLA (Superfund) Program and Section 311 of the Clean Water Act (CWA). The Superfund Program has issued specific program guidance for the collection of Superfund debts. CWA Section 311 administrative penalties are assessed and collected by the U.S Coast Guard.

Penalties assessed in final administrative orders are considered debts under Chapter 31 of the United States Code governing Federal Money and Finance. Thus, Federal and EPA debt collection regulations and procedures must be followed in collecting penalties.

Failure to adhere to official Agency financial management procedures could subject an individual to disciplinary action for misuse and mismanagement of Federal funds. If you have any questions about the receipt or collection of penalty funds, check with your local Financial Management Office (FMO) or the EPA Claims Collection Officer in the Office of General Counsel.

Authority for Administrative Penalty Collection

Statute and Regulations

Fiscal Accounting

Chapter 31 U.S.C. 3512 et seq. requires the heads of each executive agency to establish and maintain a system for accounting and internal controls. The EPA Delegations Manual authorizes the Director of FMD to develop Agency-wide financial policies and procedures and to maintain the official books of record. Authority also is delegated to Headquarters and local Financial Management Offices (servicing FMOs) to provide general accounting services and to receive and deposit funds. Procedures pertaining to fiscal management of penalty debts are set forth in Office of the Comptroller's Resource's Management Directives System (RMDS) 2540 Chapter 9. [This Directive is currently being revised and when final shall be made an Appendix in this chapter]. Agency-wide financial policies include the establishment of an EPA FMO lockbox system for the payment of administrative enforcement penalties and Superfund payments. See Appendix 1 of this chapter. However, the Superfund Program has a separate Directive (RMDS 2550D) for financial management of the Superfund Program.

Administrative Debt Collection

Chapter 31 U.S.C. 3701 et seq. requires the heads of agencies to attempt collection of all claims (including fines and penalties) of the United States arising out of activities of the agency. Section 3701 also provides that executive agencies may compromise claims of not more than $20,000 (excluding interest). The Federal Claims Collection Standards (FCCS) at 4 C.F.R. 101-105 and the EPA Claims Collection Standards (CCS) at 40 CFR Part 13 prescribe minimum debtor notification requirements and collection procedures.

EPA's Office of the Comptroller is responsible for establishing minimum notification requirements and for taking the necessary collection actions. These duties have been delegated to the Financial Management Division (FMD) in the Office of the Comptroller as described below.

Consolidated Rules of Practice for Administrative Proceedings

Prior to April 1985, the EPA Hearing Clerks who maintained the administrative case docket for Administrative Law Judges were responsible for collecting penalties under the 1980 Consolidated Rules of Practice (C.R.O.P.). 40 C.F.R. 22.31 of C.R.O.P. requires the respondent (debtor) to send payments to the Regional Hearing Clerk. In April 1985, this procedure was superseded by an Agency-wide decision to have all debts including penalties paid through the EPA Regional lockbox system. See Appendix 1 of this chapter for the list of Regional lockbox depositories. The Consolidated Rules of Practice are in the process of being revised to make the rules consistent with these procedures.

Roles and Responsibilities

The collection of administrative penalties requires the coordination of the Regional Program Office (RPO), the Regional Financial Management Office (FMO), the Office of Regional Counsel (ORC) and the Regional Hearing Clerk. Their respective roles and responsibilities are described below. Each Office should designate a specific individual or position as a contact point for dealing with financial matters.

A model "streamlined" system for carrying out these procedures and coordinating the interlocking responsibilities of the above EPA offices is described in Appendix 2 of this chapter. This model system will be adopted in the final RMDS, 2540.

Regional Program Office

The RPO has overall responsibility for implementing an administrative penalty program pursuant to national program guidance. This includes tracking final orders until all requirements, including penalty payments, have been met. Since collection of administrative penalties must be done in accordance with Chapter 31 of the U.S.C., the RPO must inform the Regional FMO when a penalty has been assessed (final order) and must inform the violator to pay penalties through the EPA Regional lockbox system. For each final order, an individual will be designated to coordinated with the FMO on all activities pertaining to payment of the penalty.

The RPO, as the originating office of the final order, must provide to the FMO, within three working days of a signed final order, the following:

- A copy of the signed final order containing the penalty assessment and the transmittal letter to the violator. A copy of the "Bill for Stipulated Penalties" where this requirement applies based on discussions at pages 2-5 through 2-7. For installment payments, attach also a schedule of payment amounts and respective due dates.

- The form entitled: EPA Enforcement Payment Accounts Receivable Control Number Form (see Appendix 2 of this chapter), hereinafter referred to as the Enforcement Control Number Form, with the originating office data included. The Enforcement Control Number Form should be attached to the final order. This form should be used when sending documents to the FMO that create a new accounts receivable, including a "Bill for Stipulated Penalties", or to modify an existing accounts receivable. The FMO will return the form to the RPO with the accounts receivable control number. The form with the control number filled in should be included in the RPO case file for review in the context of audits.

The RPO also is responsible for notifying the FMO of any errors or changes in the status of the penalty assessed in the final order or the assessment of stipulated penalties for violations of requirements of the order. The RPO must ensure that the EPA

Regional lockbox number is on all documents drafted and negotiated and transmitted to the Defendant regarding the payment of penalties.

Where the ORC, by agreement with the RPO, is the originating office in drafting, negotiating, litigating or settling the administrative case or assessing stipulated penalties, the ORC must perform all of the above requirements in lieu of the RPO. This includes designating a specific individual as a point of contact for each final order.

Regional Financial Management Office

The Headquarters Financial Management Division, along with the Regional FMO, is responsible for maintaining and updating the Integrated Financial Management System (IFMS), the Agency's official system for reporting the status of penalty payments. Upon receipt of the copy of a final penalty order and the Enforcement Control Number Form (see Appendix 2 of this chapter), the local FMO is responsible for establishing the "accounts receivable" file. The FMO must then fill out the remaining portion of the Enforcement Control Number Form including the accounts receivable number and send copies of the Form to the RPO, ORC and the Regional Hearing Clerk.

Once entered into the IFMS as an accounts receivable, the local FMO is responsible for tracking the accounts receivable, accepting penalty payments through the EPA Regional lockbox system, sending out demand letters when penalty payments are not received, assessing interest and handling charges, maintaining the general ledger, and making every effort to collect debts.

The FMO also is responsible, using the IFMS control number, for keeping the RPO, ORC and Regional Hearing Clerk informed on the status of penalty collection including sending these offices copies of payments. The FMO must also notify the RPO and the ORC when the penalty debt is 120 days in arrears and/or when it anticipates that the debt collection remedies available under its authorities will not be successful in collecting the debt. FMO collection remedies available include demand letters, private collection agencies and credit bureaus or agencies.

Office of Regional Counsel

The ORC is responsible for taking appropriate action (with the concurrence of the RPO) when notified by the local FMO that a penalty debt is 120 days in arrears. The ORC must decide and notify the local FMO in writing within 30 days on whether to (1) recommend to the Regional Administrator that the uncollected debt

be referred to the Department of Justice, Land and Natural Resources Division for the initiation of a judicial action, (2) authorize additional FMO collection procedures such as private collection agencies or (3) terminate the debt. The ORC is responsible for keeping the RPO and the FMO informed in writing, using the IFMS control number, on the status of any penalty debt referred to the ORC for enforcement action.

If the ORC is the originating office of the final order instead of the RPO, then the ORC is responsible for the duties described in the RPO section with regard to notifying the local FMO of the creation of a penalty debt.

Regional Hearing Clerk

The Regional Hearing Clerk is responsible for maintaining the Administrative Law Judge Hearing Docket. Since April 1985 when the EPA lockbox payment procedure was established, the Regional Hearing Clerk has not had the responsibility for receiving penalty payments. See Appendix 1 of this chapter. However, the Hearing Clerk is responsible for maintaining the official administrative record on each case including updating the official record when he/she receives notice from the FMO that a penalty payment has been received. The Hearing Clerk should enter the IFMS control number into the case file so that penalty payment update information can be requested from the IFMS when needed.

Financial Management Collection Procedures

This section describes the procedures for tracking "accounts receivable" and collecting penalties pursuant to Chapter 31 of the U.S.C., the Federal and EPA Claim Collection Standards, and Treasury Department and OMB requirements as set forth in the EPA Office of Comptroller, Resource Management Directives System (RMDS).

Accrual Accounting

Chapter 31 U.S.C. 3512 entitled, "Executive Agency Accounting Systems", prescribes the use of accrual accounting. Under the accrual basis of accounting, an accounts receivable represents the amount due from others, and is accounted for as an asset from the time of the event giving rise to such a claim (the time the event occurs), until such time as the amount is collected, or

determined to be uncollectible in whole or in part. The responsible FMO is to enter promptly every billing transaction into the IFMS to establish and allow for the tracking of the receivable. Chapter 31 U.S.C. 3701 et seq. requires agencies to charge interest on outstanding debts from the date on which notification of the amount is first mailed to the debtor (the original billing), and assess other processing and handling charges, unless the debt is paid by the due date.

Action Document That Establishes the Penalty Debt

FMOs must account for all funds due the Federal government as a result of EPA activities. EPA enforcement offices must inform the FMOs when a penalty debt has been created. The "action document" that establishes the creation of an up-front or stipulated penalty debt is described below.

Up-Front Penalty (Past Violations)

Under the FMD system, an EPA up-front administrative or judicial penalty becomes an EPA accounts receivable when a final order is issued. This is considered the "action document that establishes a debt". The transmittal letter and copy of the final order (action document) that the RPO sends to the violator constitutes the "original billing" in financial management language. If the penalty is not paid in accordance with the terms in the original bill, follow-up letters sent by the local FMO are called "demand letters".

Stipulated Penalties (Future Violations)

Stipulated penalties are penalties, agreed to [redacted] event [redacted] with specified terms [redacted] the agre[redacted].

In the case of stipulated penalties, the [redacted] the responsible Agency enforcement official sends the violator a transmittal letter and a "Bill for Stipulated Penalties" that informs the violator of the amount of money due the Agency under the stipulated provision, the date it is due and the method for payment (EPA lockbox).

[redacted] the penalty has become an [redacted]. The two common options are: (1) the settlement agreement may provide that the penalty is automatically due upon the occurrence or non-occurrence of a specified event, or (2) the settlement agreement may make the penalty payable only on demand by the government. The guidance on the use of stipulated penalties, located in Appendix 2 of Chapter One, provides additional information on these options. This manual does not dictate an option but identifies when the accounts receivable is triggered under each of these options and the process for collecting stipulated penalties.

If the wording of a stipulated penalty provision [redacted] Once the determination is made, [redacted] for Stipulated Penalties [redacted] With the "on-demand" provision, the responsible Agency enforcement official makes a determination to demand a penalty pursuant to any terms negotiated in the original consent order. [redacted]

Only after any disputes over an "on-demand" stipulated penalty provision have been resolved in accordance with the guidance on the Use of Stipulated Penalties in EPA Settlement Agreements (See Appendix 2 of Chapter 1), will the designated Agency enforcement official send the violator the "Bill for Stipulated Penalties" (action document). The FMO should receive a copy of the "Bill" and a completed Enforcement Control Number Form as notice that a new accounts receivable has been created.

If the wording of a stipulated penalty provision is [redacted] As soon as the responsible Agency enforcement [redacted] monitoring the Final Order (RPO or ORC) learns [redacted] the date it was due and the method for payment (EPA lockbox). The FMO should receive a copy of the "Bill" and a completed Enforcement Control Number Form.

[redacted] provision, [redacted] Such [redacted] may be required because of unforeseen changes to the significant event which triggers the stipulated penalty provision. Where an amendment is required, the "Bill for Stipulated Penalties" and an amended final order signed by the Regional Administrator (or his/her delegatee) should be sent to the violator, with copies to FMD, as the "action document" that establishes the stipulated penalty debt.

Notifying the Debtor

Once the designated EPA enforcement personnel has determined that an up-front or stipulated penalty "debt" has been established and has prepared the appropriate "action document" that creates the accounts receivable, the next step in debt collection is notifying the debtor that penalties are due (the original billing). Both the transmittal letter and the final order drafted by the RPO (or the ORC if lead) should include clear instructions to the debtor on terms and conditions for payment, including how much is due, when it is due, where the payment is to be made under the EPA Regional lockbox system and the consequences of default. The specific language on payment instructions is in the model system in Appendix 2 of this chapter.

Notifying the FMD of Penalties Assessed

Within three working days of a [redacted] the RPO (or the ORC if lead) should send copies of the transmittal letter and [redacted] to the final order and transmittal letter [redacted] completed Enforcement Control Number Form (see Appendix 2). The Regional Hearing Clerk and the ORC attorney also should be sent copies of the transmittal letter and final order for their records.

Establishing Accounts Receivable

The servicing FMD will establish an accounts receivable for each final order in accordance with Agency financial management procedures. The FMD will notify the RPO, ORC and Regional Hearing Clerk of the IFMS accounts receivable control number by filling

the FMO section of the Enforcement Control Number Form and sending each designated office a copy of the form with the attached front page of the final order.

Follow-Up Billings

Until payment is received, or the debt is referred to the ORC for judicial collection, the servicing FMO will be responsible for follow-up billings (demand letters).

- 30 days after the due date--First demand letter is sent to the debtor, providing notice that payment has not been received, interest has begun to accrue and a handling charge is being assessed.

- 60 days after the due date--Second demand payment letter is sent providing notice that interest and handling charges are accruing and advising of the consequences of failure to pay.

- 90 days after the due date--Final demand letter is sent, repeating the information on interest, handling charges and the assessment of a late payment penalty.

- 120 days after the due date--The FMO notifies the ORC in writing that collection activities have been unsuccessful and that payment is 120 days outstanding. The debt then becomes the responsibility of the ORC, but the FMO can provide advice to the ORC on the availability of other FMO collection activities such as referral to a credit agency.

Uncollected Administrative Penalties Debts

As noted above, at 120 days, after receiving no response to the third demand letter, the responsible FMO must review the case to determine whether there are any additional means available that could be successful in collecting the administrative penalty (debt). This includes the use of a private collection agency. At this point, 120 days after the penalty due date, the FMO should refer the uncollected debt (accounts receivable) to the ORC with a recommendation on whether to pursue additional FMO collection activities.

ORC Option Selection

ORC option selection must occur within 30 days of a referral from the FMO to the ORC. The ORC should consult with the FMO and RPO and select one of the following options: (1) refer to the DOJ for judicial enforcement action, (2) pursue additional FMO collection activities such as referral to a private collection agency, or (3) recommend suspension or termination of the debt. Options 2 and 3 are carried out pursuant to Chapter 31 U.S.C. 3701 (Federal Claims Collection Act) and the Federal and EPA Claims Collection Standards. Once either Option 2 or 3 is chosen, Option 1, referral to DOJ for judicial enforcement, cannot be pursued absent stringent unanticipated circumstances where our enforcement authority must be upheld.

Option selection is required to avoid confusion over who in EPA is responsible and accountable for collecting funds owed to the Federal government. Under Option 1, once the administrative debt is referred to DOJ-LNRD, DOJ is responsible for pursuing collection of the debt and keeping the ORC informed. Under Options 2 and 3, the debt is pursued within EPA under the FMO collection procedures set forth in RMDS directives and the FMO is responsible for collection efforts.

The reason for interrupting FMO collection activities at 120 days and referring the debt to the ORC for option selection is to ensure that EPA's enforcement authority is not compromised by pursuing open-ended administrative debt collection activities. Federal agencies including EPA only recently have received statutory authority to use private collection agencies. Until the EPA has sufficient experience with private collection agencies and that experience shows that the debts can be collected quickly (within 30 days), the recommendation of this Manual is that the penalty debt be referred to DOJ-LNRD for judicial enforcement. This approach reinforces EPA's enforcement policy to escalate the enforcement response from the administrative to the judicial forum in response to continuing noncompliance.

The ORC must notify the FMO <u>in writing</u>, <u>within 30 days</u> from receiving notice from the FMO of a penalty payment default, of its choice of options. A copy of the written notification should be included in the case file. If Option 1 is chosen, the written notice to the FMO should include a statement that EPA is pursuing its enforcement options under the appropriate statute and referring the debt to DOJ-LNRD. With Option 1, the ORC should be

prepared to update the FMO quarterly on the status of DOJ debt collection. Quarterly notice is important because while the FMO is no longer responsible for pursuing collection under Option 1, the FMO is still responsible to the Comptroller and OMB for quarterly reports on the status of all debts owed to the Federal government (including those referred to DOJ for collection) as a result of EPA activities.

On rare occasions, the ORC, after consulting with the FMO and the RPO, may determine that the debt is uncollectible and should be suspended or terminated to save any further loss of agency resources in attempting to collect the debt.

Procedures for referring the debt to DOJ for judicial enforcement or for suspending or terminating the debt are explained below.

Escalation of Enforcement Action on Uncollected Administrative Penalties.

As noted above, EPA's enforcement policy is to escalate the enforcement response from an administrative to judicial action when a violator does not comply with the administrative order requirements. Thus, there is a presumption that all administrative debts are collectable irrespective of the amount. However, debts under $600 should not be referred to DOJ for judicial action unless specific requirements [1] are met.

Once DOJ-LNRD has obtained a judicial judgment on an outstanding administrative debt, the judgment is referred to the USAO. The USAO conducts Federal (DOJ) collection activities in accordance with the law of the State in which the debtor resides.

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[1] Debt collection procedures set forth at 4 C.F.R. 105.4 state: "Agencies will not refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless: (a) Referral is important to a significant enforcement policy, or (b) the debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government."

The USAO also may be able to use the IRS tax offset referral program for collecting delinquent penalties once a judicial judgment has been obtained.

Evaluating Whether to Recommend Termination of the Debt

Administrative penalty debts should be terminated only in extreme circumstances. In evaluating whether to terminate the debt, the following items should be considered:

- Inability to collect any substantial amount;
- Inability to locate the debtor;
- The IRS tax offset program is not a viable option;
- Cost will exceed recovery;

Even where no assets are currently available, the deterrent impact on other similarly situated violators if the government pursues its judicial debt collection remedies to the fullest must be considered before the debt is terminated.

Procedures for Compromising, Suspending or Terminating a Debt

EPA Delegation 1-28 authorizes the EPA General Counsel to collect, compromise, suspend or end collection action on EPA claims for money or property (including penalties) arising out of EPA activities that are less than $20,000. The General Counsel has re-delegated this authority to the EPA Claims Officer in the Office of General Counsel. The EPA Claims Officer has re-delegated to the Director of FMD limited authority to compromise, terminate or suspend debts (See Appendix 3). Authority and monetary limits are as follows:

$ Amount	Office
less than 4,000	Regional FMD
less than 6,000	HQ FMD
less than 20,000	EPA Claims Officer, OGC
greater than 20,000	DOJ

Administrative penalty debts of less than $6,000 can be terminated by the FMD with the concurrence of the ORC and RPO. Debts greater than $6,000 but less than $20,000 must be referred to the OGC EPA Claims Officer and require the concurrence of the ORC and the RPO.

Debts greater than $20,000 should be referred to the DOJ Land and Natural Resources Division for judicial collection action through the direct referral process described in Chapter Four, Appendix .

Closure

The servicing FMO will continue to carry a debt referred to ORC or the DOJ as a receivable, including interest, penalties and handling charges, until the debt is paid in full, compromised and paid, or written off. Therefore, the EPA office to which the debt has been referred for further collection activity or termination should update the FMO, quarterly, on the status of the "receivable" using the IFMS control number. The EPA office also should send to the FMO copies of any change in the "receivable" as a result of these activities.

Appendix [illegible]

LOCKBOX ADDRESSES

FMO	LOCKBOX BANK	ADDRESS FOR REMITTING PAYMENT
Region 1 - Boston	Mellon Bank	EPA - Region 1 P.O. Box 360197M Pittsburgh, PA 15251
Region 2 - New York	Mellon Bank	EPA - Region 2 P.O. Box 360188M Pittsburgh, PA 15251
Region 3 - Philadelphia	Mellon Bank	EPA - Region 3 P.O. Box 360515M Pittsburgh, PA 15251
Region 4 - Atlanta	The Citizens and Southern National Bank	EPA - Region 4 P.O. Box 100142 Atlanta, GA 30384
Region 5 - Chicago	The First National Bank of Chicago	EPA - Region 5 P.O. Box 70753 Chicago, IL 60673
Region 6 - Dallas	Mellon Bank	EPA - Region 6 P.O. Box 360582M Pittsburgh, PA 15251
Region 7 - Kansas City	Mellon Bank	EPA - Region 7 P.O. Box 360748M Pittsburgh, PA 15251
Region 8 - Kansas City	Mellon Bank	EPA - Region 8 P.O. Box 360859M Pittsburgh, PA 15251
Region 9 - San Francisco	Mellon Bank	EPA - Region 9 P.O. Box 360863M Pittsburgh, PA 15251
Region 10 - Seattle	Mellon Bank	EPA - Region 10 P.O. Box 360903M Pittsburgh, PA 15251

REGIONAL SUPERFUND LOCKBOX DEPOSITORIES

FMO	LOCKBOX BANK	ADDRESS FOR REMITTING PAYMENT
Region 1 Boston	Mellon Bank	EPA - Region 1 Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251
Region 2 New York	Mellon Bank	EPA - Region 2 Attn: Superfund Accounting P.O. Box 360188M Pittsburgh, PA 15251
Region 3 Philadelphia	Mellon Bank	EPA - Region 3 Attn: Superfund Accounting P.O. Box 360515M Pittsburgh, PA 15251
Region 4 Atlanta	The Citizens and Southern National Bank	EPA - Region 4 Attn: Superfund Accounting P.O. Box 100142 Atlanta, GA 30384
Region 5 Chicago	The First National Bank of Chicago	EPA - Region 5 Attn: Superfund Accounting P.O. Box 70753 Chicago, IL 60673
Region 6 Dallas	Mellon Bank	EPA - Region 6 Attn: Superfund Accounting P.O. Box 360582M Pittsburgh, PA 15251
Region 7 Kansas City	Mellon Bank	EPA - Region 7 Attn: Superfund Accounting P.O. Box 360748M Pittsburgh, PA 15251
Region 8 Denver	Mellon Bank	EPA - Region 8 Attn: Superfund Accounting P.O. Box 360859M Pittsburgh, PA 15251
Region 9 San Francisco	Mellon Bank	EPA - Region 9 Attn: Superfund Accounting P.O. Box 360863M Pittsburgh, PA 15251
Region 10 Seattle	Mellon Bank	EPA - Region 10 Attn: Superfund Accounting P.O. Box 360903M Pittsburgh, PA 15251

MODEL SYSTEM FOR ADMINISTRATIVE PENALTY COLLECTION

Introduction

The Regions require a systematic method for tracking the payment of the fines and penalties under agreements which conclude with enforcement actions. Although the servicing Financial Management Office (FMO) has the lead responsibility for tracking the accounts receivable and collecting the fines and penalties, the RPO and ORC (if lead) must notify the FMO of the assessment of an administrative penalty so that the FMO can establish an "accounts receivable".

In order to have a sound tracking system: (1) EPA must make it clear to the person owing the money how much is due, when it is due, the interest accrual if not paid when due, and where payment is to be made; (2) the final order must be sent to the FMO for tracking; and (3) there must be a way to verify and record receipt of the payment.

Region V has recognized the need for a systematic approach and in June 1987 instituted procedures for the payment of fines, penalties and reimbursements under administrative orders. These procedures were originally developed as a joint effort among the Region V Regional Counsel, Program, and Financial Management staffs. The procedures have proven to work well because they define each party's responsibility in the process and they represent a joint effort in their development.

Region V's procedures for administrative penalty collection have been adopted in this Manual but modified to include the EPA Enforcement Payment Accounts Receivable Control Number Form (hereinafter referred to as the Enforcement Control Number Form) located at the end of this Appendix. The Enforcement Control Number Form was a necessary addition to allow consistent tracking of the same accounts receivable (penalty) by different EPA offices.

The Final Order

Once the final administrative order (AO) has been signed by the Regional Administrator, the appropriate RPO (or ORC if originating office) will send the signed AO with a transmittal letter to the respondent (debtor) in the case by certified mail (return receipt requested) and send a copy to the attorney representing the party.

The program office also will fill out the "originating office" section of the IFMS Form (see p. 2-A2-50), attach to the IFMS form the final copy of the AO and the transmittal letter to the respondent, and send them to:

- o the Regional Financial Management Office;
- o the Regional Counsel;
- o the Regional Hearing Clerk; and
- o the Headquarter's program office (where required by the Headquarter's program.)

Both the AO and the transmittal letter must include the following provisions:

- o payment of the fine or penalty must be made by the date specified in the executed order;
- o a statement to the effect that if payment is not received within 30 days of the date of the notification (billing), interest charges will be assessed from the date of notification through the date of payment at a rate established by the U.S. Treasury (rate changes, no more frequently than quarterly). Additionally, a handling charge will be imposed in 30-day increments consisting of $15.00 after the first 30 days and $15.00 for each additional 30-day increment. A six percent per annum penalty will be applied on any principal amount not paid within 90 days of the due date applied 120 days from the date of the bill;
- o payment of the fine or penalty is to be made to the designated lockbox for the Region; and,
- o transmittal of copies of the check to any designated persons in the program and/or the ORC.

When the FMO receives the AO, the transmittal letter, and the IFMS form, the assessed penalty amount will be entered into the Integrated Financial Management System (IFMS) as an accounts receivable and will be given an IFMS control number. This number will be entered on the Enforcement Control Number Form and copies of the form and the front page of the AO will be sent to the designated offices on the form.

Once the FMO gets confirmation of the payment from the bank, the FMO will update the accounts receivable. A copy of the payment with the IFMS control number will be forwarded by the FMO to the designated persons in the ORC and RPO for their tracking purposes. A copy also will be sent to the Regional Hearing Clerk who maintains the official administrative record on the case.

Modifications and Stipulated Penalties

Once an accounts receivable has been established for a penalty order, two events could change the accounts receivable:

- Modifications - An order could be amended to increase or reduce the total up-front penalties assessed in the order. This requires an amended order signed by the Regional Administrator.

- Stipulated Penalties - The order may provide that if milestone(s) are missed, stipulated penalties will be assessed. This requires a "Bill for Stipulated Penalties" to be sent to the violator for the original amount agreed to in the order. Depending on the wording of the stipulated penalties clause, a change in the stipulated penalty amount to be paid may require an amended order signed by the Regional Administrator (or his/her delegatee).

The RPO or the (ORC if lead) has the responsibility for notifying the FMO of modifications or stipulated penalties using the Enforcement Control Number Form that contains the IFMS accounts receivable control number. The same procedures described in "The Final Order" section above, apply for implementing modifications and stipulated penalties.

Failure to Pay Penalties

All EPA administrative penalty debt collection activities must be done pursuant to Resources Management Directives (RMDS) 2540, Chapter 9). All Superfund debt collection activities must be done pursuant to RMDS 2550D.

Correction of Errors on Accounts Receivable

If an account receivable is no longer valid (e.g., EPA was in error in the amount of penalty assessed in the Final Order), the appropriate RPO or ORC lead official must notify the servicing FMO

in writing. The memorandum should reference the specific IFMS control order number, date, name and amount. An explanation for the change in the status of the account receivable also should be provided in the memorandum. Copies should be sent to the appropriate parties as described previously in the "Final Order" section of this Appendix.

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:
(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: _____ _____
(Name of contact person) (Date)

in the _____ at _____
(office) (phone number)

☐ Non-SF Jud. Order/Consent Decree. USAO COLLECTS.

☐ Administrative Order/ Consent Agreement FMO COLLECTS PAYMENT.

☐ SF Jud. Order/Consent Decree. FMO COLLECTS.

☐ This is an original debt

☐ This is a modification

Name of Person and/or Company/Municipality making the payment

---

The Total Dollar Amount of Receivable _____
(If in installments, attach sch. of amounts and respective due dates)

The Case Docket Number _____

The Site-Specific Superfund (SF) Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
(Name of Contact) (Date)

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Debt Tracking Officer
   Environmental Enforcement Section
   Department of Justice/Rm. 1647D
   P.O.Box 7611, Benjamin Franklin Station
   Washington, DC 20044
2. Originating office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel

GLOSSARY

Below are key terms for filling out the EPA Enforcement Payment Account Receivable Control Number Form.

EPA Originating Office - In the case of administrative orders, the EPA office that originates and sends a copy of the signed final order and the transmittal letter to the defendant/respondent is responsible for filling out the top half of the Form. In the case of judicial orders, the U.S. Attorneys' Office (USAO) will in most cases be the entity that sends a copy of the final (entered) order or consent decree to the defendant with a transmittal letter. By Directive, the USAO will send to the appropriate Office of Regional Counsel (ORC), a copy of the entered order and transmittal letter. Unless otherwise designated in a Region, the ORC will be the EPA originating office responsible for filling out the Form and sending a copy of the entered order to the FMO.

Designated Regional Headquarters Program Office - This is the Office responsible for enforcing the statutory program (e.g., CAA, CWA, TSCA, RCRA, FIFRA, Superfund, etc.) that governs the violation. The designated program office is responsible for tracking the technical (non-penalty) requirements of the order. This program will use the IFMS accounts receivable number to check with the FMO on the status of payment of the administrative or judicial penalty.

Case Docket Number - This is the number in the upper right hand corner of the final order that is provided by the Regional Hearing Clerk (administrative) or the Clerk of the Court (judicial).

Site-Specific Superfund Account Number - The ten digit number used in the Superfund Program to identify a particular site so that monies can be tied to specific sites and activities.

IFMS Accounts Receivable Control Number - When the FMO is provided documentation (final order) on the creation of a debt, the FMO enters the debt into the Integrated Financial Management System (IFMS) and creates a new accounts receivable. . If there are several violators under the same case that will be making a payment, then each "payee" receives a different control number. The FMO will fill out a separate copy of the form for each payee and accounts receivable control number.

The completed version of the form with the EPA Originating Office and the FMO portions of the form filled in should be included in the enforcement case official file as a record for audit purposes that the final order was sent to the FMO and that an accounts receivabl control number was provided.

CHAPTER THREE

COLLECTING JUDICIAL PENALTIES

This chapter describes the roles and responsibilities of EPA [illegible] and the Department of Justice (DOJ) in monitoring and collecting judicial civil penalty judgments. This chapter does not apply to criminal fines and penalties.

Payment Depositories

EPA Judicial Enforcement Penalty Payment

EPA judicial enforcement penalties assessed under EPA statutes with the exception of CERCLA (Superfund) must be paid to the local U.S. Attorney Office (USAO) and are deposited in the DOJ lockbox system.

CERCLA (Superfund) Payments

Reimbursements to the CERCLA Trust Fund are not enforcement penalties and must be paid to the EPA FMO Regional lockbox system. Appendix 1 of this chapter contains the names and addresses of Regional Superfund lockbox depositories. Appendix 2 of this chapter contains the addresses of Headquarters and Regional FMOs. For information on the financial management of the Superfund Program see EPA Resource Management Directives (RMDS) 2550D and the September 20, 1988, Interim Desk Operating Procedures prepared by the FMD Fiscal Policies and Procedures Branch.

Responsibilities

Department of Justice

The Land and Natural Resources Division (LNRD) Environmental Enforcement Section (EES) is responsible for prosecution and supporting and coordinating the prosecution of all civil and criminal cases, matters and proceedings arising under EPA statutes. This includes monitoring and reporting on penalty judicial payments collected by the U.S. Attorneys' Office.

The U.S. Attorneys' Office is responsible for collecting judicial penalty judgments (including consent decree settlements).

Environmental Protection Agency

EPA Regional Financial Management Offices (FMOs) are responsible for establishing an "accounts receivable" for judicial penalty judgments (including consent decree settlements) and for reporting on the status of the accounts receivable (penalty/debt) until it is paid in full. FMOs do not collect, i.e., send out billings or demand letters for judicial penalties. This is the responsibility of the USAO.

Distributing Copies of Final Orders

Department of Justice

LNRD-EES is responsible for devising an arrangement with the USAO whereby a copy of the entered (final) judicial order (consent decree) is sent to the EPA Office of Regional Counsel (ORC). (Appendix 4 of this chapter contains the addresses of the Regional Counsel Offices).

Environmental Protection Agency

The ORC is responsible for distributing to the appropriate offices, copies of entered orders received from DOJ. This includes sending a copy of the entered order to the EPA Regional FMO. The completed EPA Enforcement Payment Accounts Receivable Control Number Form, (see Appendix 3 of this chapter), hereinafter referred to as the Enforcement Control Number Form, should be attached to the FMO's copy of the entered order. The FMO will return the Enforcement Control Number Form with an IFMS accounts receivable control number included. The Form with the control number should be included in the case file for review in the context of audits.

Monitoring Penalty Payments

LNRD-Environmental Enforcement Section

LNRD-EES maintains an automated data base entitled: Land Docket Tracking System (LDTS). This system monitors a case from the time a judgment is entered until verification has been received from the USAO that all penalties assessed have been paid. Using LDTS, the LNRD-EES will provide the EPA HQ-FMD, Financial Reports and Analysis Branch, with quarterly updates on the status of penalty collection.

EPA Regional Financial Management Office

EPA maintains an automated data base that tracks accounts receivable entitled: Integrated Financial Management Systems. Upon receipt of the final judicial order from the ORC, the Regional FMO is responsible for entering the penalty debt into the IFMS and tracking the debt as an account receivable until it is paid.

To crosswalk between the DOJ and EPA data systems, the Regional FMO must also, within 3 days of receipt of a copy of an entered (final) order, send copies of the Enforcement Control Number Form with a copy of the front page of the entered (final) order attached to the designated parties on the Form. LNRD-EES will enter the IFMS number into the Land Docket Tracking System (LDTS) so that penalty payments can be tracked under the EPA IFMS control number as well as the court docket number.

EPA Enforcement Reporting of the Status of Penalty Payments

Once LNRD-EES receives and records the IFMS accounts receivable control number in its docket, LNRD-EES will provide to EPA HQ-FMD, Financial Reports and Analysis Branch, quarterly updates on the status of the accounts receivable using the LDTS format. The Financial Reports and Analysis Branch will distribute the quarterly updates to the Regional FMOs.

The Regional FMO will input the information it receives on the LDTS report into the IFMS. The IFMS will be the official EPA record of the numerical status of the judicial penalty debt. Other EPA data bases will provide yes/no information on whether the total penalty assessed has been paid. Only the IFMS will be used to officially report dollar amounts. The appropriate office, RPO or ORC, should request information from the Regional FMO using the IFMS accounts receivable control number in order to verify the status of the judicial penalty debt for updating RPO data bases and STARS Consent Decree Tracking System (CDTS). (See Chapter One, Appendix 3 for STARS CDTS requirements.)

Coordination of DOJ and EPA Accounts Receivable Reporting Systems

The DOJ LNRD-EES and EPA-FMD must routinely compare and verify the accuracy of the data in their systems in order for both offices to meet their reporting responsibilities under 31 U.S.C. 3512, "Executive Agency Accounting Systems".

Pursuing Outstanding Penalty Debts

When a penalty payment is not paid, the USAO will pursue collection in accordance with the law of the State in which the debtor resides. The USAO also may use the IRS tax offset referral programs to collect the debt.

Compromising, Suspending, or Terminating Judicial Penalty Debts

The Attorney General and his delegatee in the Department of Justice have plenary prosecutorial authority to collect and compromise judicial penalties. This authority stems from 25 U.S.C. 516, which reserves to DOJ the authority to conduct the litigation of the United States, including cases in which an agency of the U.S. is a party, and the cases and regulations broadly interpreting this authority.

The USAO will notify the LNRD-EES of any plans to suspend or terminate an EPA penalty debt. LNRD-EES will notify the EPA attorney of record on the case (with a copy to the Assistant Administrator of the Office of Enforcement) and offer an opportunity to comment on any DOJ decision to suspend or terminate the debt. Any decision affecting an EPA penalty (receivable) will be reflected in the LNRD-EES quarterly updates to EPA as described in the <u>EPA Enforcement Reporting of the Status of Penalty Payments</u> section of this Chapter.

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

OCT 6 988

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

MEMORANDUM

SUBJECT: Transfer of Responsibility for Superfund Accounts Receivable to the Regions

FROM: Charles L. Grizzle
Assistant Administrator

TO: Regional Administrators

On April 27, 1988, I sent a memorandum to you about various initiatives being taken within the Agency to respond to the Fiscal Year 1986 Superfund audit report. One initiative was to improve controls over Superfund accounts receivable by placing responsibility for these receivables in the regions. I noted in my memorandum that we were developing revised guidance, Financial Management of the Superfund Program -- 2550D, which would transfer this responsibility.

I am pleased to report to you that the Agency's striped border review of the guidance has been completed, and the final version of "2550D" is being delivered through the standard Agency distribution channels.

As required by 2550D, any new or amended Superfund state contract, settlement or any other agreement or order creating amounts due EPA must now direct payment to the regional lockbox address. Further, the regional counsel, regional program office, and regional financial management office should implement the policies and procedures described in 2550D.

Please ensure that your staff members fulfill their responsibilities in this area. As you know, our success in Superfund cost recovery is being closely monitored. Our achievements in this area are measured by the amounts actually returned to the Trust Fund, and timely and accurate billings are an essential link in the recovery process.

REGIONAL SUPERFUND LOCKBOX DEPOSITORIES

EMO	LOCKBOX BANK	ADDRESS FOR REMITTING PAYMENT
Region 1 Boston	Mellon Bank	EPA - Region 1 Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251
Region 2 New York	Mellon Bank	EPA - Region 2 Attn: Superfund Accounting P.O. Box 360188M Pittsburgh, PA 15251
Region 3 Philadelphia	Mellon Bank	EPA - Region 3 Attn: Superfund Accounting P.O. Box 360515M Pittsburgh, PA 15251
Region 4 Atlanta	The Citizens and Southern National Bank	EPA - Region 4 Attn: Superfund Accounting P.O. Box 100142 Atlanta, GA 30384
Region 5 Chicago	The First National Bank of Chicago	EPA - Region 5 Attn: Superfund Accounting P.O. Box 70753 Chicago, IL 60673
Region 6 Dallas	Mellon Bank	EPA - Region 6 Attn: Superfund Accounting P.O. Box 360582M Pittsburgh, PA 15251
Region 7 Kansas City	Mellon Bank	EPA - Region 7 Attn: Superfund Accounting P.O. Box 360748M Pittsburgh, PA 15251
Region 8 Denver	Mellon Bank	EPA - Region 8 Attn: Superfund Accounting P.O. Box 360859M Pittsburgh, PA 15251
Region 9 San Francisco	Mellon Bank	EPA - Region 9 Attn: Superfund Accounting P.O. Box 360863M Pittsburgh, PA 15251
Region 10 Seattle	Mellon Bank	EPA - Region 10 Attn: Superfund Accounting P.O. Box 360903M Pittsburgh, PA 15251

EPA Financial Management Offices

EPA - Region I
JFK Fed Bldg Rm. 2203
Boston, MA 02203
FTS - 835-3339

EPA- Region II
JKJ Fed Bldg/26 Fed Plaza
New York, NY 10278
FTS - 264-8989

EPA - Region III
841 Chestnut Bldg
Philadelphia, PA 19107
FTS - 597-7805

EPA - Region IV
345 Courtland St., NE
Atlanta, GA 30365
FTS - 257-3278

EPA- Region V
230 South Dearborn Street
Chicago, IL 60604
FTS - 353-8923

EPA - Region VI
1445 Ross Ave,
12th Floor Suite 1200
Dallas, TX 75202
FTS - 255-6550

EPA - Region VII
726 Minnesota Avenue
Kansas City, KS 66101
FTS - 757-2830

EPA- Region VIII
999 18th St., Suite 50
Denver, CO 80202-2405
FTS - 564-1617

EPA - Region IX
1235 Mission Street
San Francisco, CA 94103

EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101
FTS - 399-2961

Headquarters Accounting
Operations Branch
EPA (PM-226)
401 M St, SW
Washington, DC 20460
FTS - 382-5100

Headquarters Financial
Reports and Analysis
Branch
EPA (PM-226F)
401 M St, SW
Washington, DC 20460
FTS - 382 -5131

2/2/90

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

Cy: M. Smit
Letter

File: Consent Decrees - Subst. Provisions

SWERB Attorneys - JAN 24 1990

FYI — please familiarize yourselves with this guidance.

Lynn

[redacted]

return this copy

MEMORANDUM

SUBJECT: Use of Stipulated Penalties in EPA Settlement Agreements

FROM: James M. Strock JMS
Assistant Administrator

TO: Addressees

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS GS

This memorandum provides guidance on the use of stipulated penalties in settlement of enforcement actions. For each issue discussed, a preferred approach is stated along with its rationale. These preferred approaches should be followed absent unusual circumstances dictating an alternative approach. The guidance applies to judicial settlements except that it does not supersede the September 21, 1987 Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees. It also applies to administrative cases where EPA has legal authority to assess stipulated penalties.

NB

Stipulated penalties are penalties agreed to by the parties to a settlement agreement for violation of the agreement's provisions. These penalties are then made a part of the agreement, and are enforceable if it is violated. In EPA settlement agreements, the primary goal of a stipulated penalty is to act as an effective deterrent to violating the settlement agreement.

I. Types of Requirements to Which Stipulated Penalties Should Apply

Any clearly definable event in a settlement agreement may be appropriate for stipulated penalties in a given case. Such events include testing and reporting requirements, interim and final milestones in compliance schedules, and final demonstration of compliance. The government litigation team assigned to a case should carefully consider which

consent agreement provisions are appropriate for stipulated penalties and be prepared to vigorously enforce them. Stipulated penalties can even be attached to consent agreement provisions requiring payment of up-front penalties so long as the stipulated penalties are higher than the interest, computed at the statutory interest rate, on the underlying amount. Every consent agreement requirement to which stipulated penalties are attached should be drafted to ensure that the standards for determining compliance are clear and objective, and that any information required to be submitted to EPA is clear and unequivocal.

In general, stipulated penalties are particularly important for requirements of the consent agreement which do not represent regulatory or statutory violations for which the agency could potentially get statutory maximum penalties. Such provisions may include a requirement to install specific control equipment where the regulations and statute involved require only compliance with a discharge or emissions standard, or environmental auditing or management requirements designed to ensure future compliance. Without stipulated penalty provisions, penalties for violation of such provisions in judicial cases are only available at the judge's discretion in a contempt action under the court's inherent authority to enforce its own order.

Attaching stipulated penalties to violations of consent agreement provisions which are also violations of a statute or regulation with a specified statutory maximum penalty has advantages and disadvantages which Agency attorneys should consider carefully in the context of a particular case. The advantage is ease of enforcement. The Agency can pursue violations without having to bring a new enforcement action or, in the judicial context, a contempt action. The disadvantage is where stipulated penalties for such violations are set at less than the statutory maximum, parties may argue that the government has bargained away some of its enforcement discretion.

If a particularly egregious statutory or regulatory violation occurs for which the government feels the applicable stipulated penalties are not adequate, sources may claim the government is equitably estopped from pursuing other enforcement responses. Sources may argue in the context of a contempt action or new enforcement action that the government has already conceded in the consent agreement that a fair penalty for this type of violation is the stipulated penalty, and therefore, the court should not require any

additional penalty. Sources may make this argument even if the government has reserved all rights to pursue various enforcement responses for consent agreement violations.[1]

II. Level of Stipulated Penalties

Because the statutes EPA is charged with enforcing vary so widely, penalty schedules for all media or types of violations are not practical. There are, however, several important criteria which should always be considered in setting stipulated penalty amounts. Each program office, in concert with the appropriate OECM Associate Enforcement Counsel, may want to consider providing further, more specific guidance on appropriate levels or ranges for stipulated penalties based on the criteria below.

One key element which applies to setting the levels of all stipulated penalties for violation of a consent agreement provision is that the defendant is by definition a repeat offender when the provision is violated. For this reason, such stipulated penalties should be higher on a per day basis than the initial civil penalties imposed. See Guidelines for Enforcing Federal District Court Orders in Environmental Cases (GM-27).

The economic benefit accruing to a source due to a violation should be recovered in order for the stipulated penalty to be an effective deterrent. For some types of violations, such as notice provisions, the economic benefit of noncompliance may be minimal, though significant stipulated penalties may be appropriate based on other criteria as discussed below. For these types of violations, no formal BEN analysis is necessary. For violation of provisions which involve quantifiable delayed or avoided costs, such as installation of control equipment as part of a compliance schedule, the minimum stipulated penalty should be the economic benefit of noncompliance. However, the recidivism factor will nearly always justify a penalty well above this minimum, which often serves as the point of departure for a minimum initial penalty.

The source's ability to pay can be another important criterion to consider. How much of a deterrent a stipulated penalty is will depend on how financially significant it is to the source. The same stipulated penalty may be

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[1] In considering whether to attach penalties to violations uncovered by an environmental audit, the November 14, 1986 Final EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements (GM-52) should be consulted.

financially crippling to one source, while merely a routine business expense for another. However, the burden is always on the defendant to raise such issues during negotiations and to justify lower stipulated penalties than the government has proposed. Financial ability to pay a penalty can be determined using the ABEL computer program for corporate violators and the MABEL computer program for municipal violators.

It should be emphasized that this factor should not be considered a reason for lowering the level of stipulated penalties below the level equal to the economic benefit. It would mainly affect the degree to which this base minimum amount is increased to account for the recidivist nature of the violation. The key concern is that stipulated penalties should be set at levels which are significant enough to deter violations rather than resulting in a "pay-to-pollute" scheme.

Another criterion which should be considered in setting stipulated penalty amounts is the gravity of the violation, i.e., how critical is the requirement to the overall regulatory scheme and how environmentally significant is the violation. The environmental significance factor should include consideration of potential and actual harm to human health and the environment. In general, consent agreement provisions which are central to a particular regulatory scheme should have higher stipulated penalties than provisions that are considered less significant. It is up to each enforcement program to make judgments about the relative importance of respective requirements. As previously noted, some consent agreement requirements such as notice provisions may have little or no associated economic benefit, but may nevertheless be critical to the regulatory program in question and would warrant high stipulated penalties.

Another consideration related to the gravity component is the source's history of compliance. If the source has a record of previous violations, a higher stipulated penalty may be necessary because earlier enforcement responses were ineffective in deterring subsequent violations.

Another option to consider whenever setting stipulated penalty levels is an escalating schedule, in which the stipulated penalty increases with the length of the violation. For example, violations of up to two weeks might have stipulated penalties of $1000 per day while violations of two to four weeks might have stipulated penalties of $2000 per day, and so on.

III. Method of Collection

Settlement agreements should state the method by which stipulated penalties will be collected. Two options are for the settlement agreement to provide that the penalty is automatically due upon the occurrence or non-occurrence of a specified event, or it may make the penalty payable only on demand by the government.

Automatic payment is the preferred approach. It saves resources which would otherwise be devoted to making demands for payment and may put the government in a more advantageous position should the source declare bankruptcy. If payment is made on demand, the consent agreement should make it clear that the legal liability of the source for the stipulated penalty attaches immediately upon violation, and it is only payment of the penalty to the Agency which is not due until demand is made.

Settlement agreements should always state where and how the penalty should be paid and how the check should be drafted. See EPA Manual on Monitoring and Enforcing Administrative and Judicial Orders for additional guidance. In addition, settlement agreements should not agree to pre-enforcement review of accrued stipulated penalties.

IV. Timing of Enforcement Responses

Prompt action to collect stipulated penalties due under any consent agreement is crucial. If stipulated penalties are due on demand, it is very important such demands be timely. The government encounters significant difficulty collecting stipulated penalties if it sits on its rights. Delay allows penalties to increase to levels parties may argue are inequitable. Sources may also raise equitable defenses such as laches or estoppel, arguing that the government cannot fail to exercise its rights for extended periods of time allowing stipulated penalties to continue to accrue and then move to collect unreasonably high penalties. The government, of course, can and should always rebut such claims by arguing it is simply enforcing the decree or agreement as agreed to by defendant, and is not subject to such equitable defenses. However, this unnecessary complication should be avoided.

A cap on the amount of stipulated penalties which can accrue is generally not a preferred solution to this problem. The stipulated penalty would lose its deterrent value once the cap is reached. Also, the main goal of any enforcement action must be compliance with the law so that public health and welfare is protected. If consent agreement provisions

are allowed to be violated long enough for a cap to be reached, serious environmental consequences may have occurred.

Providing that stipulated penalties only apply for a specific, reasonably short period of time in conjunction with reserving to the government all available enforcement responses for violation of the consent agreement, however, solves many of the problems mentioned above. By its own terms, stipulated penalties will not accrue to levels defendants can argue are inequitable. The government will be in a strong position when it pursues other enforcement options, such as contempt actions or a new enforcement action to get additional penalties, because it can argue that the penalties in the original consent agreement were not enough to deter the defendant from further violations and the possibility of additional penalties was clearly contemplated.

V. Reservation of Rights

All consent agreements must contain a provision which reserves to the government the right to pursue any legally available enforcement response for violation of any consent agreement provision. These enforcement responses would include civil contempt proceedings and injunctive relief, and criminal contempt proceedings for particularly egregious violations. However, for provisions mandated by statute or regulation and which have stipulated penalties attached, a reservation to pursue statutory penalties is suggested but not required. For model language, see the October 19, 1983 Guidance for Drafting Judicial Consent Decrees (GM-17).

VI. Collection of Stipulated Penalties

The government should be prepared to collect the full amount of stipulated penalties due under a consent agreement. No agreement should ever anticipate compromise by specifying instances where it will be allowed, aside from a standard force majeure clause. In rare, unforeseeable circumstances, however, the equities of a case may indicate that the government may compromise the amount it agrees to collect. For penalties payable on demand, the government may also exercise prosecutorial discretion by declining to proffer a demand for stipulated penalties for minor violations of a consent agreement.

It may also be appropriate to provide that stipulated penalties for violation of interim milestones in a compliance schedule will be forgiven if the final deadline for achieving compliance is met. This is clearly inappropriate where there is significant environmental harm caused by the defendant missing the interim deadlines. If such a provision is used,

the defendant should generally be required to place accrued penalties in an escrow account until compliance by the final deadline is achieved.

In judicial cases, the Attorney General and his delegatees in the Department of Justice (DOJ) have plenary prosecutorial discretion to compromise stipulated penalties. This authority stems from 25 U.S.C. § 516, which reserves to DOJ authority to conduct the litigation of the United States, including cases in which an agency of the United States is a party, and the cases and regulations broadly interpreting this authority.

In administrative cases handled solely by EPA, stipulated penalties should be collected pursuant to the enforcement authority granted to EPA under the statute governing the case. This authority to collect and compromise stipulated penalties varies from statute to statute.

Separate from the process for collecting stipulated penalties, EPA must keep track of money owed the federal government (accounts receivable) resulting out of the activities of the Agency, including administrative penalty assessments. A stipulated penalty becomes an account receivable when the appropriate Agency official determines that a violation of a consent agreement provision with an attached penalty has occurred. Under Agency financial regulations and policies for monitoring accounts receivable, stipulated penalties due and owing must be reported within three days to the Regional Financial Management Office (FMO). The FMO is responsible for entering the stipulated penalty as an accounts receivable into the Agency's Integrated Financial Management System (IFMS). The "appropriate agency official" who determines the existence of a stipulated penalty account receivable is responsible for keeping the FMO updated on the status of enforcement penalty collection efforts. A more detailed account of these procedures is included in the Manual on Monitoring and Enforcing Administrative and Judicial Orders.

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RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	)	CIVIL ACTION NO. C87-1471
	)	
Plaintiff,	)	JUDGE LAMBROS
	)	
v.	)	
	)	
MASTER METALS, INC.	)	
	)	
Defendant.	)	

PETITION INVOKING DEFENDANT MASTER METALS, INC.'S RIGHT TO DISPUTE RESOLUTION PURSUANT TO ARTICLE XV OF THE CONSENT DECREE ENTERED AND APPROVED BY THIS COURT ON JANUARY 15, 1990

Now comes defendant, Master Metals, Inc., by and through undersigned counsel, pursuant to Article XV, Paragraph C, of the Consent Decree entered and approved by this Court on January 15, 1990 and petitions this Court, invoking the provisions for dispute resolution, to adopt the defendant's proposal for resolution attached hereto and incorporated herein by reference.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	)	CIVIL ACTION NO. C87-1471
	)	
Plaintiff,	)	JUDGE LAMBROS
	)	
v.	)	
	)	
MASTER METALS, INC.	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF
MASTER METALS, INC.'S PETITION
INVOKING DISPUTE RESOLUTION

A. Background

Master Metals, Inc. is the owner and operator of a secondary lead smelter located at 2850 West 3rd Street, Cleveland, Ohio ("Master Metals"). The principal operation that takes place at Master Metals' facility involves reclamation of non-ferrous metals and alloys, containing lead. In short, Master Metals is a lead recycler.[1]

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[1]Master Metals processes over 50 million pounds of lead-containing by-products and lead batteries a year. This is all material that would otherwise end up in landfills or haphazardly discarded into the environment. Over 23 customers regularly purchase 2 million pounds per month of reclaimed lead bullion from Master Metals. For a more descriptive analysis of Master Metals' operations as they relate to recycling, see Defendant Master Metals' Motion for Leave to File Sur-Reply Brief Instanter, filed with this Court on December 28, 1990.

The current dispute arises by virtue of a demand for stipulated penalties for alleged violations of a Consent Decree entered by this Court on January 15, 1990. (Exhibit 1.)

By way of background, on January 11, 1982, Master Metals filed for relief under Chapter 11 of the Bankruptcy Code to the United States Bankruptcy Court for the Northern District of Ohio. On June 15, 1987, the United States, on behalf of the U.S. EPA, filed an objection to the confirmation of Master Metals' proposed plan of reorganization under Chapter 11 of the Bankruptcy Code. The United States alleged that the plan failed to properly and adequately address Master Metals' environmental obligations under the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. Section 6901, et seq.

On September 14, 1987, the United States and Master Metals entered into a stipulation which was approved by the Bankruptcy Court. A copy of that stipulation is attached to the Consent Decree approved by this Court on January 15, 1990 (Exhibit 2) as Exhibit A.

On September 18, 1987, the United States Bankruptcy Court entered an order confirming the plan of reorganization and thereby incorporated the said stipulation between the United States and Master Metals.

On June 16, 1987, the United States filed a complaint in this Court against Master Metals for injunctive relief and

civil penalties pursuant to Section 3008(a) of RCRA. Master Metals filed an answer on October 9, 1987 denying the allegations set forth in the United States' complaint.

On November 14, 1989, the United States and Master Metals entered into a settlement of their dispute as represented by the Consent Decree filed with this Court and approved on January 15, 1990. (See Exhibit 2)

Subsequent to the entering of the Consent Decree, U.S. EPA, pursuant to two (2) inspections conducted by U.S. EPA Inspector Katherine McCord, on July 17, 1990 and August 17, 1990, made a demand for stipulated penalties. That demand came by way of letter dated November 9, 1990. (Exhibit 3.)

On January 22, 1991, Master Metals responded with a counter offer under the Consent Decree's dispute resolution procedures. (Exhibit 4.) Subsequently, by letter dated January 30, 1991, the United States agreed to extend the period of informal negotiations called for by the Consent Decree's dispute resolution procedure until such time as the United States responded formally to Master Metals' counter offer.

On June 26, 1992, the United States responded to Master Metals' counter offer. "Without agreeing to any of the factual or legal arguments made by Master Metals in the informal negotiation process", the United States amended their initial demand for penalties totalling $2,286,500 to a demand for $1,593,000. (Exhibit 1.)

B. Nature of the Dispute

The nature of the dispute before this Court centers around the parties' divergent interpretation of the materials subject to regulation under the Consent Decree, and particularly, the issue of whether materials which qualify for the recycling exemption under the Code of Federal Regulations are subject to requirements of the Consent Decree.

Of the 13 alleged violations of the Consent Decree set forth in the United States' demand, 9 of the violations are the result of the United States' inclusion of non-waste materials within the confines of the Consent Decree.[2]

Master Metals has consistently taken the position that if Master Metals qualifies for the recycling exemption contained at 40 C.F.R. Sections 261.2 and 261.1(c)(8), the materials consumed in the reclamation process are not waste and, therefore, such operations are outside the RCRA Subtitle C regulatory program in the Consent Decree which settled the alleged violations of that program.[3]

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[2]Master Metals disputes the factual basis of the violations supporting the United States' demand for stipulated penalties for these 9 violations as well as the fashion in which the penalties were calculated. See Exhibit 4 for Master Metals' specific arguments disputing the underlying violations supporting the penalty demand attached hereto and incorporated herein by reference.

[3]As set forth in the Master Metals counter offer dated January 22, 1991 (Exhibit 4), a considerable amount of time was spent negotiating and refining language in the Consent Decree to include only materials that were wastes. Only "china clay reclamation material" was singled out for special treatment. An agreement was

U.S. EPA has rejected this argument. It is not known whether U.S. EPA rejects this argument on the basis that it contends that Master Metals is not a legitimate recycler because it contends that Master Metals has not complied with the procedural requirements necessary to demonstrate that it falls within the recycling exemption pursuant to the Code of Federal Regulations or whether it believes it has jurisdiction pursuant to RCRA to regulate materials which fall within the exemption. The United States has not made its position in this regard known to Master Metals.

Master Metals also disputes the alleged violations of the Section V.B.11, "Training of Personnel" (proposed penalty of $3,000) and Section V.D.3, "Store Slag and Refractory Brick in Containers" on the basis that factually the allegations did not occur (proposed penalty of $2,000).

Finally, the other two violations, V.G.1, "Liability Coverage" ($112,000) and V.G.3, "Financial Assurance for Closure and Post Closure Care" ($112,000) are also disputed. As set

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reached in these negotiations whereby material that was not waste was not and could not be included under the Consent Decree. The compromise language left open the possibility that if material did not meet the recycling exemption, it was regulated material. (See Exhibit 4.) This issue was also before this Court in January, 1990 when the United States, opposing an extension of time requested by Master Metals related to the liability insurance requirements in the Consent Decree questioned Master Metals' existence as a recycler. In its Motion to File a Sur-Reply Brief Instanter, Master Metals had to dispel this claim despite the fact that the nature of Master Metals' facility and its qualifications as a recycler under the Code of Federal Regulations was never directly at issue before this Court.

forth in massive filings before this Court, Master Metals' delay in obtaining liability coverage was entirely beyond its control. Pursuant to Article XVI, entitled "Force Majeure", Master Metals seeks to prove that any delay was a force majeure event.

With regard to alleged violation for failure to comply with the Financial Assurance for Closure and Post Closure Care provision of the Consent Decree, Master Metals objects to the facts upon which the allegation is based.

C. Proposal for Resolution

Under both the Ohio and the federal regulations, before a material is regulated as a "hazardous waste", it must first fall within the definition of a "waste." Ohio Admin. Code Section 3745-51-03; 40 C.F.R. Section 261.3.[4]

The U.S. Environmental Protection Agency ("U.S. EPA") and the Ohio Environmental Protection Agency ("Ohio EPA") regulate the treatment of recycled materials under a complicated regulatory regime in which certain recycled materials are not treated as a waste. See Ohio Admin. Code Section 3745-51; 40 C.F.R. Pt. 261; see also Hazardous Waste Management, 50 Fed. Reg. 614 (Jan. 4, 1985) (EPA final rule).

[4]RCRA, 42 U.S.C. Section 6901, et seq., enables authorized states to regulate hazardous materials within its borders. Ohio is an authorized state. The Ohio regulations governing the recycling of hazardous wastes are a near verbatim replication of the federal regulations. Nevertheless, the cites set forth in this petition will refer to both the Ohio and federal regulations. Attached as Exhibit 5 to this Memorandum are copies of the Code of Federal Regulations provisions cited and the cited provisions of the Federal Registrar.

The treatment of recycled materials under the Ohio and federal regulations entails a consideration of two variables: (1) the type of material involved; and (2) the recycling activity used by the subject facility.

For instance, the regulations provide that an unlisted "by-product" or "sludge" exhibiting a hazardous characteristic is not a waste when "reclaimed." Ohio Admin. Code Section 3745-51-02; 40 C.F.R. Section 261.2.

A "by-product" is a material that is not one of the primary products of a product process . . . . Ohio Admin. Code Section 3745-51-01(C)(3); 40 C.F.R. Section 261.2(c)(3). A sludge is any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility . . . . Ohio Admin. Code Section 3745-50-10(89); 40 C.F.R. Section 260.10.

A material is "reclaimed" if it is processed to recover a useable product or if it is regenerated. Ohio Admin. Code Section 3745-51-01(C)(4); 40 C.F.R. Section 261.1(c)(8). The recovery of lead values from spent batteries is an example of reclamation cited in the regulations. Id.

All of Master Metals' smelting operations involve the recovery of lead bullion from feedstock. Thus, it is clear that Master Metals is reclaiming its materials.

The remaining hurdle that must be overcome to qualify for the recycling exemption is that the "by-products" or "sludge" being reclaimed may not be "speculatively accumulated".[5] See Ohio Admin. Code Section 3745-51-02; 40 C.F.R. Section 261.2.

A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively if:

> The person accumulating the material can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing January 1, the amount of material that is recycled or transferred to a different site for recycling equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to materials of the same type that is recycled in the same way. Ohio Admin. Code Section 3745-51-01(C)(8); 40 C.F.R. Section 261.1(c)(8).

Thus, in order for a facility to demonstrate that it is not "speculatively accumulating", it needs to document:

1. The amount of secondary material of each class on hand on January 1;

2. The amount of material added during the calendar year; and

[5]When the recycling exemption was first promulgated in 1985, the U.S. EPA cautioned against recyclers who accumulated hazardous waste material speculatively, i.e., where no market existed for the material accumulated, where it is not feasible to reclaim the material and where less than 75% of the material accumulated at the beginning of the year is actually recycled. 50 Fed. Reg. 614, 638 (January 4, 1985); 40 C.F.R. Section 261.1(c)(8). These type of speculative operations are labeled as "shams." See 50 Fed. Reg. 614, 538 (January 4, 1985).

3. The amount of material remaining on December 31. 50 Fed. Reg. 614, 636 (January 4, 1985).

The demonstrated amounts of material may be by weight or by volume. Ohio Admin. Code Section 3745-51-01(C)(8); 40 C.F.R. Section 261.1(c)(8). The phrase "material of each class" used in the first requirement means material of the same type generated from the same process. 50 Fed. Reg. 614, 636 (January 4, 1985).

Clearly, a market exists for the reclaimed lead from the Master Metals operation. At the applicable time period, over twenty-three customers purchased 2 million pounds per month of reclaimed lead bullion from Master Metals. In addition, one company has traditionally entered into an annual contract with Master Metals to purchase lead within certain specifications. Thus, it is clear that the lead-containing materials are recyclable, let alone "potentially recyclable" and not "speculatively accumulated" consistent with the requirements of 40 C.F.R. Sections 261.2 and 261.1(c)(8).

In addition, over 90% of all material, both the material on hand as of January 1, 1990 <u>and</u> the material accumulated during the year, had been processed for reclamation.[6]

[6]The regulations are not clear regarding the calculation of the amount of material actually reclaimed. On the one hand, as stated in the regulations, 75% of all material on hand at the beginning of the year must be reclaimed. 40 C.F.R. 261.1(c)(8). If this in, in fact, the only test for meeting the 75% threshold, Master Metals had reclaimed over 75% of all material. If, however, a strict interpretation of the regulations is applied and the

Moreover, over 75% of Lenox ("china clay") material was reclaimed during the 1990 calendar year.

Finally, as the United States is well aware, it is uncontrovertible that a feasible means of reclaiming lead from lead-containing by-products is present at the Master Metals facility. Secondary lead smelting operations, although rare and expensive to construct and operate, are generally recognized in the industry as viable sources of substitutes for virgin lead feedstock. There can be no doubt that Master Metals' customers rely on the Company for an on-going supply of lead for their manufacturing processes.

In the final analysis, the record is clear that Master Metals is a bona fide recycler and entitled to the recycling exemption contained in the RCRA program. The United States has never presented any evidence to the contrary.

As indicated above, the United States, in its most recent demand, lists 13 separate violations of the Consent Decree that are in dispute with regard to its demand for stipulated penalties. (See Exhibit 1). The following alleged violations and proposed penalties are based upon alleged mishandling of materials that are outside of the regulatory definition of a waste because they are subject to the recycling exemption; thus,

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material accumulated during the term is also included in the threshold calculations, Master Metals had reclaimed in excess of 75% of all material accepted during the year <u>or</u> present at the beginning of the term.

stipulated penalties on the basis of mishandling of these materials is contrary to law and an abuse of EPA discretion:

1. Section V.B.1. Develop and Implement Inventory System; $323,000;

2. Section V.B.6. Accept No Waste and Crack No Batteries Unless in Compliance with Section V.E.3, V.E.4, V.G.1, and V.F.3; $323,000;

3. Section V.B.7. Minimize Possibility of Fire, Explosion, or Unplanned Releases; $3,000;

4. Section V.B.13. Maintain Written Operating Record; $263,000 (included within the $323,000 V.B.1 alleged violation).

5. Section V.B.7. Minimize Possibility of Fire Explosion or Unplanned Releases; $3,000.

6. Section V.D.6. Testing of Battery Casings; $293,000.

7. Section V.E.1. No Adding to or Creating New Waste Piles; $3,000.

8. Section V.E.2. Keeping Waste Piles Covered; $3,000.

9. Section V.E.3. Removal of All Waste Piles; $323,000.

The total proposed penalty by U.S. EPA for the above-cited alleged violations is $1,274,000.

Each of these alleged violations is obviated, in whole or in part, by the fact that Master Metals qualifies for the recycling exemption as discussed above. Meaningful negotiations as to the amount of stipulated penalties owed are bogged down by this issue, which clearly is the threshold issue necessary to determine the validity of the underlying violation warranting a stipulated penalty.

Master Metals requests a declaration by the Court whereby it holds that materials subject to the recycling exemption are outside of the regulatory definition of a waste, not contemplated by the Consent Decree and thus, not the subject of stipulated penalties under the Consent Decree. Once that issue is resolved, Master Metals believes it can negotiate a reasonable compromise to the United States' demand. If a compromise cannot be reached at that point, Master Metals must request an evidentiary hearing to defend itself against the allegations underlying the stipulated penalties.

With regard to the four remaining alleged violations, if a compromise cannot be reached after the "recycling exemption issue" is resolved, Master Metals seeks an evidentiary hearing whereby it can show that the United States' position with regard to these violations is arbitrary and capricious, an abuse of discretion and contrary to law.

In the alternative, Master Metals proposes that this Court appoint a mediator to assist the parties in negotiating a compromise settlement of the stipulated penalties and the interpretation of the recycling exemption as it applies to Master Metals under this Consent Decree.

Master Metals, consistent with the Consent Decree's Dispute Resolution Procedure and its previous counter offer, will continue to work towards a negotiated resolution of this dispute while this Petition is pending; however, if the United States

continues to be intransigent with regard to its interpretation of materials subject to the recycling exemption, this Court's assistance will be necessary as set forth in the foregoing Memorandum in Support of Master Metals, Inc.'s Petition Invoking Dispute Resolution.

D. Conclusion

For all the foregoing reasons, Master Metals petitions this Court pursuant to Article XV, Paragraph C of the Consent Decree entered and approved by this Court on January 15, 1990, to adopt the foregoing proposal for resolution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Petition Invoking Defendant Master Metals, Inc.'s Right to Dispute Resolution Pursuant to Article XV of the Consent Decree Entered by This Court on January 15, 1990 was sent by regular U.S. mail this 16TH day of July, 1992 to the following:

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Recd 11/16/89 MAC

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CLERK OF COURTS
U. S. District Court, N.D.O.

RELEASED
DATE 5/8/98
RIN # 191-98
INITIALS

Note Signed by Court/entered on docket Jan 15, 19

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MASTER METALS INC., Defendant.	CIVIL ACTION NO. C87-1471 JUDGE ALICE M. BATCHELDER

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), filed its Complaint in this action against Defendant, Master Metals Inc. (hereinafter "Defendant" or "Master Metals"), pursuant to the Resource Conservation and Recovery Act (hereinafter "RCRA"), 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), alleging that Defendant violated requirements of RCRA and regulations promulgated thereunder, at its facility in Cleveland, Ohio.

WHEREAS, Plaintiff and Defendant, having recognized that settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree.

NOW THEREFORE, without adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this action under Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345, and 1355. The Complaint states a claim upon which the Court can grant relief against Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a). Venue is proper under Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §1391(b).

II. STIPULATIONS

Solely for the purpose of this Consent Decree, and without any admission of liability by Defendant, the parties stipulate to the following:

A. Master Metals Inc. is a corporation organized and existing under the laws of the State of Ohio.

B. Defendant is the owner and operator of a secondary lead smelter located at 2850 West Third Street, Cleveland, Ohio (hereinafter "Master Metals facility" or "facility"). One of the principal aspects of operations at the facility involves reclamation of non-ferrous metals and alloys, principally

materials containing lead. As the owner and operator of the Master Metals facility, Defendant is required to comply with this Consent Decree, RCRA, and regulations promulgated thereunder.

C. The Master Metals facility is a facility that contains hazardous waste management units as defined at 40 CFR 260.10.

D. Pursuant to 42 U.S.C. §6925(e)(1), on November 19, 1980, Defendant obtained "interim status" to operate certain of the facility's waste piles and treatment units, and a containerized storage area, in the manner set forth in Part A of the RCRA permit application for the facility, pending the issuance of a final RCRA operating permit. On November 8, 1985, pursuant to 42 U.S.C. §6925(e)(2), the waste piles at the facility lost interim status.

E. On January 11, 1982, Defendant filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio.

F. On June 15, 1987, the United States, on behalf of the U.S. EPA, filed its Objection to Confirmation of debtor's proposed Plan of Reorganization under Chapter 11 of the Bankruptcy Code, alleging that the Plan failed to meet the requirements of 11 U.S.C. §1129(a), insofar as it failed to properly and adequately address debtor's environmental obligations under RCRA.

G. On September 14, 1987, the United States and Master Metals entered a Stipulation which was approved by the Bankruptcy

enforceable by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a). Accordingly, this Consent Decree cites to both the federal regulations which were applicable when the Complaint was filed, and to the equivalent regulations under Ohio's approved RCRA program.

III. APPLICABILITY

This Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, directors, employees, successors, assigns, and all persons, firms, entities and corporations acting under, through, or for them, or in active concert or participation with them. The Defendant shall be responsible for the acts of any of its agents, officers, directors, employees, successors, assigns, contractors, and consultants, which violate or cause the Defendant to violate the terms hereof. In the event that Defendant proposes to sell or transfer the real property or operations subject to this Consent Decree, Defendant shall, prior to transfer of ownership or operation, notify each successor in interest of the existence and terms of this Decree, and shall notify U.S. EPA, the United States Attorney for the Northern District of Ohio, and the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, in writing, of such proposed sale or transfer, at least two weeks in advance thereof, at the addresses set forth in Section VIII.

This Section does not relieve Defendant of its

obligation to comply with the notice requirements at 40 CFR 270.72.

IV. DEFINITIONS

A. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA and in the regulations promulgated thereunder, at 40 CFR Parts 260 through 271, and OAC Rules 3745-50 through 3745-69.

B. "Master Metals facility" and "facility" mean the facility, as defined at 40 CFR 260.10 and OAC Rule 3745-50-10(26), located at 2850 West Third Street, Cleveland, Ohio.

C. "Responsible agent" means a responsible corporate officer, such as a president, secretary, treasurer, or vice-president.

V. COMPLIANCE REQUIREMENTS

A. Identification of Hazardous Waste Management Units Which Must Close, and of Those That May Continue to Operate

1. Exhibit B, which is attached hereto and incorporated herein by reference, identifies all areas at the facility where hazardous waste, or material exhibiting a characteristic of hazardous waste, has been placed, generated, treated, stored, or disposed of, at any time between November 19, 1980, and the date of lodging of this Consent Decree, including: (a) the location; (b) the nature of the activity (e.g. generation, reclamation, treatment, storage, or disposal); (c) identification of waste (by RCRA characteristic and/or hazardous waste code); and (d) the manner in which waste was stored (e.g. waste pile, container).

Defendant hereby certifies that he has conducted a diligent review of all available records and other sources regarding information required in Exhibit B, and that the information in Exhibit B is complete and accurate, to the best of his information and belief. Exhibits C and D hereto (which identify those portions of the facility that must close and those that may continue to operate in accordance with the requirements of RCRA and this Consent Decree, and are described in paragraphs A.2. and A.3. below), are based in part on information in Exhibit B. Should Defendant discover additional information, or inaccuracies, regarding Exhibit B, Defendant shall promptly notify U.S. EPA. In the event that U.S. EPA or Defendant determines that the information in Exhibit B is incomplete or inaccurate, U.S. EPA may require revisions to Exhibits C and D, in which event the parties will seek modification of the Decree by the Court to conform the Decree to such revisions.

2. Exhibit C, which is attached hereto and incorporated herein by reference, identifies areas of the facility and hazardous waste management units which, due to loss of interim status or otherwise, Defendant must close in accordance with an approved closure plan (Section V.C.1.) and 40 CFR Part 265, subpart G, and OAC Rules 3745-66-10 through 3745-66-20. Areas which must close pursuant to this paragraph are hereinafter referred to as "Closing Hazardous Waste Units." Neither this paragraph nor paragraph A.3 below limits or modifies the State of

Ohio's authority relating to development, review and approval of closure plans for the facility.

3. Exhibit D, which is attached hereto and incorporated herein by reference, consists of the corrected Part A of the RCRA permit application for the facility, including a diagram. Exhibit D identifies, inter alia: (a) the nature of hazardous waste; (b) the volume of such waste; (c) the locations at the facility; and (d) the type of operations (storage or treatment), which existed at the facility on November 19, 1980 and which Defendant may continue after the Decree's entry, subject to the requirements of RCRA and this Consent Decree (including, but not limited to, Section V.G. and Section VII. E. and F. below). Hazardous waste storage and treatment units which, pursuant to this paragraph, Defendant may continue to operate after entry of this Consent Decree, are hereinafter referred to as "Operating Hazardous Waste Units."

B. General Facility Requirements

1. Within thirty (30) days after entry of this Consent Decree, Defendant shall develop and implement an inventory system that tracks all hazardous waste, and all material for reclamation other than hazardous waste, that is received, generated, or stored, at the facility, from the time of receipt or generation at the facility to the time of ultimate disposition. This inventory system shall include a container labelling and tracking system. All information required under this paragraph shall be

maintained in the facility's operating record, as required under 40 CFR 265.73 and OAC Rule 3745-65-73.

2. To the extent not provided under paragraph A.1. above, within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA an inventory of -- (a) all hazardous waste, and (b) all material for reclamation other than hazardous waste, -- that is currently at the facility, or which Defendant has, since November 19, 1980, treated, stored, or disposed of in a Closing Hazardous Waste Unit at the facility. The inventory shall, based on best information, include the nature and volume of the waste or material, the type of activity (treatment, storage, disposal), the manner in which the waste or material is or was handled (e.g., container, waste pile), and a diagram identifying the location of the waste or material.

3. Effective immediately upon entry of this Consent Decree, Defendant shall not accept from off-site or manage any hazardous waste except as specified in Part A of the permit application for the facility, attached hereto as Exhibit D, and addressed in the facility's waste analysis plan.

4. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to the Ohio Environmental Protection Agency ("Ohio EPA") annual reports for 1986, 1987, and 1988. Thereafter, Defendant shall submit to Ohio EPA reports as required by 40 CFR 265.75 and OAC Rule 3745-65-75. Copies of the reports required under this paragraph shall be concurrently submitted to U.S. EPA.

5. Defendant shall not accept hazardous waste at the facility or ship any hazardous waste from the facility unless it is manifested in accordance with the requirements of 40 CFR Part 262 and OAC Rule 3745-52 et seq.

6. Effective immediately upon entry of this Consent Decree, Defendant shall not (i) accept at the facility from off-site any hazardous waste, or any material other than hazardous waste for reclamation or for storage prior to reclamation or treatment, or (ii) crack batteries at the facility, until Defendant has fully complied with requirements of Section V., paragraphs E.3, E.4, F.1, and F.3, and has provided written certification of compliance to U.S. EPA. In addition, within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA, for approval, a plan which describes: (a) the proposed location and method for cracking batteries; (b) safeguards to prevent the release of acid or other hazardous constituents into the environment; and (c) the method for collection, storage, and neutralization of acid, in accordance with the requirements of RCRA. Within fifteen days after notification of any deficiency or required modification, Defendant shall submit to U.S. EPA a plan which corrects any such deficiency and makes any such modification. Upon approval by U.S. EPA, Defendant shall implement the approved plan. In addition, after July 31, 1990, Defendant shall not (i) accept at the facility from off-site any hazardous waste, or any material other than hazardous waste for reclamation or for storage prior

to reclamation or treatment, or (ii) crack batteries at the facility, unless Defendant is in compliance with Section V.E.5. below.

7. Effective immediately upon entry of this Consent Decree, as required by 40 CFR 265.31 and OAC Rule 3745-65-31, Defendant shall maintain and operate the facility to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous constituents to air, soil, or surface water, which could threaten human health or the environment.

8. Effective immediately upon entry of this Decree, Defendant shall regularly conduct inspections of the entire facility in accordance with 40 CFR 265.15(a) and OAC Rule 3745-65-15(a), to discover deterioration of containers or equipment, releases, malfunctions in monitoring, safety, or emergency equipment, and any other condition or event which may cause or lead to the release of hazardous waste or hazardous constituents into the environment or a threat to human health or the environment. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA for review and approval, and implement, an inspection plan and schedule for the facility. Defendant shall modify the inspection plan in accordance with any comments received from U.S. EPA within fifteen (15) days after receipt of any such comments. Defendant shall record observations from inspections as required by

40 CFR 265.15(b) and (d) and OAC Rule 3745-65-15(b) and (d), and shall, immediately upon detection, correct any problems or potential problems, as required by 40 CFR 265.15(c) and OAC Rule 3745-65-15(c).

9. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA certification that the facility contains all equipment required under 40 CFR 265.32 and OAC Rule 3745-65-32, an inventory of the equipment, and a diagram of the facility that shows the location of each piece of equipment.

10. Defendant shall, within thirty (30) days after the entry of this Consent Decree, submit to U.S. EPA for approval a written Contingency Plan which satisfies the requirements of 40 CFR 265.50 through 265.56 and OAC Rules 3745-65-50 through 3745-65-56. At the time of submittal to U.S. EPA, Defendant shall submit copies of the contingency plan to local emergency authorities, as required by 40 CFR 265.53 and OAC Rule 3745-65-53. Thereafter, Defendant shall modify the plan in accordance with 40 CFR 265.54 and OAC Rule 3745-65-54 and any comments from U.S. EPA, within fifteen (15) days after receipt of any such comments, and provide copies of any modifications to the plan to local emergency authorities upon any modification. Immediately upon entry of this Consent Decree (e.g. prior to approval of a contingency plan), Defendant shall comply with all contingency plan requirements.

11. Upon entry of this Consent Decree, the Defendant shall comply with training requirements at 40 CFR 265.16(a), (b), and (c), and OAC Rule 3745-65-16(a), (b) and (c), and maintain at the facility a written description of personnel training records and documents, as required by 40 CFR 265.16(d) and (e), and OAC Rule 3745-65-16(d) and (e).

12. Within thirty (30) days after entry of this Consent Decree, Defendant shall provide for facility security, in accordance with the requirements of 40 CFR 265.14 and OAC Rule 3745-65-14, including the requirement to maintain a fence in good repair.

13. Within sixty (60) days after the entry of this Consent Decree, Defendant shall maintain at the facility, and make available to U.S. EPA upon request, a written operating record which contains the information required under 40 CFR 265.73 and OAC Rule 3745-65-73, and the information required to be included pursuant to this Consent Decree.

14. Defendant shall retain a consultant or employee qualified to oversee the implementation of the requirements of this Consent Decree.

15. Prior to placing any hazardous battery casings or other hazardous waste in the rotary kilns, Defendant shall submit to U.S. EPA certification and documentation that this practice does not violate any permit requirement for the facility under the Clean Air Act, 42 U.S.C. §7401 et seq., and regulations promulgated thereunder, equivalent state law requirements, 40 CFR

Part 266, Subpart D, or OAC Rules 3745-58-40 through 3745-58-46, or any other Federal or State law, regulation, or permit. Compliance with this paragraph does not relieve Defendant from complying with the requirements for notice under any Federal or State law. Nothing in this paragraph shall constitute approval by U.S. EPA for such disposal or treatment activity.

C. Closure

1. Within sixty (60) days after entry of this Consent Decree, Defendant shall submit to Ohio EPA for approval a closure plan which meets the requirements of 40 CFR Part 265, Subpart G, and OAC Rules 3745-66-10 through 3745-66-20, for Closing Hazardous Waste Units (identified in paragraph A.2 above and Exhibit C hereto), and shall concurrently submit a copy thereof to U.S. EPA. Ohio EPA shall approve, disapprove, or modify the closure plan. Within thirty (30) days after any notification of disapproval, Defendant shall submit to Ohio EPA and U.S. EPA a revised closure plan which corrects any deficiencies identified by Ohio EPA. Upon receipt of Ohio EPA approval or modification of the closure plan, Defendant shall implement the closure plan in accordance with the schedule contained therein.

2. Within one-hundred and twenty (120) days after entry of this Consent Decree, as required by 40 CFR 265.112 and OAC Rule 3745-66-12, Defendant shall maintain at the facility a full facility closure plan, and, if necessary, post-closure plan, which provides for closure of all hazardous waste management units not included in the closure plan under Section V.C.1. above

(e.g. for all Operating Hazardous Waste Units, as defined in paragraph A.3. above and identified in Exhibit D thereto).

3. Within sixty (60) days after completion of closure of any hazardous waste management unit at the facility, Defendant shall submit to U.S. EPA and Ohio EPA certifications of closure for such waste pile or other hazardous waste unit, from the facility owner or operator and an independent engineer, in accordance with 40 CFR 265.115 and OAC Rule 3745-66-15.

D. Waste Characterization

1. Defendant shall complete waste determinations as required by 40 CFR 262.11 and OAC Rule 3745-52-11 for all solid waste generated at the facility (other than waste analyzed under paragraphs 4 - 6 below), including, but not limited to, sludge from drains, piping, catch basins, and sumps. Defendant shall maintain the results of these analyses in the facility's operating record, and shall submit the results to U.S. EPA within thirty (30) days after conducting the waste determinations.

2. Within sixty (60) days after the entry of this Consent Decree, Defendant shall, in accordance with 40 CFR 265.13(a) and (b), and OAC Rule 3745-65-13(a) and (b), develop and submit to U.S. EPA for approval a plan for the analysis of all hazardous waste except lead acid batteries as provided at 40 CFR 266.80, that is generated, received, or stored at the facility, and shall implement the plan as to all such waste generated or received from off-site after entry of this Consent Decree, or currently at the facility. Defendant shall modify the waste analysis plan in

accordance with any comments from U.S. EPA, within fifteen (15) days after receipt of such comments. Within sixty (60) days after U.S. EPA's approval or modification of the waste analysis plan, Defendant shall submit to U.S. EPA all information developed under the waste analysis plan as to waste currently at the facility. All information required by this paragraph shall be maintained in the facility's operating record.

3. Immediately upon entry of this Consent Decree, Defendant must store all slag generated at the facility, and all refractory brick removed from the furnaces, in containers, as defined at 40 CFR 260.10 and OAC Rule 3745-50-10 and managed in accordance with 40 CFR Part 265 subpart I, and OAC Rules 3745-66-70 through 3745-66-77, and manage such slag and brick as hazardous waste, unless and until analyses conducted in accordance with paragraphs D.4. and D.5. below establish that they do not exhibit the characteristic of EP toxicity for metals.

4. Each time Defendant removes refractory brick from furnaces at the facility, prior to disposal, Defendant shall test it to determine if it exhibits a characteristic for EP-toxicity for metals, and shall submit to U.S. EPA the results of these analyses within twenty (20) days after receipt of test results. Provided, however, Defendant shall submit test results to U.S. EPA within seventy-five (75) days after sampling. Defendant shall maintain the results of these analyses in the facility's operating record.

5. Defendant shall test slag generated at the facility to determine if it exhibits a characteristic for EP-toxicity for metals, a minimum of once per month, or every time a different waste stream is used in the rotary kiln, whichever is more frequent, and shall submit to U.S. EPA the results of these analyses within twenty (20) days after receipt of test results. Provided, however, Defendant shall submit results to U.S. EPA no later than seventy-five (75) days after sampling. Defendant shall maintain the results of these analyses in the facility's operating record.

6. Within forty-five (45) days after entry of this Consent Decree, Defendant shall test a representative sample of each type of battery casing at the facility to determine if they exhibit a characteristic for EP-toxicity for metals and corrosivity and shall submit to U.S. EPA the results of these analyses. Defendant shall maintain the results of these analyses in the facility's operating record.

E. <u>Waste Piles</u>

1. Effective immediately upon the entry of this Consent Decree, Defendant shall not add, place, treat, store, or dispose of, in a waste pile, any hazardous waste or any solid waste or other material, except for storage as provided below of waste that is in waste piles at the facility on the date of lodging of this Decree.

2. Immediately upon entry of this Consent Decree, Defendant shall manage the waste piles at the facility to prevent

and control wind dispersal, leachate creation, and run-on or run-off of leachate, as required by 40 CFR 265.251 and 265.253, and OAC Rules 3745-67-51 and 3745-67-53.

3. Within thirty (30) days after entry of this Consent Decree, Defendant shall remove from waste piles at the facility all solid waste, material, and hazardous waste other than china clay waste provided for in Section V.E.4. and V.E.5. below (designated in Exhibit C hereto). Defendant shall either: (a) transfer them from the waste piles into containers as defined at 40 CFR 260.10 and OAC Rule 3745-50-10, and managed in accordance with 40 CFR Part 265, subpart I, consistent with Part A of the RCRA permit application for the facility (Exhibit D hereto); (b) use them in the reclamation process at the facility; or (c) remove them from the facility and manage them in accordance with the requirements of RCRA and this Consent Decree. Thereafter, except as provided in paragraphs E.4. and E.5. below, Defendant shall not store waste in any waste pile or in any other land disposal unit at the facility.

4. Effective immediately upon entry of this Consent Decree, Defendant shall not add, place, accept, or dispose of any china clay waste at the facility, and shall not treat or store any china clay waste not present at the facility on the date of entry of this Consent Decree. Effective immediately upon entry of this Consent Decree, Defendant shall reclaim china clay waste on its facility at the optimum rate, as defined in the report by Hazen

Research, dated November 28, 1988, in its kilns, in compliance with all Federal, State, and local laws and regulations.

5. No later than July 31, 1990, Defendant shall remove all china clay waste piles from the facility. Prior to July 31, 1990, Defendant shall either: (a) transfer all china clay waste from the waste piles into containers as defined at 40 CFR 260.10 and OAC Rule 3745-50-10, and managed in accordance with 40 CFR Part 265, subpart I, consistent with Part A of the RCRA permit application for the facility (Exhibit D hereto); (b) use the china clay waste in the reclamation process at the facility; or (c) remove the china clay waste from the facility and manage it in accordance with the requirements of RCRA and this Consent Decree.

F. Containers

1. Within thirty (30) days after entry of this Consent Decree all hazardous waste except for the china clay waste, and all material for reclamation that exhibits a characteristic of hazardous waste, that is stored at the facility, shall be stored in containers, and staged, as provided in this paragraph. No later than July 31, 1990, all china clay waste stored at the facility shall be stored in containers, and staged, as provided in this paragraph. All containers shall be operated in accordance with the requirements of 40 CFR Part 265, subpart I, and OAC Rules 3745-66-70 through 3745-66-77. The container depicted in Exhibit E hereto is a container within the meaning of 40 CFR 260.10 and OAC Rule 3745-50-10 and, if operated in

compliance with the requirements of RCRA, including 40 CFR Part 265, subpart I, and OAC Rules 3745-66-70 through 3745-66-77, will satisfy the requirements of RCRA. Hazardous waste, and material for reclamation that exhibits a characteristic of hazardous waste, that is in containers which are not in good condition shall be transferred into containers in good condition, or overpacked. A container is not in good condition if it contains any leaks, holes, or bulges, is deteriorating, or otherwise appears structurally unsound. Containers which contain free liquids as defined by the Paint Filter Liquids Test (Test Methods for Evaluation of Solid Waste, U.S. EPA Publication SW - 846, test method no. 9095), shall be stored on pallets. As required by 40 CFR 265.173 and OAC Rule 3745-66-73, all containers shall be stored closed and secured, except when waste is being removed from or placed into containers. All containers shall be properly labelled.

2. Defendant shall not accept any hazardous waste, or material for reclamation that exhibits a characteristic of hazardous waste, at the facility from off-site unless it arrives in containers which are in good condition, or is placed into containers which are in good condition immediately upon arrival at the facility.

3. Within fifteen (15) days after entry of this Consent Decree, Defendant shall have all containers of ignitable and corrosive hazardous waste (hazardous waste codes D001 and D002) removed from the facility in accordance with all applicable

requirements, and shall submit to U.S. EPA copies of manifests for off-site transport of these hazardous wastes.

G. Financial Assurance and Insurance

1. Within sixty (60) days after the entry of this Consent Decree, Defendant shall submit to U.S. EPA written certification of compliance with liability coverage requirements of 40 CFR 265.147 and OAC Rule 3745-66-47 for the facility. Defendant shall maintain such liability coverage for as long as required under 40 CFR Part 265, subpart H, and OAC Rules 3745-66-40 through 3745-66-48.

2. If Defendant fails to obtain liability coverage satisfying the requirements of 40 CFR 265.147(a) and OAC Rule 3745-66-47(a) for all Operating Hazardous Waste Units within 180 days after entry of this Consent Decree, Defendant shall: (a) immediately cease operating, including adding waste to, all Operating Hazardous Waste Units (as defined in paragraph A.3); (b) remove all hazardous waste from such units within sixty (60) days (e.g. within 240 days after entry of this Decree), in accordance with the requirements of RCRA; and (c) commence closure of these units, in accordance with a closure plan approved under paragraph C.2. above, unless, within 180 days after entry of this Consent Decree, Defendant petitions the Court for a determination that relief other than that specified above would be the appropriate relief to be granted to Plaintiff for Defendant's failure to obtain liability coverage required by RCRA, 40 CFR 265.147 and OAC Rule 3745-66-47, and this

subparagraph, for its storage and treatment units; provided however, that the parties stipulate to the following:

(i) Defendant is required to obtain liability coverage pursuant to RCRA and 40 CFR 265.147 and OAC Rule 3745-66-47; and

(ii) Defendant has failed to obtain liability coverage required by 40 CFR 265.147 and OAC Rule 3745-66-47.

The procedures in this paragraph shall not prevent Plaintiff from pursuing, and Plaintiff hereby reserves the right to pursue, any relief that may be available for violations occurring after the date of entry of this Consent Decree.

3. Simultaneous with the submittal of any closure or post-closure plan pursuant to Section V.C.1, within one-hundred and twenty days after entry of this Consent Decree for a closure plan under Section V.C.2 above, and as required by 40 CFR 265.142(b) and OAC 3745-66-42(b), Defendant shall implement and shall submit to U.S. EPA and Ohio EPA certification that it has established financial assurance mechanisms for closure and post-closure care of the facility, respectively. Separate financial assurance mechanisms may be established for Closing Hazardous Waste Units (Section V.A.2.) and Operating Hazardous Waste Units (Section V.A.3.). The financial assurance mechanisms shall be established pursuant to the requirements of 40 CFR 265.142 through 265.146, and OAC Rules 3745-66-42 through 3745-66-46, provided however that the financial assurance mechanism for Closing Hazardous Waste Units may consist of an escrow account. Each certification shall include a detailed description of the proposed financial

assurance mechanism. Defendant shall make best efforts to fully fund the financial assurance mechanism(s) as expeditiously as practicable.

U.S. EPA shall approve or disapprove the proposed financial assurance mechanisms. Within fifteen (15) days after any notification of disapproval, Defendant shall submit to U.S. EPA a description of a financial assurance mechanism which corrects any deficiencies identified by U.S. EPA. Approval by U.S. EPA of any financial assurance mechanism under this paragraph shall not excuse any failure by the Defendants to satisfy closure and post-closure requirements under Section V.C.

VI. CIVIL PENALTY

Defendant shall pay a civil penalty of $20,000 to the United States of America. The payment, including interest on the second and third installments at the rate established under 31 U.S.C. §3717, shall be made in the form of three cashier's or certified checks each in the amount of $6900, payable to the "Treasurer of the United States of America" within one month, seven months, and thirteen months after entry of this Consent Decree, respectively, and shall be tendered to the United States Attorney for the Northern District of Ohio, at the address set forth in Section XIII. At the time of payment, a copy of such check shall be sent to U.S. EPA, at the address set forth in Section XIII.

VII. STIPULATED PENALTIES

A. The Defendant shall pay the following stipulated penalties:

1. For each day of failure to comply with any deadline for submitting plans, revised plans, certifications, or reports set forth in this Consent Decree:

Period of Failure to Comply	Penalty Per Day of Noncompliance
1st through 30th day	$ 100 per day
31st through 60th day	$ 500 per day
61st day and each day thereafter	$ 1,000 per day

2. For each failure to comply with any requirement set forth in this Consent Decree not addressed in Section VII.A.1. above, including any deadline in any plan required to be implemented pursuant to Section V of this Consent Decree:

Period of Failure to Comply	Penalty Per Day of Noncompliance
1st through 30th day	$ 1,000 per day
31st through 60th day	$ 1,500 per day
61st day and each day thereafter	$ 2,000 per day

B. If any plan or report required to be submitted to U.S. EPA under Sections V.B.6., V.B.8., V.B.10., V.D.2., and V.G.3. herein for approval pursuant to this Consent Decree is not approved by U.S. EPA upon its second submission after the entry of this Consent Decree (i.e., after U.S. EPA has made its second set of written comments after entry), then the submission shall be deemed inadequate and a violation of this Consent Decree, and shall be subject to stipulated penalties beginning thirty days

after Defendant receives notification from U.S. EPA that the second plan is inadequate.

C. All penalties begin to accrue on the day that performance is due or a violation occurs, and continue to accrue through the final day of correction of the violation.

D. Stipulated penalties shall accrue during any dispute resolution proceeding after Defendant has filed a petition with the Court pursuant to Section XV.C. If Defendant does not prevail, Defendant shall pay all accrued sums, with interest at the rate set forth at 31 U.S.C. §3717.

E. Defendant shall exercise best efforts to obtain and maintain liability coverage required by 40 CFR 265.147 and OAC Rule 3745-66-47. If after exercise of best efforts, Defendant is not offered liability coverage which satisfies the requirements of Section V.G.1. (liability coverage for sudden and nonsudden accidental occurrences), then, subject to the requirements of this paragraph, and except as provided in paragraph F below, no stipulated penalty shall be payable for noncompliance with any requirements of Section V.G.1. for Operating Hazardous Waste Units or Closing Hazardous Waste Units for which liability coverage was not offered.

Within sixty (60) days after entry of this Consent Decree, one-hundred and twenty (120) days thereafter, and every one-hundred and eighty (180) days subsequent (until Defendant obtains the required liability coverage or certifies compliance with closure and post-closure responsibilities, whichever occurs

first), Defendant shall provide to U.S. EPA written certification of its good faith and best efforts to satisfy the 40 CFR 265.147 and OAC Rule 3745-66-47 requirements for liability coverage for sudden and non-sudden accidental occurrences. The certifications shall, at a minimum, include the following:

1. copies of each request or application for liability coverage under RCRA, by or on behalf of the Defendant to a company, agent, or consultant;
2. copies of all responses from Defendant's consultants, and from companies and agents, to the requests referred to in paragraph 1 above, including price quotations and any explanations of why Defendant's requests or applications are not granted;
3. identification of the reasons given for a company denying liability coverage, and any preconditions to obtaining coverage;
4. a detailed description of measures taken and to be taken by Defendant to meet any preconditions to eligibility for liability coverage; and
5. a statement by an authorized official that Defendant exercised best efforts to obtain liability coverage which satisfies all requirements of 40 CFR 265.147 and OAC Rule 3745-66-47.

The first certification submitted under this paragraph shall cover the period from the date the Complaint was filed, to the date of certification. The second certification shall cover

the previous four months. All subsequent certifications shall cover the previous six months.

Defendant shall continue to make best efforts to satisfy liability coverage requirements and shall continue to submit certifications, under the terms set forth above, until the facility obtains the required insurance, or, until the Regional Administrator notifies Defendant pursuant to 40 CFR 265.147(e), within sixty (60) days of Defendant's certification that facility closure and, if necessary, post-closure responsibilities, are fulfilled, and that liability coverage is no longer needed.

F. Notwithstanding the provisions of paragraph E above, stipulated penalties shall accrue for operation of any Operating Hazardous Waste Unit at the facility which does not satisfy the liability coverage requirements of Section V.G.1. and which fails to comply with the requirements of Section V.G.2.(a) - (c) above, 180 days following entry of this Consent Decree, unless the Court has granted relief pursuant to Section V.G.2., above.

G. Stipulated penalties under this Section shall be paid by certified check payable to the "Treasurer of the United States of America". Payment shall be tendered to the United States Attorney, Northern District of Ohio, at the address set forth in Section VIII, within fifteen (15) days after the noncompliance period, or, if applicable, after resolution by the Court in accordance with Section VII.D. above, and Section XV. A copy of the transmittal document and check shall be mailed to U.S. EPA, Region V, at the address set forth in Section VIII. The

transmittal document shall identify this action, the requirement of this Consent Decree which was not complied with, the date(s) of non-compliance, and the amount of payment.

H. The stipulated penalties set forth above shall not preclude U.S. EPA from pursuing any other remedies or sanctions, including contempt proceedings, which may be available to the Plaintiff by reason of the Defendant's failure to comply with the requirements of this Consent Decree or RCRA.

VIII. SUBMITTALS

Any document or other item required by this Consent Decree to be submitted to U.S. EPA, Ohio Environmental Protection Agency ("Ohio EPA"), the United States Attorney for the Northern District of Ohio, or the United States Department of Justice, shall be mailed or otherwise delivered to the following persons at the addresses set forth below:

Branch Chief
U.S. EPA, Region V
RCRA Enforcement Branch, 5HR-12
230 South Dearborn Street
Chicago, Illinois 60604

Section Chief
Ohio Environmental Protection Agency
Division of Solid and Hazardous
Waste Management
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43265-1049

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Hazardous Waste
2110 East Aurora Road
Twinsburg, Ohio 44087-1969

United States Attorney
for the Northern District of Ohio
1404 East Ninth Street
Cleveland, Ohio 44114

United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Delivery shall be considered complete upon deposit of the material at issue in the U.S. Mail, certified mail, or with a reputable delivery service.

All plans required by this Consent Decree shall become enforceable requirements of this Consent Decree upon U.S. EPA approval and written notification of approval to the Defendant.

Any correspondence that is to be directed to the Defendant shall be sent to the following:

Douglas Mickey, President
Master Metals, Inc
2850 W. Third Street
Cleveland, Ohio 44113

Michael A. Cyphert, Esq.
Thompson, Hine and Flory
1100 National City Bank Building
Cleveland, Ohio 44114

IX. ACCESS TO THE FACILITY AND SAMPLES

A. U.S. EPA, Ohio EPA, and their respective employees, contractors, and authorized representatives shall have access to the facility at all reasonable times for the purposes of inspecting, sampling, and evaluating compliance with the provisions of this Consent Decree, including the right to

photograph and review and copy sampling data and other records. In addition, Defendant shall insure that such persons have the authority to inspect at all reasonable times laboratories used by Defendant or its contractors for analyses. U.S. EPA and Ohio EPA employees, contractors, and other authorized representatives, shall have the right to take splits of any samples taken by the Defendant or its contractors in the course of performing work required by this Consent Decree. U.S. EPA shall be given at least ten (10) days notice prior to any sampling relating to closure required under this Consent Decree. Except as provided otherwise herein, Defendant shall provide U.S. EPA results of all analyses within fifteen (15) days after receiving the results from the laboratory.

B. This Section in no way limits any right of entry available to U.S. EPA or Ohio EPA pursuant to applicable Federal or State laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. §6927.

X. REPORTING

A. Beginning the fifteenth day of the month following entry of this Consent Decree, and every thirty (30) days thereafter until termination of this Consent Decree, Defendant shall submit to U.S. EPA a description of the measures Defendant has taken in accordance with this Consent Decree during the previous thirty (30) days and a status report for compliance with the requirements of the Consent Decree.

B. Within thirty (30) days after the date for completion of any requirement contained in this Consent Decree, including any requirement in a plan developed hereunder (other than a requirement to submit a document to U.S. EPA), Defendant shall notify U.S. EPA in writing of compliance or noncompliance with said requirement. If any required action has not been taken or completed in accordance with any schedule, Defendant shall notify U.S. EPA of the reasons for any failure to complete such activity, the measures Defendant has taken toward meeting the requirement, the projected date for completion, and the probability of meeting the next requirement in the schedule. The notification does not excuse any noncompliance. If the compliance status changes with respect to any requirements of the Consent Decree, Defendant shall also notify U.S. EPA in writing of the change in compliance status.

C. All submittals made under Section X shall be signed by a responsible agent of the facility and shall include the following certification statement:

"I certify that the information contained in or accompanying this (submission) (document) is true, accurate, and complete."

XI. RESERVATION OF RIGHTS AND OBLIGATION TO COMPLY WITH ALL LAWS

A. Plaintiff does not waive any rights or remedies, and this Consent Decree is without prejudice to Plaintiff's rights and remedies, including, but not limited to: (1) the right to impose any permit requirements, including corrective

action requirements under Section 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v); (2) the right to take any action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, Pub L. 99-499 (hereinafter "CERCLA"); (3) the right to require corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. §6928(h); and (4) the right to pursue remedies available to the United States for any violation by Defendant of this Consent Decree, or of any Federal or State law, regulation, or permitting condition, not specifically alleged in the Complaint and resolved by this Consent Decree.

B. The execution or performance of this Consent Decree by Defendant shall not constitute an admission of any fact or legal issue, or of any liability or wrongdoing relating to the Master Metals facility. Defendant expressly reserves the right to raise all legal and equitable rights, claims and defenses which it may have under RCRA or any other legal authority in any proceeding, other than one to enforce the requirements of this Consent Decree except to the extent permitted herein, and except to the extent inconsistent with the terms of this Consent Decree.

C. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable Federal, State and local laws, regulations, and permit conditions. This Consent Decree is neither a permit nor a modification to a permit.

XII. PRECLUSION OF CLAIMS AGAINST THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

Defendant agrees not to make any claims pursuant to Sections 106(b), 111 or 112 of CERCLA, 42 U.S.C. §§9606(b), 9611 or 9612, or any other provision of law directly or indirectly against the Hazardous Substance Response Trust Fund established by CERCLA for costs incurred in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 CFR 300.25(d).

XIII. COSTS

Each party to this action shall bear its own costs and attorney's fees.

XIV. MODIFICATIONS

No requirement or provision of this Consent Decree shall be modified except upon written agreement by the parties and further order of this Court, or upon order by this Court under Section XV herein (Dispute Resolution).

XV. DISPUTE RESOLUTION

A. In the event that the parties cannot resolve a dispute with respect to this Consent Decree, then the interpretation advanced by the United States shall be considered binding unless Defendant invokes the dispute resolution provisions of this Section.

B. If in the opinion of any party there is a dispute with respect to this Consent Decree, that party shall send a written notice to the other party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was sent unless the parties agree otherwise.

C. If the informal negotiations are unsuccessful, Plaintiff's position shall control unless Defendant files with the court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Defendant's petition must be filed no more than twenty (20) days after termination of informal negotiations. Plaintiff shall then have twenty (20) days to respond to the petition. In any such dispute, Defendant shall have the burden of proving that Plaintiff's position is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

D. Invocation of the dispute resolution provisions of this Section shall not extend or postpone any deadlines affected by the dispute.

XVI. FORCE MAJEURE

A. A "Force Majeure" event for purposes of this Decree is defined as any event that is caused by circumstances entirely beyond the control of Defendant or any entity controlled by or under the common control of Defendant including the Defendant's consultants and contractors, and that Defendant could not have

foreseen and prevented, that delays or prevents the performance of any obligation under this Consent Decree.

B. When circumstances are occurring or have occurred that can reasonably be anticipated to cause a delay in achieving any requirement set forth in this Consent Decree, or in any plan developed hereunder within the time allowed under the Decree, whether or not due to a "Force Majeure" event, Defendant shall promptly notify U.S. EPA -- in no event later than two business days (for verbal notification) and five business days (for written notification) after Defendant obtains information indicating that a delay reasonably can be anticipated to be encountered. The required written notice shall include a detailed explanation of the precise cause(s) for and anticipated duration of any such delay; the measures taken and to be taken by Defendant to prevent or minimize the delay; the timetable for implementation of such measures; the anticipated date such requirement will be achieved; a statement as to whether Defendant is claiming a "Force Majeure"; and the bases for Defendant's claim of "Force Majeure". The Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Failure to notify within the time period specified above shall constitute a waiver of any claim of "Force Majeure." Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

C. If the United States agrees that a delay is or was attributable to a "Force Majeure" event, the parties shall, by written agreement, modify the compliance schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the required activity and/or any succeeding phase of the activity affected by such delay, not to exceed the actual duration of the delay.

D. If the United States and Defendant are unable to agree as to whether the reason for the delay was a "Force Majeure" event, or on a stipulated extension of time, then the Dispute Resolution provisions of Section XV shall apply. Defendant shall have the burden of demonstrating that the event was a "Force Majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension period is appropriate.

E. Increased costs of complying with this Consent Decree, or Defendant's financial inability to carry out the provisions of this Consent Decree, shall not be considered a "Force Majeure" event.

XVII. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XVIII. TERMINATION

Within thirty (30) days after Defendant judges it has fully complied with all of the requirements of this Consent Decree other than reporting, and is continuing to comply with the reporting requirements of this Consent Decree, it shall submit to U.S. EPA a certification of compliance. If U.S. EPA concurs that Defendant has fully satisfied the requirements of this Consent Decree, the parties shall file a joint motion with the Court to terminate this Consent Decree.

XIX. NOTICE REQUIREMENTS

The parties acknowledge that final approval by the United States and the entry of this Consent Decree are subject to the Public Notice and Comment requirements of 28 CFR 50.7.

FOR THE UNITED STATES OF AMERICA

RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice

FOR DEFENDANT, MASTER METALS

DOUGLAS W. MICKEY
President, Master Metals
8/29/89

WILLIAM J. EDWARDS
Acting United States Attorney
Eastern District of Ohio

EDWARD E. REICH
Acting Assistant Administrator for
Enforcement and Compliance Monitoring
United States Environmental Protection
Agency

VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

BARBARA A. ROGERS
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

STUART HERSH
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

ENTERED, this _____ day of _____

JUDGE ALICE M. BATCHELDER
United States District Court Judge

OhioEPA
State of Ohio Environmental Protection Agency
P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

May 27, 1988

RECEIVED
JUN 23 1988
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

RELEASED
DATE 5/8/98
RIN # 1971-98
INITIALS tjs

Mr. William E. Muno, Chief
RCRA Enforcement Section
U.S. EPA, Region V
230 S. Dearborn Street
Chicago IL 60604

Dear Mr. Muno:

U.S. EPA is currently pursuing a Department of Justice (DOJ) RCRA enforcement action against Master Metals located at 2850 West 3rd Street, Cleveland, Ohio 44113.

During a complaint investigation on September 4, 1987 Ohio EPA personnel sampled two waste piles at a demolition dump. The waste was rotary kiln furnace slag transported from the Master Metals facility. Analytical results received on October 5, 1987 indicated that the waste piles contained materials which are EP toxic for lead and cadmium. In addition, there is evidence of "battery cracking" at the Master Metals facility. Information concerning these matters is attached.

Ohio EPA is requesting that U.S. EPA pursue enforcement of these violations in the context of U.S. EPA's current enforcement action against Master Metals.

Please contact Dave Sholtis of my staff at (614)644-2944 if you have any questions or need additional information.

Sincerely,

Michael A. Savage

Michael A. Savage, Manager
Surveillance & Enforcement Section
Division of Solid and Hazardous Waste Management

MS/JM/drr

1945S(15)

cc: Dave Sholtis/Jeff Mayhugh, DSHWM
Catherine McCord, USEPA, Region V
Mark Bergman/Debby Berg, NEDO
RF

Yellow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

APR 12 1989

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Master Metals

FROM: Stuart P. Hersh SPHersh

TO: Helen Keplinger

This is in response to Linda Parker's request for a bullet memorandum regarding a description of the Master Metals (MM) facility, and a discussion of significant issues in the draft Consent Decree. I understand that Linda has recently left the Agency.

Background

- MM is the only facility in the United States which recycles low-grade lead-bearing wastes and still meets air emissions standards. One other facility has this capability (ALCO Pacific in California), with the same type of rotary furnace smelter. Apparently, however, ALCO has been taking primarily high-grade lead wastes. The remaining 17 secondary lead smelters in the country can only accept high-grade lead wastes.

- MM was in bankruptcy from 1983-1988.

- A total of six hazardous waste piles were identified in the referral, two containing K069 and four containing D008. However, as explained in the referral, only the two piles containing K069 hazardous waste were in violation of the LOIS provisions, and only these two were therefore alleged in the Complaint as LOIS violations.

- The litigation team discovered that "working piles", other than the six waste piles identified, may have been created day-to-day. Consequently, the draft Consent Decree at Section VI.A.1(a) requires MM to identify all treatment, storage or disposal areas since November 19, 1980.

Operation of the Facility

- Except for those areas presently being used for container and tank storage, all identified treatment,

storage or disposal areas must close under the terms of the Decree.

- Prior to accepting hazardous lead wastes from off-site, all lead bearing wastes at the site, except china clay wastes, must be removed from waste piles and either placed in containers and tanks, or properly disposed of or recylced. In addition the D001 and D002 wastes must be properly disposed of. Decree at Section VI.A.7. MM claims to have completed these tasks.

- In addition, prior to accepting hazardous lead wastes from off-site, MM must stop accepting any lead-bearing china clay wastes, and must have a schedule to remove all china clay wastes from waste piles by no later than July 31, 1990. MM has committed to not accept any china clay waste shipments, and is planning to recycle the lead in the china clay wastes by July 31, 1990. To accomplish this recycling, MM is preparing to construct a new large smelter in full compliance with federal, state and local requirements.

- The approximately one (1) year life of this china clay waste pile poses minimal environmental risks because the leachable lead content of the waste is small, lead is stable except in an acidic environment, and because the process for determining and remediating any lead releases at the facility would be initiated immediately upon signing the Consent Decree as part of the closure activities for the other waste piles.

- All lead wastes to be accepted at the MM facility must either arrive in containers, or immediately upon arrival be placed in containers or tanks. Section VI.E.3.

- MM has submitted a Part B application for the storage of lead wastes in tanks and containers, which is being reviewed by EPA and Ohio.

- By continuing to accept hazardous lead wastes, MM will continue its recycling operations, thereby generating funds to close not only the two waste piles identified in the Complaint, but all waste piles at the facility. These closure activities would be akin to a corrective action and would include sampling and remediation. In addition, the funds will allow MM to construct the new smelter, to purchase tanks and containers, and to complete other activities pursuant to the Consent Decree.

- To recycle lead in the china clay without harming the smelter, high lead content wastes must be added. China clay, apparently, may adhere to the fire brick under

certain conditions. A computer generated schedule by a consultant to defendant indicates that china clay lead can be recycled in the new smelter by July 31, 1990. However, present stocks of higher lead content wastes necessary for this operation would be exhausted in a matter of days (for battery plates) to a couple of months (for moderate lead content wastes). These stocks must be replenished to enable MM to recycle the china clay wastes.

Benefits of Settlement as Proposed

- Societal benefit - Recycling of wastes, particularly hazardous waste, has long been strongly encouraged by Congress and the EPA. By allowing MM to continue accepting lead wastes, we are fulfilling this objective for lead wastes in general, and for the lead wastes presently at the MM facility. This is particularly important since MM is the only facility in the country recycling low-grade lead-bearing wastes.

- Site-specific benefit - Continued operation of the facility will provide for expeditious clean-up of the site, closure of the waste piles and payment for these activities by MM. If the facility is required to cease operations, this site will likely become a Superfund site. MM does not now have the funds to close the entire site properly, and, therefore, the cost may fall upon the Hazardous Substance Response Trust Fund pursuant to CERCLA. However, a clean-up action would be considerably delayed, since we understand that listing on the NPL and performance of an RI/FS could take five or more years.

Financial Liability Insurance Requirements

- The existing waste piles are required to have both sudden and non-sudden accident liability insurance, pursuant to 40 C.F.R. 265.147(a) and (b).

- MM is required to obtain sudden accident liability insurance for the containers and tanks, pursuant to 40 C.F.R. 265.147(a), but is not required to obtain non-sudden accident liability insurance coverage (265.147(b)).

- The Consent Decree requires MM to obtain required liability insurance coverage within 60 days after entry of the Consent Decree (Section VI.F.1.).

- If MM "is not offered" the appropriate insurance coverage, after best efforts to obtain it, no

stipulated penalty is payable for failure to comply with Section VI.F.1. (Section VIII.E). The best efforts demonstration is extensively defined in Section VIII.E., with a re-demonstration required every 180 days. The provision to waive stipulated penalties is a recognition of the practical reality that the insurance industry generally has not been offering such insurance coverage for most of the hazardous waste industry. This is particularly true when coverage is sought for a hazardous waste management unit which is also the subject of litigation with the Federal government, and for which a pre-existing condition, or existing contamination, may be hard to define (as in the case of the waste piles).

- The prospect of MM obtaining the required insurance for its tanks and containers is somewhat better than for the waste piles, though still uncertain. The tanks and containers present a more definable risk by the insurance industry, and the amount and type of coverage required for tanks and containers is less than for waste piles.

Proposal for Redrafting Insurance Provision

In response to our earlier discussions, we propose to redraft the provision of the Consent Decree regarding the liability insurance requirement for tanks and containers by adding a reservation of rights, effective if MM fails to obtain the required insurance within 180 days following entry of the Consent Decree, and after reasonable notice to MM. The reservation would allow the government, at its discretion, to assess stipulated penalties or pursue other relief to enforce the liability insurance coverage requirements for the tanks and containers.

It is doubtful MM would accept this proposal. MM would assume that the government would act after the 180 days, in the event MM is not offered insurance. The remedy would almost certainly be severe enough to force MM out of business. This remedy would come after MM makes commitments to purchase the new smelter, tanks, containers, and other items pursuant to the Consent Decree. MM may decide it could receive more equitable treatment from a federal court. It is unclear whether the court would accept or reject an "impossibility" argument under these circumstances.

MM does not seriously dispute the requirement to have insurance, but strongly disagrees with what is an appropriate remedy for failing to have the insurance, particularly where, as here, the insurance has not been offered. As a fall-back position, I believe the litigation team can reach agreement with MM to certify, after the 180 days, this matter to the Court for a

ruling on the appropriate remedy. The parties would stipulate that MM is required by law to obtain sudden liability insurance coverage for its tanks and containers, and that MM does not have the insurance. MM would accept the remedy imposed by the Court, even if it means closing the facility.

The benefits of certifying the remedy issue to the Court after the 180 days are threefold. First, it is consistent with agency policy and regulations requiring this insurance coverage. Second, this is an opportunity for MM to attempt to obtain the insurance. Third, scarce Agency resources are preserved by having only a limited hearing on the issue of remedy for failure to obtain the insurance. The drawbacks of certifying the remedy issue to the Court include the uncertainties of litigation, which are compounded by strong equities for MM and by a Judge who previously has ruled unfavorably on environmental issues (see Reilly Tar, 1988).

Nonetheless, if we are unable to reach a settlement, this issue will be litigated. The Court has set trial in this matter for September 1989, and has made clear that no extension of the trial date will be permitted. Consequently, the litigation team must take steps in the immeadiate future to prepare for trial. The litigation team must know, by April 14, 1989, whether the proposed language in the draft Consent Decree, for dealing with MM's inability to obtain insurance, will be acceptable to the Agency.

cc: Robert Schaefer
Mike Elam
Mike Smith
Lynn Peterson
Bill Muno
Kevin Pierard
Catherine McCord
Scott Fulton
Barbara Rodgers
Arthur Harris
Glenn Unterberger
Bruce Diamond
Jack Winder
Jacki Tenusak

OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office
10 E. Aurora Road
Twinsburg, Ohio 44087
(216) 425-9171

TO: SB

Richard F. Celeste
Governor

October 13, 1989

Re: Master Metals
Cuyahoga County
OHD 097-613-871
GEN TSD

Mr. Douglas Mickey
Master Metals
2850 West Third Street
Cleveland, Ohio 44113

Dear Sir:

On August 31, 1989, I conducted a hazardous waste inspection of your Master Metals facility located at 2850 West Third Street in Cleveland, Ohio. Mr. Seda Ergun, Mr. Dan Banaszek and you represented your facility during my inspection. Your facility was inspected compliance with Ohio Hazardous Waste Regulations. A copy of my RCRA Inspection Report is enclosed for your information. Please address the following violations and concerns:

1) Contingency Plan - "Refusals to Respond" OAC 3745-65-37.

Written agreements with all local or state emergency authorities must be documented in your contingency plan. If any emergency authority refuses to respond to an emergency situation, then this refusal must be documented as specified in this regulation.

2) Closure Plan - OAC 3745-66-12
OAC 3745-66-11

The current closure plan for this facility is not accurate with the facility operations. A closure plan is presently being revised which should describe in detail how each unit is being closed, how they will meet the requirements of OAC 3745-66-11, will estimate the maximum amount of hazardous waste in inventory, decontamination of ally systems and appropriate structures, the year closure is to begin, schedule for closure, and needed groundwater monitoring, leachate collection, run-off control and submittal to the Director of the Ohio EPA 180 days prior to beginning the closure process.

RECEIVED
OCT 17 1989
OHIO EPA
DIV OF SOLID &
HAZ WASTE MGMT

3) Waste Pile on an Impermeable Base, Run-on/Run-off - OAC 3745-67-53

The remaining waste piles are not on a base which can be documented to be impermeable. Supposedly the lead waste streams are on concrete, however, the condition of the concrete has not been properly assessed. There is no diking around the waste pile to prevent run-on control. The system currently being used for run-off control is plastic sheeting over the piles. This minimizes rainwater contacting the waste pile, however, does not totally control run off as specified in the regulations.

4) Condition of Portable Bins - OAC 3745-66-71
OAC 3745-66-73

Two of the portable bins had tarps which were not providing adequate protection from the elements. Bin #6 had hundreds of small holes from hot waste loads. Even though a portion of the tarp is under an overhanging roof, precipitation could still contact the stored hazardous wastes. Bin #9 had a tarp which was too short to cover the entire bin. Precipitation could easily contact the hazardous waste here and puddled leachate water was noted adjacent to this bin. This water should be analyzed as required by OAC 3745-52-11 and disposed of properly. Doors on the front of these bins would keep these containers closed as required. Some of the plastic over the drums of hazardous waste were not preventing rainwater form entering these drums.

I also have the following concerns about your facility:

5) Hazardous Waste Labels

Drums and boxes of non-hazardous wastes were labeled with hazardous waste labels. This is not an acceptable practice. Only containers of hazardous waste are to be labeled as hazardous waste. Non-hazardous stickers are available on the market if you want to label the non-hazardous waste streams.

6) Condition of Non-Hazardous Drums

Several drums of non-hazardous wastes remain on-site. the condition of some of these drums is very poor. Processing of these non-hazardous waste streams would eliminate these containers. Or you may want to transfer the contents of these leaky containers into good conditioned, closed containers.

Yellow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

APR 12 1989

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Master Metals

FROM: Stuart P. Hersh SPHersh

TO: Helen Kepfinger

This is in response to Linda Parker's request for a bullet memorandum regarding a description of the Master Metals (MM) facility, and a discussion of significant issues in the draft Consent Decree. I understand that Linda has recently left the Agency.

Background

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- MM was in bankruptcy from 1983-1988.

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- The litigation team discovered that "working piles", other than the six waste piles identified, may have been created day-to-day. Consequently, the draft Consent Decree at Section VI.A.1(a) requires MM to identify all treatment, storage or disposal areas since November 19, 1980.

Operation of the Facility

- Except for those areas presently being used for container and tank storage, all identified treatment,

storage or disposal areas must close under the terms of the Decree.

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- All lead wastes to be accepted at the MM facility must either arrive in containers, or immediately upon arrival be placed in containers or tanks. Section VI.E.3.

- MM has submitted a Part B application for the storage of lead wastes in tanks and containers, which is being reviewed by EPA and Ohio.

- By continuing to accept hazardous lead wastes, MM will continue its recycling operations, thereby generating funds to close not only the two waste piles identified in the Complaint, but all waste piles at the facility. These closure activities would be akin to a corrective action and would include sampling and remediation. In addition, the funds will allow MM to construct the new smelter, to purchase tanks and containers, and to complete other activities pursuant to the Consent Decree.

- To recycle lead in the china clay without harming the smelter, high lead content wastes must be added. China clay, apparently, may adhere to the fire brick under

certain conditions. A computer generated schedule by a consultant to defendant indicates that china clay lead can be recycled in the new smelter by July 31, 1990. However, present stocks of higher lead content wastes necessary for this operation would be exhausted in a matter of days (for battery plates) to a couple of months (for moderate lead content wastes). These stocks must be replenished to enable MM to recycle the china clay wastes.

Benefits of Settlement as Proposed

- Societal benefit - Recycling of wastes, particularly hazardous waste, has long been strongly encouraged by Congress and the EPA. By allowing MM to continue accepting lead wastes, we are fulfilling this objective for lead wastes in general, and for the lead wastes presently at the MM facility. This is particularly important since MM is the only facility in the country recycling low-grade lead-bearing wastes.

- Site-specific benefit - Continued operation of the facility will provide for expeditious clean-up of the site, closure of the waste piles and payment for these activities by MM. If the facility is required to cease operations, this site will likely become a Superfund site. MM does not now have the funds to close the entire site properly, and, therefore, the cost may fall upon the Hazardous Substance Response Trust Fund pursuant to CERCLA. However, a clean-up action would be considerably delayed, since we understand that listing on the NPL and performance of an RI/FS could take five or more years.

Financial Liability Insurance Requirements

- The existing waste piles are required to have both sudden and non-sudden accident liability insurance, pursuant to 40 C.F.R. 265.147(a) and (b).

- MM is required to obtain sudden accident liability insurance for the containers and tanks, pursuant to 40 C.F.R. 265.147(a), but is not required to obtain non-sudden accident liability insurance coverage (265.147(b)).

- The Consent Decree requires MM to obtain required liability insurance coverage within 60 days after entry of the Consent Decree (Section VI.F.1.).

- If MM "is not offered" the appropriate insurance coverage, after best efforts to obtain it, no

stipulated penalty is payable for failure to comply with Section VI.F.1. (Section VIII.E). The best efforts demonstration is extensively defined in Section VIII.E., with a re-demonstration required every 180 days. The provision to waive stipulated penalties is a recognition of the practical reality that the insurance industry generally has not been offering such insurance coverage for most of the hazardous waste industry. This is particularly true when coverage is sought for a hazardous waste management unit which is also the subject of litigation with the Federal government, and for which a pre-existing condition, or existing contamination, may be hard to define (as in the case of the waste piles).

- The prospect of MM obtaining the required insurance for its tanks and containers is somewhat better than for the waste piles, though still uncertain. The tanks and containers present a more definable risk by the insurance industry, and the amount and type of coverage required for tanks and containers is less than for waste piles.

Proposal for Redrafting Insurance Provision

In response to our earlier discussions, we propose to redraft the provision of the Consent Decree regarding the liability insurance requirement for tanks and containers by adding a reservation of rights, effective if MM fails to obtain the required insurance within 180 days following entry of the Consent Decree, and after reasonable notice to MM. The reservation would allow the government, at its discretion, to assess stipulated penalties or pursue other relief to enforce the liability insurance coverage requirements for the tanks and containers.

It is doubtful MM would accept this proposal. MM would assume that the government would act after the 180 days, in the event MM is not offered insurance. The remedy would almost certainly be severe enough to force MM out of business. This remedy would come after MM makes commitments to purchase the new smelter, tanks, containers, and other items pursuant to the Consent Decree. MM may decide it could receive more equitable treatment from a federal court. It is unclear whether the court would accept or reject an "impossibility" argument under these circumstances.

MM does not seriously dispute the requirement to have insurance, but strongly disagrees with what is an appropriate remedy for failing to have the insurance, particularly where, as here, the insurance has not been offered. As a fall-back position, I believe the litigation team can reach agreement with MM to certify, after the 180 days, this matter to the Court for a

ruling on the appropriate remedy. The parties would stipulate that MM is required by law to obtain sudden liability insurance coverage for its tanks and containers, and that MM does not have the insurance. MM would accept the remedy imposed by the Court, even if it means closing the facility.

The benefits of certifying the remedy issue to the Court after the 180 days are threefold. First, it is consistent with agency policy and regulations requiring this insurance coverage. Second, this is an opportunity for MM to attempt to obtain the insurance. Third, scarce Agency resources are preserved by having only a limited hearing on the issue of remedy for failure to obtain the insurance. The drawbacks of certifying the remedy issue to the Court include the uncertainties of litigation, which are compounded by strong equities for MM and by a Judge who previously has ruled unfavorably on environmental issues (see Reilly Tar, 1988).

Nonetheless, if we are unable to reach a settlement, this issue will be litigated. The Court has set trial in this matter for September 1989, and has made clear that no extension of the trial date will be permitted. Consequently, the litigation team must take steps in the immeadiate future to prepare for trial. The litigation team must know, by April 14, 1989, whether the proposed language in the draft Consent Decree, for dealing with MM's inability to obtain insurance, will be acceptable to the Agency.

cc: Robert Schaefer
Mike Elam
Mike Smith
Lynn Peterson
Bill Muno
Kevin Pierard
Catherine McCord
Scott Fulton
Barbara Rodgers
Arthur Harris
Glenn Unterberger
Bruce Diamond
Jack Winder
Jacki Tenusak

CC → USA ORC

City of Cleveland

GEORGE V. VOINOVICH, MAYOR

JAMES J. McNAMEE
CHIEF

CHRIS J. GANCE
FIRE MARSHAL

DIVISION OF FIRE
FIRE PREVENTION BUREAU

1645 SUPERIOR AVENUE • CLEVELAND, OHIO 44114
TELEPHONE: (216) 664-6664

ALL-AMERICA CITY

RECEIVED
OCT 17 1988
OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION V

October 13, 1988

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, OH 44113

RE: 2850 West 3rd. Street

Dear Mr. Mickey:

A recent inspection of the subject location by Inspector Zahrodonij, of the Division of Fire, revealed the following violations of the Municipal Code, and the methods for correcting them:

Hazardous Materials

1. Abandoned ammonia storage tank. Municipal Code 3101.10(e). Remove ammonia storage tank.

2. No tank installation permits. Municipal Code 381.05(a). Obtain tank installation permits for the following tanks: A) (T-7) 500 gallon above ground oil tank; B) (T-8) 250 gallon above ground hydraulic oil tank.

3. No permits for the storage and use of hazardous materials. Municipal Code 3105(a). Obtain permits for the storage and use of the following hazardous materials:

   Liquid Oxygen (LOX) Liquid oxygen and natural gas piping shall be marked in accordance with ANSI A 13.1, "Scheme for the Identification of Piping Systems". Signage shall clearly establish the location and identity of sectional shutoff valves.

   Flammable and combustible liquids. Before permits are issued for the storage and use of flammable and combustible liquids, the following shall be met:

The dispensing units for unleaded and diesel fuel are to be repaired. All electrical wiring is to conform to National Fire Protection Association 70 and National Fire Protection Association 30A. Stanchions are to be placed as to prevent vehicular damage. Emergency shut off switches are to be clearly identifiable as per National Fire Protection Association 30, 1984, chapter 4. Proper illumination and "NO SMOKING" signs are to be provided. A minimum of 5BC extinguisher is to be in the immediate vicinity. A proper daily inventory is to be maintained as per Article 28 of the Ohio Fire Code. A "precision" test as per National Fire Protection Association 329 will also be needed on both tanks, product and vent piping due to inadequate inventory practices and neglect of equipment.

Proper storage and quantities of hydraulic and lubricating oils and any other flammable or combustible liquid or solid must also be addressed.

Corrosives: Quantities and location of corrosives on hand will be needed to make an evaluation. Storage will be required as per the Municipal Code and the Ohio Fire Code.

Unfired pressure vessels: Proper storage and separation of oxygen, propane and acetylene will be evaluated. Amounts and locations will be needed. Uses and safety procedures on oxygen and fuel gases are to be as per National Fire Protection Association 51B. Uses and safety procedures for propane and industrial powered trucks utilizing propane are to meet the requirements of National Fire Protection Association 505 and National Fire Protection Association 58.

Poisons: All poisons (i.e., arsenical compounds) shall be stored in a one (1) hour fire resistive enclosure with natural or mechanical ventilation to the outside atmosphere. Storage of other hazardous material or any storage other than poisons is not permitted in this room.

All lead, dross and lead oxides from the bag house are to be stored in properly labeled containers.

In addition, all containers are to be properly labeled and packaged as per Congressional Federal Register 49. Damaged containers are to be replaced. All packaging shall be such as to prevent inadvertent leakage. All empty rusting drums are to be removed. There will be a minimal discharge of any hazardous material to the atmosphere, soil and sewer system. All requirements of the EPA, Air Pollution, OSHA and Regional Sewer are to be adhered to.

In the event of a discharge, the Fire Department is to have first notification.

Containers of ORM-E materials have been accepted into the facility improperly labeled. Transportation of improperly labeled hazardous material is in violation of the Department of Tranportation/Congressional Federal Register 49. Improperly labeled containers shall not be accepted. **The Fire Prevention Bureau is to be notified of all such containers.**

Building Construction

4. Unsafe structures. Municipal Code 3101:10(a). Repair or raze all unsafe structures on the premises. A certified Architect or Structural Engineer is to make recommendations and determine the structural stability of all damaged structures. Immediate contact with the Building Department is to be established concerning this matter.

Combustible Waste and Debris

5. Excessive accumulations of combustible waste and debris is to be removed throughout. Housekeeping needs attention. If the "round house" is to be used as a storage facility, it will then have to meet those requirements.

RIGHT TO KNOW

A. Locator list of all hazardous and toxic chemicals has not been submitted to the Fire Prevention Bureau. Section 393.07(a). Submit two (2) notarized copies of the locator list to the Fire Prevention Bureau.

B. No National Fire Protection Association 704 placard in the work area. Section 393.06(d). Post N.F.P.A. 704 warning placard in each work area.

C. No hazard communication program. Section 393.05(b). Implement a hazard communication program and submit a written copy to the Fire Prevention Bureau.

D. No sign has been posted to inform employees they have a right to information on the toxic or hazardous effects of chemicals in the work place. Section 393.05(a). Post a sign to inform employees they have a right to know the hazards of the chemicals in accordance with the code.

E. No label, tag or markings on the containers with the chemical name or common name. Section 393.06(a)(1). Label, tag or mark each container with the chemical name or common name.

F. Work area does not have a list posted of all hazardous or toxic chemicals which are used in the work area. Section 393.05(c). Post a list of all hazardous or toxic chemicals used in the work area.

G. Material Safety Data Sheet file is not maintained in the work place. Section 393.08(b). Obtain a copy of the M.S.D.S. for each hazardous or toxic chemical used in the work place and ensure they are readily accessible to employees.

H. Failure to submit an annual registration form and registration fee to the Commissioner of Assessments & Licenses. Section 393.11(a). Submit a registration form and fee to the Commissioner of Assessments & Licenses in accordance with the fee structure of Section 393.11(b). NOTE: S.I.C. 20-39 are exempt from submitting registration form and paying a fee.

I. No record of employee training. Section 393.09(c). Maintain a written record of employees trained, the date the training took place, the name and qualifications of the trainer and the subjects covered.

If there are any questions, please call Inspector Zahrodonij at 664-6664.

Sincerely,

James J. McNamee, Chief
Division of Fire

JJM/pjp

cc: Fire Marshal Chris J. Gance
Lt. Scott, FPB
Mark Bergman, Ohio EPA (Twinsburg)
Katherine McCord, U.S. EPA
Rich Connally, Regional Sewer
Inspector Zahrodonij
file

CMEL, ID, ISS LDF

OhioEPA
te of Ohio Environmental Protection Agency
Northeast District Office
E. Aurora Road
sburg, Ohio 44087-1969
(216) 425-9171

extra copy

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

September 30, 1988

RE: MASTER METALS
CUYAHOGA COUNTY
OHD 097-613-871
GEN-TSD

CERTIFIED MAIL

Mr. Doug Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Dear Mr. Mickey:

On 26 August 1988, I conducted a hazardous waste inspection of your Master Metals facility located at 2850 West 3rd Street in Cleveland, Ohio. Mr. Seda Ergun of Envisage and you represented this facility during my inspection. The facility was inspected for compliance with Ohio Hazardous Waste Regulations. A copy of the RCRA Inspection Report is enclosed for your information. These following violations and concerns noted in my report will require prompt attention:

Descriptions

1. Waste Stream Analysis - OAC 3745-65-13 - 40 CFR 265.13

   Master Metals must have detailed waste analysis available on each waste stream accepted by your facility. This documentation must be available for review on-site.

2. Waste Analysis Plan - OAC 3745-65-13 - 40 CFR 265.13

   Master Metal's waste analysis plan must be revised to better address incoming hazardous waste streams. The current plan does not require enough information to maintain adequate knowledge and controls on these hazardous waste streams.

3. Contingency Plan - OAC 3745-65-52 - 40 CFR 265.52

   The Contingency Plan must contain documented agreements with all local and State emergency authorities which will respond in the event of an emergency.

4. Operating Record - OAC 3745-65-73 - 40 CFR 265.73

Master Metals current operating record addresses the incoming inventory, however, does not address the materials which are fed into the furnaces. An accurate on-site inventory could not be provided during this inspection. The operating record is to be revised to satisfy this requirement.

5. Annual Operating Report - OAC 3745-65-75 - 40 CFR 265.75

The facility was unable to provide documentation during my inspection that the 1987 Annual Report was submitted to the Ohio EPA before March 1, 1988. Please submit this required report if it has not yet been submitted.

6. Closure Plan - OAC 3745-66-12 - 40 CFR 265.112

Master Metals must have a complete closure plan which addresses partial closure and full closure of all hazardous waste units. The maximum inventory in the current Part "A" does not agree with the closure plan. The closure plan needs to be revised and closure of the battery cracking/ storage areas plus the removed waste piles should have been submitted to the Regional Administrator/Director 180 days prior to closing these ares. Obviously, we are beyond that point, so please submit appropriate closure plans as soon as possible.

7. Closure Trust Fund - OAC 3745-66-43 - 40 CFR 265.143

A partial closure trust fund has been established for $21,000.00 under a U.S. EPA agreement. Master Metals should up-date this amount to cover a full closure. The cost estimate must continue to be revised on an annual basis, which will accurately reflect the cost of a full closure. Documentation showing correction of this violation should also be submitted to Jennifer Kwasniewski (DSHWM) of our Columbus Office .

8. Container Storage - OAC 3745-66-71 and OAC 3745-66-73, 40 CFR 265.171 and 40 CFR 265.173

Numerous drums contained hazardous waste materials which did not have lids. Some of these drums were covered with large sheets of plastic. Some of the plastic covered drums were not preventing rainwater from entering the drums. The plastic had blown away from some of the drums and other drums did not have any coverings. Numerous drums were noted in poor and leaking condition. Several cardboard boxes containing hazardous waste materials were spilled and leaking solid materials.

9. Aisle Space - OAC 3745-65-35 - 40 CFR 265.35

A large area of drums at the rear of the facility were double stacked on skids. The limited aisle space was inadequate to allow proper inspection of all drums. The drums should not be more than two deep between aisles.

10. Inspections and Personnel Training - OAC 3745-66-74 - 40 CFR 265.174
OAC 7345-65-16 - 40 CFR 265.16

The documented inspections conducted on the storage areas did not indicate spills, leaks, inadequate aisle space, uncovered drums, blowing plastic covers, etc. The inspection forms should include these problems and the date of remediation. The inspector needs to be better trained to properly record the inspection results. Leaving sections of the form blank is not appropriate when a specific block (acceptable or not acceptable) is to be checked.

11. Waste Piles - OAC 3745-67-53 - 40 CFR 265.253
OAC 3745-67-51 - 40 CFR 265.251

The waste piles had plastic sheets with weights holding them down. The base of the piles had some exposed waste materials. These methods are not adequate to meet the requirements of these rules (i.e. protection from wind disperial and precipitation). Removal and formal closure of these waste pile areas is the best solution to this problem.

12. Part "A"

The Part "A" on file with the Ohio EPA does not accurately describe the current Master Metals facility operation. An up-dated Part "A" must be filed with the Director of the Ohio EPA.

13. Lead Furnace Slag Pile

The nonhazardous lead slag pile is immediately beside a pile of lead feed stock. The two piles intermix along one side. This could easily cause the nonhazardous slag waste to exceed the E.P. Toxic standards for lead. These two piles must be kept separated to prevent erroneous testing results. Where the materials have commingled, Master Metals should manage the mixed materials as hazardous waste.

14. Storage Bins

The three-sided storage bins were originally scheduled to have tarped tops to prevent wind dispersal and precipitation complications. Your current methods of draping thin gauge plastic over the pile within the bin seems very inefficient. Eventually the workers will leave the piles uncovered for short or long periods of time and the winds or rains will cause problems. Please consider a more efficient methods to keep the materials in the bins protected. Each bin must be labeled adequately to indicate that it contains hazardous waste so that it is clearly identified from other wastestreams.

15. Flammable Waste Stream - Ohio Revised Code 3734.02(F) - OAC 3745-66-71/40 CFR 265.171

Master Metals does not have a permit allowing acceptance of D001 (FLAMMABLE WASTES). Dozens of drums from a company named Alcolac in Sedalla, Missouri were labeled D001. Several of these drums were leaking a liquid material onto the ground. You were unable to tell me if the D001 was properly labeled. These drums could pose a very serious threat to your facility and employees. If these drums were mislabeled,, then they must be correctly labeled. If the material is flammable, then the waste material be securely containerized, properly labeled and removed to a facility licensed to handle this waste stream. It is of great concern to me that your facility accepted these drums without question. It is of further concern that they are stored in such a haphazard fashion.

16. Labeling on Containers

Several of the hazardous waste containers in storage had no labeling to indicate the contents. The wording "Hazardous Waste" was not maintained on these containers. The U.S. EPA identification number of the waste material or the name of the waste was not indicated on several of the drums.

17. Security Fence - OAC 3745-65-14 - 40 CFR 265.14

The chainlinked fence along the railroad tracks has a few areas where a child could easily crawl underneath. One area had about an 18 inch gap between the ground and the bottom of the fence. This situation should be rectified to provide better security.

18. Spillage - OAC 3745-52-11 - 40 CFR 262.11

A puddle of liquid material was noted on the ground. It was adjacent to the waste pile returned by Marks Cement. Introduction of pH paper showed a pH of at least 10 (MAXIMUM INDICATION COLOR OF THIS pH PAPER). Contact with this alkaline puddle could cause burns or blisters to on-site personnel. The source of this puddle needs to be determined and rectified to prevent future problems. The liquid also must be properly characterized and handled in accordance with applicable rules.

19. Underground Tank

A plastic lined underground cement tank was recently installed to collect acid run-off from the new battery cracking operation. I advised you to refer to the new underground tank regulations, because you appear to be in violation of secondary containment requirements. You may also need a leak detection system. U.S. EPA Region V could give you more specific guidance on the new underground tank regulations.

In summary, the Master Metals facility has shown some improvement in the past year, however, some very serious violations were found during this inspection. A copy of this letter and the RCRA Interim Status Inspection Form is being forwarded to the U.S. EPA so they may work with you in resolving your compliance problems. I advise you to correct the above listed concerns as soon as possible. If I may be of further assistance you can contact me at (216) 425-9171. Currently there is still on issue as to the regulatory status of the 3-sided bins as potential "waste piles". This issue will be addressed as part of the U.S. EPA negotiations.

Sincerely,

Mark Bergman by D Berg

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste
Management

MB/sp

Enclosure

cc: Dave Sholtis, DSHWM, Central Office
Catherine McCord, U.S. EPA, Region V
Ollie Zahorodny, Cleveland Fire Department
Cleveland Air Agency
Ms. Rachael Fish, OSHA

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Sincerely,

Mark Bergman by DBeg

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste
Management

190-201

MB/sp

Enclosure

cc: Dave Sholtis, DSHWM, Central Office
Catherine McCord, U.S. EPA, Region V
Ollie Zahorodny, Cleveland Fire Department
Cleveland Air Agency
Ms. Rachael Fish, OSHA

OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office
10 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

RECEIVED
JUL 27 1988
OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION V

July 22, 1988

RE: MASTER METALS
CUYAHOGA COUNTY

CERTIFIED MAIL

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Dear Mr. Mickey:

On April 28, 1988, I conducted an unannounced visit of your facility. Mr. Joe Seldom and you represented your facility. I viewed the area where the waste piles from the Marks Cement Site are stored. Please keep this waste protected from the rainfall. You should wait until you receive written approval from the Ohio EPA before you remove or process this waste pile.

I also saw the future industrial battery cracking area which is still under construction. During the interim, battery cracking has continued at the rear of your property. Acid from some of the batteries was dripping onto the ground. Large puddles of water were around this vicinity (possibly 20 ft. X 20 ft. and two inches deep). The puddles were partially on cemented areas, however, had drained onto some dirt covered areas. When I introduced several strips of litmus paper, the color indicated a pH of 2 or less, consistantly around the batter cracking area. The large pile of internal battery grids was unprotected on the ground also. I could not determine if it was on cement or dirt.

Your facility was requested in my letter dated March 24, 1987, to cease battery cracking until proper permits are obtained. Your operation remains in direct violation violation of:

1. Waste Pile Storage 40 CFR 265 Subpart L
2. Land Treatment of Acids 40 CFR 265 Subpart M
3. Unpermitted disposal and storage of hazardous waste 40 CFR 270 & 265 and ORC (3745.02E)

Your facility must cease cracking batteries immediately and undertake clean-up as instructed by U.S. EPA. This letter is being referred to our enforcement section in Columbus and the U.S. EPA - Region V.

Sincerely,

Mark Bergman / K. C.

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste Management

cc: Jeff Mayhugh, DSHWM, Central Office
Catherine McCord, U.S. EPA - Region V
Debby Berg, DSHWM, NEDO

MB/sp

State of Ohio Environmental Protection Agency
theast District Office
..10 E. Aurora Road
Twinsburg, Ohio 44087
(216) 425-9171

Richard F. Celeste
Governor

July 22, 1988

RE: MASTER METALS
CUYAHOGA COUNTY
OHD 907-613-871
GEN-TSD/LAND UNIT

Mr. Doug Mickey
Master Metals
2850 West Third Street
Cleveland, Ohio 44113

Dear Sir:

On September 1, 1987, I conducted a hazardous waste inspection of your Master Metals facility located at 2850 West Third Street, Cleveland, Ohio. On October 20, 1987, your facility submitted a response to my inspection. This letter is a response to your October 20th submittal only and is not intended as an evaluation of your current compliance status with other applicable regulations. I offer the following comments from my review:

1) Personnel Training — OAC 3745-65-16, CFR 265.16

The training refresher offered to all plant and manufacturing employees dealt with OSHA requirements of personal safety. However, there was no documentation addressing each job title's specific responsibilities, no review of the Contingency Plan and no indication that proper handling of hazardous wastes was included in the training, plus no training qualifications of Mr. Fink or Mr. Munson. This violation remains outstanding.

2) Job Descriptions — OAC 3745-65-16, 40 CFR 265.16

The job descriptions appear satisfactory.

3) Posted Signs — OAC 3745-65-14, 40 CFR 265.14

The requirements for this violation appear to have been satisfied, however, there were no photos verifying the posting of these signs. Please provide these photos as documentation of a return to compliance.

4) Inspection Plan — OAC 3745-65-15, 40 CFR 265.14

Your facility submitted an inspection plan. It is questionable if this plan is being properly used due to the unacceptable state of the drum storage area during my April 28, 1988 visit.

5) Inspection Reports — OAC 3745-65-15, 40 CFR 265.15

According to the job responsibilities of the plant manager, he is the only person responsible for inspection reports. Mr. Van Buskirk and you do not have job responsibilities which include daily and weekly inspections. Either the job responsibilities need to be revised or only the plant manager must conduct the inspections.

6) Safety Equipment — OAC 3745-65-33, 40 CFR 265.33

The safety equipment weekly inspection form is acceptable, however, it must be filled out properly. The filled out form (10/9/87) was not properly completed:

A) No indication if the fire extinguishers are charged full.

B) No indication if the paging system is operational.

C) No indication if bulbs needed were replaced and if so, when did the remedial action occur?

Properly filling out and understanding this inspection form should be included in your training program. Please provide copies of recent inspection forms showing that the above items are being addressed.

7) Contingency Plan — OAC 3745-65-52, 40 CFR 265,52

The signed documented agreements with local and state emergency authorities are to be maintained in the Contingency Plan. You did not have copies of the signed forms (these should be submitted to my attention). Also, please forward a copy of your Contingency Plan to my attention for our agency files.

8) Operating Log — OAC 3745-66-12
40 CFR 265.112

I am in receipt of your log form; however, copies of completed log forms should be submitted (month of June to present) in order to verify your compliance with this requirement.

9) Closure Plan — OAC 3745-66-12
40 CFR 265.112

The closure plan of the waste piles must be filed officially with the Director of the Ohio EPA as well as USEPA Regional Administrator. The closure plan should address the items contained in the attached document. It is my understanding that your facility is accepting K069 material from off-site locations. This should not be occurring until you have written approval from the USEPA and the Ohio EPA.

10) Final Assurance — OAC 3745-66-43
40 CFR 265.143

You submitted information indicating that Master Metals does not currently have a closure trust fund in place. You should resolve this with Ms. Susan McDowell of our Central Office. You should also address your inability to obtain non-sudden liability insurance (OAC 3745-66-47/40 CFR 265.147).

11) Closure Cost Estimate — OAC 3745-66-43
40 CFR 265.143

Your facility has shown detailed closure costs for the partial closure of the waste piles. Closure must be completed within 180 days of approval or a waiver must be requested from the Director of the Ohio EPA.

12) Drum Condition — OAC 3745-66-71
40 CFR 2265.171

Drums in poor condition were noted during USEPA's visit on May 4, 1988.

13) Inspections — OAC 3745-66-74
40 CFR 265.174

You submitted a copy of a completed inspection form. Please submit a copy of the April 28, 1988, inspection report to see if notations were in agreement with what I viewed that day.

14) Wind Dispersal OAC 3745-67-51
40 CFR 265.251

Tarping has been used to control wind dispersal, however, the bottoms of the piles were not completely covered during USEPA's visit on May 4, 1988.

15) Run-on and run-off Control 40 CFR 265.253

Tarping is being used to control precipitation. Further improvements will be necessary to bring this requirement into compliance. These above comments are being forward to the USEPA and the Ohio EPA enforcement section for their consideration.

Sincerely,

Mark Bergman / KC

Mark Bergman, R.S.
Environmental Scientist
Division of Solid & Hazardous Waste Management

MB:mo

Enclosure

cc: Jeff Mayhugh, CO
Catherine McCord, USEPA, Chicago

MASTER METALS
U.S. Ceramic Tile
Chemclear

U.S. Department of Justice

DTB:BAR:lls
90-7-1-376
90-7-1-390

RECEIVED
JUN 29 1988
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

Washington, D.C. 20530

June 24, 1988

Catherine McCord
Environmental Scientist
U.S. Environmental Protection Agency
Region V
RCRA Enforcement 5HE-12
230 South Dearborn Street
Chicago, Illinois 60604

John Van Vrankin
Associate Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Kathy Sutula
Art Harris
Assistant United States Attorneys
Northern District of Ohio
1404 East Ninth Street
Cleveland, Ohio

Stuart Hersch
Chuck McKinley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Re: Ceramic Tile, Master Metals, and ChemClear: Loose Ends

Dear Catherine, John, Stuart, Chuck, Art, and Kathy:

As you know, I will be out of the office on a detail at the U.S. Attorney's office until sometime in November. During my absence, Bob Oakley (FTS 633-4081) is the DOJ attorney assigned to these cases. If I need to be reached, Bob will know where to reach me. A few notes on the status of these cases:

Master Metals

1. As you know, Art Harris is lead.

2. Catherine - we still need to provide defendant comments on their draft closure plan.

3. I will have a disc with the Consent Decree sent to Region V, so that revisions can be made there. If you do not receive the disc soon, please call my secretary, Linda Smith, at 633-4113. Also, since the computers often drop things or disorganize documents being copied onto discs, I suggest that you compare your most recent draft of the Decree to that on the disc.

4. On June 20 Mike Cyphert called concerning scheduling negotiations. I suggested that a conference call be set up in the middle of the week of June 27, 1988, when Catherine will be available by phone (FTS 774-6319), and told him he could expect a call from Art concerning possible times. He said that he would try to provide us with written comments on the Consent Decree by the end of this week. The primary concerns he expressed related to timetables under the Decree, the prohibition against accepting or cracking batteries until specified measures have been taken, the requirement that present inventory be used before accepting new inventory, and the requirement that the waste piles be depleted in short order.

5. Status conference: July 1, 1988 status (8 am).

6. OSHA was out there again.

Ceramic Tile

1. The Decree has been approved, and will be sent to Kathy for signatures and filing on June 24, 1988. Bob Oakley will inform Kathy if we get any comments, so that Kathy can request entry when the 30 day comment period runs. Someone - please let defendants know as soon as the decree is entered, since that starts the running of deadlines.

2. Exhibits to decree -- John agreed to get from Robert Swale and forward to Kathy the Closure Plan and Conditions of Closure Plan Approval, to be filed as exhibits to the Consent Decree.

3. Confidential documents: to the best of my knowledge, John, Kathy, and I are the only people who have copies of the confidential documents that defendants produced subject to the stipulation and protective order. Each of us will send these to defendants, per the order.

4. Please pay our consultant at Geoscience - we may need him again sometime.

5. Financial assurance for closure -- we never finalized this with defendant. John agreed to take the lead in resolving this

aspect of the decree with defendants. John - enclosed are copies of correspondence and documents from defendants, and my handwritten notes, concerning defendants' proposals for financial assurance for closure. You should already have copies of the documents defendants produced during discovery concerning their financial condition. In any event, Mary Schaffer, financial analyst with the Antitrust Division, is very familiar with this matter, has copies of all of these documents, and is available for consultation at FTS 724-7876. She is expecting a call from you. When I last spoke with defendants' counsel, I notified them that we had not rejected their proposals out of hand, and that some combination of the two proposals may be a possibility. As we discussed, as to defendants' proposal that they commit to spend one-fourth of the closure costs each year, I suggest that rather than dividing expenditures evenly over the four years, the expenditures should correspond to the actual amounts defendants have to spend annually under the closure plan. I expect that expenditures will be weighted toward the first year. As to their proposal that the U.S. be given a second mortgage on their equipment, please clear this at DOJ and EPA. In the event that this approach is acceptable, the burden of liquidating should be on defendants, not on the U.S.

ChemClear

1. As you know, Art Harris is lead.

2. Please discuss proposed changes to the Consent Decree with Bob Oakley, and keep him appraised of the status of the case generally.

3. The Complaint needs to be filed soon.

Have a great summer.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: Barbara Rogers

Barbara Rogers, Attorney
Environmental Enforcement Section

Enclosures
cc: Bob Oakley

RCRA CONSENT AGREEMENT AND FINAL ORDER SIGN-OFF

PART I BACKGROUND

Facility Name MASTER METALS INC CLEVELAND, OHIO

Facility RCRA ID Number OHD 097 613 871

Docket Number

REB Assignee CATHERINE McCORD 64436 ORC Assignee JOHN VANVRANKEN

Summary of Agreement SETTLEMENT OF CIVIL JUDICIAL ACTION - USE OF HW MANAGEMENT UNITS THAT LOST INTERIM STATUS; CLOSURE OF UNITS; COMPLIANCE SCHEDULE FOR OPERATING

PART II CONCURRENCES ON DRAFT CAFO

	Initials	Date	Agree	Disagree
REB Assignee	CM	6/1/88	✓	
Chief, RCRA Enf. Section	CJL with changes	6/3/88	✓	
Chief, RCRA Enf. Branch	JB	6-3-88	✓	
Asst. Regional Counsel				
Chief, S.W.E.R. Section				

PART III RETURN TO ORC ASSIGNEE FOR TRANSMITTAL OF DRAFT TO THE FACILITY

PART IV FINAL CAFO APPROVAL

REB Assignee				
Chief, RCRA Enf. Section				
Chief, RCRA Enf. Branch				
Assoc. Dir., Office of RCRA				
Asst. Regional Counsel				
Chief, S.W.E.R. Section				
Chief, S.W.E.R. Branch				
Deputy, Regional Counsel				
Regional Counsel				
Director, WMD				
Regional Administrator				

PART V RETURN TO D. REAPE, 5HS-13, FOR MAILING

ϕ, N, ISS LDE

OhioEPA
State of Ohio Environmental Protection Agency
O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

14

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

May 27, 1988

Mr. William E. Muno, Chief
RCRA Enforcement Section
U.S. EPA, Region V
230 S. Dearborn Street
Chicago IL 60604

Dear Mr. Muno:

U.S. EPA is currently pursuing a Department of Justice (DOJ) RCRA enforcement action against Master Metals located at 2850 West 3rd Street, Cleveland, Ohio 44113.

During a complaint investigation on September 4, 1987 Ohio EPA personnel sampled two waste piles at a demolition dump. The waste was rotary kiln furnace slag transported from the Master Metals facility. Analytical results received on October 5, 1987 indicated that the waste piles contained materials which are EP toxic for lead and cadmium. In addition, there is evidence of "battery cracking" at the Master Metals facility. Information concerning these matters is attached.

Ohio EPA is requesting that U.S. EPA pursue enforcement of these violations in the context of U.S. EPA's current enforcement action against Master Metals.

Please contact Dave Sholtis of my staff at (614)644-2944 if you have any questions or need additional information.

Sincerely,

Michael A. Savage

Michael A. Savage, Manager
Surveillance & Enforcement Section
Division of Solid and Hazardous Waste Management

MS/JM/drr

1945S(15)

cc: Dave Sholtis/Jeff Mayhugh, DSHWM
Catherine McCord, USEPA, Region V
Mark Bergman/Debby Berg, NEDO
RF

ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE, SUITE 210 • BEDFORD, OHIO • 44146
(216) 439-5959

RECEIVED
U.S. EPA REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

April 29, 1988

Mark Bergman, R.S.
Environmental Scientist
Division of Solid & HAzardous Waste
Management
OHIOEPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, OH 44087-1969

Re: Mark's Cement Complaint #815

ATTENTION: Mark Bergman

Thank you for the letter mailed to me certified and registered dated April 18, 1988 to my office.

It is true that I met with Debby Berg, Dave Wertz and yourself. It is also true I was representing Mark's Cement and that Doug Mickey from Master Metals joined the meeting forty-five minutes after it began.

We certainly discussed the fact that the recovered wastes were returned to Master Metals on or about Friday March 25th. What surprised me is that you, Debby Berg and Dave Wertz asked me for answers to questions you already knew for forty-five minutes.

You knew before you asked me that the wastes were returned to Master Metals on March 25, 1988. What was the purpose of closely questioning me about this entire matter when you have already discussed these facts with Douglas Mickey on Friday March 25th and again Monday March 28th.

It was certainly stated that the EPA required additional information on the sampling of this waste material. What is also true is that the Closure report submitted to you on or about December, 1987 apparently had not been read by either Debby Berg or Dave Wertz as they both stated several times they had never read this report. Why does the EPA need additional information when they have not read Mark's Cement Demolition Fill Site Sampling Plan already submitted?

Prior to my meeting with Mr. David Wertz I discussed with him on the telephone March 27th the fact that we have submitted a great deal of information and he at that time indicated to me that he had not read the report. Had not enough time

passed between our telephone discussion and the meeting for him to read this report?

It is not true that during the meeting I acknowledged that Mark's Cement, Inc. would submit a form of Closure Plan in accordance with CFR 40 Section 265 Subpart G. What I remember is that you handed me a guidance document during the meeting. The contents of which I had not read prior to or during the meeting.

I am in the process of reviewing the Closure Plan and will contact you concerning this situation in the near future.

Sincerely,

Robert Otto Carson

Robert Otto Carson

ROC/tyl

cc: Dave Sholtis, DSHWM, Central Office
Catherine McCord, U.S. EPA-Region V
Dave Lipstreu, Aurora City Hall
Doug Mickey, Master Metals
Mark Meyers, Mark's Cement, Inc.
Debby Berg, DSHWM, NEDO

Robert to Carson
Attorney At Law
653 Broadway, Suite 210
Bedford, Ohio 44146

CLEVELAND, OH
PM
13 MAY
1988

Domestic USA

#4

Catherine McCord
U.S. EPA- Region V
230 South Deerborn
Chicago, Illinois 60604

5/20/88

Barbara and John, enclosed are wish-list items for CD.

Master Metals
Consent Decree

-Defendant shall, within 15 days of the effective date of this Consent Decree, submit to U.S. EPA and Ohio EPA a revised Part A of a hazardous waste permit application to include all current and past, but not closed, hazardous waste management units. The facility's Part A shall be modified again after the closure of each waste management units. The location of these units are to be indicated on the permit application.

-Defendant shall only store or treat hazardous waste in tanks or containers as defined by 40 CFR 260.10. All tanks will be operated in accordance with applicable requirements of 40 CFR 265, Subpart J. All containers will be managed in accordance with requirements of 40 CFR 265, Subpart I. All leaking containers or containers in poor condition shall be repackaged or overpacked within thirty (30) days of the effective date of this Consent Decree.

- Within thirty (30) days, of the effective date of this Consent Decree, all containers will be stored and staged in the container storage area(s).

- Within thirty (30) days, of the effective date of this Consent Decree, all waste stored in containers will be stored on pallets and the container storage area will be bermed.

- Defendant shall not accept any waste from off-site until all on-sitewaste is moved from waste piles into containers and all existing containers that are in poor or leaking condition have been repacked or overpacked.

- Defendant shall keep all container closed and secured, with drum rings for open-top drums, unless waste is being removed or placed in the containers.

- Defendant shall only open batteries to remove acid in a manner that allows all acid to be immediately collected in a tank or container that is composed of materials compatible with such materials. Batteries shall no longer be cracked open on the ground and battery acid is not to be spilled or neutralized on the ground.

-Defendant shall, within 30 days of the effective date of this Consent Decree, submit a closure plan for the facility. This closure plan shall address closure of the entire facility or any areas that hazardous waste has been treated, stored, or disposed, including but not limited to battery storage areas, battery cracking areas, waste pile areas, container storage areas.

-Defendant shall, within 30 days of the receipt of disapproval by U.S. EPA, modify the closure plan to reflect comments presented by U.S. EPA in the disapproval letter.

-Defendant shall implement the facility's U.S. EPA-approved closure plan within 15 days of approval.

- Defendant shall test all refractory brick removed from the facility's kilns prior to disposal. All refractory brick is to be managed as hazardous waste until chemical analysis demonstrates that the waste does not exhibit a characteristic of hazardous waste.

-Defendant shall, within thirty (30) days of the effective date of this Consent Decree, provide for facility security as required by 40 CFR 265.14.

-Defendant shall, within thirty (30) days of the effective date of this Consent Decree, maintain adequate aisle space between all aisles of containers to allow for inspection and movement of spill control equipment.

-Defendant shall test slag generated at the facility for EP toxicity metals once per month or every time a different waste stream used in kiln.

- Defendant shall within thirty (30) days of the effective date of this Consent Decree, submit to U.S. EPA an inspection plan for the facility.

- Defendant shall immediately cease placing battery casings in the rotary kilns. This practice may resume upon demonstration to U.S. EPA that the facility is in compliance with air permit requirements and with requirements of 40 CFR 266, Subpart D.

-Defendant shall, within fifteen (15) days of the effective date of this Consent Decree, test current and old battery casings located at southwest corner of facility and any other casings for the characteristics of hazardous waste.

-Defendant shall, upon the effective date of this Consent Decree, store all slag generated at the facility in containers or tanks until tested for the characteristics of hazardous waste.

- Defendant shall, within thirty (30) days of the effective date of this Consent Decree, have an independent environmental audit performed at the facility. All conclusions, reports, and recommendations resulting from this audit are to be submitted to U.S. EPA.

-Defendant shall, immediately upont the effective date of this Consent Decree, maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-

sudden release of hazardous waste or hazardous waste constituents to air, soil, or surace water.

- Defendant shall, within thirty (30) days of the effective date of this Consent Decree, submit to U.S. EPA documentation that all required equipment of 40 CFR 265.32 is in place at the facility. This documentation shall include an inventory and facility map showing their location.

- Defendant shall, within fifteen (15) days of the effective date of this Consent Decree, shall develop and implement a waste inventory system that tracks all waste received, is generated, or is in storage, at the facility. This inventory system shall include a container labelling and tracking system.

- Defendant shall, within fifteen (15) days of the effective date of this Consent Decree, submit to U.S. EPA an inventory of all waste currently at the facility by container, waste pile, or tank.

- Defendant shall, within thirty (30) days of this effective date of this Consent Decree, submit to U.S. EPA a revised waste analysis plan that fufills the requirements of 40 CFR 265.13. All information required by this provision shall be maintained in the facility's operating record.

- Defendant shall, within thirty (30) days of the effective date of this Consent Decree, submit to U.S. EPA waste analysis information by container, tank, or waste pile for all waste currently at the facility.

- Defendant shall, within thirty (30) days of the effective date of this Consent Decree, shall comply with and submit to U.S. EPA documentation of compliance with closure financial assurance requirements of 40 CFR 265.143.

- Defendant shall, within thity (30) days of the effective date of this Consent Decree, shall comply with and submit to U.S. EPA documentation of compliance with liability requirements of 40 CFR 265.147.

ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE, SUITE 210 • BEDFORD, OHIO • 44146
(216) 439-5959

April 29, 1988

Mark Bergman, R.S.
Environmental Scientist
Division of Solid & HAzardous Waste
Management
OHIOEPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, OH 44087-1969

Re: Mark's Cement Complaint #815

ATTENTION: Mark Bergman

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It was certainly stated that the EPA required additional information on the sampling of this waste material. What is also true is that the Closure report submitted to you on or about December, 1987 apparently had not been read by either Debby Berg or Dave Wertz as they both stated several times they had never read this report. Why does the EPA need additional information when they have not read Mark's Cement Demolition Fill Site Sampling Plan already submitted?

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MAY 2 - 1988
OHIO EPA-N.E.D.O.

passed between our telephone discussion and the meeting for him to read this report?

It is not true that during the meeting I acknowledged that Mark's Cement, Inc. would submit a form of Closure Plan in accordance with CFR 40 Section 265 Subpart G. What I remember is that you handed me a guidance document during the meeting. The contents of which I had not read prior to or during the meeting.

I am in the process of reviewing the Closure Plan and will contact you concerning this situation in the near future.

Sincerely,

Robert Otto Carson

Robert Otto Carson

ROC/tyl

cc: Dave Sholtis, DSHWM, Central Office
Catherine McCord, U.S. EPA-Region V
Dave Lipstreu, Aurora City Hall
Doug Mickey, Master Metals
Mark Meyers, Mark's Cement, Inc.
Debby Berg, DSHWM, NEDO

Aurora contractor defies city, dumps debris in peat bog

P 12 4-28-88

By TOM BRECKENRIDGE
STAFF WRITER

An Aurora cement contractor, in defiance of city officials, continues to dump debris that residents believe is harming the land and wildlife of a nearby peat bog.

Operators of Mark's Cement Inc. say they will continue to dump dirt and broken concrete off Aurora Rd. just east of Geauga Lake Park despite a cease-and-desist order from the city and pending legal action in Portage Common Pleas Court.

The land extends several hundred feet south of Aurora Rd. and drops about 15 feet to an expansive bog. "We're filling the property in so we can put some type of commercial development. We want to beautify the land so you won't have to look into an ugly swamp," said Donald Garrini, construction manager for Mark's.

But city officials and residents suspect potentially hazardous materials are being dumped, based on an Ohio EPA-ordered excavation of the site last fall.

Mark's officials acknowledged dumping two truckloads of lead slag hauled from Master Metals Inc. in Cleveland last fall. Garrini said Mark's officials were unaware the material was hazardous. "We dug it out. We've done everything possible to be cooperative," Garrini said.

But the Environmental Protection Agency isn't entirely satisfied. The cleanup "doesn't quite agree with our regulations at this point. We're trying to get that ironed out," said Mark K. Bergman, spokesman at the EPA's Twinsburg office. He would not elaborate.

City officials issued a cease-and-desist order to halt dumping last December, according to Law Director Norman L. Christley. The company hasn't complied, and the city has asked Portage County Common Pleas Court for an order to halt the dumping, Christley said.

An EPA official was back at the site last week taking water samples in the wake of growing concern from residents on nearby East Blvd. They fear discolored, smelly water flowing from a storm sewer at the dump has killed fish, turtles and other wildlife they claim once thrived in a nearby creek.

James A. Unverrich and other residents have dammed several inlets from the creek into the bog to protect nesting wildlife. The creek flows about a quarter mile into Aurora Lake.

An EPA official said discolored water could be the result of leaching from a nearby septic tank. Results of the water samples could be ready in four to six weeks, the official said.

Mark's officials said the discolored water could be oily runoff from Aurora Rd. "There is nothing at that dump that is going to contaminate anything," Garrini said.

4-28-88

PARTICIPANTS

Catherine McCord
(312) 886-4436

11:00 - Conference call
Master Metals & Marks Cement

Barbara Rogers - DOJ
(312) 886-6235 Linda Bollen - U.S. EPA Attorney
Dave Werty
Deb Berg
Mark Bergman

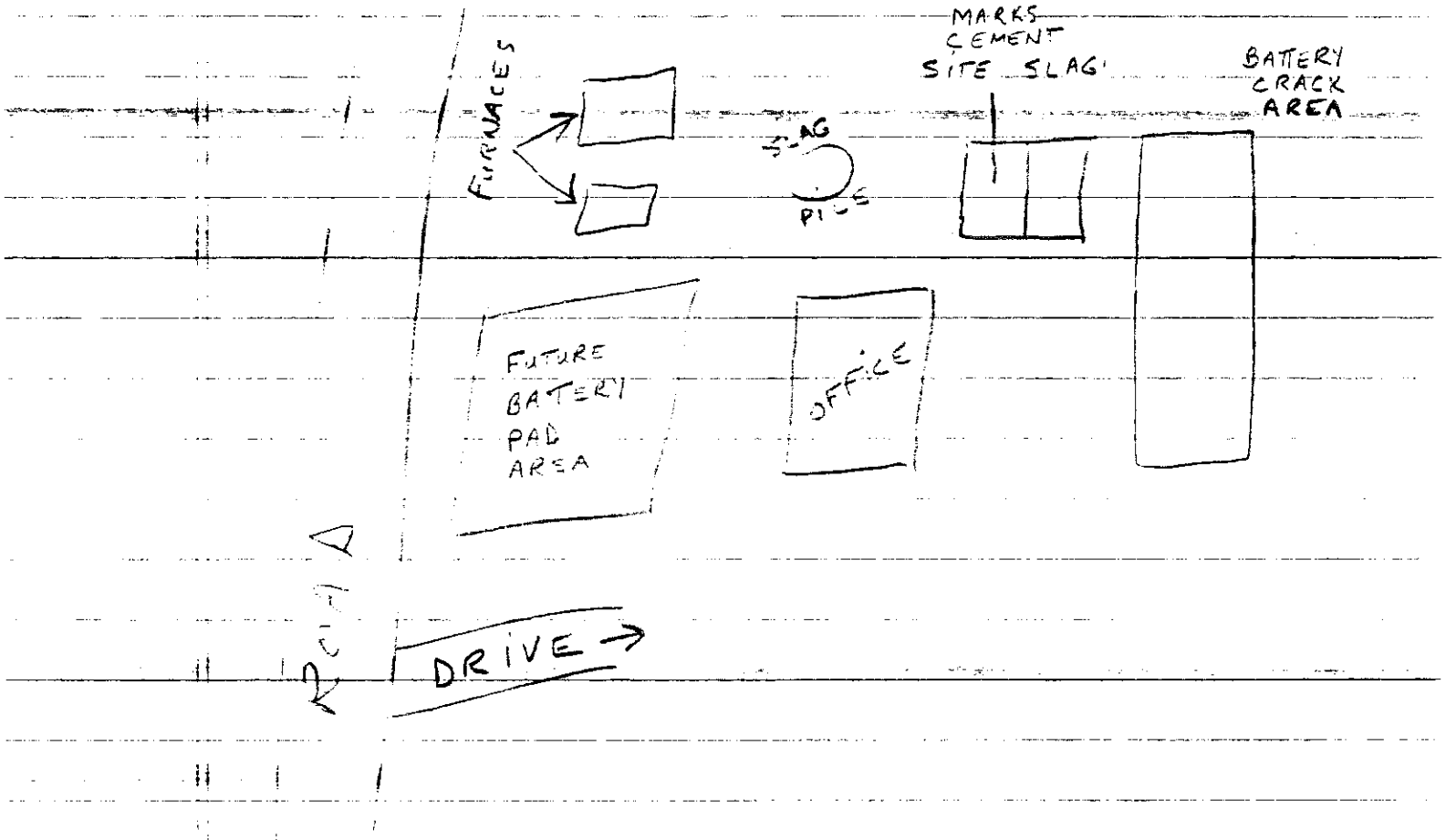
We explained the history of situation. When I go to Master Metals I am to check the roll-off wastes, area that cement was poured over & where the slag wastes have been taken.

Send Catherine copies of the complaint, slides and a copy of Dennis Bush's ICC.

Master Metals
Cleveland

Doug Mickey - President
" Joe Seldon - Plant Manager

The slag from the Marks Cement Site is in a building covered with plastic. It is not to be disposed of until they get permission (SEE SKETCH). The slag prior to Sept. 1987 was going to Harvard Road Landfill by independent
W. 7th (BOM) → haulers. They were hauling once a month (APPROX. 10-12 LOADS/MO.). An adjacent pile of raw product probably got mixed in with the slag. Now the slag is tested monthly (E P Tox) before it goes to BFI hauling and disposed (SEE 4-27-88 LETTER). Doug was unsure what happened to the 9-28-87 tested slag that was 1000 mg/L lead. The batteries continue to be cracked now at rear of facility. Puddles of water show pH of 2 or below with pH paper. Battery [illegible] within 1 month.


MARKS
CEMENT
SITE SLAG
BATTERY
CRACK
AREA
FURNACES
SLAG
PIPE
FUTURE
BATERY
PAD
AREA
OFFICE
DRIVE

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

April 27, 1988

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Re: Rotary Furnace Slag Analysis

Envisage Environmental obtained a representative sample of the "slag" material resulting from the operation of the Rotary Kiln Furnace at the Master Metals facility. The sample was obtained on March 9, 1988.

The slag sample was analyzed using the EP Toxicity Test as described in 40CFR Part 261, Appendix II. The results are as follows:

Metal Constituent		EP Toxicity Result	Regulated Concentration
Arsenic	D004	< 0.10 mgs/l	5.0 mgs/l
Barium	D005	2.70 mgs/l	100.0 mgs/l
Cadmium	D006	< 0.01 mgs/l	1.0 mgs/l
Chromium	D007	< 0.01 mgs/l	5.0 mgs/l
Lead	D008	0.05 mgs/l	5.0 mgs/l
Mercury	D009	< 0.05 mgs/l	0.2 mgs/l
Selenium	D010	< 0.05 mgs/l	1.0 mgs/l
Silver	D011	< 0.05 mgs/l	5.0 mgs/l

The above analysis shows that the slag generated at the Rotary Kiln Furnace is not a characteristic hazardous waste due to metal content. If you have any questions, feel free to call.

Respectfully Submitted,

Seda Ergun
ENVISAGE ENVIRONMENTAL

inter-office communication

to: MARK BERGMAN DSHWM date: 4-27-88

om: BOB DAVIC, DWQMA

subject: MARK'S CEMENT, AURORA

ON 4-27-88 ≈ 2:00 PM A MR. TOM BRECKENRIDGE OF THE PLAIN DEALER ASKED TO SPEAK WITH ME ABOUT MARK'S CEMENT DUMP, AURORA. HE MADE AN UNANOUNCED VISIT TO NEDO. APPARENTLY SOME LOCAL CITIZENS HAD WALKED HIM AROUND THE DUMP SITE.

I TOLD HIM THAT I HAD COLLECTED WATER SAMPLES AND THAT THE DATA WOULD BE PASSED ON TO DSHWM. HE WILL MOST LIKELY GIVE YOU A CALL FOR DETAILS ABOUT THE CASE.

TOM BRECKENRIDGE

REPORTER

THE PLAIN DEALER
1801 SUPERIOR AVE.
CLEVELAND, OHIO 44114

344-4695
TOLL FREE IN OHIO
1-800-362-0727

4-27-88

Marks Cement
Aurora, Ohio

BILL GALINAC 562-7927
951 EAST BLVD.
AURORA, OHIO

He saw some roll-off containers being dumped at the demo-site. Can't say what was in them and doesn't recall what day it was. The time of dumping was around 1:30 P.M..

MASTER METALS, INC., 2850 W. THIRD ST., CLEVELAND, OHIO 44113 • (216) 621-2361

Lead Smelter and Refiner

April 25, 1988

Ms. Kathryn McCord
U.S. EPA
Region V
5HE-12
230 South Dearborn Street
Chicago, IL 60604

RECEIVED
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

Dear Ms. McCord:

I understand from Mr. Mike Cypert, legal counsel in EPA matters for Master Metals that you have replaced Dale Helmer. I apologize that I could not have been available longer while you were in town, but I had a previous commitment out of town. As Master Metals is a small facility with 28 employees, we have no in house environmentalist other than myself. I will be more than happy to invite you to our facility at your convenience to review our agreement. In line with the agreement I would like to update our progress toward this agreement.

Rotary Kiln:

The rotary kiln has been operating successfully and we are making progress using the dross piles.

Container Storage:

Two more containers are ready for delivery, this makes a total of four. We have not brought them on the property because of the space restrictions caused by the construction of the battery decassing area. We however have already paid for 50% of the cost of both bins (copy of payment included). As soon as the concrete has been poured and cured, the bins will be placed into service for storage of battery plates. I am including photographs of the progress we have been making regarding this phase. 1) Photo one is the receiving area where the batteries will be unloaded. 2) Photo two is the excauated area where concrete will be poured and the bins to store the battery plates will be placed. This area is also the area where samples were taken. I am marking on photo one and two referencing the places where the drilling was done. I have been informed by my environmental consultant that all results are within EPA guidelines

and we are prepared to pour concrete should the EPA have no objections. A copy of these results is included.

Financial responsibility:

We have paid $8700.00 toward the second two bins, as well as the consulting and legal fees associated with the stipulation agreement. Part of these fees were reported on the report dated November 10, 1987 and the additional fees I am including copies of. These fees totaled $8,176.25 from Benesch, Friedlander. Thompson, Hine and Flory caused us and expense of $6,683.30 and Envisage Environmental $5,884.20. We have also paid 50% of the estimated cost of the battery decassing area represented by the accompanying invoice. The credit from the last report of $9,710.37 and $8700.00 (bin) and $37,743.75 - $15,000.00 monthly distribution equals a credit of $41,154.12.
This completes my progress report.

Sincerely,

Douglas K. Mickey
President

Enclosures

DKM/pac

OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office
10 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

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APR 21 1988
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

April 18, 1988

RE: MARKS CEMENT
COMPLAINT #815

CERTIFIED MAIL

Robert O. Carson, Atty.
653 Broadway Avenue, Suit 210
Bedford, Ohio 44146

Dear Sir:

The purpose of this letter is to confirm requests made to you during our recnt meeting of March 31, 1988, in the Twinsburg office at that time.

You met with Ms. Debby Berg, Mr. Dave Wertz and myself. You were representing the Mark's Cement Company. At a later time, Mr. Douglas Mickey from Master Metals joined this meeting. We discussed the fact that the recovered lead slag wastes were returned to Master Metals on March 25, 1988. As stated in the meeting the Ohio EPA will need additional information on the sampling of this waste material, to determine if it was representative. Also, during the meeting you acknowledged that Marks Cement would submit a formal Closure Plan, in accordance with CFR 40 Section 265 Subpart G and the guidance document supplied during this meeting.

The Closure Plan should be submitted as soon as possible, so we can review it and process it accordingly. If you have any questions concerning this situation you may contact me at (216) 425-9171.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste Management

MB/sp

cc: Dave Sholtis, DSHWM, Central Office
Catherine McCord, U.S. EPA - Region V
Dave Lipstreu, Aurora City Hall
Doug Mickey, Master Metals
Mark Meyers, Marks Cement Company
Debby Berg, DSHWM, NEDO

Memorandum

Subject	Date
May 5, 1988 Status Conference in USA v. Master Metals, Inc., C87-1471, Judge Batchelder	April 6, 1988

To: Barbara Rogers, DOJ
Linda Bullen, EPA Region V
Jessie Goldfarb, EPA OECM

From: Arthur I. Harris
Assistant U.S. Attorney, ND Ohio

As you will recall, we filed this district court case on June 15, 1988, in conjunction with our objection to the defendant's plan of reorganization. The objection was resolved when Judge Ray confirmed the plan of reorganization in bankruptcy court on September 16. The defendant filed its answer to our district court complaint on October 9, 1987; however, there has been no other activity in the district court case. The defendant has been awaiting a draft consent decree from us ever since the bankruptcy case was resolved last September. Since EPA has not considered any civil penalty necessary for this recently reorganized debtor, the chief obstacle to negotiating a consent decree should be irrelevant to our case.

Needless to say, every effort should be made to assure that we get that long-awaited draft to the defendant before the May 5 status conference with Judge Batchelder. In past EPA cases, Judge Batchelder has been known to call in responsible government employees and ask why it takes so long for certain matters to be completed. I hope we can keep that from happening in this case.

If any of you is having difficulty getting needed information from technical people or otherwise, and you think a call from me might help, please let me know.

Thanks.

FILED
1988 APR -4 AM 8:58

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

United States of America	)	JUDGE ALICE M. BATCHELDER
vs.	)	CASE NO. C87-1471
Master Metals Inc.	)	

TAKE NOTICE THAT THE ABOVE-ENTITLED CASE HAS BEEN SET FOR

STATUS CONFERENCE

on May 5, 1988 at 11:00 a.m.in the U.S. Courthouse, Superior Ave., Public Square, Cleveland,Ohio before the Honorable Alice M. Batchelder in Room 256. **ALL COUNSEL MUST BE PRESENT**

Date: April 4, 1988

JAMES S. GALLAS
Clerk

B.A. Dwyer, Deputy Clerk
Phone: 216/522-2629

To: Arthur I. Harris,Esq.
Barbara A. Rogers,Esq.
Linda Bullen,Esq.
Michael A. Cyphert,Esq.

NOTE: Counsel must be prepared to advise the Court with specificity the discovery to be undertaken, including, but not limited to, identiti of witnesses to be deposed and substance of requests for admissions

COUNSEL ARE REQUIRED TO CONTACT THE COURTROOM DEPUTY,BY TELEPHONE BY 2:00 p.m.,ONE BUSINESS DAY PRIOR TO THE SCHEDULED CONFERENCE, TO CONFIRM THAT THEY WILL ATTEND.

ANY REQUESTS FOR CONTINUANCE OF THE STATUS CONFERENCE HEARING MUST BE MADE BY WRITTEN MOTION,SUPPORTED BY BRIEF AND AFFIDAVIT,PRIOR TO THE HEARING.

CLIENTS MUST BE PRESENT OR REACHABLE BY PHONE AT THE TIME OF THE HEARING.

THOMPSON, HINE AND FLORY
1100 NATIONAL CITY BANK BUILDING
CLEVELAND, OHIO 44114
(216) 566-5500 · TELEX 980317

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 461-8060

IN PALM BEACH, FLORIDA
165 WORTH AVENUE
PALM BEACH, FLORIDA 33480
(305) 833-8900

IN WASHINGTON, D.C.
1920 N STREET, N. W
WASHINGTON, D.C. 20036
(202) 331-8800 · TELEX 904173

WRITER'S DIRECT DIAL NUMBER
(216) 566-5717

October 9, 1987

Arthur I. Harris, Esquire
Assistant United States Attorney
Northern District of Ohio
1404 East Ninth Street
Suite 500
Cleveland, Ohio 44114

Barbara A. Rogers, Esquire
Environmental Enforcement Section
U.S. Department of Justice
P. O. Box 7611 Ben Franklin Station
Washington, D. C. 20044

Re: United States of America vs.
Master Metals, Inc.

Dear Barbara and Art:

Enclosed please find a copy of Master Metals' Answer to your Complaint in the above-captioned matter. As we discussed previously, we are awaiting your initial draft of a Consent Decree in this matter so that a final settlement can be reached. I believe that you will find that Master Metals' facility has been dramatically improved.

I look forward to your draft in further efforts in settlement of this matter.

Sincerely,

Mike Cyphert

Michael A. Cyphert

MAC/nab
Enclosure
cc: Mr. Douglas Mickey (w/encl.)
William Schonberg, Esq.(w/encl.)

MM W/NEDO

9/4/87

Bergen
Welting
Det

Sept 1987 - Complaint
anonymous source
material demo site - in Aurora OH
indicated that Master Metals -

piles - slag -
grabbed samples
Mark contacted Doug Mickey

→ Mark Leemen
- hauling ma
had
- contacted City Aurora.

PV

NOT EP TOXIC

→ alot of piles look the same -
Pb - like materials - chunks of lead

AURORA → ≈ week after →
→ bull-dozed over -
owner -
contacted -

bull-dozed over a

9/5/87 → 30 yds dumped
2 dumped truck -

met 9/8/87 met with Doug Mickey

ondep 7/8/87 — true analysis Envisage →
~analysis

2 → around waste analysis →

→

Mr. Mickey - source slag from
rotary → furnace -

Hazardous → initially one composit

12 different pt of pile — hazardous.

Another composite → exposed →

Both EP → toxic →

results → rec'd by OEPA → Wadsworth labs
~~Pb~~ Oct 7, 1987 - NEDO
initial composit 9/4/87
s.o. 360 mg/l Pb | Cd 4.0 pm

second — 9/16/5
130 mg/l Pb / Cd 1.4 am.

Mr. Mickey ⇒ acknowledged ⇒

any other

cleaning out area - removed slag pile ⇒

normally goes to sanitary landfill ⇒
SW ⇒

2 loads went to ~~bate~~ ⇒ because

EP toxic slag normally goes to ____ ldfl
Pb slag ⇒
Inland ldfl ⇒

Explanation - was aware
impression going to landfill -

City David Lipstream - City told Mark that
waste ⇒

Doug Mickey - said originally Mark denied to
~~Ma~~ Mickey that waste

bulldozed - possibly over weekend.

14th - sampling contacted Mark Cement - meet at site
Doug Mickey

Mark Meyers - MgR Marks Cement
Don Gatini - Foreman - dump.

✓ 9/14/87
excavate piles + put in roll-off →
roof-off stayed there
~~last~~ March 25, taken — back to
2 - 20 yd roll-offs -
Envirosnge sampled → Master Metals -
analysis →
2 different
pile →
roll-offs →
→ ~~Nov. 2, 1987~~ -

Sept 14, 1987 - told them to sample -
told them to excavate
end Sept excavated -
+ took samples 8/27/88 →

→ Rec'd Nov 20,
EP sample on slag -
on-site -
came back Pb 0.06 mg/l
~~EP~~ toxic - 0.01 mg/l -

+ also submitted Historical →
1985, 86, 87 prior to dumping
All below Cd, + Pb →

explanation → sloppy housekeeping →
product pile → go mixed with
slag pile →

piles right next to each other —

piles —
site →
Mounds all over — product
Pb — one area — designate

adjacent →

excavation Collect 9/28/87 → samples 3 samples — ① cont comp Pb — .02 mg/l
② pile top 18.5
③ pile base 195

9/28 — Mantu Metals site Cd David Munson Envisage — NO Field NOTES —
93 mg/l Pb 1,000 mg/l → characteristic — Pb slag contaminated w/ other waste →
Oct 16/~~85~~ 1987
Letter Envisage → mm
→ OEPA 11/5/87

Rec'd Marks Cement →
Dec 1, 1987 conducted
soil + dumpster →

5 samples — grab — grid — TOP 1 ft #1
all 0.02 Cd below detect.
Pb — .60 EP toxic
Cd — highest. Pb → 2.60 TOP 1 ft #2
.02 ppm

composite from 1 + 2

started closure plan — unapproved closure plan
→

end November

Bob.
~~Autocarson~~ attorney
Robert ~~Autocarson~~ — Manko Cement —
came into OEPA →

brought closure plan → the
demolition →

orally gave comments — closure plan —
Envisage —

Nov 10 OEPA — letter to Manko Cement —
needed for real closure process.
technically never submitted —

Master Metals — 11/4/87 letter OEPA
told them they may
→ told to stores — DO NOT ship off-site
advised them →
send doc. w/in 30 days how issue to
be
no legal counsel — Mr. Mickey

Response from M.M.
copy! Envisage found HW → _____
Segregate → submitted 11/5/87 —

→ Envisage sent letter OEPA — (David Munson)

→ —

resolution never checked →

---

in December — 1, sampling
roll-off — Envisage →
not hazardous →
advise keep at site →
Marks advising →

— nothing happened w/ waste Dec → March —
— nothing closure
— no activity ust Master Metal →

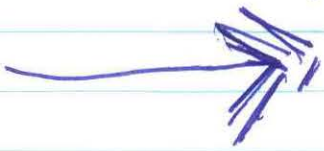
March started referral →
referral — committee →

~~Apr~~ March ~~22~~ 31, 1988
Bob Carson, Dave + Debby Marks
explained closure plan w/o approval —

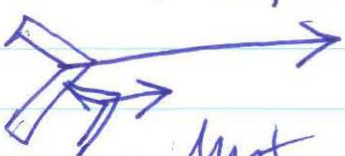
Doug Micky ~~stronto~~ showed up
— removed to his property —
advised him to secure it
brought to ~~facility~~ MM 25, 1987 — brought,
roll-off — still in roll-off
writing told → meeting

→ bin ⇉ storage bins

waste —
Mark going to Master Metals →



Complaint →
no any legal action →
MM, +



just preparing — finishing package.

K069 — piles — not on Part A →
→ accepting it + putting it in
their containers + process —

— approx 1 week ago
Citizen's complaint
BOB DAVIC

City of Aurora — Citizen's Group
neighbors do not like demo site

Stream samples — bleach in of
≈ faulty septic system →
City trying to get ingenuity to stop dumping. — ED
w/ Jim Unverrich — battery waste buried at site —
resident

drainage ditch - 1 dead fish,
dead pt. turtle →

take 3 -

Dennis Bush - OEPA
high level of Pb showing up in
Langlois River →

Master
Dennis Bush

Raleph Dollhopf -

Month -
went out one month ago →
told Ralph about

went out

abandonment - ~~to~~ is a release to a

after 2pm $\boxed{2:15}$

→

ENFORCEMENT REFERRAL

DIVISION OF SOLID AND HAZARDOUS WASTE MANAGEMENT

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS tjo

To: Enforcement Coordinator

From: (District Name) NEDO

Date: MARCH 30, 1988

1. Responsible Party (TRANSPORTER & DISPOSAL SITE OWNER)

(a) Name MARKS CEMENT COMPANY

(b) Address 7315 AURORA ROAD
AURORA, OHIO 44202

County: PORTAGE

(c) Contact Person: DON GARRINI

(d) Telephone No.: (216) 562-1615

2. Responsible Party (GENERATOR OF WASTE)

(a) Name: MASTER METALS

(b) Address: 2850 WEST 3RD STREET
CLEVELAND, OHIO 44113

(c) Contact Person: DOUGLAS MICKEY

(d) Telephone No.: (216) 621-2361

3. Regulatory Status (check appropriate lines)

X TSD Facility (Permitted) [Master Metals]

___ TSD activity (Unpermitted)

___ Transporter

___ Solid Waste (License and/or PTI)

___ Generator

___ Small Quantity Generator

X Unpermitted/Unlicensed Solid Waste Disposal [Mark's Cement property]

4. Violation Description:

(a) Location of Violation: WASTE MATERIAL WAS DUMPED AT A DEMO SITE LOCATED AT 1000 AURORA ROAD, AURORA, OHIO.

(b) Nature of violation. (Specific description of violation, regulation or statute violated, a statement of how long or how often violation has occurred, and environmental and/or health effects of violation.)

On September 4, 1987, an anonymous complainant contacted Nedo and said that furnace slag waste from Master Metals Company (TSD) was dumped at an off-site demo site owned by Marks Cement Company. Although a previous analysis of the furnace slag waste (secured by Master Metals through Envisogu Env. Inc - 7-08-87 report) showed the slag waste to be nonhazardous previously, Ohio EPA samples of the slag waste dumped at the demo dump showed the waste to be hazardous via EP toxicity for Lead and Cadmium. Ohio EPA sampled this slag waste on September 4, 1987 (representative composite sample of two piles), and on September 16, 1987 (grabs of slag waste exposed under fill dirt; piles had since been bulldozed & covered with fill dirt) - results of this sampling received from Wadsworth Lab on October 7, 1987.

Sample results received on Nov 5 1987 from Envisogu confirmed that the slag waste dumped at the Mark's Cement Company property was hazardous for Lead; however the waste (with dirt), after being dug up and placed in roll-off boxes, tested non hazardous. OEPA questions the representativeness of these last samples. Envisogu also sampled other piles of furnace slag at Master Metals (September 87 samples EP toxic for Lead & Cadmium, November 84 samples nonhazardous); Envisogu concluded the slag shipment handled by Mark's Cement (dumped at demo site) was hazardous due to contamination from raw materials at Master Metals facility.

Pg 2a

Nature of Violations (cont'd)

Mark's Cement has removed the excavated slag & dirt roll-off boxes back to Master Metals, and has conducted some soil and water testing at the dump site. However, this effort is not adequate to meet the closure performance standard. At a March 31, 1988 meeting held at Nedo, the attorney representing Mark's Cement was advised that an adequate closure plan would have to be developed and submitted for agency approval. Mark's Cement should also address potential for ORC 6111 violations.

a. Violations incurred by Mark's Cement:

- Transportation of Unmanifested hazardous waste OAC 3745-53-20
- Transporter not PUCO Registered OAC 3745-53-11
- Disposal of Hazardous Waste at Unpermitted TSD facility; Transportation to Unpermitted TSD facility ORC 3734.02(F)
- Acceptable Closure Plan not yet filed OAC 3745-66-12
- TSD performance standards (OAC 3745-65 et al) also applicable

b. Violations incurred by Master Metals:

- Failure to characterize waste properly OAC 3745-52-11
- Failure to manifest waste to a permitted TSD. OAC 3745-52-20

(c) Brief description of complaints from the public against the party(ies), if any.

Local residents have contacted city officials about their water supplies.

(d) Chronology of events (site inspections, letters, meetings, telephone calls). Describe enforcement action already taken against entity for this violation (including letters, telephone calls, meetings).

COMPLAINT INVESTIGATED 9-4-87

NOTIFIED MASTER METALS 9-8-87

NOTIFIED CITY OFFICIAL 9-15-87

2nd SAMPLE COLLECTED 9-16-87

TEST RESULTS RECEIVED 10-5-87

LETTER OF VIOLATION 11-10-87

MET W/ MARKS CEMENT ATTNY 11-30-87

MET W/ MARKS CEMENT ATTNY 1-12-88

COPY OF CLOSURE PLAN TO OEPA 3-22-88
(draft copy obtained by M. Bergman from Marks Cement)

(e) Index of documents (copies attached).

COMPLAINT FORM & NOTES

PERSONAL NOTES ON CHRONOLOGY

LETTER TO WADSWORTH LAB ON pH

TELEPHONE NOTE W/ CITY ENGINEER

* LETTER OF VIOLATION TO MARKS CEMENT (11-10-87)

LETTER FROM CITY TO MARKS CEMENT

* OEPA LETTER TO MASTER METALS (11-2-87)

MARKS CEMENT ATTNY LETTER TO OEPA 11-3-87

CITY OFFICIAL LETTER TO OEPA

MARKS CEMENT ATTNY LETTER TO OEPA 11-13-87

DRAFT CLOSURE PLAN 11-25-87 (RECEIVED 3-18-88)

MARKS CEMENT ATTNY LETTER TO OEPA 11-30-87

MARKS CEMENT ATTNY LETTER TO OEPA 1-12-88

MARKS CEMENT LETTER TO OEPA 2-29-88
MARKS CEMENT ATTNY LETTER TO OEPA 3-22-88

 PERSONAL NOTES

(f) Index of physical evidence (copies attached).

SAMPLES COLLECTED 9-4-87 and 9-16-87 (by OHio EPA)
SLIDES TAKEN 9-15-87 (APPROX. 12)
MASTER METALS JULY '87 WASTE ANALYSIS
→ OEPA SAMPLE RESULTS RECEIVED 10-7-87
MASTER METAL SAMPLES ON 9-28-87
MARKS CEMENT SITE SAMPLES ?
MASTER METAL SAMPLES ON 11-4-87
ENVISAGE SAMPLING PLAN 12-1-87

(g) Witness list (name, address and phone number of people with firsthand knowledge related to the violation)

DAVE LIPSTREU - CITY OF AURORA 562-6131
KRIS CODER - OEPA - NEDO 425-9171
NO LONGER WORKS THERE > DAVE MUNSON - ENVISAGE 526-0990
DON GARRINI - MARKS CEMENT 562-1615
MARK MEYERS - MARKS CEMENT 562-1615
ROBT. CARSON - ATTNY MARKS CEMENT 439-5959

(h) Extenuating or mitigating circumstances.

N. A.

(i) Possible measures to remedy the violation (e.g., repairs, new process equipment, new procedures, etc.).

Area of Mark's Cement property (i.e. demo dump) where furnace slag waste disposed must be demonstrated to be decontaminated via a formal closure plan approved by Ohio EPA. Master Metals must undertake management program (with confirmation sampling if necessary) to properly manage all raw materials and waste materials on-site, & to provide that all waste materials are properly disposed of in accordance with solid and hazardous waste regulations.

5. Request for Enforcement Action

(a) Contacts:

District Contact: Mark Burgman

Central Office Contact: Mike Savage

Legal Office Contact:

Other Government Contact:

(b) District recommendation for enforcement action: Referral of Mark's Cement Company to Ohio AGO to obtain proper closure. Referral of Master Metal's to U.S.E.P.A. for addition of these violations to their existing RCRA case.

(c) Recommendation with respect to publicity: Recommend low publicity.

Signed: Mark K. Bergman (Investigator) Date: April 18, 1988

Deborah J. Berg April 12, 1988

Approved: [signature] (District Unit Supervisor) Date: April 20, 1988

Approved: [signature] (District Chief) Date: 4-21-88

****

ENFORCEMENT COMMITTEE

Action Recommended: _____

Assigned To : _____

Date : _____

0755S

If you have any problems with this, let me know.

OHIO ENVIRONMENTAL PROTECTION AGENCY -- COMPLAINT INVESTIGATION REPORT

	DATE RECEIVED	PERSON RECEIVING COMPLAINT
815 MARK	9-4-87	D EASTERLING

YPE
phone X
t ___
er ___
fied ___

COMPLAINANT: (Name, Address, Phone)

ANONYMOUS.

SUSPECTED SOURCE: (Name, Address, Phone)

MASTER METALS
CLEVELAND
621-2361

EMENT OF COMPLAINANT: (INCLUDE DIRECTIONS TO THE SITE)

Lead slag from Master Metals is being dumped at a low-lying site across from the Sea World entrance on S.R. #43. Property is owned by Mark Myers (MARKS CEMENT). A black material with yellow and orange colors. MARKS CEMENT 7315 AURORA RD. AURORA (562-1615)

INGS:

9-4-87 Collected an on-site composite sample from two piles. Nobody was on-site.
9-8-87 Met with Doug Mickey from Master Metals. They have an E.P. Toxic analysis from 7-8-87 which identifies this material as a solid waste not a hazardous waste.

MMENDATIONS: DATE OF WRITTEN FOLLOW UP ___

Refer to attached letter.

ECTIVE ACTION AGREED TO BY SOURCE:

ENTS:

Specializing in Removal and Replacement
Commercial and Residential Work

Mark's Cement, Inc.
Fully Insured & Bonded
Over 20 Years Experience

DON GARRINI
Construction Division
Manager

Office:
562-7021
562-1615

STIGATOR: DATE COMPLETED:

Complaint = 9-4-87 @ 11:10

ANONYMOUS

Used to work for trucking Co. "Mark Cement". They are removing lead slag (acdg. to a person who works for Mark Cement)

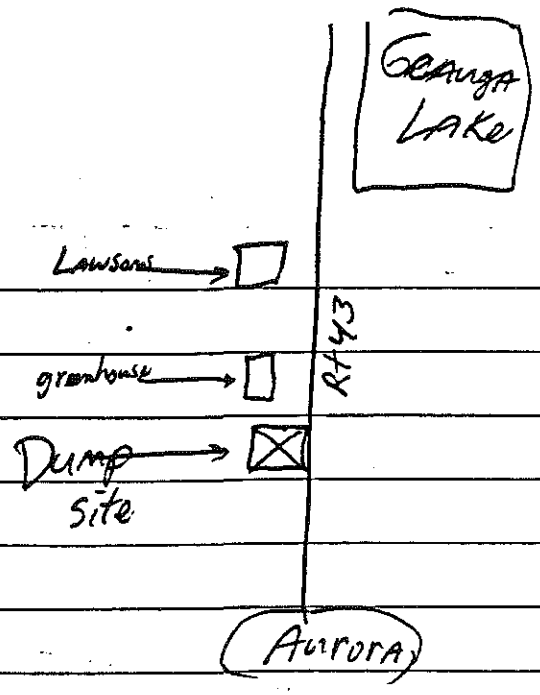
from Master Metals clean up

Dumping at: just east of Lawsons & Auto parts Store on Rt 43 across from Geauga Lake

This is ~ 40 acre, low-lying site owned by Mark Myers (owner of Mark Cement). Black matched with yellow & orange colors.

ON same side of Rd as Lawsons ~ 300 or 400 ft south of Lawsons

→ Sample more toward the back.



Dump site is approximately 300 to 400 feet from Lawsons

Sample pile in back not yet pushed over the side

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

July 08, 1987

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Re: Rotary Furnace Slag Analysis

Envisage Environmental obtained a representative sample of the "slag" material resulting from the operation of the Rotary Kiln Furnace at the Master Metals facility. The sample was obtained on June 12, 1987.

The slag sample was analyzed using the EP Toxicity Test as described in 40CFR Part 261, Appendix II. The results are as follows:

Metal Constituent		EP Toxicity Result	Regulated Concentration
Arsenic	D004	< 0.5 mgs/l	5.0 mgs/l
Barium	D005	0.2 mgs/l	100.0 mgs/l
Cadmium	D006	0.04 mgs/l	1.0 mgs/l
Chromium	D007	0.03 mgs/l	5.0 mgs/l
Lead	D008	1.8 mgs/l	5.0 mgs/l
Mercury	D009	< 0.05 mgs/l	0.2 mgs/l
Selenium	D010	< 0.1 mgs/l	1.0 mgs/l
Silver	D011	0.03 mgs/l	5.0 mgs/l

The above analysis shows that the slag generated at the Rotary Kiln Furnace is not a characteristic hazardous waste due to metal content. If you have any questions, feel free to call.

Respectfully Submitted,

David K. Munson
Regulatory Compliance Manager

Marks Cement Site
Aurora

9-14-87 Spoke with Dave Lipstreu from City of Aurora. Explained progress on complaint and will copy him on the letter I send out. He said the lead slag piles have been covered over.

9-14-87 Spoke with Doug Mickey from Master Metals and he said the Marks Cement people deny dumping of any lead slag at their demo site.

9-14-87 Kris Coder and I visited demo site. The two lead slag piles have been bulldozed and fill dirt put over them. One exposed area remains at the slope and a few chunks have rolled to the toe of the slope. Photos were taken of area. Noticed a sign on the site:

PRIVATE PROPERTY
NO TRESSPASSING
VIOLATORS WILL BE PROSECUTED
NO DUMPING WITHOUT PERMISSION
562-1615

Nobody on-site requesting the owners

State of Ohio Environmental Protection Agency

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

Toward A Cleaner Environment

Richard F. Celeste
Governor

September 22, 1987

Mr. Robert Peters
Wadsworth Testing Laboratory
1000 Fourth Street, S.E.
Canton, Ohio 44707

Dear Sir:

On September 22, 1987, I spoke with Ms. Karen Knudtsen of our office. I explained to her that a sample I had collected for an E.P. Toxicity test, corroded our stainless steel mixing bowl. I would be very interested in having a pH conducted on these two samples, W-870916-1. The samples are solid, however, if it is possible, I would like you to obtain a pH.

Thank you.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste
Management

MB/sp

cc: Sue Buchanan, Central Office

VADSWORT''ALERT LABS
. O. BOX 208
ANTON, OH 44701
216) 454-8304

CHAIN-OF—CUSTODY RECORD

№ 1421

PROJECT LOCATION	NAME OF CLIENT	PROJECT TELEPHONE NO	PROJECT NUMBER
MARKS CEMENT DEMO SITE S.R. #43 AURORA, OHIO	OHIO EPA (DSHWM) 2110 E. AURORA RD. TWINSBURG, OHIO	(216) 425-9171	W-870916-1

ITEM NUMBER	SAMPLE NUMBER	NUMBER & SIZE OF CONTAINERS	DESCRIPTION	TRANSFER NUMBER & CHECK 1	2	3	4	5	6	7
1		1 X 250 ML	INITIAL COMPOSITE FOR 2 WASTE PILES							
2		1 X 250 ML	BURIED COMPOSITE FROM TOE & SIDE OF SLOPE							

Person Responsible for sample	Affiliation	Date	Time
MARK BERGMAN	OEPA	9-16-87	3:30 P.M.

Purpose of analysis (use back of front sheet if necessary)

E.P. TOXIC METALS (8)

2 WEEK TURNAROUND

TRANSFER NUMBER	ITEM NUMBER	TRANSFERS RELINQUISHED BY	ACCEPTED BY	DATE	TIME
1	1 & 2	Mark Bergman	Jeffrey C. Smith	9/16/87	3:30 pm
2					
3					
4					
5					

RECEIVED
OHIO EPA
OCT 05 1987
DIV. of SOLID & HAZ WASTE MGT.

Site Name: MARK'S CEMENT SITE Date: 9-16-87 Control No.: W 870916-1 Sampler M. BERGMAN K. CODER

Sample I.D. # 1

Composite sample collected from two wastepiles of lead slag

Sample I.D.

Sample I.D. #2

Composite sample collected from buried lead slag piles (FROM TOE & SIDE OF SLOPE).

Sample I.D.

Sample I.D.

Sample I.D.

Sample I.D.

Sample I.D.

Sample I.D.

Site Name MARK'S CEMENT DEMO SITE Sample Control Number: W-870916-1

Parameter(s)	Matrix	Container Type/Size	Preservative	Hold Time	Special Instructions
E.P. TOX & pH	SOLID	Qt./GLASS	REFRIDGERATION	180 DAYS	

Sampling Date SAMPLE #1 → SEPT. 4, 1987 SAMPLE #2 → SEPT. 16, 1987 Sampler M. BERGMAN K. CODER

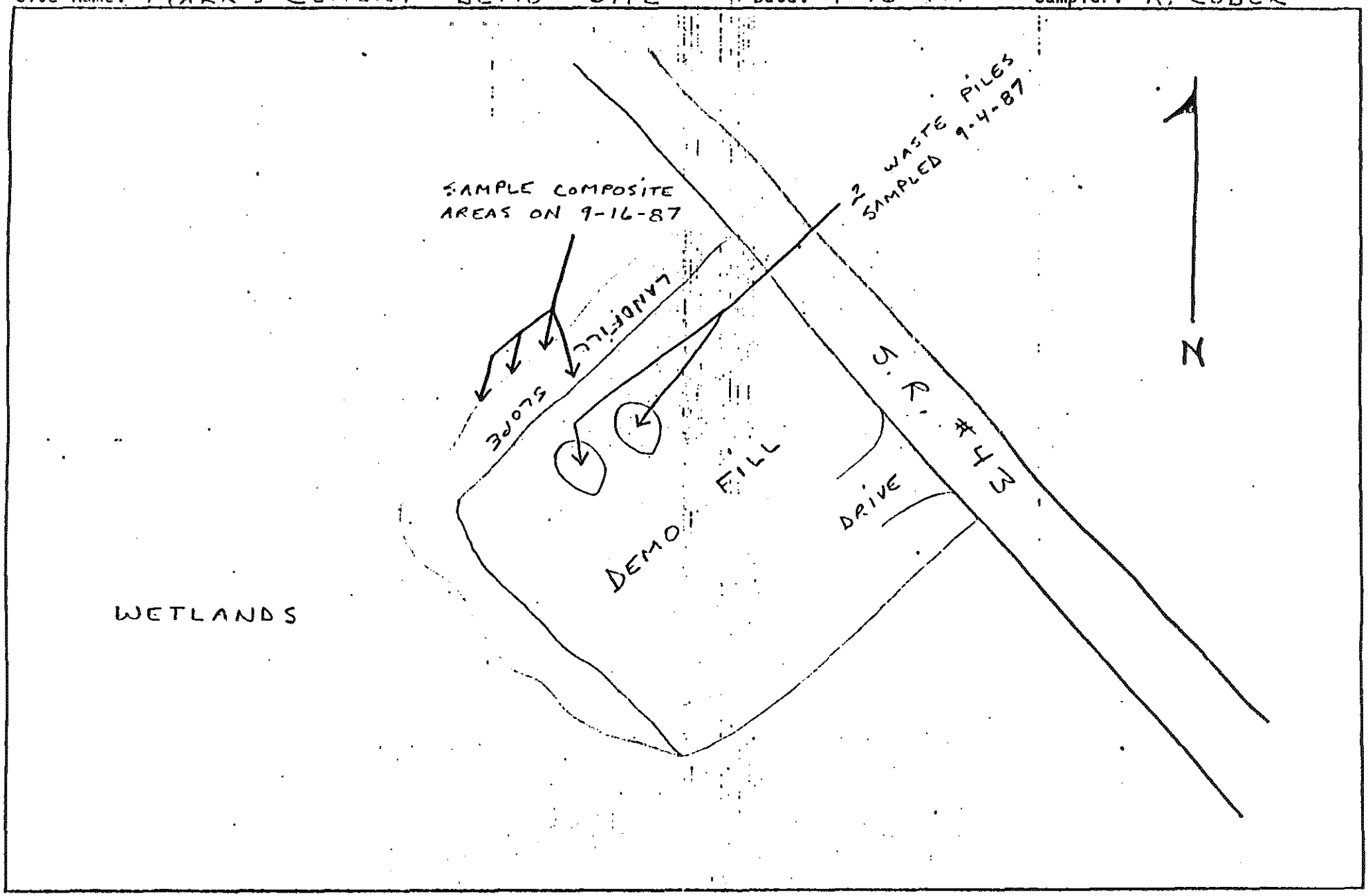
Sampling Containers GLASS JARS

Preservatives REFRIDGERATION

Sampling Equipment S.S. SCOOP & S.S. BOWL

Safety Equipment TYVEK, GLOVES & BOOTS

Site Name: MARK'S CEMENT DEMO SITE Date: 9-16-87 Sampler: K. CODER M. BERGMAN



Site Map: Sketch Site, Mark Sampling Locations, Indicate Directions (N-E-S-W)

WADSWORTH/ - ...
LABORATORIES, INC.
Sampling, testing, mobile labs
Since 1938

1600 Fourth Street, S.E./ P.O. Box 208 / Canton, OH 44701 / (216) 454-5809

ANALYTICAL REPORT

PROJECT NO. 2-870916-1

MARKS CEMENT DEMO SITE

Presented to :

SUE BUCHANAN

OHIO EPA-DSHWM

WADSWORTH/ALERT LABORATORIES, INC.

Bob Peters

Bob Peters
Project Manager

Marvin W Stephens /A

Marvin W. Stephens, Ph. D.
Vice President & Director General Laboratory Program

October 1, 1987

RECEIVED
OCT - 7 1987
OHIO EPA-N.E.D.O.

RECEIVED
OHIO EPA
OCT 05 1987
DIV. of SOLID & HAZ. WASTE MGT.

CORPORATE AND LABORATORY: Canton, Ohio (216) 454-5809
LABORATORY: Cleveland, Ohio (216) 642-9151
LABORATORY: Bartow, Florida (813) 533-2150
SOUTHEAST REGIONAL OFFICE: Lexington, South Carolina (803) 957-6590
24-HOUR ALERT LINE: (216) 454-8304

WADSWORTH/ALERT
LABORATORIES, INC.

METALS ANALYSIS REPORT

COMPANY : OHIO EPA-DSHWM
LABORATORY ID : 2692-42333
SAMPLE MATRIX : SOLID

RECEIVING DATE : 9/16/87

SAMPLE ID : INTIAL COMPOSITE FOR 2 WASTE PILES

Leachate testing in accordance with USEPA Manual SW846 Method 1310

ELEMENT	PREPARATION - ANALYSIS DATE	RESULT (mg/l)	DETECTION LIMIT
Silver	9/22- 9/24/87	ND	0.01
Arsenic	9/22- 9/24/87	0.015	0.005
Barium	9/22- 9/24/87	2.9	0.1
Cadmium	9/22- 9/24/87	4.0	0.01
Chromium	9/22- 9/24/87	ND	0.02
Mercury	9/22- 9/25/87	ND	0.005
Lead	9/22- 9/25/87	360	0.05
Selenium	9/22- 9/24/87	ND	0.005
Final pH	9/22- 9/25/87	5.5	
Initial pH	9/22- 9/25/87	11.5	

ND - NONE DETECTED

RECEIVED
OHIO EPA

OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT

WADSWORTH/ALERT
LABORATORIES, INC.

ANALYTICAL REPORT

COMPANY : OHIO EPA-DSHWM
LABORATORY ID : 2692-42333
SAMPLE MATRIX : SOLID

RECEIVING DATE : 9/16/87

SAMPLE ID : INTIAL COMPOSITE FOR 2 WASTE PILES

PARAMETER	PREPARATION - ANALYSIS DATE	RESULT	DETECTION LIMIT
pH	9/24/87	11	su

ND - NONE DETECTED

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OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT.

WADSWORTH/ALERT
LABORATORIES, INC.

METALS ANALYSIS REPORT

COMPANY : OHIO EPA-DSHWM
LABORATORY ID : 2692-42334
SAMPLE MATRIX : SOLID

RECEIVING DATE : 9/16/87

SAMPLE ID : BURIED COMPOSITE FROM TOE & SIDE OF SLOPE

Leachate testing in accordance with USEPA Manual SW846 Method 1310

ELEMENT	PREPARATION - ANALYSIS DATE	RESULT (mg/l)	DETECTION LIMIT
Silver	9/23- 9/25/87	ND	0.01
Arsenic	9/23- 9/26/87	0.12	0.005
Barium	9/23- 9/25/87	2.7	0.1
Cadmium	9/23- 9/25/87	1.4	0.01
Chromium	9/23- 9/25/87	ND	0.02
Mercury	9/23- 9/25/87	ND	0.005
Lead	9/23- 9/25/87	130	0.05
Selenium	9/23- 9/26/87	ND	0.005
Final pH	9/23- 9/26/87	4.9	
Initial pH	9/23- 9/26/87	11.3	

ND - NONE DETECTED

RECEIVED
OHIO EPA

OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT

WADSWORTH/ALERT
LABORATORIES, INC.

ANALYTICAL REPORT

COMPANY : OHIO EPA-DSHWM
LABORATORY ID : 2692-42334
SAMPLE MATRIX : SOLID

RECEIVING DATE : 9/16/87

SAMPLE ID : BURIED COMPOSITE FROM TOE & SIDE OF SLOPE

PARAMETER	PREPARATION - ANALYSIS DATE	RESULT	DETECTION LIMIT
pH	9/24/87	11	su

ND - NONE DETECTED

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OHIO EPA
OCT 05 1987
DIV. of SOLID & HAZ. WASTE MGT.

WADSWORTH/ALERT
LABORATORIES, INC.

QUALITY CONTROL SECTION

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OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT.

WADSWORTH/ALERT
LABORATORIES, INC.

MATRIX SPIKE DATA

LAB ID	PARAMETER	SPIKE PERCENT RECOVERY	SPK/DUP PERCENT RECOVERY
42333	Arsenic	92	94
870924	Barium	94	92
42333	Cadmium	93	94
42333	Chromium	97	100
870924	Lead	99	95
42333	Mercury	100	97
42333	Selenium	102	98
42333	Silver	106	102

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OHIO EPA

OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT.

WADSWORTH/ALERT
LABORATORIES, INC.

MATRIX SPIKE RECOVERY CONTROL LIMITS

PARAMETER	WATER RECOVERY CONTROL LIMITS	SOLID RECOVERY CONTROL LIMITS
Aluminum	75-125	75-125
Antimony	70-130	55-145
Arsenic	61-137	42-156
Barium	79-114	71-123
Beryllium	70-114	59-124
Cadmium	75-115	65-125
Calcium	74-115	63-126
Chromium	73-117	62-128
Copper	82-110	75-117
Iron	73-118	63-129
Lead	62-126	46-142
Magnesium	76-120	65-131
Manganese	82-113	74-120
Mercury	80-120	70-130
Nickel	79-111	71-119
Potassium	77-113	68-122
Selenium	50-130	30-150
Silver	79-110	71-118
Sodium	84-112	77-119
Strontium	78-118	68-128
Thallium	62-129	45-146
Zinc	68-124	54-138

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OHIO EPA

OCT 0 5 1997

DIV. of SOLID & HAZ. WASTE MGT

WADSWORTH/ALERT
LABORATORIES, INC.

METALS ANALYSIS REPORT

COMPANY : Wadsworth/Alert Laboratories
LABORATORY ID : 9087-90924
SAMPLE MATRIX : WATER

RECEIVING DATE : 9/24/87

SAMPLE ID : INTRA-LAB BLANK , 9 /24/87

ELEMENT	PREPARATION - ANALYSIS DATE	RESULT (mg/l)	DETECTION LIMIT
Silver	9/24/87	ND	0.01
Arsenic	9/24/87	ND	0.005
Barium	9/24/87	ND	0.1
Cadmium	9/24/87	ND	0.01
Chromium	9/24/87	ND	0.02
Mercury	9/24/87	ND	0.005
Sodium	9/24/87	ND	0.01
Selenium	9/24/87	ND	0.005

ND - NONE DETECTED

RECEIVED
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OCT 05 1987
DIV. of SOLID & HAZ. WASTE MGT

WADSWORTH/ALERT
LABORATORIES, INC.

METALS ANALYSIS REPORT

COMPANY : Wadsworth/Alert Laboratories
LABORATORY ID : 9087-90925
SAMPLE MATRIX : WATER

RECEIVING DATE : 9/25/87

SAMPLE ID : INTRA-LAB BLANK , 9 /25/87

ELEMENT	PREPARATION - ANALYSIS DATE	RESULT (mg/l)	DETECTION LIMIT
Silver	9/25/87	ND	0.01
Arsenic	9/25/87	ND	0.005
Barium	9/25/87	ND	0.1
Calcium	9/25/87	ND	0.01
Cadmium	9/25/87	ND	0.01
Chromium	9/25/87	ND	0.02
Copper	9/25/87	ND	0.01
Iron	9/25/87	ND	0.05
Mercury	9/25/87	ND	0.005
Potassium	9/25/87	ND	0.5
Magnesium	9/25/87	ND	0.01
Manganese	9/25/87	ND	0.01
Sodium	9/25/87	ND	0.01
Lead	9/25/87	ND	0.05
Selenium	9/25/87	ND	0.005
Zinc	9/25/87	ND	0.01

ND - NONE DETECTED

RECEIVED
OHIO EPA

OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT

WADSWORTH/ALERT
LABORATORIES, INC.

METALS ANALYSIS REPORT

COMPANY : Wadsworth/Alert Laboratories
LABORATORY ID : 9087-90926
SAMPLE MATRIX : WATER

RECEIVING DATE : 9/26/87

SAMPLE ID : INTRA-LAB BLANK , 9/26/87

ELEMENT	PREPARATION - ANALYSIS DATE	RESULT (mg/l)	DETECTION LIMIT
Arsenic	9/26/87	ND	0.005
Beryllium	9/26/87	ND	0.005
Copper	9/26/87	ND	0.01
Mercury	9/26/87	ND	0.002
Molybdenum	9/26/87	ND	0.5
Nickel	9/26/87	ND	0.04
Antimony	9/26/87	ND	0.2
Selenium	9/26/87	ND	0.005
Thallium	9/26/87	ND	0.1
Tungsten	9/26/87	ND	0.5

ND - NONE DETECTED

RECEIVED
OHIO EPA

OCT 05 1987

DIV. of SOLID & HAZ. WASTE MGT

Marsh Cement Site

10-21-87

Spoke with Charlie Brown, City Engineer for Aurora. Explained new situation on waste material and site. He said they (AURORA CITY) will be installing a sewer across the rear of that swamp in about 4 months. It will not be close to the demo site.

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

November 04, 1987

Mr. Mark Bergman
Div of Solid & Hazardous Waste Mgt
Ohio Environmental Protection Agency
2110 East Aurora Road
Twinsburg, Ohio 44087

Mr. Bergman,

The results of our sampling of the "Slag Pile" at the Master Metals facility is enclosed, along with the results from sampling at the Mark's Cement Dump Site. An explanation of sampling procedures and results is included.

I would like to emphasize that the slag sample from the Master Metals facility was obtained prior to the segregation of the slag. An analysis of the segregated furnace slag is being performed at this time, with results to follow soon.

Please review the enclosed results as soon as possible so that all interested parties can move forward with a solution.

If you have any questions regarding these analysis, please feel free to call. We are available to meet with you at any time to discuss this situation.

Respectfully Submitted,

David K Munson

David K. Munson
Envisage Environmental

cc: Mr. Douglas Mickey
Master Metals Inc.

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NOV - 5 1987
OHIO EPA-N.E.D.O.

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

November 02, 1987

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Collected on ?
Possibly 9-29-87

Re: EP Toxicity Analysis - Mark's Cement Dump Site

Envisage Environmental obtained samples of the dirt/slag mixture located at the Mark's Cement Dump Site. The waste material transported to this site by Mark's Cement had already been mixed with other construction wastes and topsoil/dirt.

The samples obtained were as follows:

1) One composite of multiple grabs from the 2 filled dumpsters, designated as "Container Composite".

2) One composite of multiple grabs along base of area/pile where Master Metals waste material was placed, designated as "Pile Base Composite".

3) One composite of multiple grabs along top of area/pile where Master Metals waste material was placed, designated as "Pile Top Composite".

The samples were observed to be mixtures of loose dirt, rocks, construction wastes and slag-like chunks. Each composite sample was handled separatly in the following manner, prior to testing:

- Gross weight of Original sample obtained.
- Chunks/rocks were separated from the original sample and weighed individually.
- Chunks/rocks were crushed to desired small particle size.
- Loose dirt was crumbled and weighed.
- A representative portion of each component was composited, based on weight percent contained in the original sample.
- This composite was thoroughly mixed and 100 gms obtained for EP Toxicity testing.

Analysis Report(continued)

The resulting representative samples were analyzed per the EP Toxicity Test as described in 40CFR Part 261, Appendix II. The results are as follows:

Metal		Regulated Concentration	Container Composite	Pile Top	Pile Base
Arsenic	D004	5.0 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Barium	D005	100.0 mgs/l	0.35 mgs/l	1.80 mgs/l	0.68 mgs/l
Cadmium	D006	1.0 mgs/l	0.03 mgs/l	0.42 mgs/l	0.72 mgs/l
Chromium	D007	5.0 mgs/l	0.02 mgs/l	< 0.01 mgs/l	0.02 mgs/l
Lead	D008	5.0 mgs/l	0.20 mgs/l	18.5 mgs/l	195.0 mgs/l
Mercury	D009	0.2 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Selenium	D010	1.0 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Silver	D011	5.0 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l

The above analysis indicates that the material in the dumpster containers do not fail the EP Toxicity Test.

The samples taken from the areas where the Master Metals waste material was placed exhibit EP Tox Lead above the 5.0 mg/l limitation. This result correlates to the analysis performed by the OEPA on grab samples obtained by their personnel.

To reiterate our past telephone conversation, Mr. Mark Bergman of OEPA insists that the furnace slag be segregated in clean separate drums. Also, the furnace slag cannot be sent off-site until an analysis is performed and OEPA approval is received.

If you have any questions, feel free to call.

Respectfully Submitted,

David K. Munson

David K. Munson
Regulatory Compliance Manager

cc: Mr. Mark Bergman
OEPA, Twinsburg

Envisage
Environmental
Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

October 16, 1987

Mr. Douglas Mickey
Master Metals
2850 West 3rd Street
Cleveland, Ohio 44113

Re: Rotary Furnace Slag Analysis - 09/28/87

Envisage Environmental obtained a representative sample of the "slag" material resulting from the operation of the Rotary Kiln Furnace at the Master Metals facility on September 28, 1987.

The slag sample was analyzed per the EP Toxicity Test as described in 40CFR Part 261, Appendix II. The results are as follows:

Metal Constituent		EP Toxicity Result		Regulated Concentration	
Arsenic	D004	< 0.05	mgs/l	5.0	mgs/l
Barium	D005	< 0.05	mgs/l	100.0	mgs/l
Cadmium	D006	93.0	mgs/l ✓	1.0	mgs/l
Chromium	D007	0.85	mgs/l	5.0	mgs/l
Lead	D008	1,000.0	mgs/l ✓	5.0	mgs/l
Mercury	D009	< 0.05	mgs/l	0.2	mgs/l
Selenium	D010	< 0.05	mgs/l	1.0	mgs/l
Silver	D011	< 0.05	mgs/l	5.0	mgs/l

The above analysis shows that the slag generated at the Rotary Kiln Furnace is a characteristic hazardous waste due to metal contaminants, Lead and Cadmium. Apparently, the slag pile was contaminated with other types of waste materials. It is recommended that you segregate the furnace slag in clean drums so that we may sample this material exclusively, without the potential contamination from other in-plant sources.

If you have any questions, feel free to call.

Respectfully Submitted,

David K. Munson

David K. Munson
Regulatory Compliance Manager

OhioEPA
State of Ohio Environmental Protection Agency

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

Richard F. Celeste
Governor

CERTIFIED MAIL

November 10, 1987

RE: MARKS CEMENT DEMO SITE
PORTAGE COUNTY
COMPLAINT #815

Mr. Mark Meyers
Marks Cement Company
7315 Aurora Road
Aurora, Ohio 44202

Dear Sir:

On September 4, 1987, this Agency received a complaint that waste lead slag material from the Master Metals facility in Cleveland was being dumped in a demolition fill on S.R. #43 in Aurora, Ohio. On this same day I conducted an inspection on this site. Nobody was on-site during my inspection. Two piles of waste material did appear to contain lead residual. I collected a composite sample from both waste piles.

On September 8, 1987, I visited Mr. Doug Mickey at Master Metals. We discussed the complaint and he confirmed that the Marks Cement Company had hauled away some of his lead slag. It was supposed to go to a licensed sanitary landfill. A waste analysis of lead slag had been conducted by Wadsworth Testing on June 12, 1987, and it tested nonhazardous.

On September 15, 1987, I learned from Mr. Dave Lipstreu, of the City of Aurora, that the slag piles had been bulldozed flat. Mr. Kris Coder, Ohio EPA, and I visited the site and took photographs. Dirt and debris were covering the lead slag areas. There remained one small exposure on the slope of the fill and a few chunks of residue had rolled to the bottom of the fill slope.

On September 16, 1987, Mr. Coder and I met Mr. Don Garrini and you at this demolition site. You confirmed that two loads of lead slag had been dumped at this site because the sanitary landfill was closed for the day. Another composite sample was collected from the uncovered residual. You were advised to excavate the lead slag material into water protected containers. The excavation was to remain open until testing confirmed if this material was hazardous waste. Later this same day, both composite samples were delivered to Wadsworth Testing Laboratories in Canton, Ohio.

OHIO EPA
NEDO

On October 5, 1987, I was notified that both composite samples tested above the E.P. Toxic standards for lead and cadmium. These results qualify the waste material as a hazardous waste. I immediately contacted you and Mr. Mickey from Master Metals . I informed you that the waste was hazardous.

On October 7, 1987, Mr. Don Garrini called me to see if this waste material would be hauled back to Master Metals, injected into the rotary furnace and then handled as a nonhazardous slag.

On October 19, 1987, I discussed the above mentioned proposal with my supervisor, Ms. Debby Berg. Because of other complexities at the Master Metals facility, this waste material should not be returned to Master Metals for processing. The proper way to dispose of this hazardous waste is to remove it to a licensed commercial disposal or treatment facility. If you contact this office we can recommend several facilities which will qualify.

Since the waste found on your property qualifies as a hazardous waste, your site has become a land disposal unit of hazardous waste. Your options are to attempt to license this facility as a land disposal unit per the regulations CFR 40 Section 264 or conduct a closure per the regulations CFR 40 Section 264 Subpart G. Should you choose the closure option, you must submit a written plan covering all applicable requirements (such as time schedule, disposal, decontamination, sampling, certification of closure and any post-closure requirements if necessary). Please submit a Part B application or closure plan to my attention within 30 days receipt of this letter.

If you have any questions, you may contact me at (216) 425-9171.

Sincerely,

Mark B

Mark Bergman, R.S
Environmental Sc
Division of Soli

MB:mo

cc: Doug Mickey,
Dave Lipstre
Master Metal
Dave Sholti

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:
Mr. Mark Meyers
Marks Cement Co.
7315 Aurora Road
Aurora, Ohio 44202

4. Article Number
429-613-798

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
11-12-87

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Feb. 1986 DOMESTIC RETURN RECEIPT

City of Aurora
P. O. Box 217, 130 S. Chillicothe Road
Aurora, Ohio 44202

October 29, 1987

Mr. Mark Meyers
Mark's Cement
7315 Aurora Road
Aurora, Ohio 44202

Dear Mr. Meyers:

Be advised that henceforth, all dumping of any materials upon your property at 1005, 1003, 1001, 997 & 995 Aurora Road, Sublots 669, 670, 671, 672 and 673 respectively, is to cease immediately.

Any further dumping in this area will result in citations under Sections 660.04 and 660.17 and 660.18 of the Aurora Codified Ordinances.

Respectfully,

THE CITY OF AURORA, OHIO

David A. Lipstreu
Zoning Administrator

DAL/mh

xc: Mayor
Law Director
Service Director
Council Members
Mr. Bergman, Ohio E.P.A.
Mr. Hillman, ODNR, Division of Wildlife

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OCT 30 1987
OHIO EPA-N.E.D.O.

OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216)425-9171

Toward a Cleaner Environment

Richard F. Celeste
Governor

November 2, 1987

RE: MARKS CEMENT DEMO SITE
PORTAGE COUNTY
COMPLAINT #815

CERTIFIED MAIL

Mr. Doug Mickey
Master Metals
2850 W. Third Street
Cleveland, Ohio 44113

Dear Sir:

You are receiving a copy of a letter addressed to Mr. Mark Meyers. It describes in detail, the dumping of your lead slag at a demolition site in Aurora, Ohio. Two composite samples were collected and tested on this waste stream. Copies of the test results are enclosed. As you can see, the E.P. Toxicity standards for lead and cadmium were exceeded on both samples. This waste stream qualifies as a hazardous waste. This does not agree with a composite sample tested for Master Metals on June 12, 1987. Since a discreptancy exists, all lead slag must be handled as a hazardous waste until proven differently. Please be advised that since Master Metals is the generator of this waste material, you share in the liability of this incident. You are expected to work with Mark's Cement Company to resolve this problem. In addition, all on-site lead slag must be properly protected from the elements and environment per the requirements of CFR 40 Parts 262 thru 265. All paperwork and disposal requirements must be properly addressed on this waste stream.

Please send me documentation, within 30 days receipt of this letter, which addresses how you are resolving this issue. If you have any questions you may contact me at (216) 425-9171.

Sincerely,

Mark Bergman/K.L.C.

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste Management

MB/sp

Enclosure

ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE, SUITE 210 • BEDFORD, OHIO • 44146
(216) 439-5959

MARK BERGMAN
OHIO EPA
STATE OF OHIO ENVIRONMENTAL PROTECTION AGENCY
NORTHEAST DISTRICT OFFICE
2110 EAST AURORA ROAD
TWINSBURG, OHIO
44087-1969

RE: 995, 997, 1001, 1003, & 1005 Aurora Road

Dear Mr. Bergman:

The purpose of this letter is confirm the conversation which occurred during your second visit to the above property.

My understanding is that your indicated to both Mark and Don that hardfill could be brought onto the land without objection from the EPA.

My further understanding is that the EPA has never issued any instructions to anyone indicating in anyway whatsoever that filling of the above land must stop.

I would appreciate your immediate response if the above facts are in anyway inaccurate.

Thank-you,

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NOV 3 - 1987
OHIO EPA-N.E.D.O.

Robert Otto Carson

ROBERT OTTO CARSON

11/3/87

City of Aurora
P. O. Box 217, 130 S. Chillicothe Road
Aurora, Ohio 44202

November 3, 1987

Mr. Mark Bergman
Ohio EPA, N.E. District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

Dear Mr. Bergman:

Based upon our conversation last week, it is my understanding that your office was in the process of notifying Mark's Cement of further required site clean-up work to be carried out on their property at 1005 Aurora Road. You also indicated the possibility of the installation of several monitoring wells in the area.

Please advise me of any further action and/or communications from your office relative to this matter.

Very truly yours,

THE CITY OF AURORA, OHIO

David A. Lipstreu
Zoning Administrator

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NOV - 4 1987
OHIO EPA-N.E.D.O.

cc: Mayor
Council
Law Director

ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE, SUITE 210 • BEDFORD, OHIO • 44146
(216) 439-5959

November 11, 1987

Mark Bergman
OHIO EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, OH 44087-1969

Re: Mark's Cement Demo Suite
Portage County
Complaint #815

Certified Mail

Dear Mr. Bergman:

We have received a copy of November 2nd letter to Doug Mickey.

However, we never received the letter referred to in the November 2nd copy.

You indicate that Doug Mickey is receiving a copy of a letter addressed to Mr. Mark Meyers describing in detail the dumping of lead slag in Aurora, Ohio.

Repeating to make clear to you we have not received this letter.

Would you be willing to send us this letter or a copy of it to the above caption address. We will certainly appreciate it.

Sincerely,

Robert Otto Carson

Robert Otto Carson

ROC/tyl

RECEIVED
NOV 13 1987
OHIO EPA-N.E.D.O.

Envisage Environmental Incorporated P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

November 19, 1987

Mr. Mark Bergman
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Mark,

This letter is to inform you of the results from the latest analysis of the Rotary Furnace Slag generated at the Master Metals facility.

The sample was obtained on November 04, 1987 by an Envisage Environmental Field Technician from the segregated furnace slag material. The slag pieces were crushed in order to obtain a mixture of small particle size for analysis. A representative portion of the crushed slag was analyzed per EP Toxicity Testing requirements in 40CFR Part 261 Appendix II. The results are as follows:

Metal Constituent		EP Toxicity Result	Regulated Concentration
Arsenic	D004	0.05 mgs/l	5.0 mgs/l
Barium	D005	14.50 mgs/l	100.0 mgs/l
Cadmium	D006	< 0.01 mgs/l	1.0 mgs/l
Chromium	D007	0.02 mgs/l	5.0 mgs/l
Lead	D008	0.06 mgs/l	5.0 mgs/l
Mercury	D009	< 0.05 mgs/l	0.2 mgs/l
Selenium	D010	< 0.05 mgs/l	1.0 mgs/l
Silver	D011	< 0.05 mgs/l	5.0 mgs/l

The above results coincide with past results of "segregated" furnace slag. These results also confirm that the slag shipment handled by Mark's Cement was analyzed as hazardous due to a contamination from raw materials at the Master Metals facility.

RECEIVED
NOV 20 1987

Master Metals Slag Analysis(11-19-87 letter)

The EP Toxicity analysis of the Furnace Slag prior to and after this incident has shown that the regulated metals, lead and cadmium, are below the Maximum Allowable Concentration Limits.

As a comparison, I am including data from previous analysis for the constituents of concern, Lead and Cadmium:

Sample Date	Metal Analyte	Analysis Result	Regulated Concen.
11-02-87	Cadmium(D006)	< 0.01 mgs/l	1.0 mgs/l
	Lead(D008)	0.06 mgs/l	5.0 mgs/l
06-12-87	Cadmium(D006)	0.04 mgs/l	1.0 mgs/l
	Lead(D008)	1.80 mgs/l	5.0 mgs/l
12-09-86	Cadmium(D006)	< 0.01 mgs/l	1.0 mgs/l
	Lead(D008)	0.07 mgs/l	5.0 mgs/l
05-01-85	Cadmium(D006)	0.02 mgs/l	1.0 mgs/l
	Lead(D008)	< 0.01 mgs/l	5.0 mgs/l

As shown in this data, the Rotary Furnace is designed and operated in a manner which maximizes lead product recovery and minimizes lead contamination in the resulting slag.

Envisage Environmental will continue to analyze the furnace slag material on a regular schedule. Please review this letter and respond to Mr. Douglas Mickey of Master Metals with your comments regarding the handling and disposal of this non-hazardous material. An expeditious reply is appreciated so that Master Metals may minimize the inventory accumulation of this material.

Respectfully submitted,

David K. Munson

David K. Munson
Envisage Environmental

cc: Mr. Douglas Mickey
Master Metals Inc.

Envisage Environmental Incorporated
P.O. Box 132 Richfield, Ohio 44286
Phone (216) 526-0990

ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE. SUITE 210 • BEDFORD. OHIO • 44146
(216) 439-5959

November 30, 1987

Mark Bergman
Environmental Scientist
OHIOEPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Oh 44087-1969

Re: Mark's Cement, Inc.

Dear Mr. Bergman:

I would like to take this opportunity to thank you for meeting me on the spur of the moment in your office to discuss the rough draft for a closure plan prepared by David Munson.

I appreciate you taking the time to go over this report with me so that I can frame a second draft. Your comments have enabled me to move forward quickly and avoid several months of delay.

I plan to call you upon your return to Cleveland.

Very truly yours,

Robert Otto Carson

ROC/tyl

RECEIVED
DEC 2 - 1987
OHIO EPA-N.E.D.O

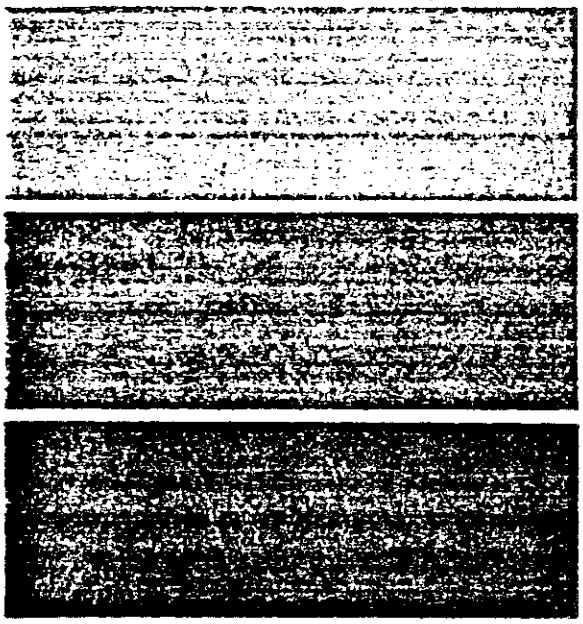
ENVISAGE ENVIRONMENTAL INCORPORATED
P. O. Box 152, Richfield, Ohio 44286
Phone (216) 526-0990

REPORT NO. 87-1940 (0212CA)
COMPANY Mark's Cement
TITLE Sampling Plan
DATE 12-1-87

MARK'S CEMENT COMPANY
AURORA, OHIO

DEMOLITION FILL SITE
SAMPLING PLAN

CONDUCTED - DECEMBER 1, 1987



MARK'S CEMENT DEMOLITION FILL SITE

S A M P L I N G P L A N

Conducted: December 01, 1987

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

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Introduction:

The Sampling Plan for the soil was conducted on December 01, 1987 at the Mark's Cement Demolition Fill site. The sampling occured within the guidelines described in the Closure Plan, as submitted to the OEPA on November 25, 1987.

Site Description:

At the site, there are two separate areas where the contamination has been removed and placed into dumpsters.

The area closest to Aurora Road was designated as the "Northern Area(N) and the area further from Aurora Road was designated as the "Southern Area". The dimensions of these excavations were:

	Width	Length	Depth
Northern Excavation:	30 feet	30 feet	6 feet
Southern Excavation:	10 feet	15 feet	6 feet

Soil Sampling Plan:

The primary objective of the sampling plan at the Mark's Cement demolition fill site was to collect samples that provided representative, random, accurate and precise measurements of the EP Toxic properties of the remaining soil.

The results of the sampling will, after review, provide a basis for further progress toward decontamination and closure of the affected areas.

The method of "simple random sampling" was chosen in order to obtain the appropriate number of composited samples for analysis per the EP Toxicity Test as contained in 40CFR Part 261, Appendix II.

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Sampling Plan: Mark's Cement(continued)

Each Excavation was divided into individual sampling zones (ie: Grid Zones). The number of Grid Zones per excavation was determined by applying Random Sampling Calculations. The following results were obtained:

Northern Excavation...3 separate Grid Zones(#'s 1-N, 2-N, 3-N)
Southern Excavation...2 separate Grid Zones(#'s 1-S, 2-S)

Each Grid Zone will be divided into equal 1 square foot(1'x1') numbered sections at the "floor" of each excavation.

Within each Grid Zone, the 1'x 1' sections were numbered, as shown on the Grid Diagrams enclosed in this report. The number of sections in each Grid Zone were as follows:

Northern Excavation:

Grid Zone # 1-N.....300 sections numbered 001-300
Grid Zone # 2-N.....300 sections numbered 001-300
Grid Zone # 3-N.....300 sections numbered 001-300

Southern Excavation:

Grid Zone # 1-S.....150 sections numbered 001-150
Grid Zone # 2-S.....150 sections numbered 001-150

Within each grid zone, 14 of the 1'x 1' numbered sections were randomly designated for sampling. The numbered sections were selected with a Random Numbers Table, prior to sample acquisition. These numbers represent the EXACT locations within each Grid Zone where sampling occured.

The random numbers obtained for each Grid Zone are listed below, in order of actual appearance from the Random Number Program.

Grid 1-N	Grid 2-N	Grid 3-N	Grid 1-S	Grid 2-S
188	47	74	17	90
287	214	114	19	79
161	63	6	2	75
44	19	275	111	56
127	28	8	44	121
155	49	246	50	53
167	153	78	54	85
210	246	117	126	120
98	9	48	75	93
182	159	65	38	127
253	222	280	123	14
247	149	106	13	66
07	211	164	35	112
51	31	184	60	39

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Sampling Plan: Mark's Cement Site(continued)

The following chart summarizes:

Excavation	# of Grid Zones	# of composites analyzed	# grabs
Northern	three(#1-N,2-N,3-N)	three(1 composite/Grid)	14/composite
Southern	two(#1-S,2-S)	two(1 composite/Grid)	14/composite

Soil Sampling Equipment:

Each sample was obtained with use of a soil grab apparatus entering the soil at a depth of 4-6 inches. Each grab sample was segregated in labelled sealed bags for transport to the laboratory.

The 14 random grab samples obtained from each Grid Zone were equally composited, by weight, for analysis by utilizing cone and quartering techniques.

The Grid Zone Diagrams show the precise grid zone sizes, numbering systems, and sample locations for each Grid Zone.

Each Grid Zone soil sample(ie: #1-N, #2-N, #3-N, #1-S, #2-S, #3-S) was analyzed for all EP Toxic Metals using the EP Toxicity Test contained in 40CFR Part 261 Appendix II.

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ANALYTICAL RESULTS:

Soil Analysis Results:

The results in this chart are reported in mgs/liter.

Parameters	Grid 1-N	Grid 2-N	Grid 3-N	Grid 1-S	Grid 2-S
Arsenic	< 0.05	< 0.05	< 0.05	< 0.05	< 0.05
Barium	< 0.05	< 0.05	< 0.05	< 0.05	< 0.05
Cadmium	< 0.01	0.02	0.02	< 0.01	< 0.01
Chromium	< 0.01	< 0.01	< 0.01	< 0.01	< 0.01
Lead	0.60	0.25	0.25	< 0.05	0.10
Mercury	< 0.05	< 0.05	< 0.05	< 0.05	< 0.05
Selenium	< 0.05	< 0.05	< 0.05	< 0.05	< 0.05
Silver	< 0.05	< 0.05	< 0.05	< 0.05	< 0.05

The EP Toxicity Lead and Cadmium levels in the Southern Excavation Area were extremely low, as seen in the two samples representing this area(Grid #1-S & Grid # 2-S).

The EP Toxicity Lead and Cadmium levels in the Northern Excavation Area, as represented by Grid Zone samples 1-N, 2-N & 3-N, were low.

As compared to the initial testing performed by the OEPA, the lead contamination of the soil was reduced by, at least, 99.995%.

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Sampling Plan: Mark's Cement Site(continued)

Dumpster Analysis Results:

The dumpsters, labelled #01 and #02, were analyzed twice over the past two months.

During early November, one sample representing the two dumpsters was obtained. At that time the dumpsters were approximately one-half full. On December 01, 1987, additional grab samples were obtained from the top one-foot of each dumpster for analysis. This sampling represented the additional soil added to the container, thereby filling each container with additional soil removed from the excavation areas.

The analytical results were as follows:

	********** DUMPSTER **********		
Parameter	#01(top 1')	#02(top 1')	#1/#2 bottomhalf composite
Arsenic	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Barium	0.50 mgs/l	0.30 mgs/l	0.35 mgs/l
Cadmium	0.05 mgs/l	0.08 mgs/l	0.03 mgs/l
Chromium	< 0.01 mgs/l	< 0.01 mgs/l	0.02 mgs/l
Lead	2.60 mgs/l	2.80 mgs/l	0.20 mgs/l
Mercury	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Selenium	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l
Silver	< 0.05 mgs/l	< 0.05 mgs/l	< 0.05 mgs/l

As shown in these results, the second round of material(ie: top layer) contained more Lead and Cadmium than the first material removed(ie: #1/#2 composite). These results indicate that the soil removal process was more effective during the second removal process when the dumpsters were filled.

The above analysis represents the top and middle layers of the Dumpsters. All data indicate that the soil material, although contaminated with the Lead and Cadmium removed from the excavation areas, is a non-hazardous waste material.

As described in the Closure Plan submitted on November 25, 1987, this material will be sent, upon approval, to a non-hazardous landfill for disposal.

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Surface Water Analysis:

On November 13, 1987, surface water samples were obtained from the areas surrounding the Demolition Fill Site.

The areas surrounding directly southwest of the Demolition Fill Site are comprised of scattered pockets of surface water resulting from storm water runoff from Aurora Road and surrounding higher elevation areas, including the fill. This surface water eventually drains into the storm drainage trench located approximately 100 feet directly south of the fill site.

This drainage trench is stagnant, and only flows from east to west during periods of high runoff volume, therefore is not technically defined as a "creek".

Also, water runoff samples were obtained north of the site along Aurora Road.

The results are as follows: TOTAL?

	Lead	Cadmium
Northern Puddle	< 0.05 mgs/l	< 0.01 mgs/l
Middle Puddle	< 0.05 mgs/l	< 0.01 mgs/l
Trench Discharge	< 0.05 mgs/l	< 0.01 mgs/l
Aurora Road Runoff	< 0.05 mgs/l	< 0.01 mgs/l

Lead and Cadmium were not found in the surface water samples.

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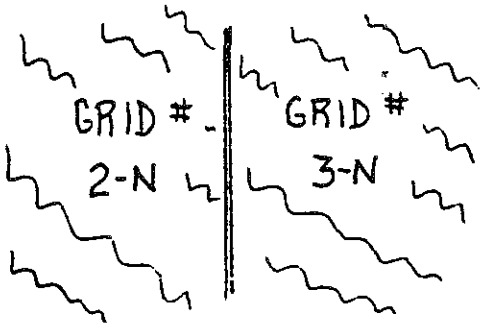
GRID #1-N

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21									30
31									40
41			44						50
51									60
61									70
71									80
81									90
91							98		100
101	102	103	104	105	106	107	108	109	110
111									120
121						127			130
131									140
141									150
151				155					160
161						167			170
171									180
181	182						188		190
191									200
201	202	203	204	205	206	207	208	209	210
211									220
221									230
231									240
241						247			250
251		253							260
261									270
271									280
281	282	283	284	285	286	287	288	289	290
291	292	293	294	295	296	297	298	299	300

AURORA ROAD



* GRID SIZE: 10' x 30'
* NORTH EXCAVATION SIZE: 30' x 30'
* SCALE: 0 1' 2' 3'
* 14 RANDOM GRAB SAMPLES COMPOSITED (SAMPLE #1-N)

Envisage Environmental Incorporated
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Phone (216) 526-0990

GRID # 2-N

GRID # 1-N

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21							28		30
31									40
41						47		49	50
51									60
61		63							70
71									80
81									90
91									100
101	102	103	104	105	106	107	108	109	110
111									120
121									130
131									140
141								149	150
151		153						159	160
161									170
171									180
181									190
191									200
201	202	203	204	205	206	207	208	209	210
211			214						220
221	222								230
231									240
241					246				250
251									260
261									270
271									280
281	282	283	284	285	286	287	288	289	290
291	292	293	294	295	296	297	298	299	300

AURORA ROAD

GRID # 3-N

* GRID SIZE: 10' x 30'
* NORTH EXCAVATION SIZE: 30' x 30'
* SCALE: 0 1' 2' 3'
* 14 RANDOM GRAB SAMPLES COMPOSITED (SAMPLE # 2-N)

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

GRID # 3-N

GRID # 1-N | GRID # 2-N

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21									30
31									40
41							48		50
51									60
61				65					70
71			74				78		80
81									90
91									100
101	102	103	104	105	106	107	108	109	110
111			114			117			120
121									130
131									140
141									150
151									160
161			164						170
171									180
181			184						190
191									200
201	202	203	204	205	206	207	208	209	210
211									220
221									230
231									240
241					246				250
251									260
261									270
271				275					280
281	282	283	284	285	286	287	288	289	290
291	292	293	294	295	296	297	298	299	300

AURORA ROAD

* GRID SIZE: 10' x 30'
* NORTH EXCAVATION SIZE: 30' x 30'
* SCALE: 0 1' 2' 3'
* 14 RANDOM GRAB SAMPLES COMPOSITED (SAMPLE 3-N)

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

GRID # 1-S

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100
101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120
121	122	123	124	125	126	127	128	129	130
131	132	133	134	135	136	137	138	139	140
141	142	143	144	145	146	147	148	149	150

AURORA ROAD

GRID #2-S

* 14 GRABS COMPOSITED IN THIS GRID (SAMPLE 1-S)
* GRID SIZE: 10' x 15'
* SOUTH EXCAVATION SIZE: 20' x 15'
* SCALE: 0 1' 2'

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GRID #2-S

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100
101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120
121	122	123	124	125	126	127	128	129	130
131	132	133	134	135	136	137	138	139	140
141	142	143	144	145	146	147	148	149	150

GRID #1-S

AURORA ROAD

* 14 RANDOM GRABS COMPOSITED INTO ONE SAMPLE (#2-S)
* GRID SIZE: 10' x 15'
* SOUTH EXCAVATION SIZE: 20' x 15'
* SCALE: 0 1' 2'

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ROBERT OTTO CARSON
ATTORNEY AT LAW
653 BROADWAY AVENUE, SUITE 210 • BEDFORD, OHIO • 44146
(216) 439-5959

January 8, 1988

Mr. Mark Bergman
Environmental Scientist Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087-1969

RE: Mark's Cement, Inc.

Dear Mr. Bergman,

Please find one copy of the Envisage Environmental Incorporated plan for Mark's Cement Company.

May I meet with you at 8 a.m. on January 12, for a brief one half hour meeting concerning the demolition fill sites sampling plan conducted December 1?

Please call my office to confirm.

Sincerely yours,

Robert Otto Carson JAN 13 1988

Robert Otto Carson

ROC/cw

Enclosure

cc Mark's Cement, Inc.

RECEIVED
JAN 13 1988
OHIO EPA-N.E.D.O.

MARK'S CEMENT INC.

562-7021

7315 AURORA ROAD
AURORA, OHIO 44202

562-1615

CERTIFIED MAIL

State of Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087-1969

February 29, 1988

Attention: Mr. Mark Bergman
Phone: 425-9171

Re: Mark's Cement Demo Site
Portage County
Complaint #815

Dear Mr. Bergman,

A sampling plan and analysis was performed on the dumpsters located on Mark's Cement site by Envisage Environmental Incorporated. The material was examined according to the closure plan submitted November 25, 1987 and was determined to be non-hazardous waste.

Our conversation on February 25, 1988 concluded that your office still considers the material as hazardous. To date, we have received no written communication concerning your decision.

We offer an alternative solution. Contact has been made with Master Metals, an approved company to handle materials of the composition and the originator of this present material. They have granted permission to return the material to their yard so that it may be processed and recycled with their material of the same composition. This material will be processed under their normal accepted proceedures resulting in the usual waste materials produced and handled in the same manner.

We await your decision in this matter and hopefully anticipate an answer by March 9, 1988. I'm sure you understand our eagerness in resolving this situation in that the time spent by containment in rented dumpsters is expensive and non-productive.

Yours Truly

Don Garrini
Construction Division Manager
Mark's Cement Inc.

RECEIVED

MAR 1- 1988

OHIO EPA-N.E.D.O

DG/dm

DRAFT

CLOSURE PLAN

FOR

MARK'S CEMENT

DEMOLITION FILL SITE

SUBMITTED BY:

Envisage Environmental, Inc.

Submittal Date:

November 25, 1987

Copy to Ohio EPA - NEDO
on 3-18-88
M.B.

Envisage
Environmental
Incorporated
P.O. Box [illegible]
Phone [illegible]

I N D E X

DRAFT

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Diagram #03: Southern Excavation Grid.....

Envisage Environmental Incorporated

P.O. Box 152 Richfield, Ohio 44286

Phone (216) 526-0999

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Introduction:

This closure plan has been prepared in response to the accidental placement of hazardous Rotary Kiln Furnace Slag at the Mark's Cement Demolition Fill Site, located at 1000 Aurora Road.

The two shipments of furnace slag were placed in piles at two specific locations in the fill site. The material was leveled off within know measurable parameters.

Once notified of the hazardous nature of the furnace slag by the OEPA Twinsburg office, Mark's Cement personnel voluntarily began excavation and containerization of the furnace slag material.

Envisage
Environmental
Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-[illegible]

DRAFT

DECONTAMINATION PROCEDURES:

The primary step in mitigating this accident is the excavation and containerization of the furnace slag material.

The following sections describe the excavation and removal of the contaminated fill into secure containers at the site.

Excavation of Furnace Slag Material

Prior to OEPA notification to Mark's Cement about the nature of this material, the two piles were leveled off during normal course of operations into an area estimated by the operator to be within the following dimensions:

Northern vein..... 20' x 20'maximum @ estimated 6" thickness
Southern vein..... 10' x 15'maximum @ estimated 6" thickness

By the time OEPA notified company officials, the material had already been covered, in the normal course of operating events, by 2-3 feet of demolition fill material.

Therefore, the primary plan of excavation was to remove the normal fill material away from the contaminated "vein" resulting from the furnace slag material.

The top 2-3 feet of material was moved aside in order to gain access to the contaminated fill material. The original excavation areas were approximately 20'x20'(Northern) and 10'x15'(Southern).

Two portable dumpsters were obtained and lined with plastic, so that the excavated dirt and furnace slag could be placed into these tarped containers.

At that time Envisage Environmental field personnel were called to the site to obtain soil samples around the excavation "holes". Samples were obtained from the "ridges" and "bases" of the excavations and composited. Please note that these samples were not obtained in a scientific or random representative manner. Specific "pieces" of fill which appeared to be similar to the slag were obtained, therefore providing a bias to the sampling procedure. The advantage of this type of sampling method was the confirmation, based on the previous EP Toxicity results(see Appendix C), that not all the furnace slag material had been removed.

After these results were obtained, each excavation hole was widened to the present dimensions of 30'x40'(Northern) and 20'x22'(Southern). The additional removal completely filled the two on-site dumpsters. The excavation holes and dumpsters were covered with plastic tarps in order to minimize rain exposure to the soil.

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DRAFT

The next stage of mitigating this accidental occurance will be specifically designed random sampling of the excavation holes in order to determine if all the contamination has been removed. Also, removal of the filled dumpsters from the Mark's Cement should occur in the near future, after review and approval of this Plan by the Agency.

SAMPLING PLAN:

The Sampling Plan will focus on soil sampling, which will provide documentation that the decontaminated soil has been effectively excavated. Also, a plan of action for water sampling has been proposed.

Soil Sampling Plan:

The primary objective of a sampling plan at the Mark's Cement demolition fill site will be to collect samples that will provide representative, random, accurate and precise measurements of the EP Toxic properties of the remaining soil. The goal of sampling and analysis is to provide documentation that the site has been restored to its original uncontaminated state.

The method of "simple random sampling" was chosen in order to obtain the appropriate number of composited samples for analysis per the EP Toxicity Test as contained in 40CFR Part 261, Appendix II.

There will be three major "grid zones" in the Northern Area(#1-N, #2-N, #3-N) and three major grid zones in the Southern Area(#1-S, #2-S, #3-S). Each Grid Zone will be divided into equal 4 square foot(2'x2') numbered sections at the "floor" of each excavation.

Within each grid zone, 14 of the 2'x2' numbered sections will be randomly designated for sampling. The numbered sections will be selected prior to sample acquisition with a Random Numbers Table.

Each sample will be obtained with use of a soil grab apparatus entering the soil at a depth of 6 inches. The 14 samples obtained representing each grid zone will be equally composited, by weight, for analysis by utilizing cone and quartering techniques.

The calculations determining grid zone intervals and number of random samples required are contained in Appendix B. The Sampling Plan Map shows the precise grid zone sizes.

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Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526 0990

Soil Sampling Equipment:

A "soil grab apparatus" will be utilized to sample the soil, with each sample segregated in labelled sealed bags for transport to the laboratory. The following sampling procedure will be utilized:

- -Clean sampling apparatus.
- -Insert sampler into soil within the randomly selected cubic foot area at a depth of six inches.
- -Rotate apparatus to cut a core of the soil.
- -Close and remove apparatus from soil.
- -Transfer sample to collection bag.

Water Sampling Plan:

Along with the above soil samples, surface water samples will be obtained from the areas surrounding the Demolition Fill Site.

The areas surrounding directly southwest of the Demolition Fill Site are comprised of scattered pockets of surface water resulting from storm water runoff from Aurora Road and surrounding higher elevation areas, including the fill. This surface water eventually drains into the storm drainage trench located approximately 100-150 feet directly south of the fill site. This drainage trench is stagnant, and only flows from east to west during periods of high runoff volume, therefore is not technically defined as a "creek".

Preliminary water samples will be obtained from the locations of water accumulation, along with samples from the drainage trench.

Soil & Water Analysis Parameters:

Each Soil Grid sample(ie: #1-N, #2-N, #3-N, #1-S, #2-S, #3-S) will be analyzed for the parameters Lead and Cadmium using the EP Toxicity Test contained in 40CFR Part 261 Appendix II.

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Phone (216) 526-0990

DRAFT

POST EXCAVATION PROCEDURES:

The results of the previous testing will determine the next steps to be taken at the site.

Interpretation of Soil Analysis:

The following two possibilities exist:

Possibility #1: The Lead and/or Cadmium levels will be below the Maximum Acceptable Limits of the EP Toxicity Test.

In this case, no further removal of soil will occur. This result would point out that the Lead and Cadmium contamination has been removed and does not pose a "leaching" threat to the environment.

Possibility #2: The Lead and/or Cadmium levels will be above the Maximum Acceptable Limits of the EP Toxicity Test.

In this case, a greater volume of soil will be removed from the appropriate excavation area. Once this has occurred, resampling of the soil will occur, as discussed in the Soil Sampling Plan, until the desired decontamination is obtained.

Interpretation of Water Analysis:

The surface water samples will be analyzed for Lead and Cadmium contamination. The following possibilities exist:

Possibility #1: Lead and/or Cadmium will not be present in the water.

In this case, the long-term sampling plan will be implemented as discussed in Post Closure Responsibilities, Section 01.

Possibility #2: Lead and/or cadmium will be present in the water.

In this case, the following procedures will take place:

a) A resample of the area will be conducted within one week.

Water samples will be obtained from the same sampling points, along with points further from the fill site in order to determine the extent of contamination.

If contamination is not present, the Post-Closure Responsibilities, Section 02, will be fulfilled.

Envisage Environmental Incorporated
P.O. Box [illegible] Richfield, Ohio [illegible]
Phone (216) [illegible]

b) If the retest confirms the Lead and/or Cadmium contents of the surrounding surface water, an impermeable clay cap will be installed at the portion of the demolition fill site which had contained the excavated furnace slag. This will be done in order to prevent water from entering the fill.

In addition, sumps will be installed throughout the area surrounding the demolition site within one month. A minimum of four sumps will be installed.

The sumps will be constructed in a manner which will allow surface and near surface water to enter and be readily collected for sampling. A water sample from each sump will be collected and analyzed on a monthly basis for six months.

If contaminatizon ceases, the Post Closure Responsibilities, Section 03, will be fulfilled.

c) Discovery of Lead and/or Cadmium contamination in the surface sumps for more than two consecutive months will initiate further mitigating steps.

A ground water monitoring well will be installed in a location agreed upon by the Agency for the purpose of determining the extent of ground water contamination. Water samples from the sumps and monitoring well will be obtained and analyzed monthly for a period of six months.

If contamination is not present in the monitoring well during this six month period, Post Closure Responsibilities, Section 04 will be initiated.

Envisage Environmental Incorporated
P.O. Box 152 [illegible]
Phone (216) [illegible]

DISPOSAL OF CONTAMINATED SOIL:

After the contaminated soil has been containerized, an effective method of disposal will be sought. The goal of this section is to describe the alternatives for safe, efficient removal of the containerized soil in a manner which complies with applicable regulations. A major objective, also, is to reduce the amount of time that the containerized soil is stored at the Mark's Cement site.

The following Plan is offered:

1) The two containers of contaminated soil will be sampled and analyzed for the EP Toxic Metals Cadmium and Lead. The disposition of the material will be dependent on the results of this testing, as follows:

a) If the material does not exhibit concentrations above the Maximum Allowable for Cadmium and Lead of 1.0 mgs/l and 5.0 mgs/l, respectively, the material is a non-regulated waste per 40 CFR Part 261.24.

In this case, the container(s) will be transported to the nearest approved non-hazardous disposal facility. The advantages of this disposal procedure are:

-Large reduction in transportation mileage, thereby reducing the possibility of a transportation-related incident.

-Reduced possibility of additional site impairment which could occur if the waste material remained on-site for an extended period of time.

The approval time for acceptance of a waste material at a hazardous waste facility is typically a significant period. Unecessary storage of the material on the Mark's Cement Demolition Site would occur if the material was destined for a hazardous waste facility.

Therefore, if the material is shown to be non-hazardous, and sent to a non-hazardous disposal facility, it will be removed from site in a safer and quicker manner.

b) If the material does exhibit concentrations above the Maximum Allowable for Cadmium and Lead of 1.0 mgs/l and 5.0 mgs/l, respectively, the material is a regulated hazardous waste per 40 CFR Part 261.24.

In this case, the container(s) must be transported to a facility approved to handle Cadmium(D006) and/or Lead(D008) waste materials.

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Phone (216) 526-[illegible]

Cadmium(D006)-contaminated waste: Any container exhibiting the EP Toxicity characteristic for the metal cadmium will be sent to a licensed hazardous waste disposal facility.

Lead(D008)-contaminated waste: Any container exhibiting only the EP Toxicity characteristic for the metal Lead will be sent to the Master Metals facility. Master Metals has filed their Part A application, which includes D008, Lead(but not D006). In complying with thier interim status permit for containerized wastes, Master Metals will keep the material in the same container(s) utilized for transportation of the material to their facility. The advantages of sending Lead-only contaminated material to Master Metals is as follows:

- It is not a violation of their interim status permit for containerized D008 wastes.
- The transportation distance, therefore highway liability, is reduced.
- The approval delay time for another hazardous facility is greatly reduced, therefore the storage containers of contaminated soil can be removed from the Mark's Cement site in an expeditious manner.

Once at the Master Metals facility, the material will remain containerized. The lead-contaminated soil will be processed in the Rotary Furnace, therefore recovering the lead contamination.

The resulting soil will become part of the non-hazardous slag material. As shown in the most recent correspondance (included with this plan), the Rotary Furnace Slag has always been non-hazardous when segregated from contamination by raw material.

Therefore, by processing the lead-only contaminated soil at Master Metals, the lead will be recovered rather than sent to a landfill and the resulting slag will be non-hazardous.

Envisage Environmental Incorporated
P.O. Box 157 Richfield Ohio 44286
Phone (216) 526-[illegible]

POST CLOSURE RESPONSIBILITIES:

The Post-Closure responsibilities will vary based on the results of initial soil/water investigation/testing, the extent of environmental impairment and the steps taken to mitigate the situation.

Each "Section" below defines procedures that will be followed in the event of certain events or "possibilities" as described in the Post Excavation Procedures Section of this Closure Plan.

Post Closure Section 01: Post Closure responsibilities will consist of quarterly water samples obtained from the surface water in the vicinity of the demolition fill and drainage trench. This quarterly sampling will occur for the calender year 1988.

Post Closure Section 02: Post Closure responsibilities will consist of quarterly water samples obtained from the surface water in the vicinity of the demolition fill and drainage trench. This quarterly sampling will occur for the calender year 1988 and 1989.

Post Closure Section 03: Post Closure responsibilities will consist of monthly water samples obtained from the installed sumps for an additional six month period. After this time, samples will be obtained and analyzed quarterly for a one year period.

Post Closure Section 04: Post Closure responsibilities will consist of monthly water samples obtained from the installed sumps and monitoring wells for an additional six month period. After this time, samples will be obtained and analyzed quarterly for one year.

CERTIFICATION OF CLOSURE:

Closure Certification will be performed by a Registered Professional Engineer upon completion of the appropriate phases of this Closure Plan. Closure completion is regarded as the point at which Post Closure Responsibilities, as defined by Post Closure Sections #01, #02, #03 or #04, have been performed with satisfactory testing results.

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Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0000

CLOSURE SCHEDULE:

The Closure Schedule is variable based on factors yet to be determined, such as; remaining soil contamination, surface water evaluation and regulatory status of containerized soil.

The best time estimate is as follows, from the date of Agency approval of this Closure Plan:

1) Excavate contaminated soil and place in containers.....completed.

2) Obtain samples of remaining soil and surface waters.....Week One

3) Sample contaminated soil in containers for disposal evaluation.....Week One

4) Receive analytical results of remaining soil quality and surface water analysis.....Week Three

5) Receive analytical results of containerized soil.....Week Three

6) Discuss results with all parties involved and Agency....Week Four

7) Implement Water Sampling Plan.....Week Five

7(a) Transport material to non-hazardous facility, or to Master Metals facility for Lead-only contaminated material.....Week Five

7(b) File application for approval at hazardous waste facility (if necessary).....Week Five

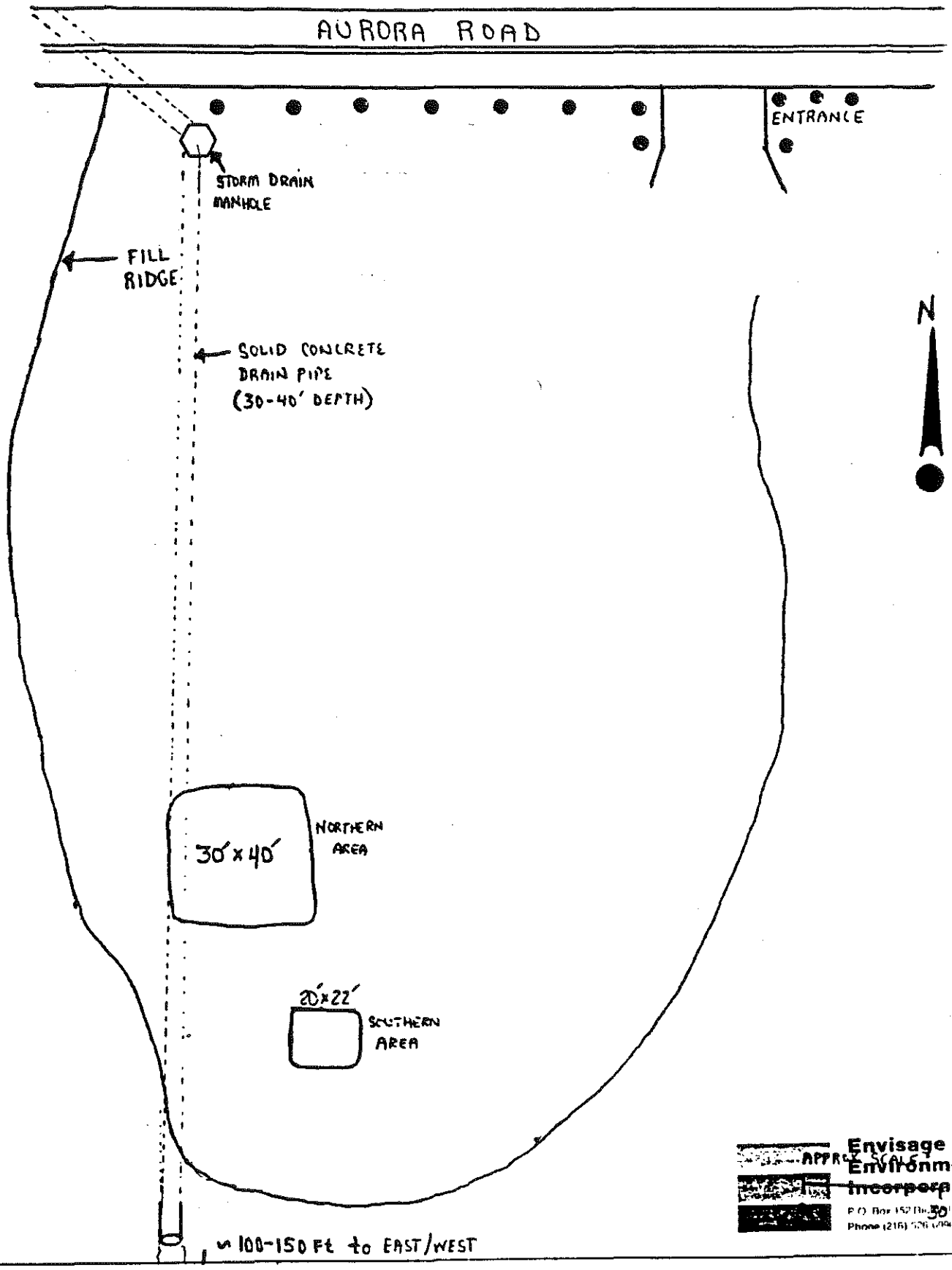
Wait for approval for disposal at hazardous waste facility..... ?

Obtain approval and make arrangements for shipment....Week Nine

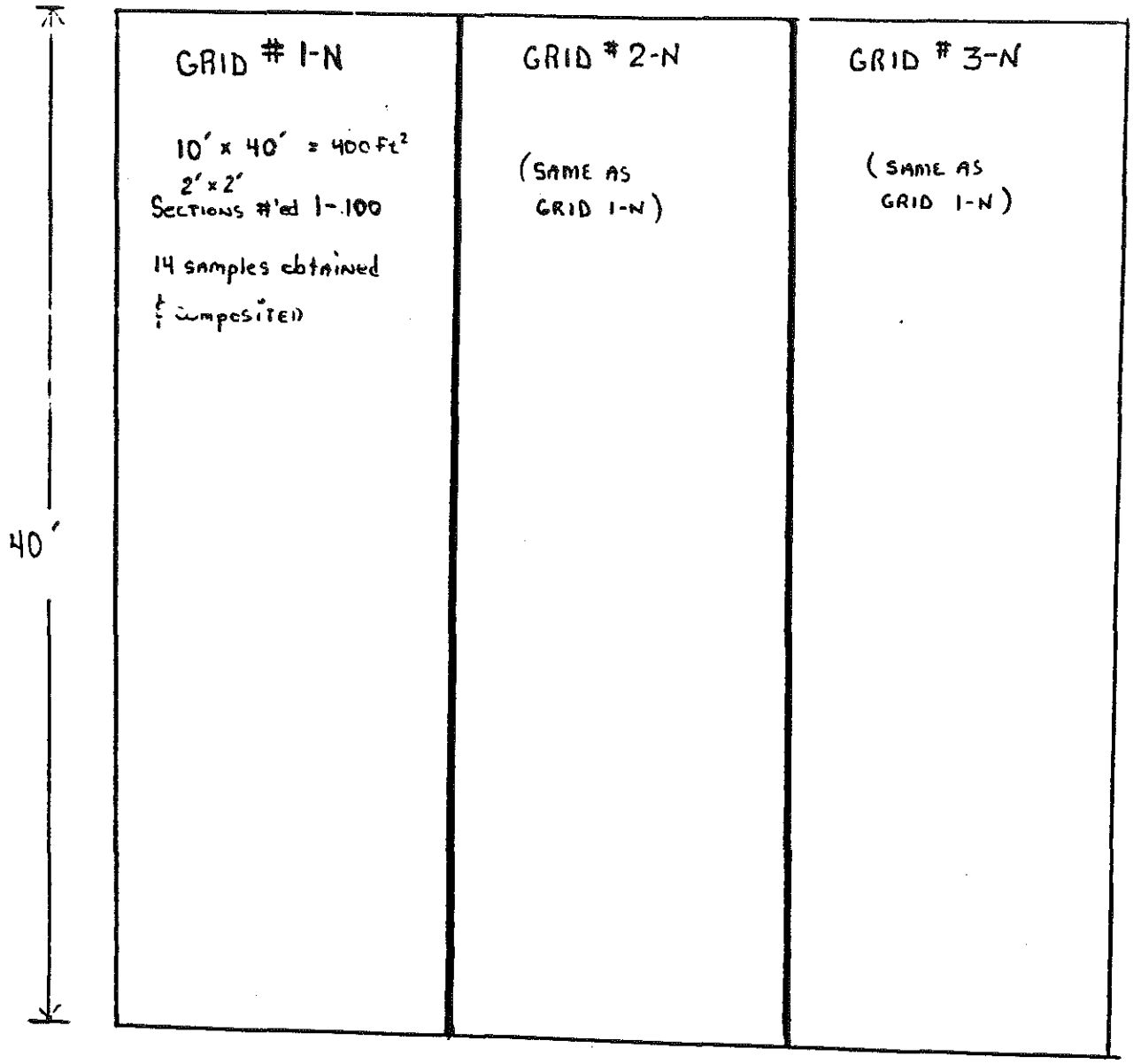
Transport material to hazardous waste facility.....Week Ten

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-2000

DE. SLITTON FILL SITE



NORTHERN AREA



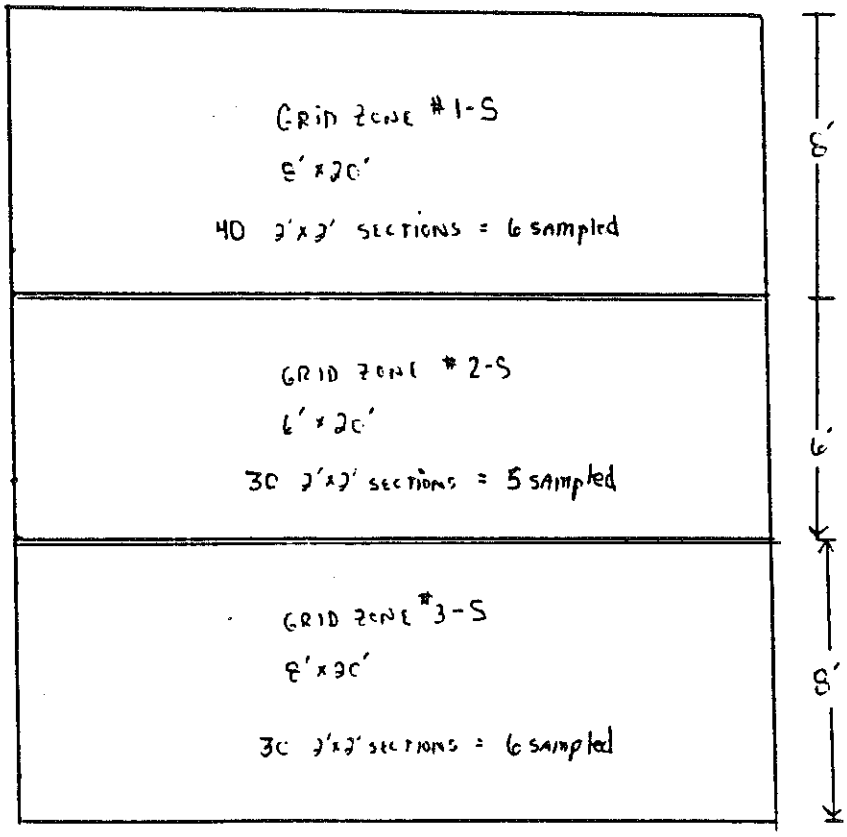
NORTH

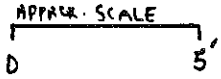
SCALE: (APPROX.)

0 5 FEET

Envisage Environmental Incorporated
P.O. Box 152 [illegible]
Phone (216) [illegible]

SOUTHERN AREA





Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526 [illegible]

MARK'S CEMENT & PETROLEUM, INC.

562-7021

7015 AURORA ROAD
AURORA, OHIO 44202

562-1615

Mark Bergman
Ohio EPA
N.E. District Office
Twinsburg, Ohio 44087

March 22, 1988

RE: MCPI

Dear Mr. Mark Bergman,

Pursuant to our most recent discussion, we shall move both containers from the land fill to Master Metals on March 25, 1988.

Our plans are based on our closure plan, discussions, desire to relieve our public officials of the building public pressure, and desire to bring this long term problem to a final resolution.

Thank you

Robert Otto Carson

Robert Otto Carson

RECEIVED

MAR 22 1988

OHIO EPA-N.E.D.O.

RC/dm

3-17-88 - Spoke with Seda Erqun from Envirage about Marks Cement Closure Plan. He said it is on their computer.

3-18-88 - Reviewed Marks Cement submittal and obtained copy of Closure Plan from Don Garini.

3-25-88 - Brought Del and Dave up to speed on Marks Cement situation. We contacted Bob Carson and set-up a meeting for 3-31-88 at OEPA, 9:30 A.M. Spoke with Doug Mickey and he said the roll-offs were taken to Master Metals today. Updated Dave Lipstrou.

3-28-88 - Conference call with Mike Savage. Must fill-out referal ASAP on Marks Cement. Doug Mickey is now confirmed for 3-31-88 meeting.

ROBERT OTTO CARSON

[illegible] BROADWAY [illegible] SUITE [illegible]

(216) 439-5959

November 11, 1987

Mark Bergman
OHIO EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, OH 44087-1969

Re: Mark's Cement Demo Suite
Portage County
Complaint #815

Certified Mail

Dear Mr. Bergman:

We have received a copy of November 2nd letter to Doug Mickey.

However, we never received the letter referred to in the November 2nd copy.

You indicate that Doug Mickey is receiving a copy of a letter addressed to Mr. Mark Meyers describing in detail the dumping of lead slag in Aurora, Ohio.

Repeating to make clear to you we have not received this letter.

Would you be willing to send us this letter or a copy of it to the above caption address. We will certainly appreciate it.

Sincerely,

Robert Otto Carson

ROC/tyl

RECEIVED
NOV 13 1987
OHIO EPA-N.E.D.O.

State of Ohio Environmental Protection Agency

Northeast District Office
[illegible]0 E. Aurora Road
[illegible]sburg, Ohio 44087-1969
([illegible]) 425-9171

Richard F. Celeste
Governor

CERTIFIED MAIL

November 10, 1987

RE: MARKS CEMENT DEMO SITE
PORTAGE COUNTY
COMPLAINT #815

Mr. Mark Meyers
Marks Cement Company
7315 Aurora Road
Aurora, Ohio 44202

Dear Sir:

On September 4, 1987, this Agency received a complaint that waste lead slag material from the Master Metals facility in Cleveland was being dumped in a demolition fill on S.R. #43 in Aurora, Ohio. On this same day I conducted an inspection on this site. Nobody was on-site during my inspection. Two piles of waste material did appear to contain lead residual. I collected a composite sample from both waste piles.

On September 8, 1987, I visited Mr. Doug Mickey at Master Metals. We discussed the complaint and he confirmed that the Marks Cement Company had hauled away some of his lead slag. It was supposed to go to a licensed sanitary landfill. A waste analysis of lead slag had been conducted by Wadsworth Testing on June 12, 1987, and it tested nonhazardous.

On September 15, 1987, I learned from Mr. Dave Lipstreu, of the City of Aurora, that the slag piles had been bulldozed flat. Mr. Kris Coder, Ohio EPA, and I visited the site and took photographs. Dirt and debris were covering the lead slag areas. There remained one small exposure on the slope of the fill and a few chunks of residue had rolled to the bottom of the fill slope.

On September 16, 1987, Mr. Coder and I met Mr. Don Garrini and you at this demolition site. You confirmed that two loads of lead slag had been dumped at this site because the sanitary landfill was closed for the day. Another composite sample was collected from the uncovered residual. You were advised to excavate the lead slag material into water protected containers. The excavation was to remain open until testing confirmed if this material was hazardous waste. Later this same day, both composite samples were delivered to Wadsworth Testing Laboratories in Canton, Ohio.

City of Aurora

P. O. Box 217, 130 S. Chillicothe Road
Aurora, Ohio 44202

November 3, 1987

Mr. Mark Bergman
Ohio EPA, N.E. District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

Dear Mr. Bergman:

Based upon our conversation last week, it is my understanding that your office was in the process of notifying Mark's Cement of further required site clean-up work to be carried out on their property at 1005 Aurora Road. You also indicated the possibility of the installation of several monitoring wells in the area.

Please advise me of any further action and/or communications from your office relative to this matter.

Very truly yours,

THE CITY OF AURORA, OHIO

David A. Lipstreu
Zoning Administrator

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NOV - 4 1987
OHIO EPA-N.E.D.O.

cc: Mayor
Council
Law Director

ROBERT OTTO CARSON

653 BROADWAY AVENUE, SUITE 2.0 • BEDFORD, OHIO • 44146

(216) 439-5959

MARK BERGMAN
OHIO EPA
STATE OF OHIO ENVIRONMENTAL PROTECTION AGENCY
NORTHEAST DISTRICT OFFICE
2110 EAST AURORA ROAD
TWINSBURG, OHIO
44087-1969

RE: 995, 997, 1001, 1003, & 1005 Aurora Road

Dear Mr. Bergman:

The purpose of this letter is confirm the conversation which occurred during your second visit to the above property.

My understanding is that your indicated to both Mark and Don that hardfill could be brought onto the land without objection from the EPA.

My further understanding is that the EPA has never issued any instructions to anyone indicating in anyway whatsoever that filling of the above land must stop.

I would appreciate your immediate response if the above facts are in anyway inaccurate.

Thank-you,

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NOV 3 - 1987
OHIO EPA-N.E.D.O.

Robert Otto Carson

ROBERT OTTO CARSON

11/3/87

Envisage Environmental Incorporated PO Box 150 Rionfield, Ohio 44096
Phone (216) 526-0990

November 19, 1987

Mr. Mark Bergman
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Mark,

This letter is to inform you of the results from the latest analysis of the Rotary Furnace Slag generated at the Master Metals facility.

The sample was obtained on November 04, 1987 by an Envisage Environmental Field Technician from the segregated furnace slag material. The slag pieces were crushed in order to obtain a mixture of small particle size for analysis. A representative portion of the crushed slag was analyzed per EP Toxicity Testing requirements in 40CFR Part 261 Appendix II. The results are as follows:

Metal Constituent		EP Toxicity Result	Regulated Concentration
Arsenic	D004	0.05 mgs/l	5.0 mgs/l
Barium	D005	14.50 mgs/l	100.0 mgs/l
Cadmium	D006	< 0.01 mgs/l	1.0 mgs/l
Chromium	D007	0.02 mgs/l	5.0 mgs/l
Lead	D008	0.06 mgs/l	5.0 mgs/l
Mercury	D009	< 0.05 mgs/l	0.2 mgs/l
Selenium	D010	< 0.05 mgs/l	1.0 mgs/l
Silver	D011	< 0.05 mgs/l	5.0 mgs/l

The above results coincide with past results of "segregated" furnace slag. These results also confirm that the slag shipment handled by Mark's Cement was analyzed as hazardous due to a contamination from raw materials at the Master Metals facility.

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NOV 20 1987
OHIO EPA-N.E.D.O.

The EP Toxicity analysis of the Furnace Slag prior to and after this incident has shown that the regulated metals, lead and cadmium, are below the Maximum Allowable Concentration Limits.

As a comparison, I am including data from previous analysis for the constituents of concern, Lead and Cadmium:

Sample Date	Metal Analyte	Analysis Result	Regulated Concen.
11-02-87	Cadmium(D006)	< 0.01 mgs/l	1.0 mgs/l
	Lead(D008)	0.06 mgs/l	5.0 mgs/l
06-12-87	Cadmium(D006)	0.04 mgs/l	1.0 mgs/l
	Lead(D008)	1.80 mgs/l	5.0 mgs/l
12-09-86	Cadmium(D006)	< 0.01 mgs/l	1.0 mgs/l
	Lead(D008)	0.07 mgs/l	5.0 mgs/l
05-01-85	Cadmium(D006)	0.02 mgs/l	1.0 mgs/l
	Lead(D008)	< 0.01 mgs/l	5.0 mgs/l

As shown in this data, the Rotary Furnace is designed and operated in a manner which maximizes lead product recovery and minimizes lead contamination in the resulting slag.

Envisage Environmental will continue to analyze the furnace slag material on a regular schedule. Please review this letter and respond to Mr. Douglas Mickey of Master Metals with your comments regarding the handling and disposal of this non-hazardous material. An expeditious reply is appreciated so that Master Metals may minimize the inventory accumulation of this material.

Respectfully submitted,

David K. Munson

David K. Munson
Envisage Environmental

cc: Mr. Douglas Mickey
Master Metals Inc.

Envisage Environmental Incorporated
P.O. Box 152 Richfield, Ohio 44286
Phone (216) 526-0990

3-17-88 - Spoke with Seda Ergun from Envisage about Marks Cement Closure Plan. He said it is on their computer.

3-18-88 - Reviewed Marks Cement submittal and obtained copy of Closure Plan from Don Garrini.

3-25-88 - Brought Del and Dave up to speed on Marks Cement situation. We contacted Bob Carson and set up a meeting for 3-31-88 at OEPA, 9:30 A.M. Spoke with Doug Mickey and he said the roll offs were taken to Master Metals today. Updated Dave Lipstreu.

3-28-88 - Conference call with Mike Savage. Must fill-out referal ASAP on Marks Cement. Doug Mickey is now confirmed for 3-31-88 meeting.

State of Ohio Environmental Protection Agency

Northeast District Office
[illegible] E. Aurora Road
Twin[illegible]g, Ohio 44087-1969
21[illegible] 9171

Toward a Cleaner Environment

Richard F. Celeste
Governor

MEETING ATTENDANCE SHEET

Subject: MARKS CEMENT

Date 3/31/88 Time 9:38 Meeting Place NEDO

	Name	Affiliation	Phone Number
1.	David Werts	OEPA-NEDO	216-425-9171
2.	Deborah J. Kelly	OEPA-Nedo	216-425-9171
3.	[illegible]	OEPA-NEDO	425-9171
4.	Robt Otto Carson	MCPS	439-5959
(ARRIVED 10:20) 5.	Doug McKee	Master Metals	621-2361
6			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14			
15.			

Construction Management Consultants, Inc.
19451 Roseland Avenue
Cleveland, Ohio 44117
(216) 531-0161

TO:

Master Metals, Inc.
2850 West 3rd St
Cleveland, Ohio 44113

INVOICE: № 111

DATE: March 31, 1988

JOB: 8803

Amount due for Draw Request #1.

Total $ 17,730.00

TOTAL DUE NOW ..... $ 17,730.00

paid ck # 17823-4/21/88 15,000.00

$ 730.00

State of Ohio Environmental Protection Agency

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

Richard F. Celeste
Governor

November 2, 1987

RE: MARKS CEMENT DEMO SITE
PORTAGE COUNTY
COMPLAINT #815

CERTIFIED MAIL

Mr. Doug Mickey
Master Metals
2850 W. Third Street
Cleveland, Ohio 44113

Dear Sir:

You are receiving a copy of a letter addressed to Mr. Mark Meyers. It describes in detail, the dumping of your lead slag at a demolition site in Aurora, Ohio. Two composite samples were collected and tested on this waste stream. Copies of the test results are enclosed. As you can see, the E.P. Toxicity standards for lead and cadmium were exceeded on both samples. This waste stream qualifies as a hazardous waste. This does not agree with a composite sample tested for Master Metals on June 12, 1987. Since a discreptancy exists, all lead slag must be handled as a hazardous waste until proven differently. Please be advised that since Master Metals is the generator of this waste material, you share in the liability of this incident. You are expected to work with Mark's Cement Company to resolve this problem. In addition, all on-site lead slag must be properly protected from the elements and environment per the requirements of CFR 40 Parts 262 thru 265. All paperwork and disposal requirements must be properly addressed on this waste stream.

Please send me documentation, within 30 days receipt of this letter, which addresses how you are resolving this issue. If you have any questions you may contact me at (216) 425-9171.

Sincerely,

Mark Bergman / K.L.C.

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste Management

MB/sp

Enclosure

City of Aurora
P. O. Box 217, 130 S. Chillicothe Road
Aurora, Ohio 44202

October 29, 1987

Mr. Mark Meyers
Mark's Cement
7315 Aurora Road
Aurora, Ohio 44202

Dear Mr. Meyers:

Be advised that henceforth, all dumping of any materials upon your property at 1005, 1003, 1001, 997 & 995 Aurora Road, Sublots 669, 670, 671, 672 and 673 respectively, is to cease immediately.

Any further dumping in this area will result in citations under Sections 660.04 and 660.17 and 660.18 of the Aurora Codified Ordinances.

Respectfully,

THE CITY OF AURORA, OHIO

David A. Lipstreu
Zoning Administrator

DAL/mh

xc: Mayor
Law Director
Service Director
Council Members
Mr. Bergman, Ohio E.P.A.
Mr. Hillman, ODNR, Division of Wildlife

RECEIVED
OCT 30 1987
OHIO EPA-N.E.D.O.

SETTLED IN 1799

BENESCH, FRIEDLANDER, COPLAN & ARONOFF
ATTORNEYS AT LAW
1100 CITIZENS BUILDING
850 EUCLID AVENUE
CLEVELAND, OHIO 44114-3399
(216) 363-4500

IN COLUMBUS
88 EAST BROAD STREET
COLUMBUS, OHIO 43215-3506
(614) 223-9300

CABLE "BFCA"
TELEX 297607
TELECOPIER (216) 363-4588
WRITER'S DIRECT DIAL NUMBER
363-4634

September 21, 1987

Arthur I. Harris, Esq.
Assistant United States Attorney
Northern District of Ohio
1404 East 9th Street
Suite 500
Cleveland, OH 44114

Re: Master Metals, Inc., Reorganized Debtor

Dear Art:

Enclosed is a file-stamped copy of the order entered by the Bankruptcy Court on September 16, 1987 confirming Master Metals, Inc.'s plan of reorganization in accordance with section 1129(a) of the Bankruptcy Code.

Very truly yours,

William E. Schonberg

WES/com
Enclosure
cc: Michael A. Cyphert (w/o enc.)
Douglas K. Mickey (w/o enc.)
Jerry L. Moody (w/o enc.)

FILED
SEP 1 1987
CLERK OF COURTS
U. S. Bankruptcy Court
Northern Dist. of Ohio

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings for a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr. ORDER CONFIRMING PLAN OF REORGANIZATION

Came on before the Court the hearing on confirmation of the plan of reorganization (the "Plan") under chapter 11 of title 11 (the "Bankruptcy Code") of the United States Code filed by Master Metals, Inc., debtor (the "Debtor") on March 19, 1987, a copy of which Plan, the approved Amended Disclosure Statement, a ballot and the Order approving the Amended Disclosure Statement combined with notice of hearing on confirmation of the Plan having been transmitted to creditors and equity security holders whose consideration thereof is required by law; and

It having been determined after hearing on notice and the Court finding that:

1. The objections to confirmation of the Plan filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") were withdrawn by the EPA at the hearing on confirmation of the Plan. As the basis for the withdrawal of such objections, the Debtor and EPA have entered into a

stipulation (the "Stipulation"), a copy of which is annexed hereto as Exhibit "A" and made a part hereof, which is fair and reasonable and consistent with Section 3.2 of the Plan; and

2. The Plan has been accepted in writing by the creditors and equity security holders whose acceptance is required by law and that the Plan has been accepted by at least one class of impaired claims determined without including any acceptance of the Plan by any insider holding a claim of such class; and

3. The provisions of chapter 11 of the Bankruptcy Code have been complied with; that the Plan has been proposed in good faith and not by any means forbidden by law; and

4. Each holder of a claim or interest will receive or retain under the Plan property of value, as of the effective date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date. Further, the Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted the Plan; and

5. All payments made or promised by the Debtor or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and are reasonable or, if for services and costs incurred by the reorganized debtor after the Confirmation Date (as such term is defined in the Plan) in consummating the Plan and administering the reorganization case,

the reorganized debtor shall make payments for such services and costs, without further Court authorization and unless disputed by the reorganized debtor, in accordance with Section 6.6 of the Plan; and

6. The identity, qualifications, and affiliations of the persons who are to be directors or officers of the Debtor as the reorganized debtor, after confirmation of the Plan, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holders and with public policy; and

7. The identity of any insider that will be employed or retained by the Debtor and his compensation have been fully disclosed; and

8. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor as the reorganized debtor; and

9. All of the applicable provisions of Section 1129(a) of the Bankruptcy Code have been satisfied and the Plan should be confirmed, sufficient cause having been shown therefor and the Court being fully advised in the premises herein. Therefore, it is

ORDERED, that the Plan filed by the Debtor on March 19, 1987, a copy of which Plan is attached hereto, is confirmed; and it is further

ORDERED, that notwithstanding any otherwise applicable non-bankruptcy law, rule or regulation relating to financial condition, the Debtor shall carry out the Plan and shall comply with any and all orders of this Court that may be made in aid of consummation of the Plan; and it is further

ORDERED, that upon the entry of this Order of Confirmation, the Debtor shall be discharged from all obligations, demands and/or claims of whatever character, whether provable, liquidated or unliquidated, fixed or contingent, and this Court shall retain jurisdiction over the Debtor (i) for the purpose of aiding and effectuating consummation of the Plan, (ii) for all matters contained in the Stipulation, until certification by the reorganized debtor and the EPA that the reorganized debtor has made all deposits and/or expenditures required under the Stipulation, and (iii) as provided in Article XI of the Plan, until the case is closed and all provisions of the Plan have been satisified in accordance with the orders of this Court; and it is further

ORDERED, that the Stipulation is approved; and it is further

ORDERED, that parties to any and all executory contracts and unexpired leases deemed rejected and disaffirmed upon the entry of this Order of Confirmation pursuant to Article X of the Plan must file proof of any claim for damages arising from such rejection and disaffirmance with this Court within 30 days after the entry of this Order of Confirmation or such claim shall be

barred from receiving any payment under the Plan. Notice of the time within which such claims must be filed shall be contained in the notice of confirmation of the Plan served upon all creditors and parties in interest pursuant to Bankruptcy Rule 3020(c); and it is further

ORDERED, that upon the entry of of this Order of Confirmation, the Debtor as reorganized debtor shall be revested with all property of the Debtor as provided in the Plan and pursuant to Section 1141(b) of the Bankruptcy Code.

Dated: September _____, 1987
Cleveland, Ohio

BY THE COURT

_____
JOHN F. RAY, JR.
United States Bankruptcy Judge

STIPULATION

The United States of America on behalf of the United States Environmental Protection Agency (referred to hereafter as the "EPA") and Master Metals, Inc. (referred to hereafter as the "Debtor") agree as follows:

1. As used herein, the following terms shall have the following definitions:

a. "Facility" means the facility owned and operated by Master Metals, Inc., located at 2850 West 3rd Street, Cleveland, Ohio

b. "Closure," "Close," and "Partial Closure," refer to the closure of the waste piles at the Facility, and closure of that portion of the storage area at the Facility that does not have interim status, in accordance with an EPA Approved Partial Closure Plan (as defined in d. below).

c. "Partial Closure Plan" means the Partial Facility Closure Plan of Action, dated August 13, 1987, submitted to the EPA by the Debtor on August 14, 1987, containing, inter alia, the Debtor's proposed plan to reorganize and close the Facility's waste piles and construction

EXHIBIT "A"

of new container storage areas to qualify for interim status under RCRA and 40 C.F.R. Part 265.

d. "Approved Partial Closure Plan" means a plan for Partial Closure that has received final written approval by EPA.

e. "Closure Activities" means all measures identified in the EPA Approved Partial Closure Plan for the Facility, and, pending EPA final written approval of the Partial Closure Plan, means any measures consistent with the closure requirements at 40 C.F.R. Part 265, Subpart G.

f. "Closure Costs" and "Closure Funds" mean the costs of and funds for completing the Closure Activities, with the exception of funds to be spent by Debtor for the purchase, installation and operation of the new rotary kiln furnace.

2. On August 14, 1987, Debtor provided to EPA for review and approval its proposed Partial Closure Plan for closure of those portions of the Facility that do not have interim status. It is currently estimated that Partial Closure will cost approximately $425,000. This estimate includes costs for the purchase, installation, and operation of a new rotary kiln furnace, which Debtor proposes to purchase, at an estimated cost of $200,000. Debtor may undertake Closure Activities with the understanding that spending for such activities does not constitute

pre-approval, and that EPA has not approved Debtor's proposed Partial Closure Plan.

3. To help insure that Debtor will have sufficient funds available to fund closure of the Facility in accordance with an Approved Partial Closure Plan and meet its environmental obligations under RCRA, Debtor shall either set aside or spend funds for Closure Activities in accordance with the provisions below.

4. Debtor shall establish and maintain a separate escrow account ("Escrow Account") acceptable to EPA to be used solely for Closure Activities.

5. On the Consummation Date (as such term is defined in Debtor's Plan of Reorganization dated March 17, 1987 (the "Plan")), Debtor shall deposit in the Escrow Account Closure Funds in the sum of $15,000. This sum, as well as all other sums listed below, is separate from and in addition to, funds to be spent by Debtor for the purchase, installation, and operation of the new rotary kiln furnace.

6. In each of the four months following the Consummation Date, Debtor shall spend directly on Closure Activities (i.e., using funds not previously deposited into the Escrow Account) or pay into the Escrow Account, the sum of $15,000, making a total of $75,000 either spent on

Closure Activities and/or paid into the Escrow Account during the four months following the Consummation Date.

7. Over the following 19 months (i.e., the fifth through the twenty-third months following the Consummation Date) Debtor shall spend directly on Closure Activities (i.e., using funds not previously deposited into the Escrow Account) or pay into the Escrow Account the sum of $8,000 per month, making a total of $152,000 (or $227,000, including the previous $75,000).

8. Any amount spent or deposited into the Escrow Account subsequent to the Consummation Date which is greater than the amount required under Paragraphs 6 and 7 may be applied by Debtor to amounts due in subsequent months. Debtor may apply the funds which Debtor spent on Closure Activities prior to the Consummation Date, including $27,841.87 paid prior to September 8, 1987, to payments required in the second and third months after the Consummation Date or thereafter.

9. Debtor may access the Escrow Account to pay for Closure Activities.

10. Within 60 days after receipt of EPA's written evaluation of the Partial Closure Plan, Debtor shall, if required, submit to EPA a revised estimate of the cost of Partial Closure. If the new estimate is greater than the estimate referred to herein in Paragraph 2, the

parties shall modify the payment schedule to increase the amount of or extend the time period for monthly payments. In the event that estimated Partial Closure costs prove to be greater than actual costs, Debtor may at any time propose to EPA, and EPA shall consider, a reduction of the amounts required under Paragraphs 6 and 7. In addition, Debtor may at any time propose to EPA, and EPA shall consider, a modification of the payment schedule or amounts set forth in this Agreement. The parties will use their best efforts in good faith to resolve informally all disputes or differences of opinion which may arise under this Agreement.

11. Beginning 30 days after the Consummation Date, and each month thereafter until all deposits and/or expenditures required herein have been made, Debtor shall deliver to the EPA at:

Dale Helmers
United States Environmental Protection Agency
Region V
5 HE-12
230 South Dearborn Street
Chicago, Illinois 60604

a report detailing the status of Closure Activities and amounts spent on Closure Activities, as well as the status of funding of its Escrow Account. Upon request, Debtor agrees to provide the EPA additional information to verify compliance with the terms of this Agreement.

12. The EPA shall retain the right to allege a material default by Debtor with respect to the terms of this Agreement as grounds for dismissal or conversion of Debtor's reorganization case under Section 1112(b) of the Bankruptcy Code.

13. In the event Debtor's reorganization case is dismissed or converted, all monies in the Escrow Account (or monies which under this Agreement should have been spent on Partial Closure or placed in the Escrow Account) shall be held in constructive trust, to be used exclusively for Partial Closure, Closure and other costs necessary to comply with RCRA and other environmental requirements.

14. This Agreement in no way limits the authority of the United States or remedies available to the United States, under RCRA and all other environmental laws, including, but not limited to, EPA's authority in reviewing the Partial Closure Plan for the Facility, and the relief sought by the United States in the civil action against Debtor in Case No. C87-1471 (N.D. Ohio); nor shall amounts to be paid or spent hereunder limit the extent of Debtor's closure responsibilities.

15. The United States Bankruptcy Court for the Northern District of Ohio, Eastern Division shall retain jurisdiction over, among other things, all matters contained

in this Agreement until certification by the parties that Debtor has made all deposits and/or expenditures required under this Agreement.

16. EPA agrees to withdraw its objection to confirmation of the Debtor's Plan provided that this Stipulation is incorporated into the Court's Order confirming the Plan.

17. Except as otherwise expressly provided herein, the EPA and Debtor expressly reserve all legal and equitable rights and defenses that they may have regarding the subject of this Agreement. The execution or performance of this Agreement by Debtor shall not constitute an admission of any factual or legal issue, or of any liability or wrongdoing relating to the Facility and Debtor expressly reserves all rights, claims and defenses which it may have in any proceedings regarding the Facility.

9/14/87

Master Metals, Inc.

9/14/87

United States of America
on behalf of the United States
Environmental Protection
Agency

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For A Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr. DEBTOR'S PLAN OF REORGANIZATION

Master Metals, Inc., debtor and debtor in possession, hereby proposes under § 1121(a) of the Bankruptcy Code the following plan of reorganization and agrees to be bound thereby:

ARTICLE I

DEFINITIONS

As used in the Plan, the following terms shall have the respective meanings specified below:

1.1 "Administrative Expenses" shall mean all administrative expenses and Claims entitled to priority in distribution pursuant to § 503(b) of the Bankruptcy Code, other than a Priority Claim or Tax Claim.

1.2 "Allowed Claim" shall mean any Claim against the Debtor, proof of which was filed on or before the date fixed by the Bankruptcy Court within which proofs of claim may be filed or such other date as may have been or is designated by the Bankruptcy Court, or which has been or hereafter is scheduled by the Debtor as liquidated in amount and not disputed or contingent and, in either case, a Claim as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Bankruptcy Code or Rules of Bankruptcy Procedure or an order of the Bankruptcy Court, or as to which any objection has been determined by an order or judgment of the Bankrutpcy Court allowing such Claim that is no longer subject

1.16 "Fry Metals Claim" shall mean the debt evidenced by the consignment transaction between the Debtor and Fry Metals and the consignment interest of Fry Metals in the Debtor's "low grade lead dross" inventory shipped by Fry Metals to the Debtor pursuant to such agreement.

1.17 "Globe" shall mean Globe Union Division of Johnson Controls, a Wisconsin corporation.

1.18 "Globe Claim" shall mean the debt evidenced by a certain Consignment Agreement dated January 26, 1982, entered into by and between the Debtor and Globe Union Division of Johnson Controls, and the consignment interest of Globe in the Debtor's battery inventory as described therein, as confirmed and continued by that certain order of the Bankruptcy Court dated January 26, 1982, pertaining thereto.

1.19 "Interests" shall mean any rights of holders of issued and outstanding shares of Common Stock or other equity securities of the Debtor in respect thereof.

1.20 "Investors" shall mean Douglas K. Mickey and Jerry L. Moody, in connection with their purchase of the shares of Reorganized Debtor Common as provided in the Plan.

1.21 "New Lenders" shall mean Douglas K. Mickey and Jerry L. Moody, in connection with their unsecured loan to the Reorganized Debtor as provided in the Plan.

1.22 "NL" shall mean NL Industries, Inc., a New Jersey corporation, with its principal place of business located in New York City, New York.

1.23 "NL Claim" shall mean that debt owed by the Debtor to NL evidenced by the NL Note, the NL Mortgage, the Agreement For The Sale Of Assets by and between the Debtor and NL dated September 7, 1979, the Assumption Agreement by and between the Debtor and NL dated September 7, 1979 and instruments and/or agreements related thereto, security for the payment of which NL retains a first mortgage lien in and to the Real Property pursuant to and as provided in the NL Mortgage.

1.24 "NL Mortgage" shall mean that certain mortgage deed dated September 7, 1979, and recorded on September 11, 1979, in Volume 15376, Page 345 of Cuyahoga County Records, between the Debtor as mortgagor and NL as mortgagee, granting unto NL a mortgage lien in and to the Real Property.

1.25 "NL Note" shall mean that certain promissory note executed and delivered by the Debtor to NL dated September 7, 1979, drawn in the original principal amount of $800,000 and bearing interest at the rate of ten percent (10%) per annum.

1.35 "Secured Claim" shall mean a Claim secured by a lien, security interest or other Claim against, or interest in, the Property, other than a Tax Claim.

1.36 "Tax Claim" shall mean any unsecured Claim of a governmental unit entitled to priority in distribution pursuant to § 507(a)(7) of the Bankruptcy Code.

A term used in the Plan and not defined herein has the meaning attributed to the term in the Bankruptcy Code.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

For the purpose of the Plan, Claims and Interests are designated as follows:

2.1 Class 1 shall consist of all Administrative Expenses.

2.2 Class 2 shall consist of all Priority Claims and shall not include any Claims included in any other Class provided under and pursuant to the Plan.

2.3 Class 3 shall consist of all Tax Claims.

2.4 Class 4 shall consist of all Environmental Claims.

2.5 Class 5 shall consist of the Section 364 Claim.

2.6 Class 6 shall consist of the NL Claim.

2.7 Class 7 shall consist of the Globe Claim.

2.8 Class 8 shall consist of the Fry Metals Claim.

2.9 Class 9 shall consist of the Secured Claim of J & H Leasing Co. under the terms of that certain Equipment Lease - Installment Purchase Agreement dated March 1984, by and between the Debtor and J & H Leasing Co., as approved and confirmed by that certain order of the Bankruptcy Court dated June 13, 1984 pertaining thereto.

2.10 Class 10 shall consist of all general unsecured Claims and all unsecured Claims not otherwise classified.

Bankruptcy Court dated June 13, 1984 relative thereto; and shall retain its lien to secure such Secured Claim; and no legal, equitable or contractual rights to which the holder of the Class 9 Claim is entitled shall be deemed altered hereby.

ARTICLE IV

TREATMENT OF CLASSES OF CLAIMS AND INTERESTS THAT ARE IMPAIRED UNDER THE PLAN

4.1 Class 2 Claims are impaired; and in full settlement, release and discharge of all Class 2 Claims the holders of Class 2 Allowed Claims shall receive on account thereof, in quarterly installments, deferred Cash payments, over a three (3) year period after the Consummation Date, of a value, as of the Consummation Date, equal to the allowed amount of the Class 2 Allowed Claims, or Cash payments upon such other terms as may be agreed upon between the Debtor and the respective holders of such Allowed Claims.

4.2 Class 3 Claims are impaired; and in full settlement, release and discharge of all Class 3 Claims the holders of Class 3 Allowed Claims shall receive on account thereof, in quarterly installments, deferred Cash payments, over a six (6) year period after the date of assessment of such Allowed Claims, of a value, as of the Consummation Date, equal to the amount of such Allowed Claims, in accordance with § 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that as to those holders of Class 3 Allowed Claims who have not made an assessment of their Class 3 Allowed Claims, such deferred Cash payments shall be made over a period of six (6) years from the Consummation Date.

4.3 The Class 6 Claim is impaired; and in full settlement, release and discharge of the Class 6 Claim, such Secured Claim shall be treated as follows:

(a) The total outstanding balance of principal plus accrued interest due under the NL Claim shall be reduced, as of the Confirmation Date, from $679,287 to the total principal amount of $150,000, payable to NL by the Reorganized Debtor during a three (3) year term after the Consummation Date as provided in Section 4.3(b) of the Plan. On the Confirmation Date the Reorganized Debtor shall execute and deliver to NL an amended promissory note (the "Amended NL Note") to evidence such reduction of the NL Note and the NL Claim. The principal amount of the Amended NL Note and the total indebtedness under Section 1.1 of the NL Mortgage shall be $150,000. The Amended NL Note and the NL Mortgage shall bear interest at the rate of 2% per annum in excess of the announced "prime rate" of AmeriTrust Company National Association, from time to time in effect.

(e) The foregoing shall not discharge or affect any rights and/or claims the Debtor or the Reorganized Debtor and NL may now or hereafter have against each other derived from, in respect of or arising out of claims, fines or penalties asserted by governmental units or agencies in respect of or arising out of violations of any federal, state or municipal environmental or health statutes, ordinances, rules or regulations applicable to the Debtor's or the Reorganized Debtor's business operation and/or the Real Property.

4.4 The Class 10 Claims are impaired; and in full settlement, release and discharge of the Class 10 Claims, the holders of such Allowed Claims shall be paid 5% of the amount of such Allowed Claims, in Cash, without interest, upon the Consummation Date, provided, however, that the Reorganized Debtor's liability under this Section 4.4 shall be limited such that if the Plan is confirmed under § 1129(b) of the Bankruptcy Code and/or the Class 10 Allowed Claims exceed $1,300,000, the Reorganized Debtor shall pay Pro Rata to the holders of such Allowed Claims on account thereof, in the aggregate, the amount of $70,000, which may result in a distribution to the holders of such Allowed Claims of less than 5% of the amount of such Allowed Claims.

4.5 The Class 11 Interests are impaired; and on the Confirmation Date the Class 11 Interests shall be deemed cancelled and terminated without any further action and the holders of such Interests shall neither receive any Cash nor retain any property or rights on account of such Interests.

ARTICLE V

CONDITIONS PRECEDENT TO THE IMPLEMENTATION OF THE PLAN

5.1 The Plan, its implementation, consummation, and the obligations of the New Lenders, the Investors and the Debtor, as the case may be, provided herein are subject to consummation of the transactions contemplated by the Financing Agreement by and between the Debtor, the Investors and the New Lenders, pursuant to which (i) the New Lenders have agreed to make an unsecured Cash loan not to exceed $85,000 to the Reorganized Debtor on or before the Confirmation Date and (ii) the Investors have agreed to purchase the shares of Reorganized Debtor Common in accordance with the terms of Article VI of the Plan.

6.3 Pursuant to the terms of the Plan the holders of Class 10 Allowed Claims will receive the considerations set forth in and pursuant to Article IV hereof in full settlement, release and discharge of such Allowed Claims.

6.4 The Reorganized Debtor may object to Claims subsequent to the Confirmation Date and Claims may be reconsidered for cause pursuant to § 503(b) of the Bankruptcy Code if previously allowed.

6.5 Upon the entry of the Confirmation Order, the Reorganized Debtor shall be revested with the Property, free and clear of all Claims, liens, security or other interests of the Debtor's creditors, Interest holders or parties in interest, except as otherwise provided in the Plan, and the Reorganized Debtor shall be entitled to manage its affairs without further order of the Bankruptcy Court. The Reorganized Debtor shall manage the resolution of and distributions on account of Claims consistent with the Plan and shall make such distributions of Cash and Reorganized Debtor Common, from time to time, as are required by the Plan.

6.6 The Reorganized Debtor shall, without further Bankruptcy Court authorization, pay monthly against all bills rendered to the Reorganized Debtor (unless disputed by the Reorganized Debtor) for all costs incurred by the Reorganized Debtor after the Confirmation Date in consummating the Plan and administering the reorganization case, including, but not limited to, all professional fees and expenses, and shall pay all professional fees of counsel and accountants to the Debtor.

ARTICLE VII

GRANT OF CONTINUANCE OF SECURITY INTEREST

7.1 The distributions to be made to the holders of Secured Claims provided for in and subject to Articles III and IV of the Plan shall be secured by the grant or continuance, as the case may be, of security interests in and to the Property securing such Claims and the proceeds thereof as provided for in and subject to Articles III and IV of the Plan. Said security interests shall be evidenced by documentation in form and substance sufficient to effectuate such grant or continuance, as the case may be, and shall run in favor of the holders of the respective Secured Claims.

10.3 The holder of any Claim arising by reason of the rejection of an executory contract must file a proof of such Claim within 30 days after the Confirmation Date or the date of the entry of an order of the Bankruptcy Court authorizing the rejection of such executory contract, or such Claim will be barred from receiving any payment under the Plan.

ARTICLE XI

RETENTION OF JURISDICTION

11.1 The Bankruptcy Court shall retain jurisdiction of these proceedings pursuant to and for the purposes of §§ 105(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3020(d) and for the following purposes, inter alia:

(a) To determine any and all objections to the allowance of Claims or Interests;

(b) To determine any and all applications for allowance of compensation and/or reimbursement of expenses, except as is set forth in and subject to Article VI, Section 6.6 of the Plan;

(c) To determine any and all controversies, disputes or acts under or in connection with the Plan and such other matters as may be provided for in the Confirmation Order;

(d) To effectuate payments under and performance of provisions of the Plan;

(e) To hear and determine any and all pending or subsequently brought motions, applications, adversary proceedings and contested matters;

(f) To hear and determine such motions or proceedings as may be instituted by the Debtor to reject an executory contract, pursuant to Article X of the Plan; and

(g) To make such orders, or give such direction as may be appropriate under § 1142 of the Bankruptcy Code or in aid of consummation of the Plan, including the granting of extensions of any deadline set herein, applications for which are filed prior to the time the deadline or bar date for the filing of any proof of claim has passed.

DATE	BANKRUPTCY CASE RECORD
12-9-86	Order entered prescribing notice of hearing on applications for allowance of interim compensation and reimbursement of expenses of various parties filed.
12-11-86	Certificate of Service by attorney for debtor on applications for allowance of Interim Compensation and Reimbursement of Expenses-- Notice of hearing**12-29-86 at 10:00 am.**
12/29/86	**Hearing on Applications for allowance of interim compensation and reimbursement of expenses:** **1) Benesch, Friedlander, Coplan, Aronoff, - Fees- $21,021.25, Expenses - $772.69, (3/4/86 - 11/12/86) —GRANTED OSJ** 12-31-86 **2) Grant Thornton, Fees- $1,991.00, Expenses - $264.00, (3/1/86 - 11/30/86) - GRANTED OSJ** 12-31-86 **3) Javitch & Eisen Co., Fees- $11,693.50, Expenses- $125.80, (2/16/82 - 11/14/86) —GRANTED OSJ** 12-31-86 **4) Thompson, Hine & Flory, Fees- $1,064.25, NO Expenses, (7/10/85 - 7/23/85) —GRANTED OSJ** 12-31-86
12-31-86	Order entered granting applications for various ALLOWANCE OF CONPENSATION AND REIMBURSEMENT OF COSTS EXPENDED. ✓
1-5-87	Report of Operations of debtor-in-possession for period thru 11-1-86- 11-30-86 filed.
1/29/87	REPORT OF OPERATIONS OF DEBTOR-IN-POSSESSION FOR PERIOD THROUGH 12/1/86 - 12/31/86, FILED.
2/23/87	REPORT OF OPERATIONS OF DEBTOR-IN-POSSESSION FOR PERIOD THRU 1/1/87 to 1/31/87 FILED.
3/2/87	Motion of Debtor, Debtor-in-Possession to compromise controversy between themselves and current pending before this Court in an Adversary B86-345 Debtor Vs. Chemdan Corp. filed. **(Hearing: 4/2/87 at 9:00 am.)** (Copy in Adv. proceed.)
3/2/87	Motion of Debtor, Debtor-in-Possession to limit notice of Motion to compromise controversy to Creditors Committee and those parties requesting notice, filed.
3/18/87	REPORT OF OPERATIONS OF DEBTOR-IN-POSSESSION FOR PERIOD THRU 2/1/87 - 2/28/87 filed.

DOCKET NUMBER

DATE	BANKRUPTCY CASE RECORD
3/ 9/87	**DEBTOR'S PLAN OF REORGANIZATION** filed.
3/19/87	**Disclosure Statement of debtor pursuant to § 1125 of the Bankruptcy Code, filed.**
3/19/87	Motion of Debtor and Debtor-in-Possession for approval of Disclosure Statement for Debtor's Plan of Reorganization, filed.
3/25/87	Order entered setting hearing on approval of Disclosure Statement for Debtor's Plan of Reorganization--**4/28/87 at 9;00 am.**
3/25/87	Order entered and NOTICE FOR HEARING on approval of Disclosure Statement combined with Order and notice fixing time for filing proof of claims: Hearing--**4/28/87 at 9:00 am.** Last Day for filing and serving written objections to the Disclosure Statement-- 4/23/87. Last Day for filing Proof of Claims--4/28/87 (or the date which the Court enters an Order approving the Disclosure Statement, whichever is later)
4/7/87	Certificate of service by debtor/ debtor in possession of Order and Notice for hearing on approval of disclosure statement, filed.
4/9/87	Certificate of service of Proposed Disclosure Statement and Plan of Reorganization by attorney for debtor/debtor-in-possession, filed.
4/14/87	Notice of appearance by Inland Reclamation, Inc., Creditor, represented by attorney Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co. L.P.A. filed.
4/14/87	Certificate of service of Order and notice of hearing on approval of Disclosure Statement combined with Order and notice fixing time for filing proofs of claim filed.
4/24/87	Certificate of service of proposed Disclosure Statement and Plan of Reorganization filed.
4/ 9/87	**Hearing on approval of Amended Disclosure Statement—APPROVED OSJ CONFIRMATION HEARING SET FOR — JUNE 24, 1987 @ 9:00 A.M. in Courtroom #420.**
4/28/87	**TRIAL MINUTES FILED. (NO witnesses', no exhibits)**

DOCKET NUMBER

DATE	BANKRUPTCY CASE RECORD
4/27/87	REPORT OF OPERATIONS OF DEBTOR-IN-POSSESSION FOR PERIOD 3/1/87 - 3/31/87 FILED.
4/27/87	VALUATION ANALYSIS OF DEBTOR-IN-POSSESSION OF SUMMARY OF DATA AND CONCLUSIONS FOR VALUATION DATE: 1/1/82, filed.
5/1/87	Order entered approving amended disclosure statement, fixing time for filing acceptances or rejectings of plan of reorganization on 6/15/87; and setting hearing on confirmation of plan for **6/24/87 at 9:00 am.**
5/14/87	Certificate of service by Tom Lally, Vice President of Cleveland Letter Service, Inc. on the Plan of Reorganization, Amended Disclosure Statement, Order approving Disclosure Statement, and Ballot confirming to Official Form NO 30, filed.
5/28/87	REPORT OF OPERATIONS OF DEBTOR IN POSSESSION FOR PERIOD 4/1/87 to 4/30/87 filed.

As of 6/8 AJH

WOODWARD–CLYDE CONSULTANTS

DATE: 9-6-89
NAME: MASTER METALS
PROJECT NO.: 88C6174

TO: Cathrine McCord c/o Kevin Pierard
ADDRESS: USEPA - 5HR
230 S. Dearborn Street
CHICAGO, IL 60604

Transmittal

- [x] ENCLOSED
- [ ] UNDER SEPARATE COVER
- [ ] MESSENGER
- [x] FIRST CLASS MAIL
- [ ] SPECIAL DELIVERY
- [ ] AIR MAIL
- [ ] _____

- [ ] TRACINGS
- [ ] PHOTOSTATS
- [ ] PRINTS
- [ ] SPECIFICATIONS
- [ ] COPY OF LETTER
- [ ] SEPIAS
- [ ] PHOTOS

- [ ] DRILLING LOGS
- [ ] TEST RESULTS
- [ ] DOCUMENTS
- [ ] CONTRACTS
- [ ] FOR APPROVAL
- [ ] FOR YOUR USE
- [x] AS REQUESTED

- [ ] APPROVED
- [ ] APPROVED AS NOTED
- [ ] RESUBMIT
- [ ] RETURN CORRECTED PRINTS
- [ ] FOR COMMENT
- [ ] _____

NO. OF COPIES	DWG. NO.	DESCRIPTION	DATE
9		Exhibits B, C and D to Consent Decree	8-31-89

REMARKS: As you requested

RECEIVED
SEP - 7 1989
OFFICE OF RCRA
WASTE MANAGEMENT DIVISION
EPA, REGION V

Copy to: Mr. Douglas Mulvey, MASTER METALS
Mr. Michael Cyphert, THOMPSON, HINE & FLORY

122 South Michigan Avenue
Suite 1920
Chicago, IL 60603
(312) 939-1000

FROM: Daniel J. Banaszek
WOODWARD–CLYDE CONSULTANTS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE

DATED: APRIL 28, 1987

AND

DEBTOR'S PLAN OF REORGANIZATION

DATED: MARCH 17, 1987

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

AMENDED DISCLOSURE STATEMENT PURSUANT TO § 1125 OF THE BANKRUPTCY CODE

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Dated: April 28, 1987

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MAY 1 1987

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr. ORDER APPROVING AMENDED DISCLOSURE STATEMENT, FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN AND SETTING HEARING ON CONFIRMATION OF PLAN, COMBINED WITH NOTICE THEREOF

An amended disclosure statement (the "Disclosure Statement") under Chapter 11 of the Bankruptcy Code having been filed by Master Metals, Inc., debtor (the "Debtor") on April 28, 1987, referring to a plan under Chapter 11 of the Code filed by the Debtor on March 19, 1987; and

It having been determined after hearing on notice that the Disclosure Statement contains adequate information;

It is ORDERED, and notice is hereby given, that:

A. The Disclosure Statement filed by the Debtor on April 28, 1987 contains adequate information as such term is defined in §1125 of the Bankruptcy Code and the same is hereby approved.

B. June 15, 1987 is fixed as the last day for filing written acceptances or rejections of the plan referred to above.

C. On or before May 10, 1987 a copy of the plan, this order approving the Disclosure Statement, the Disclosure Statement and a ballot conforming to Official Form No. 30 shall be transmitted by the Debtor by

mail to creditors, equity security holders and other parties in interest as provided in Rule 3017(d).

D. June 24, 1987 at 9:00 a.m. in the United States Bankruptcy Court, United States Courthouse, Room 420, Cleveland, Ohio 44114, is fixed as the date, time and place for the hearing on confirmation of the plan.

E. June 15, 1987 is fixed as the last day for filing and serving pursuant to Rule 3020(b)(1) written objections to confirmation of the plan.

BY THE COURT

JOHN F. RAY, JR.
United States Bankruptcy Judge

Dated: May 1, 1987
Cleveland, Ohio

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION

The plan referred to in this ballot can be confirmed by the Court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests voting on the plan. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the plan if the Court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count you must complete and return this ballot.

The undersigned, a Class [2][10] creditor of the above-named debtor in the unpaid principal amount of $_____,

(Check One Box)

/__/ Accepts /__/ Rejects

the plan for the reorganization of the above-named debtor.

Print Or Type Name And Address

Date: _____ _____

_____

_____

Signed: _____

RETURN THIS BALLOT ON OR BEFORE JUNE 15, 1987, TO:
William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff, 1100 Citizens Building, Cleveland, Ohio 44114.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

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PLAN OF REORGANIZATION

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The undersigned, a Class 3 creditor of the above-named debtor in the unpaid principal amount of $_____,

(Check One Box)

/__/ Accepts /__/ Rejects

the plan for the reorganization of the above-named debtor.

Print Or Type Name And Address

Date: _____ _____

_____

_____

Signed: _____

RETURN THIS BALLOT ON OR BEFORE JUNE 15, 1987, TO:
William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff, 1100 Citizens Building, Cleveland, Ohio 44114.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION

The plan referred to in this ballot can be confirmed by the Court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests voting on the plan. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the plan if the Court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count you must complete and return this ballot.

The undersigned, a Class 6 creditor of the above-named debtor in the unpaid principal amount of $_____,

(Check One Box)

/__/ Accepts /__/ Rejects

the plan for the reorganization of the above-named debtor.

Print Or Type Name And Address

Date: _____ _____

_____

_____

Signed: _____

RETURN THIS BALLOT ON OR BEFORE JUNE 15, 1987, TO:
William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff, 1100 Citizens Building, Cleveland, Ohio 44114.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION

The plan referred to in this ballot can be confirmed by the Court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests voting on the plan. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the plan if the Court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count you must complete and return this ballot.

The undersigned, a Class 10 creditor of the above-named debtor in the unpaid principal amount of $_____,

(Check One Box)

/__/ Accepts /__/ Rejects

the plan for the reorganization of the above-named debtor.

Print Or Type Name And Address

Date: _____ _____

_____

_____

Signed: _____

RETURN THIS BALLOT ON OR BEFORE JUNE 15, 1987, TO:
William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff, 1100 Citizens Building, Cleveland, Ohio 44114.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re MASTER METALS, INC., Debtor.	In Proceedings For a Reorganization Under Chapter 11 Case No. B82-0078 Judge John F. Ray, Jr.

AMENDED DISCLOSURE STATEMENT PURSUANT TO § 1125 OF THE BANKRUPTCY CODE

I. INTRODUCTION

On January 11, 1982 (the "Petition Date"), Master Metals, Inc. ("Master Metals"), a privately-held Ohio corporation, filed a voluntary petition commencing a reorganization case under chapter 11 of title 11 (the "Bankruptcy Code") of the United States Code (the "Reorganization Case") in the United States Bankruptcy Court for the Northern District of Ohio in Cleveland, Ohio (the "Court"). On March 19, 1987, Master Metals filed with the Court a plan of reorganization (the "Plan"). This Amended Disclosure Statement ("Disclosure Statement") describes the Plan.

This Disclosure Statement has been approved as containing adequate information under § 1125 of the Bankruptcy Code by order of the Court entered on May 1, 1987, and its distribution to the holders of claims against and interests in Master Metals has been authorized by that order. Master Metals is providing this Disclosure Statement to all known holders of such claims and interests for the purpose of soliciting acceptances of the Plan, a copy of which accompanies this Disclosure Statement.

For the purpose of this Disclosure Statement a "Claim" shall mean any claim against Master Metals as defined in § 101(4) of the Bankruptcy Code, including contingent claims and any claim which has not been disallowed by an order of the Bankruptcy Court or for which an order of disallowance of the Bankruptcy Court has been reversed on appeal by an order of an appellate court which is not itself subject to further appeal or certiorari proceedings. The term "Interest" when used in this Disclosure Statement shall refer to the rights of the holders of Master Metal's outstanding capital stock.

References in this Disclosure Statement to the "Court" shall refer to the federal court in the Northern District of Ohio conferred with jurisdiction over the Master Metals Reorganization Case or the court so authorized with respect to any proceedings in connection therewith.

THIS DISCLOSURE STATEMENT, TOGETHER WITH THE ACCOMPANYING PLAN, SHOULD BE READ IN ITS ENTIRETY. FOR THE CONVENIENCE OF MASTER METALS' CREDITORS AND INTEREST HOLDERS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT UNDER THE HEADING "DEVELOPMENT AND PURPOSES OF THE PLAN" (SEE SECTION VI A), BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF, WHICH IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY. TERMS DEFINED IN THE PLAN AND NOT OTHERWISE DEFINED SPECIFICALLY HEREIN WILL, WHEN USED HEREIN, HAVE THE MEANINGS ATTRIBUTED TO THEM IN THE PLAN.

II. THE PURPOSE OF THIS AMENDED DISCLOSURE STATEMENT

The Bankruptcy Code requires that, before the Plan may be confirmed by the Court, it must be submitted to creditors and equity security holders of Master Metals, who must be provided with an opportunity to vote on whether to accept or reject the Plan. In addition, any solicitation of acceptances

or rejections of the Plan must be preceded or accompanied by disclosure materials approved by the Court as containing "adequate information." "Adequate information" is information of a kind and in sufficient detail to enable solicited creditors and equity security holders to make informed judgments about the Plan and the acceptance or rejection thereof.

Master Metals has filed this Disclosure Statement with the Court pursuant to § 1125 of the Bankruptcy Code and in connection with the solicitation of acceptances of the Plan. This Disclosure Statement was filed with the Court on April 28, 1987, and was, after notice and a hearing, approved by order of the Court dated May 1, 1987, as containing such "adequate information."

A COPY OF THE PLAN ACCOMPANIES THIS DISCLOSURE STATEMENT. THE PLAN AND ALL EXHIBITS THERETO SHOULD BE READ CAREFULLY IN CONJUNCTION WITH THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL NOR IS IT A SOLICITATION OF AN OFFER TO PURCHASE ANY SECURITY. ALL FINANCIAL INFORMATION CONTAINED HEREIN, INCLUDING PROFORMA FINANCIAL STATEMENTS AND FORECASTS, HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT AND IS BASED UPON MASTER METALS' EXPERIENCE, BOOKS AND RECORDS, AS WELL AS ESTIMATES AND ASSUMPTIONS AS IDENTIFIED HEREIN. CONSEQUENTLY, MASTER METALS IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH MASTER METALS HAS MADE EVERY EFFORT TO PRESENT ALL AVAILABLE INFORMATION AS ACCURATELY AS POSSIBLE AND SUCH INFORMATION IS ACCURATE TO THE BEST OF THE KNOWLEDGE, INFORMATION AND BELIEF OF MASTER METALS.

The Court has set June 15, 1987 as the deadline for the filing of acceptances or rejections of the Plan and June 24, 1987 at 9 o'clock a.m.

for a hearing on the confirmation of the Plan. Creditors of Master Metals may vote to accept or reject the Plan by filling out, executing and mailing the accompanying ballot in the enclosed, pre-addressed, postage prepaid, envelope.

AS A CREDITOR, YOUR VOTE IS IMPORTANT. The Plan divides creditors and the holders of equity securities (sometimes referred to herein as the "Shareholders") of Master Metals into ten (10) classes of "Claims" and one (1) class of "Interests" and provides separate treatment for each such class. Classes 1 ("Administrative Claims"), 4 ("Environmental Claims"), 5 ("Section 364 Claim"), 7 ("Globe Claim"), 8 ("Fry Metals Claim") and 9 ("J & H Leasing Co. Claim") are unimpaired and will be deemed to have accepted the Plan. Classes 2 ("Priority Claims"), 3 ("Tax Claims"), 6 ("N.L. Claim") and 10 ("All General Unsecured Claims") are impaired since the legal, equitable or contractual rights attaching to the Claims of these classes are modified or terminated, as the case may be, under the Plan. Class 11 ("Interests of Common Shareholders") is impaired and is deemed to have rejected the Plan, since the Interests of the Shareholders are cancelled and terminated pursuant to the terms of the Plan. Master Metals seeks the acceptance of the Plan by each of Classes 2, 3, 6 and 10.

Classes 2, 3, 6 and 10 will have accepted the Plan if ballots evidencing acceptance of the Plan are received from creditors holding at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims held by the creditors in each such class who are eligible to vote and have voted to accept or reject the Plan.

IN THE VIEW OF MASTER METALS, THE TREATMENT OF CREDITORS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY FOR CREDITORS THAN THAT WHICH COULD BE ACHIEVED UNDER OTHER ALTERNATIVES, AS DISCUSSED UNDER THE HEADING

"CONFIRMATION OF THE PLAN" (SEE SECTION VIII OF THIS DISCLOSURE STATEMENT). ACCORDINGLY, MASTER METALS BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND MASTER METALS RECOMMENDS THAT CREDITORS VOTE TO ACCEPT THE PLAN.

III. VOTING INSTRUCTIONS

A ballot is enclosed for holders of Claims who are eligible to vote. Instructions detailing the voting procedures are set forth on the ballot. The Court has set June 15, 1987 as the deadline for the filing of acceptances or rejections of the Plan. To vote on the Plan, indicate on the enclosed ballot whether you accept or reject the Plan. Please use only the enclosed ballot. If your ballot is damaged or lost, or if you have any questions concerning voting procedures, you may contact:

William E. Schonberg, Esq.
Benesch, Friedlander, Coplan & Aronoff
1100 Citizens Building
Cleveland, Ohio 44114
(216) 363-4500

Creditors who fail to vote will not be counted in the calculation of whether a class has accepted or rejected the Plan.

By its approval of the adequacy of the information contained in this Disclosure Statement, the Court neither endorses the Plan nor warrants the accuracy or the completeness of the information contained herein.

IV. BACKGROUND AND FINANCIAL INFORMATION REGARDING MASTER METALS

A. Historical Background.

Master Metals was incorporated on June 6, 1979 for the purpose of acquiring substantially all of the assets of the metals division (collectively, the "Metals Division Assets") of N.L. Industries, Inc. ("N.L.") located at 2850 W. 3rd Street, Cleveland, Ohio 44113. Privately owned and operated, Master Metals' primary business is as a secondary lead smelter. From lead scrap, Master Metals produces ingot lead extrusions and other items and sells them to its customers, including a number of "Fortune 500" customers, in the battery, automotive and solder manufacturing and chemical industries. Master Metals also engages in custom smelting and tolling of lead-tin bearing materials. Immediately prior to the commencement of the Reorganization Case, Master Metals employed twelve (12) salaried workers and twenty-one (21) hourly workers at its manufacturing plant and industrial facility located in Cleveland, Ohio.

As a complement to its extrusion and other product sales business, since early 1986 Master Metals has aggressively developed a lead waste disposal segment of its business operations, disposing of tetraethyl lead waste for such customers as E.I. Du Pont De Nemours & Company (Inc.). Such high-margin generating business presently accounts for approximately 8.4% of Master Metals' gross sales volume.

In its first year of operation Master Metals realized a pre-tax profit of $57,837 on gross sales of approximately $12,580,000. Although subject to the vagaries and wild fluctuations of the price of lead on the open market, Master Metals maintained a stable sales base during the first half of its second fiscal year of operations, realizing gross sales of $5,032,470 for

the six (6) month period ending February 28, 1981. However, the second half of 1981 saw steady decreases in the price of lead, thereby diminishing Master Metals' profit margin and impairing its ability to service its secured debt to N.L. and to Walter Heller & Company ("Heller").

The aggregate purchase price payable by Master Metals to N.L. for the Metals Division Assets was $900,000, $100,000 thereof having been paid in cash in 1979 and the balance evidenced by a promissory note dated September 7, 1979 in the principal amount of $800,000 and bearing interest at the rate of (10%) per annum (the "N.L. Note"), executed and delivered by Master Metals to N.L. As security for payment of the N.L. Note, Master Metals granted unto N.L. a first mortgage lien and security interest in and to the 4.77 acres of real property located at 2850 W. 3rd Street, Cleveland, Ohio and the industrial buildings and other improvements and fixtures located thereon (collectively, the "Real Property") which constitutes Master Metals' manufacturing facility and which was sold to Master Metals by N.L. in connection with Master Metals' purchase of the Metals Division Assets. At the present time, N.L. is Master Metals' major secured creditor. (See, Section IV E 1 of this Disclosure Statement for a detailed description of N.L.'s secured Claim.)

In connection with its purchase of the Metals Division Assets, Master Metals borrowed $1 Million Dollars from Heller and granted to Heller a first lien in and to all of its accounts receivable and certain other assets to secure Heller's Claim, which Claim aggregated $1 Million in 1979 and was reduced to approximately $417,000 by early 1982.

B. Events Leading to the Commencement of the Reorganization Case.

Master Metals' financial difficulties find their genesis in the early 1980's when its prospects for growth and profitability were diminished by

the national economic downturn and the resulting negative impact on the lead industry. Although Master Metals was profitable during its first fiscal year of operation, during the second half of 1980 and all of 1981, lead prices declined from a high of $.63 per pound to $.19 per pound, thereby diminishing or destroying any profit margin on the sale of lead products. In addition, Master Metals' plant was designed primarily to produce antimonial lead by blast furnace smelting. With the introduction of the maintenance-free battery, which uses primarily corroding grade or soft lead, the demand for antimonial lead has decreased substantially. While Master Metals is capable of producing corroding lead, it is a much more costly endeavor. Thus, by the end of 1981, Master Metals was no longer able to operate profitably due to the dropping price of lead and the decreasing demand for antimonial lead. In addition, Master Metals was unable to service the secured Claims of Heller, its secured lender, or N.L., without severely restricting its operations.

For the fiscal year ended August 31, 1980, Master Metals earned a pre-tax profit of $57,137 on gross sales of $12,580,672. However, for the fiscal year ended August 31, 1981, Master Metals incurred a net operating loss of $299,278 on gross sales of $10,058,319. The burden thus imposed on Master Metals' cash flow by decreasing margins (and sales) and increasing interest rates began to take its toll. During late 1981 the cash flow burden was especially evident as Master Metals struggled to service its obligations to its general trade creditors. Moreover, at December 31, 1981 Master Metals owed N.L. approximately $650,000 and Heller approximately $400,000 upon their respective secured Claims.

Finally, in January of 1982, Heller made demand for full payment upon the demand note evidencing its secured Claim. At the time of the

commencement of the Reorganization Case, the balance owed to Heller was $417,231. Thus, the inability of Master Metals to satisfy current operating and capital requirements and service its debt obligations led its directors to initiate the Reorganization Case on January 11, 1982. The Reorganization Case was commenced as a means of best protecting the integrity of Master Metals' assets and its going concern value.

C. The Reorganization Case.

1. Court Supervision of Operations.

Master Metals commenced the Reorganization Case on January 11, 1982, and thereafter has continued in possession and control of its property as a debtor in possession. Unless restricted by the Bankruptcy Court, a debtor in possession is generally permitted to conduct its business in the ordinary course, subject only to limited supervisory powers of the Bankruptcy Court. These powers generally include considerations of transactions by the debtor in possession that are outside the ordinary course of its business, such as sales of major assets, approval of the retention of attorneys, accountants and various other professionals, review of matters involving claims against the debtor and consideration of objections raised by parties in interest to the operations and proposed actions of the debtor in possession.

Since the commencement of the Reorganization Case numerous pleadings, orders, schedules, operating reports and other documents have been filed with the Court, and hearings on various issues have been held before the Honorable John F. Ray, Jr., United States Bankruptcy Judge. During this period Master Metals has also engaged in discussions and negotiations with its Unsecured Creditors' Committee (see Section C 2 below) and N.L. concerning, among other things, its operations as a debtor in possession and the formulation of a plan of reorganization. If any party in interest

requires more extensive detail regarding events occurring during the Reorganization Case, such interested parties are urged to consult the extensive files maintained by the Court's Clerk's office and/or consult with Master Metals' officers or its counsel.

2. Official Committee.

The Court has appointed a committee to represent the interests of Master Metals' general unsecured creditors (the "Unsecured Creditors' Committee"). The Unsecured Creditors' Committee, which is comprised of six of Master Metals' largest unsecured creditors, was appointed by the Court by order entered February 24, 1982.

Representatives of the following unsecured creditors are the members of the Unsecured Creditors' Committee:

East Penn Manufacturing Co., Inc.
Mountain Metal Co.
Fitzsimmons Metal
Louisville Scrap Metals
United Alloys & Steel
Parkwood Iron & Metal

Members of the Unsecured Creditors' Committee collectively hold unsecured Claims, as scheduled by Master Metals, totalling approximately $166,625. Total unsecured Claims based on the sales of goods by and/or rendering of services to Master Metals, including Claims scheduled as disputed, are scheduled by Master Metals in the total amount of $1,298,694.91. A number of creditors have filed proofs of Claim with the Court, in certain instances evidencing an alleged Claim in an amount greater than that scheduled by Master Metals. The precise amount of unsecured Claims as may be allowed is subject to final determination by the Court after resolution of any objections filed by Master Metals or any party in interest.

Since the initiation of the Reorganization Case, the Unsecured Creditors' Committee and its counsel have played an active role, monitoring Master Metals' financial and certain business affairs and engaging in discussions and negotiations with Master Metals. The members of the Unsecured Creditors' Committee have also advised and consulted with Master Metals regarding its efforts to formulate a plan of reorganization.

D. Assets of Master Metals.

In its Schedules filed with the Court, Master Metals scheduled assets with a total value of $1,826,382.73. Subsequent thereto, Master Metals was authorized by the Court to retain Ostendorf-Morris & Co. and Rosen & Company, Inc., professional appraisers, to appraise Master Metals' real and personal property, respectively, on a fair market and liquidation basis. Following is a summarization of the identity and value of the major assets of Master Metals as (i) scheduled by Master Metals and (ii) appraised on a liquidation basis:

Asset	Value as scheduled by Master Metals	Appraisal liquidation value at 10/29/86
Real Property	Unknown	$125,000.00 (at 1985)
Cash and Cash Deposits	$ 36,086.12	Not Appraised.
Motor Vehicles (forklifts, payloaders and loaders)	$ 34,500.00	$ 26,550.00
Office Equipment and Supplies	$ 12,432.00	$ 2,215.00
Machinery and Equipment	$ 658,840.00	$ 50,120.00
Inventory	$ 178,000.00	Not Appraised.

Accounts Receivable	$ 888,524.61	Not Appraised.
Miscellaneous	$ 18,000.00	Not Appraised.
	$1,826,382.73	

A copy of the written appraisal reports of Ostendorf-Morris & Co. and Rosen & Company, Inc., is on file in the Clerk's office of the Court.

Since the commencement of the Reorganization Case, Master Metals has reduced operating costs, reduced the number of employees, sold certain small items of equipment and otherwise reorganized business operations with a view towards obtaining operating viability at a reduced sales level. Sales volume that in 1981 was $10 Million is now projected to be approximately $3 Million per annum. Master Metals has also made numerous corrections and adjustments to its financial records to more accurately reflect, among other things, the book value of its assets. Therefore, in order for all creditors and other parties in interest to fully comprehend and analyze the provisions of the Plan, it is necessary to analyze the present financial condition of Master Metals. A detailed liquidation analysis of Master Metals' assets is set forth in Section VIII B of this Disclosure Statement. However, set forth below is a balance sheet for Master Metals at December 31, 1986.

MASTER METALS, INC.
BALANCE SHEET (UNAUDITED)
AT DECEMBER 31, 1986
(In Thousand Dollars)

ASSETS:

Current Assets:	
Cash	$ 14
Accounts Receivable	480
Inventory	284
Prepaid & Other Assets	14
Total Current Assets	$ 792

Property, Plant, Equipment & Fixed Assets: (net of Depreciation)	$ 726
Other Assets	26
Total Assets	$1,544
LIABILITIES:	
Current Post-Petition Liabilities (1)	$ 772
Long-Term Liabilities (2)	787
Pre-Petition Unsecured Claims (undisputed)	1,256
Total Liabilities	$2,815
Shareholder Equity	($1,271)
Total Liabilities and Shareholder Equity	$1,544

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(1) Current Post Petition Liabilities include current trade debt, current portion of long-term debt to the Lenders, tax and other accrued claims.

(2) Primarily N.L. secured Claim at $679,287 (interest accrued to January 11, 1982) and other notes payable.

In addition to the above and in order to provide a complete overview analysis of Master Metals' operating results, annexed to this Disclosure Statement are the following:

1. Exhibit "A": Balance Sheet (unaudited) for fiscal years ended August 31, 1985 and 1986;
2. Exhibit "B": Statement of Operations (unaudited) for fiscal years ended August 31, 1985 and 1986;
3. Exhibit "C": Unaudited Proforma Balance Sheet of Master Metals upon consummation of the Plan; and
4. Exhibit "D": Unaudited Proforma Statement of Operations and Cash Flow Forecast for each of the Four Years in the Period Ended August 31, 1990.

E. Summary of Scheduled Claims and Administrative Expenses.

1. The N.L. Industries, Inc. Secured Claim.

N.L. is Master Metals' largest secured creditor, having sold the Metals Division Assets located at the Real Property to Master Metals, while retaining a mortgage on the Real Property to secure payment of the purchase price.

Pursuant to an Agreement for the Sale of Assets dated September 7, 1979 between N.L. and Master Metals (the "Purchase Agreement"), Master Metals purchased the Real Property and substantially all of the assets of N.L. located at the Real Property, as evidenced by, among other instruments, a deed from N.L. to Master Metals dated September 7, 1979. The Metals Division Assets purchased included the Real Property, all raw material, leasehold interests, machinery, equipment, personal property, certain insurance policies, customer contracts and other like assets. The purchase price for the Metals Division Assets was $900,000 (plus an additional amount, to be determined, to be paid for the "metal inventory") which was paid or payable, as the case may be, as follows: $100,000 in cash and the balance of $800,000 evidenced by the N.L. Note. The N.L. Note provides for payments by Master Metals to N.L. of $13,280 per month plus interest.

As security for payment of the N.L. Note, Master Metals granted N.L. a first mortgage in and to the Real Property, together with all fixtures, chattels and articles of personal property attached thereto, pursuant to that certain mortgage deed dated September 11, 1979 (the "N.L. Mortgage"). The N.L. Mortgage was recorded on September 11, 1979, in Volume 15376, Page 345 of Cuyahoga County Records, Cleveland, Ohio.

As partial consideration for the purchase of the Metals Division Assets, Master Metals agreed to assume certain liabilities of N.L.,

including lease payment obligations, Workers' Compensation claims, employee salary and wage claims, pending litigation liabilities, if any, and others.

On the Petition Date, the outstanding principal balance of the N.L. secured Claim was $679,297 (the "N.L. Claim"). During the Reorganization Case Master Metals has not made any payments to N.L. However, extensive negotiations between Master Metals and N.L. during the Reorganization Case have resulted in the formulation of an agreement, as described in Section VI of this Disclosure Statement, that constitutes the framework for treatment of the N.L. Claim and the feasibility of the Plan.

2. Other Scheduled Claims.

The priority and other unsecured Claims against Master Metals, as set forth in its Schedules filed with the Court, are summarized as follows:

Description of Claim	Scheduled Amount
Unsecured Employee Wage and Vacation Claims (priority and non-priority)	$ 27,578.00
Employee Pension Plan Deposits	9,729.50
Tax Claims (Federal, State and Local)	56,637.48
Secured Claims (includes N.L. secured Claim and Heller secured Claim)	1,083,674.61
Unsecured Claims (includes disputed Claims)	1,298,694.91
	$2,476,314.50

3. Expenses of Administration.

Master Metals has incurred certain expenses during the Reorganization Case in respect of its operations as a debtor in possession. At December 31, 1986, Master Metals' post-petition accounts payable and other certain accrued liabilities totalled approximately $772,000. These consist primarily of post-petition trade debt, lease payments, the current portion

of long-term debt, the "Section 364 Claim" (as such term is defined in the following Section IV H 5 of this Disclosure Statement), professional fees, accrued salaries, accrued insurance premiums and accrued taxes. Such administrative expenses are entitled to priority in distribution over unsecured Claims pursuant to §§ 503(b) and 507(a) of the Bankruptcy Code.

As discussed in detail in Section VIII B of this Disclosure Statement under the heading "Liquidation Analysis", based on the foregoing and the value of Master Metals' assets, it is Master Metals' opinion that in the event of a liquidation of its assets under Chapter 7 of the Bankruptcy Code, general unsecured creditors would receive no payment on account of their allowed Claims. Master Metals further believes that liquidation expenses, including those associated with the appointment of a trustee and the retention of counsel for such a trustee, would be substantial and would further serve to eliminate the possibility of any distribution to holders of allowed unsecured Claims.

F. United Steelworkers of America Collective Bargaining Agreement.

Pursuant to the Purchase Agreement, Master Metals assumed all of N.L.'s liabilities and obligations under that certain collective bargaining agreement dated April 11, 1979 (the "Collective Bargaining Agreement") by and between N.L. and the United Steelworkers of America (on behalf of Local Union No. 735) (the "Union"). The term of the Collective Bargaining Agreement was from April 12, 1979 to April 11, 1982, with automatic renewals from year to year thereafter unless written notice to terminate or amend was given by either party no less than sixty (60) days prior to the expiration date.

Pursuant to several supplemental agreements entered into, from time to time, between Master Metals and the Union, the term of the Collective

Bargaining Agreement has been extended to July 15, 1987. The most recent of such supplemental agreements is dated January 15, 1987. Presently, the Collective Bargaining Agreement, as extended and supplemented, covers the terms and conditions of employment of Master Metals' fourteen (14) hourly employees.

G. Environmental Claims.

The secondary lead smelting and other businesses in which Master Metals is engaged are monitored by a number of environmental agencies, including, but not limited to, the United States Environmental Protection Agency (the "EPA"), the Ohio Environmental Protection Agency (the "Ohio EPA"), the Occupational Safety and Health Administration ("OSHA") and the City of Cleveland, Department of Air Pollution (the "City"). Inasmuch as lead by-products are classified as a hazardous waste, during the smelting and other handling thereof Master Metals must comply with guidelines designed to protect the natural environment from air, land and water pollution.

The EPA and Ohio EPA, constantly monitoring and inspecting Master Metals' operations, have not cited Master Metals for any violations of their respective guidelines or any environmental statutes since Master Metals commenced its business. OSHA randomly inspects Master Metals' operations, conducting tests to determine air lead content and general safety of the workplace. On or about May 1986, OSHA filed a Complaint against Master Metals with the Occupational Safety and Health Review Commission, alleging certain violations, and to enforce the provisions, of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). Master Metals denies such allegations, having filed its Answer denying liability for any violations and requesting that the Complaint be dismissed. However, the

allegations in the Complaint and all claims of OSHA arising in connection therewith have been resolved pursuant to an agreement between OSHA and Master Metals, whereby Master Metals has agreed to pay to OSHA a $1,000 penalty over a 10-month period, from February 1987 to December 1987. Master Metals believes, therefore, that such action does not pose a threat to the viability of its ongoing business operations.

The City monitors visible emissions of Master Metals' smelting and refining operations, checking, on a periodic basis, the sulphur dioxide (SO_2) levels in such emissions. Master Metals has timely remedied, and believes it will continue to timely remedy, any and all past or present (if any) citations as may be issued by the City for alleged violations of the City of Cleveland's air pollution code and other environmental guidelines.

H. Business Operations Subsequent to the Petition Date.

Master Metals presently operates in an economical fashion, employing eight (8) salaried and fourteen (14) hourly employees. Master Metals conducts its smelting, refining, extrusion and waste disposal businesses at the Real Property.

1. Operating Results.

The stay of collection of unsecured Claims and the debtor in possession financing agreement with certain of Master Metals' present Shareholders (as described in the following Section IV H 5 of this Disclosure Statement) have slowly enabled Master Metals to rehabilitate its business operations. The reduction of its operating costs and size has also enhanced Master Metals' operating viability. During its first year of operation as a debtor in possession (January to December 1982) Master Metals reflected, as of December 31, 1982, an operating loss of approximately $396,351. However, for the fiscal year ended August 31, 1986, Master Metals

has obtained a consistent level of operating stability, reflecting a cumulative net profit for said period, exclusive of any debt service on the N.L. Claim or the Section 364 Claim, of approximately $58,400. The improving results of Master Metals' business operations are also shown in the Statement of Operations (unaudited) for the fiscal year ended August 31, 1986, annexed to this Disclosure Statement as Exhibit "B".

2. Payment of the Heller Secured Claim.

Within nine (9) months subsequent to the Petition Date, Heller's secured Claim (the "Heller Claim") was paid in full. The initial loan from Heller to Master Metals totalled $1 Million and the principal balance of such secured Claim was $417,231.32 as of the Petition Date. The Heller Claim was secured by the accounts receivable and inventory of Master Metals, as well as the proceeds of each. Termination statements terminating Heller's security interests in such property securing the Heller Claim were filed in September of 1982.

3. Leasing of Major Equipment.

By 1983 Master Metals had paid off the Heller Claim, reduced its inventory and reduced its work force to twelve (12) persons. Master Metals then began to involve itself in the fabricated lead and lead tin products business. In connection with this new business segment, Master Metals entered into a lease agreement on April 6, 1983 for an extrusion press with Douglas K. Mickey (Master Metals' President), Jerry L. Moody (Master Metals' Secretary) and Robert E. Neskey. Such agreement was approved by the Court.

Due to an increase in the price of lead during 1984, Master Metals' experienced some profitability in 1984, and a second extrusion press was installed. The second extrusion press was used to handle smaller orders, thereby allowing the first press to handle the more profitable volume orders

uninterrupted. Master Metals purchased the second extrusion press for $5,000. However, $35,000 was required to properly install, set up and make such press operational. In order to finance such installation and set up, Master Metals sold such press in March of 1984 to J & H Leasing Co. ("J & H") for $40,000, and J & H leased the press back to Master Metals. Under such leasing arrangement, Master Metals is required to make monthly payments of $1,578 to J & H for thirty-six (36) months. This transaction was approved by the Court by order dated June 13, 1984.

In order to facilitate its scrap metal refining business, Master Metals entered into a Lease Agreement with Douglas K. Mickey on May 1, 1984, for the lease of a refining kettle. Under the Lease Agreement, Master Metals was required to make monthly lease payments of $322.10 for a term of twenty-four (24) months. The leasing arrangement provided Master Metals with an option to buy the kettle for $500 at the end of the lease period, which option Master Metals exercised on or about June 1986. This transaction was also approved by the Court by order dated June 13, 1984.

On February 16, 1982, as approved by order of the Court, Master Metals entered into an Equipment Lease Agreement for a rotary furnace with Ronald G. Mickey and Douglas K. Mickey. The leasing arrangement provided for monthly payments of $715.55 for thirty-six (36) months. Master Metals continued to use the rotary furnace for approximately 1 3/4 years after the termination of the Lease Agreement without making any lease payments therefor. In December 1986, Master Metals determined not to exercise its option under the Lease Agreement to purchase the rotary furnace due to the fact that the cost of repairing the furnace exceeded its value. The lessors thereupon took possession of the rotary furnace.

In January 1985, Master Metals received delivery of a rotary furnace from Chemdan Corporation ("Chemdan"), which furnace was to have enabled it to smelt low-grade residues which the blast furnace was unable to process. The rotary furnace was purchased from Chemdan for a total purchase price of $92,500. Thirty Thousand Dollars ($30,000) was paid in cash and Master Metals executed a promissory note in favor of Chemdan in the amount of $62,500. Chemdan allegedly retained a security interest in the rotary furnace to secure payment of the balance of the purchase price.

The rotary furnace malfunctioned shortly after its delivery to Master Metals, causing Master Metals to expend approximately $28,000 in repair costs and incur substantial damages in the form of loss of profits and production revenue. On July 26, 1986 Master Metals commenced an adversary proceeding in the Court against Chemdan, seeking to recover such damages and alleging, among other things, that Chemdan breached its express and implied warranties with respect to the rotary furnace. Subsequently, Master Metals and Chemdan reached an agreement resolving the allegations set forth in such adversary proceeding. Subject to the terms of such agreement, Master Metals has agreed to pay $12,000 to Chemdan in full settlement and compromise of the respective claims of Master Metals and Chemdan against the other. Master Metals has requested that the Court approve such compromise agreement.

4. Termination of the Pension Plan.

In connection with its purchase of the Metals Division Assets, Master Metals established the Master Metals, Inc. Retirement Plan for Bargaining Unit Employees (the "Pension Plan"), covering Master Metals' hourly employees. The Pension Plan was terminated by Master Metals effective October 31, 1983. On October 30, 1984, the Internal Revenue Service (the

"IRS") issued to Master Metals a Favorable Determination Letter stating that the termination of the Pension Plan did not adversely affect the qualification of the Pension Plan for federal tax purposes. Furthermore, the IRS accepted the effective date of termination of the Pension Plan as October 31, 1983.

In connection with its termination of the Pension Plan, Master Metals requested that the IRS issue waivers of the minimum funding standard under Section 412(d) of the Internal Revenue Code of 1986 for the Pension Plan years ending August 31, 1981, August 31, 1982 and August 31, 1983. As of the date of this Disclosure Statement, the IRS has not issued its determination regarding the waiver of such minimum funding standard. However, Master Metals has been advised by Alexander & Alexander of Michigan, Inc. ("Alexander and Alexander"), the Pension Plan's actuary, that the IRS should issue a favorable determination regarding such waivers within the next few months.

In connection with the IRS' waiver of the minimum funding standard, a 5% excise tax (the "5% Tax") may be due to the IRS for the "Accumulated Funding Deficiency" as of the end of each Pension Plan year ending prior to the termination of the Pension Plan, pursuant to Section 4971(a) of the Internal Revenue Code of 1986. The Accumulated Funding Deficiency was $19,500 for the Pension Plan year ending August 31, 1981 and $15,000 for the Pension Plan year ending August 31, 1982. Thus, the total amount of the 5% Tax that may be due to the IRS by Master Metals would be approximately $2,700 plus interest. Section 4971(b) of the Internal Revenue Code also provides for a 100% excise tax (the "100% Tax") to be assessed against Master Metals if the above penalties are not paid by the end of the Pension

Plan year following the Pension Plan year in which the Accumulated Funding Deficiency was experienced. The IRS can, and often does, waive the 100% Tax.

As the Pension Plan is subject to the rules and regulations promulgated by the Pension Benefit Guaranty Corporation (the "PBGC"), a request for a Notice of Sufficiency from the PBGC was filed by Master Metals. Master Metals has been informed by representatives of the PBGC that such notice will be forthcoming in the very near future. However, according to Alexander & Alexander, there are presently sufficient funds in the Pension Plan to pay all of the accrued vested benefits due under the Pension Plan.

5. The Section 364 Claim.

In mid-1982, Master Metals required operating capital sufficient to enable it to purchase inventory and service its post-petition operating expenses on a more stable basis as it paid the Heller Claim and sought to restructure its business operation. To facilitate such efforts, Douglas K. Mickey, Jerry L. Moody, Robert Neskey and Reserve Trading, Inc. (collectively, the "Lenders") agreed to loan operating funds to Master Metals on an ongoing basis (the "Section 364 Claim"), to be repaid on demand pursuant to that certain demand note in favor of the Lenders. As approved by and pursuant to an order of the Court dated September 2, 1982, Master Metals granted to the Lenders a senior lien and security interest in and to all of its accounts receivable, contract rights, instruments, inventory and the proceeds thereof, to secure payment of the Section 364 Claim. As of January 31, 1987, the outstanding balance of the Section 364 Claim was approximately $122,000.

I. Income Taxes; Net Operating Loss Carryovers.

As of August 31, 1986, based upon unaudited financial records and statements, Master Metals had available for federal income tax purposes a net operating loss carryover amounting to approximately $2 Million, which may be utilized to, among other things, offset gains in connection with the discharge of Claims upon confirmation of the Plan. The utilization of the remainder of Master Metals' tax loss carryovers that may be available may enhance the viability of its business operation subsequent to confirmation of the Plan.

For a detailed discussion of the federal income tax consequences of the Plan, please refer to Section VII of this Disclosure Statement.

J. Directors and Executive Officers of Master Metals.

The following chart identifies the current directors and executive officers of Master Metals and states the compensation paid thereto;

Name	Position with Master Metals	Compensation Pre-Petition Annual Rate	Compensation Current Annual Rate
Douglas K. Mickey	President and Treasurer; Director	$32,000	$42,000
Jerry L. Moody	Vice President and Secretary; Director	32,000	42,000

There are no family relationships among the officers and directors listed above, nor any arrangements or understandings between any officer and any other person pursuant to which the officer was selected.

K. Transactions With Master Metals' Management.

In connection with the operation of certain segments of its business Master Metals is required to purchase, in advance and often on a "C.O.D." basis, batteries, plates, lead dross and other raw materials necessary to satisfy certain customer orders. However, on a number of occasions,

especially during 1983 and 1984, Master Metals did not have cash or available credit to purchase such raw material inventory. Douglas K. Mickey d/b/a Power Components ("Power Components") has, on certain occasions during 1983, 1984, and 1985, purchased such raw material inventory and sold it to Master Metals at a price equivalent to Power Components' purchase price therefor, thereby enabling Master Metals to satisfy such customer orders. Power Components extended unsecured credit to Master Metals in connection with such purchases, agreeing that Master Metals could pay for such purchases as its cash flow would allow. During 1986, as Master Metal's business began to stabilize, Power Components engaged in fewer of such transactions with Master Metals. On those few occasions during 1986 when Power Components did sell raw material inventory to Master Metals, it charged Master Metals a price not in excess of approximately 10% to 20% above Power Components purchase price therefor, consistent with the purchase price otherwise payable by Master Metals on the open market.

As Master Metals strengthens its business and customer base and is relieved of the requirement that it pay "C.O.D." for purchases of certain raw materials, Power Components does not intend to purchase and resell raw material inventory to Master Metals.

In addition to the above, Power Components buys and resells tin-lead metals on the open market. Although Master Metals is in the tin-lead conversion business, it does not buy and resell, or "broker", tin-lead metals. Moreover, Power Components does not sell such tin-lead metals to Master Metals. Power Components conducts such business so as not to interfere with either Master Metals' business operations or Mr. Mickey's services to Master Metals.

Jerry L. Moody and his wife are 50% shareholders, respectively, of Reserve Trading, Inc. ("Reserve Trading"), an Ohio corporation engaged in the business of buying and reselling, or "brokering", batteries, various alloys and certain metals on the open market. Master Metals is not engaged in the business of brokering or otherwise trading metals on the open market. Reserve Trading conducts its business so as not to interfere with either Master Metals' business operations or Mr. Moody's services to Master Metals.

During the period 1982 to 1985, when Master Metals did not have cash or available credit necessary to purchase steel case batteries to satisfy certain customer orders, Reserve Trading would purchase such batteries on the open market and sell them to Master Metals at a price equivalent to or for an amount not in excess of 10% to 25% above Reserve Trading's purchase price therefor, consistent with the purchase price otherwise payable by Master Metals on the open market. Such sales by Reserve Trading to Master Metals have been on an irregular basis, with no sales occuring during the last six months.

Other than (i) the transactions described above, (ii) the equipment lease transactions described in Section IV H 3 of this Disclosure Statement, (iii) the Section 364 Claim and (iv) certain loans described below, there are no other business relationships or transactions by and between any of Master Metals' present management and Master Metals. Moreover, no payments or transfers, other than the foregoing and in the ordinary course of business and in accordance with normal business terms, have been made by Master Metals to any Directors, management, employees and/or any other insiders.

Master Metals' accounts receivable, as described in Section IV D of this Disclosure Statement, are net of the claims of Master Metals against

three of the Shareholders. Such claims are based upon loans made by Master Metals to such Shareholders in 1980, as evidenced by, in certain cases, promissory notes in favor of Master Metals. Such claims and Shareholders are as follows: a claim against James Flowers in the amount of $22,825; a claim against Curtis Drinkard in the amount of $23,200; and a claim against Jerry L. Moody in the amount of $18,000. The claim against Mr. Flowers was disputed.

In order to satisfy his note payable, as as of March 1, 1987, Mr. Moody has commenced making payments to Master Metals in the amount of $200.00 per month, plus interest on the outstanding principal balance computed at the rate of 8% per annum. Such monthly payments shall continue for a period of four (4) years, with a "balloon" payment of the balance of such claim payable in full at the end of such four year period.

Master Metals initiated an adversary proceeding in the Court against Mr. Flowers in 1983 for the purpose of collecting its disputed claim. Pursuant to an agreement in compromise of such claim, Master Metals obtained a judgment against Mr. Flowers in the amount of $5,000. However, Master Metals has determined that such judgment is uncollectible. Moreover, Master Metals has determined that its claim against Mr. Drinkard, whose location is unknown, is also uncollectable.

V. CLAIMS AGAINST MASTER METALS

Master Metals has previously filed with the Court Schedules setting forth all Claims against Master Metals as of January 11, 1982 and as reflected in its books and records. Such scheduled Claims are summarized in Section IV E above. Unless such Schedules have denominated a particular Claim as "contingent," "unliquidated," or "disputed," or are amended to so

denominate, scheduled Claims are deemed allowed unless objection thereto is interposed by Master Metals or any other interested party. If an objection is made, the validity and amount of the Claim will be determined by the Court following a hearing. The following describes the Claims that are treated in the Plan. Please refer to Section VI of this Disclosure Statement for a more detailed discussion of the treatment of such Claims under the Plan.

A. Secured Claims.

Approaching in the aggregate $810,000, the Secured Claims are five (5) in number and are held by seven (7) creditors. The Secured Claims arise primarily from Master Metals' purchase of the Metals Division Assets from N.L., purchases of equipment and the Section 364 Claim.

1. The N.L. Claim.

As described in Section IV E 1 above, the N.L. Claim denotes the secured Claim of N.L. as evidenced by the N.L. Note and N.L. Mortgage. The N.L. Claim is the largest secured Claim against Master Metals, with a balance of principal plus accrued interest as of the Petition Date of $679,287. To secure payment of the N.L. Claim, N.L. holds a first priority mortgage lien in and to the Real Property. The Real Property has been appraised as having a liquidation value (exclusive of costs of disposal) as of 1985 of $125,000. N.L. has filed a proof of its secured Claim with the Court, alleging that the balance of the N.L. Claim, at approximately December 1983, was $783,015.79. Master Metals has not made any payments to N.L. on account of the N.L. Claim during the Reorganization Case.

2. The Section 364 Claim.

The Section 364 Claim denotes the secured Claim of the Lenders against Master Metals, as evidenced by (i) a demand note in favor of the Lenders and

(ii) that certain order of the Court dated September 2, 1982 authorizing Master Metals to incur secured indebtedness to the Lenders pursuant to § 364(c) of the Bankruptcy Code. As of January 31, 1986, the outstanding balance of the Section 364 Claim was approximately $122,000, security for the payment of which the Lenders hold a senior lien and security interest in and to all of Master Metals' accounts receivable, contract rights, instruments, inventory and the proceeds thereof.

Master Metals has made certain payments to the Lenders on account of the Section 364 Claim, on an irregular basis and in varying amounts, during the Reorganization Case. However, the Lenders have periodically advanced additional funds to Master Metals during the Reorganization Case, as dictated by Master Metals' cash flow requirements, resulting in the outstanding balance of the Section 364 Claim fluctuating between $75,000 and $160,000.

Master Metals will continue to make payments to the Lenders in accordance with the provisions of the demand note and the order of the Court. However, the Lenders have advised Master Metals that at this time the Lenders do not intend to make demand upon Master Metals for payments on the Section 364 Claim for a period of time -- perhaps one (1) or two (2) years -- subsequent to confirmation of the Plan, unless Master Metals, as reorganized debtor, has cash flow sufficient to allow for such payments. (See, Proforma Operations and Cash Flow Forecast annexed hereto as Exhibit "D").

3. Globe Claim.

On or about January 26, 1982, Master Metals entered into a Consignment Agreement (the "Consignment Agreement") with the Globe Union Division of Johnson Controls, Inc. ("Globe"), pursuant to which, among other things,

Globe ships certain battery inventory to Master Metals on a consignment basis. On January 26, 1982, the Court entered an order authorizing and confirming such consignment sales arrangement. Pursuant to such order the senior rights, liens and interests of Globe, as consignor, in and to the consigned inventory were confirmed and continued on an ongoing basis.

The "Globe Claim" denotes that debt evidenced by the Consignment Agreement. Master Metals has, during the Reorganization Case, complied with all terms and provisions of the order and the Consignment Agreement. The amount of the Globe Claim varies from time to time, based upon the value and amount of the inventory as may be shipped to Master Metals by Globe on a consignment basis. The Globe Claim shall be paid by Master Metals in accordance with the provisions of the Consignment Agreement and order of the Court.

4. The Fry Metals Claim.

Prior to the Petition Date and continuing subsequent thereto, Fry Metals Corporation ("Fry Metals"), as consignor, has shipped to Master Metals low grade lead dross on a consignment basis, which lead dross Master Metals would smelt into rough molds and return to Fry Metals as "hog molds" containing lead bullion.

The "Fry Metals Claim" denotes that debt evidenced by Master Metals' consignment agreement with Fry Metals. Such Claim, averaging $20,000 at a given time, shall be paid, or has been paid, by Master Metals in accordance with the terms of the consignment agreement with Fry Metals.

5. The J & H Leasing Co. Claim.

In March 1984, Master Metals purchased an extrusion press for $5,000. However, Master Metals required approximately $35,000 to install, set up and render the extrusion press fully operational. In order to finance such cost

requirement, Master Metals sold the extension press to J & H in March 1984, and J & H leased such press back to Master Metals under the terms of a certain Equipment Lease - Installment Purchase Agreement. Such lease agreement provided for monthly payments of $1,578 to J & H for a period of thirty-six (36) months. Such "sale-leaseback" transaction was approved by an order of the Court dated June 13, 1984.

The Claim of J & H is not impaired under the Plan and Master Metals will continue to make payments to J & H in accordance with the tenor of the lease agreement between Master Metals and J & H.

B. Unsecured Claims.

1. Tax Claims.

As detailed in the following chart, Master Metals has scheduled certain priority tax Claims in its Schedules filed with the Court and certain governmental units have filed Proofs of Claim with the Court alleging that they hold unsecured Claims against Master Metals entitled to priority under Section 507(a)(7) of the Bankruptcy Code:

Governmental Unit	Nature of Tax Claim	Scheduled Amount	Proof of Claim Amount
Treasurer-State of Ohio; The State Insurance Fund	Workers' Compensation	$47,385.90	$ 49,356.08 (Claim #63) 171,331.00 (Claim #76)
Treasurer-State of Ohio	Ohio Tax Withheld	* 2,252.41	No Proof of Claim Filed
Treasurer-State of Ohio	Ohio Corporation Franchise Tax	58.00	No Proof of Claim Filed
Central Collection Agency	City of Cleveland Income Tax Withheld	* 2,693.37	No Proof of Claim Filed

* Tax Claim paid in full subsequent to Petition Date.

City of Cleveland Division of Taxation	Municipal Income Tax, Net Profit Tax Return	175.00	No Proof of Claim Filed
Treasurer-Cuyahoga County, Ohio	Real Property Tax	4,072.80	No Proof of Claim Filed
Treasurer-Cuyahoga County, Ohio	Personal Property Tax	Unknown	$ 27,740.82 (Claim #74)

Master Metals may file objections to the allowance of some or all of the above tax Claims within the applicable time periods and in accordance with the Bankruptcy Code and Bankruptcy Rules. Master Metals is unable at this time to determine the outcome of such objections and the total amount of the above tax Claims which will be allowed Claims entitled to payments under the Plan on account thereof.

2. Priority Claims.

Master Metals has scheduled unsecured vacation pay Claims allegedly entitled to priority under § 507(a)(3) of the Bankruptcy Code and owing to twenty-nine (29) claimants in the total amount of $27,578. However, Master Metals has determined that some or all of such Claims may not be entitled to priority in distribution pursuant to § 507(a)(3) of the Bankruptcy Code, but rather are general unsecured Claims. This determination is based on the fact that the holders of such Claims did not earn the subject vacation pay during all or a portion of the ninety (90) day period prior to the Petition Date, but were entitled to full payments on account thereof prior to the period ninety (90) days prior to the Petition Date. Such Claims are held, for the most part, by former employees of Master Metals.

3. Employee Pension Plan.

Master Metals has scheduled, as a priority Claim pursuant to § 507(a)(4) of the Bankruptcy Code, deposits owing to the Pension Plan for the period July 11, 1981 to January 11, 1982, in the amount of $9,729.50.

As discussed in Section IV H 4 of this Disclosure Statement, Master Metals believes that such Claim may have been satisfied in connection with the termination of the Pension Plan. However, Master Metals may be required to pay the 5% Tax and/or the 100% Tax.

4. General Unsecured Claims.

General unsecured Claims arising from the sale of goods and/or the furnishing of services to Master Metals, and unsecured claims not otherwise classified, have been scheduled by Master Metals in the total amount of $1,298,674.91 and are held by approximately two hundred fifty-five (255) creditors. Of this total amount, approximately $9,941.42 has been scheduled by Master Metals as "disputed," "contingent," and/or "unliquidated."

In addition to the above, Master Metals' Shareholders hold unsecured Claims which arose in connection with certain unsecured loans by such Shareholders to Master Metals at the time of the purchase of the Metals Division Assets. Such Claims, evidenced by promissory notes executed by Master Metals in favor of each Shareholder, aggregate $107,569.30 and are set forth in the following chart. Such chart also identifies the number of shares of Master Metals' common stock held by each Shareholder and each Shareholder's original capital contribution for such shares of common stock:

Shareholders	Number of Shares	Purchase Price	Loan to Master Metals Evidenced by Promissory Note	
Douglas K. Mickey	234	$117,000	$ 8,000	
Curtis Drinkard	69	34,500	500	
Jerry L. Moody	23	11,500	3,500	
James Flowers	69	34,500	15,500	
David Hightower	26	13,000	37,000	
Colbert Clark	13	6,500	15,830.34	(Balance)
William Sanford	13	6,500	15,830.34	(Balance)
Cornelia Sanford	13	6,500	11,408.62	(Balance)
		Total:	$107,569.30	

C. Contingent Claims.

Master Metals may be contingently liable for payment of the 5% Tax and/or the 100% Tax, as described in Section IV H 4 of this Disclosure Statement. Additionally, a proof of Claim has been filed in the Reorganization Case by the Ohio Bureau of Workers' Compensation alleging a priority Claim in the amount of $171,331, which Claim is disputed by Master Metals.

A determination as to the validity and amount, if any, of the foregoing, as well as any other contingent Claims, will be made by the Court upon notice and hearing as may be required.

D. Suits Brought Against Master Metals.

Aside from scheduled suits which are incidental to Master Metals business operations in alleging claims arising therefrom (which are in the nature of actions on account) and environmental actions by OSHA and the City, certain of which were "stayed" upon commencement of the Reorganization Proceedings, there are no material legal proceedings, other than the Reorganization Case and an adversary proceeding brought against Master Metals by CFF, Inc., dba Commercial Factors of Cleveland and Commercial Factors of Cleveland, Inc. (collectively, "CFF"), pending against Master Metals. CFF seeks to recover $9,626.66 from Master Metals based upon, among other things, a payment by Master Metals' allegedly in violation of Section 1309.37(C) of the Ohio Revised Code. Master Metals denies such allegations. The Court will determine the validity of such claims.

VI. THE PLAN OF REORGANIZATION

THE FOLLOWING IS A SIMPLIFIED SUMMARY OF THE PLAN, A COPY OF WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT AND TO WHICH REFERENCE SHOULD BE MADE FOR A FULL STATEMENT OF ITS TERMS. THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN.

A. Development and Purposes of the Plan.

The essential purpose of the Plan is twofold. First, to provide for the treatment of the N.L. Claim and the operational financial integrity of Master Metals as a reorganized debtor. Second, to satisfy the allowed Claims of unsecured creditors in a manner which is in their best interest, is feasible and in accordance with the confirmation standards of the Bankruptcy Code. Obtaining these goals will enable Master Metals to emerge from the Reorganization Case as a rehabilitated and viable business entity.

Master Metals believes that the Plan provides sufficient and valid consideration to all classes of creditors and reflects an appropriate resolution of their Claims. Since Master Metals' assets are insufficient to satisfy, in whole or in part, any Claims, except for a portion of the N.L. Claim, the Section 364 Claim and possibly the allowed administrative expenses, Master Metals believes that such considerations payable to unsecured creditors are of a value in excess of that which they would receive upon the total liquidation of Master Metals. In other words, if Master Metals were liquidated under Chapter 7 of the Bankruptcy Code, general unsecured creditors would receive no compensation or payment on account of their Claims. (See the Liquidation Analysis in the following Section VIII B of this Disclosure Statement).

1. Summary of the Plan.

In summary, the Plan provides that Master Metals will pay all allowed administrative expenses and Claims entitled to priority in distribution in full in accordance with the terms of the Plan. Moreover, the secured Claims of the Lenders (the Section 364 Claim), Globe, Fry Metals and J & H are unimpaired and will be paid in full in accordance with the tenor of the respective agreements evidencing such Claims.

If the Plan is confirmed pursuant to § 1129(a) of the Bankruptcy Code, the N.L. Claim, in the amount of approximately $679,000, will be reduced to an allowed secured Claim in the amount of $150,000, payable by Master Metals over a period of three years subsequent to confirmation of the Plan. The unsecured deficiency Claim of N.L. based upon such reduction, in the amount of approximately $529,000, will be discharged and N.L. will not receive any cash distribution or retain any property on account thereof. In full settlement and discharge of all other unsecured Claims, the holders of such allowed Claims will be paid 5% of the amount of such allowed Claims, in cash, without interest, on the "Consummation Date" (as hereinafter defined). However, if the aggregate amount of such allowed Claims exceeds $1,300,000, Master Metals, as reorganized debtor, will pay pro rata to the holders of such allowed Claims on account thereof, in the aggregate, the total amount of $70,000, which may reduce the amount of the distribution to the holders of such allowed Claims.

If the Plan is confirmed pursuant to § 1129(b) of the Bankruptcy Code, the unsecured deficiency Claim of N.L., in the amount of approximately $529,000, shall be retained by N.L. as an allowed unsecured Claim, entitled to a pro rata distribution on account thereof as an allowed Claim.

Therefore, if the Plan is confirmed pursuant to § 1129(b) of the Bankruptcy Code, the allowed unsecured Claims would most likely exceed $1,300,000, which may result in a distribution to the holders of such allowed Claims, on a pro rata basis, of less than 5% of the amount of such allowed Claims.

In order to enable Master Metals to consummate the Plan, Douglas K. Mickey and Jerry L. Moody (the "New Lenders") have agreed to loan to Master Metals, as reorganized debtor, a cash sum not to exceed $85,000, upon and subject to the terms and conditions of the Plan. Such loan proceeds will be utilized by Master Metals to facilitate the satisfaction of its obligations under the provisions of the Plan payable on the Consummation Date. The Consummation Date, as used herein and as defined in Article I, Section 1.11 of the Plan, means the first business day after the thirtieth (30th) day following the date on which the Court enters an order confirming the Plan, or such later business day as soon as practicable thereafter.

2. Issuance of Reorganized Debtor Common Stock.

The Plan provides that Master Metals, as reorganized debtor, will issue 500 shares of new common stock, no par value per share, of the reorganized debtor (the "Reorganized Debtor Common") to Douglas K. Mickey and Jerry L. Moody (the "Investors," in connection with their purchase of the shares of Reorganized Debtor Common), which will aggregate 100% of all issued and outstanding shares of stock of the reorganized debtor. Such shares of the Reorganized Debtor Common shall be valid, fully paid for and nonassessable and shall have one (1) vote per share and such other rights as may be designated by the reorganized debtor.

In accordance with an agreement by and among the Investors, the shares of Reorganized Debtor Common shall be issued to and owned by the Investors

as follows: 70% or 350 of such shares shall be issued to and owned by Douglas K. Mickey and 30% or 150 of such shares shall be issued to and owned by Jerry L. Moody. The Investors will, on or before the Consummation Date and subject to Article V of the Plan, purchase such shares of Reorganized Debtor Common for the amount of $10 per share, for an aggregate purchase price of $5,000.

Master Metals' certificate of incorporation, as reorganized debtor, will be amended, if necessary, to authorize 750 shares of capital stock at no par value per share and to have such terms and preferences, subject to Article XII of the Plan, as shall be determined by the reorganized debtor's Board of Directors at the time of issuance, which shares shall be the Reorganized Debtor Common.

B. Allowance of Claims and Interests.

1. Claims in General.

The Plan provides distributions to be made only to those holding "Allowed Claims" in the various classes. In general there are two means by which Claims may become Allowed Claims entitled to distributions under the Plan. First, Master Metals has previously filed with the Court Schedules setting forth all Claims against Master Metals. Unless the Schedules have denominated a particular Claim as "contingent" "unliquidated" or "disputed," or such Schedules are amended to so denominate, scheduled Claims are deemed allowed unless objection thereto is interposed by Master Metals or any other interested party. If any objection is made, the validity and amount of the Claim will be determined by the Court following a hearing.

The second method through which a Claim may become an Allowed Claim is through the filing of a Proof of Claim. Such a filing is required in order

to assert any Claim not reflected in the Schedules or any Claim shown on the Schedules as "contingent," "unliquidated" or "disputed." Such a filing is also required by any person seeking to assert an amount larger than the amount scheduled by Master Metals or asserting a classification different from that shown in the Schedules. Upon filing, a Proof of Claim supersedes the information contained in the Schedules. As with scheduled Claims, a Claim asserted by means of a Proof of Claim will become an Allowed Claim unless objection is made thereto. Upon objection, the validity and amount of the Claim will be determined by the Court.

2. Interests of the Stockholders.

The Plan provides that the Interests of Master Metals' Shareholders will be deemed canceled and terminated, without any further action by Master Metals, as of the confirmation of the Plan. The Shareholders will not receive any payments or other considerations under the Plan on account of such Interests or retain any property or rights on account of such Interests.

C. Means of Execution of the Plan.

The Plan is to be implemented consistent with § 1123 of the Bankruptcy Code. Master Metals will implement and fund the Plan with cash on hand, cash generated from its business operations and from the unsecured loan to it from the New Lenders. It is contemplated that on or before the date the Court enters an order confirming the Plan (the "Confirmation Date"), the New Lenders will loan to Master Metals, as reorganized debtor, a cash sum not to exceed $85,000, in accordance with a financing agreement between the reorganized debtor and New Lenders. From the foregoing Master Metals, as reorganized debtor, will segregate into a separate fund cash sufficient to

pay the funds payable on the Consummation Date in accordance with the terms of the Plan. Master Metals estimates that the aggregate cash consideration payable on the Consummation Date and during the first calendar quarter thereafter to the holders of the Class 2, 3, 6 and 10 Allowed Claims, in accordance with the terms of the Plan, totals approximately $76,900.

The agreement of the New Lenders to loan funds to Master Metals as reorganized debtor does not constitute and should not be deemed to constitute a recommendation by the New Lenders to any creditor as to how to vote on the Plan.

D. Classification and Treatment of Claims and Interests.

The Plan divides Claims against Master Metals into 10 separate classes. Interests in Master Metals are treated in one additional class. Cash payments will be made to persons holding Allowed Claims in certain classes.

1. Class 1 (Administrative Expenses).

Class 1 consists of all administrative expenses entitled to priority in distribution pursuant to §§ 503(b) and 507(a) of the Bankruptcy Code. Class 1 includes obligations incurred by Master Metals during the Reorganization Case, including the costs and expenses of the proceedings such as fees for professional services of attorneys and accountants and administrative claims, costs and expenses incurred by Master Metals as a debtor in possession. It is estimated that Class 1 Claims will aggregate approximately $700,000 on the Consummation Date.

Class 1 Allowed Claims are not impaired under the Plan and will be paid in full on the Consummation Date, in the ordinary course of Master

Metals' business or upon such other terms as may be agreed to between Master Metals and the respective holders of such Allowed Claims.

Since Class 1 Claims are not impaired, solicitation of acceptances of the Plan from the holders of Class 1 Claims is not required under the Bankruptcy Code and acceptance by Class 1 is deemed to have occurred.

2. Class 2 (Priority Claims).

Class 2 Claims consist of all Claims entitled to priority in distribution pursuant to §§ 507(a)(3), (a)(4), or (a)(6) of the Bankruptcy Code, such as wage or vacation pay Claims and Pension Plan deposit or other employee benefit Claims, and does not include any Claims included in all other classes of Claims provided for under and pursuant to the Plan.

Class 2 Claims are impaired under the Plan and the holders of such Allowed Claims will be paid on account thereof, in quarterly installments, deferred cash payments, over a three (3) year period after the Consummation Date, of a value, as of the Consummation Date, equal to the allowed amount of the Class 2 Allowed Claims, or cash payments upon such other terms as may be agreed to by Master Metals and the respective holders of Class 2 Allowed Claims.

Since Class 2 Claims are impaired, solicitation of acceptances of the Plan from the holders of Class 2 Claims is required under the Bankruptcy Code and is being undertaken by means of this Disclosure Statement.

3. Class 3 (Tax Claims).

Class 3 consists of unsecured Claims asserted against Master Metals by governmental units which, if allowed, are entitled to priority in distribution pursuant to § 507(a)(7) of the Bankruptcy Code. Pursuant to Article IV, Section 4.2 of the Plan, in full settlement, release and

discharge of all Class 3 Claims, the holders of such Allowed Claims shall receive on account thereof, in quarterly installments, deferred cash payments over a six (6) year period after the date of assessment of such Claims, of a value, as of the Consummation Date, equal to the amount of such Allowed Claims. However, as to those holders of Class 3 Allowed Claims who have not made an assessment of the Class 3 Allowed Claims, such deferred cash payments shall be made over a period of six (6) years from the Consummation Date.

The rights of holders of Class 3 Claims are impaired under the Plan. Therefore, solicitation of acceptances of the Plan from the holders of such Claims is required under the Bankruptcy Code and is being undertaken by means of this Disclosure Statement.

4. Class 4 (Environmental Claims).

The Class 4 Environment Claims are held by certain governmental units or agencies, such as the Environmental Protection Agency, and are based on alleged violations, if any, by the Debtor of, or compliance requirements pertaining to, certain federal, state or local environmental statutes or regulations in connection with Master Metals' operations at the Real Property.

The Class 4 Claims are unimpaired. Master Metals shall continue to make such payments to, or otherwise comply with all environmental, health and safety statutes, rules and regulations of, the various governmental units or agencies in Class 4. Therefore, no legal, equitable or contractual rights to which the holders of the Class 4 Claims are entitled shall be deemed altered by the Plan.

Since the Class 4 Claims are not impaired, solicitation of acceptances of the Plan from the holders thereof is not required under the Bankruptcy Code and acceptance by Class 4 is deemed to have occurred.

5. Class 5 (The Section 364 Claim).

Class 5 consists of the Section 364 Claim. The Lenders, as the holders of the Section 364 Claim, shall continue to receive or be entitled to receive, as the case may be, such payments as are provided under and pursuant to the terms of that certain order of the Court dated September 2, 1982 and the demand promissory note and other instruments and documents evidencing the Section 364 Claim. Payment of the Section 364 Claim is secured by a first lien and security interest in favor of the Lenders in and to Master Metals' accounts receivable, contract rights, instruments, inventory and the proceeds thereof.

The Class 5 Claim is unimpaired. Master Metals shall continue to make the payments as are provided under and pursuant to the terms of the instruments, order of the Court and other documents evidencing the Section 364 Claim and the Lenders shall retain their lien to secure such secured Claim. Therefore, no legal, equitable, or contractual rights to which the holders of the Class 5 Claim are entitled shall be deemed altered by the Plan.

Since the Class 5 Claim is not impaired, solicitation of acceptance of the Plan from the holders thereof is not required under the Bankruptcy Code and acceptance by Class 5 is deemed to have occurred.

6. Class 6 (N.L. Claim).

Class 6 consists of one secured Claim, i.e., the N.L. Claim. The N.L. Claim is impaired under the Plan. In full settlement, release and discharge of the N.L. Claim, such secured Claim shall be treated as follows:

(a) The total outstanding balance of principal plus accrued interest due under the N.L. Note and the N.L. Claim shall be reduced as of the date of confirmation of the Plan (the "Confirmation Date"), from $679,287 to the total principal amount of $150,000, payable to N.L. by Master Metals, as reorganized debtor, during a three-year term after the Consummation Date, as provided in subsection (b) set forth below.

On the Confirmation Date Master Metals, as reorganized debtor, will execute and deliver to N.L. an amended promissory note (the "Amended N.L. Note") to evidence such reduction of the N.L. Note and the N.L. Claim. The principal amount of the Amended N.L. Note and the total indebtedness under Section 1.1 of the N.L. Mortgage shall be $150,000. The Amended N.L. Note and the N.L. Mortgage shall bear interest at the rate of 2% per annum in excess of the announced "prime rate" of AmeriTrust Company National Association, from time to time in effect.

(b) Interest on the Amended N.L. Note shall accrue commencing as of the Consummation Date. Principal and interest payments on the Amended N.L. Note shall be made to N.L. by Master Metals, as the reorganized debtor, commencing on the fifteenth (15th) day of the month following the Consummation Date and continuing on the fifteenth (15th) day of each month thereafter, as follows:

(i) Interest only for the first six (6) months after the Consummation Date;

(ii) Principal plus interest in the total amount of $3,000 per month for the next eighteen (18) months;

(iii) Principal plus interest in the total amount of $4,000 per month for the next twelve (12) months thereafter; and

(iv) A "balloon" payment in an amount equal to the balance of principal and interest due under the Amended N.L. Note on the fifteenth (15th) day of the month thirty-seven (37) months subsequent to the Consummation Date.

(c) Payments of principal and interest under the Amended N.L. Note shall be secured by the security and mortgage interests held by N.L. pursuant to the N.L. Mortgage and such interests shall remain in full force and effect until such time as the Amended N.L. Note is paid in full. Thereupon, the N.L. Claim (as reduced), the Amended N.L.

Note and the N.L. Mortgage shall be deemed cancelled, terminated, released and satisfied in full and shall automatically lapse and be null and void and N.L. shall forthwith take all action necessary or as reasonably requested by Master Metals, as the reorganized debtor, to terminate, release and discharge any and all lien, security, mortgage or other such interests held by N.L. in and to the Real Property and any of the Property. The N.L. Mortgage shall be amended, as necessary, in connection with the reduction of the N.L. Claim to the amount of the Amended N.L. Note.

(d) If the Plan is confirmed pursuant to § 1129(a) of the Bankruptcy Code, on the Confirmation Date the unsecured deficiency Claim of N.L. in an amount in excess of the principal amount of the Amended N.L. Note shall be discharged and N.L. shall neither receive any cash nor retain any property or interests on account of such Claim. If the Plan is confirmed pursuant to § 1129(b) of the Bankruptcy Code, N.L. shall retain an unsecured Class 10 Claim in an amount equal to the difference between (i) the total amount of the N.L. Claim prior to any reduction thereof pursuant to the Plan and (ii) the principal amount of the Amended N.L. Note.

(e) The foregoing shall not discharge or affect any rights and/or claims Master Metals or Master Metals as the reorganized debtor and N.L. may now or hereafter have against each other derived from, in respect of or arising out of claims, fines or penalties asserted by governmental units in respect of or arising out of violations of any federal, state or municipal environmental or health statutes or ordinances applicable to Master Metals' or the reorganized debtor's business operation and/or the Real Property.

Pursuant to an agreement with N.L., Douglas K. Mickey, Master Metals' President, and Jerry L. Moody, Master Metals' Vice-President, have agreed to personally guarantee payment of the first $75,000 of principal payable to N.L. by Master Metals under the terms of the Amended N.L. Note. Such agreement is subject to, and only effective upon, the confirmation of the Plan and the terms of the guarantee agreement between Mr. Mickey, Mr. Moody and N.L.

Since the Class 6 Claim is impaired, solicitation of acceptance of the Plan from N.L. is required under the Bankruptcy Code and is being undertaken by means of this Disclosure Statement.

7. Class 7 (Globe Claim).

Class 7 consists of the Globe Claim. The Globe Claim is not impaired under the Plan. Payment of the Globe Claim is secured by the senior rights, liens and interests of Globe, as consignor, in and to the battery inventory consigned by Globe to Master Metals pursuant to the terms of the Consignment Agreement.

The Class 7 Claim is unimpaired. Master Metals shall continue to make the payments to Globe as provided under and pursuant to the terms of the Consignment Agreement and Globe shall retain its senior rights, liens and interests, as consignor, in and to the consigned inventory securing the Globe Claim. Therefore, no legal, equitable or contractual rights to which Globe is entitled shall be deemed altered by the Plan.

Since the Class 7 Claim is not impaired, solicitation of acceptance of the Plan from Globe is not required under the Bankruptcy Code and acceptance by Class 7 is deemed to have occurred.

8. Class 8 (Fry Metals Claim).

Class 8 consists of the Fry Metals Claim. The Fry Metals Claim is not impaired under the Plan. Fry Metals shall continue to receive such payments, if any, as provided by the consignment agreements with Master Metals and Fry Metals shall retain its consignment interests in and to the lead dross inventory as may be shipped by it to Master Metals on a consignment basis.

Since the Class 8 Claim is not impaired under the Plan, solicitation of acceptance of the Plan from Fry Metals is not required under the Bankruptcy Code and acceptance by Class 8 is deemed to have occurred.

9. Class 9 (The J & H Claim).

The Class 9 Claim is held by J & H and is based upon that certain Equipment Lease - Installment Purchase Agreement with Master Metals as described in Section V A 5 of this Disclosure Statement. J & H's secured Claim is not impaired under the Plan. Master Metals will continue to make payments to J & H in accordance with the tenor of such agreement and the order of the Court dated June 13, 1984 and J & H shall retain all security and other interests to which it is entitled thereunder.

Since the Class 9 Claim is not impaired under the Plan, solicitation of acceptance of the Plan from J & H is not required under the Bankruptcy Code and acceptance by Class 9 is deemed to have occurred.

10. Class 10 (General Unsecured Claims and Unsecured Claims Not Otherwise Classified)

Class 10 Claims consist of Claims of general unsecured creditors and all unsecured Claims not otherwise classified. Class 10 Claims are impaired under the Plan. In full settlement, release and discharge of all Class 10 Claims, the holders of such Allowed Claims shall be paid 5% of the amount of such Allowed Claims, in cash without interest, upon the Consummation Date, provided, however, that Master Metals' liability in connection with such payments to holders of Class 10 Allowed Claims is limited such that if the Plan is confirmed under § 1129(b) of the Bankruptcy Code and/or the Class 10 Allowed Claims exceed $1,300,000, Master Metals shall pay pro rata to the holders of such Allowed Claims in the aggregate, the amount of $70,000, which may result in a distribution to the holders of such Allowed Claims of less than 5% of such Allowed Claims.

Since Class 10 Claims are impaired under the Plan, solicitation of acceptances of the Plan from the holders of Class 10 Claims is required

under the Bankruptcy Code and is being undertaken by means of this Disclosure Statement.

11. Class 11 (Shareholders Interests).

The Class 11 Interests are held by the Shareholders identified in Section V B 4 of this Disclosure Statement. The Class 11 Interests are impaired under the Plan. The Class 11 Interests shall be deemed cancelled and terminated on the Confirmation Date without any further action and the Shareholders shall neither receive any cash nor retain any property or rights on account of such Interests.

Since the Class 11 Interests are deemed to have rejected the Plan, solicitation of acceptances of the Plan from the holders thereof is not required under the Bankruptcy Code and rejection of the Plan by Class 11 is deemed to have occurred.

E. Conditions Precedent to the Confirmation of the Plan.

The Plan, its implementation, consummation and the obligations of Master Metals, the Investors and the New Lenders, as the case may be, provided therein are subject to the execution of, closing under and consummation of the transactions contemplated by that certain financing agreement by and between the New Lenders and Master Metals pursuant to which (i) the New Lenders shall make an unsecured cash loan to Master Metals of an amount not to exceed $85,000 on or before the Confirmation Date and (ii) the Investors have agreed to purchase the shares of Reorganized Debtor Common in accordance with Article VI of the Plan.

F. Estimated Administrative Expenses.

The Plan provides for payment in full in cash of all administrative Claims allowed by the Court. These administrative Claims are included in Class 1 and include the costs and expenses incurred on behalf of Master

Metals and the Unsecured Creditors' Committee in connection with the Reorganization Case, such as fees to attorneys, accountants and officers.

1. Professionals Employed by Master Metals.

The administrative expenses of the professionals retained by Master Metals in the Reorganization Case and incidental to the Plan are comprised of charges of attorneys, accountants and other professionals for services rendered. The allowance of such fees as administrative expenses is subject to review and approval by the Court upon notice and a hearing. As of the Consummation Date, Master Metals estimates that such professional fees payable may approximate $40,000.

2. Unsecured Creditors' Committee.

The administrative expenses of the Unsecured Creditors' Committee are largely comprised of attorney's fees. Master Metals is unable at this time to estimate the amount of fees for the Committee's attorneys that may be allowed by the Court and thereby payable under the provisions of the Plan.

G. Other Plan Provisions.

1. Discharge.

Except as otherwise provided in the Plan, confirmation of the Plan shall be deemed to have discharged Master Metals from any unfiled, contingent, unliquidated, or unmatured Claim, whether legal or equitable, arising out of transactions, transfers, sales, contracts, leases or guarantees and any Claim that arose before the Confirmation Date and any Claim of a kind specified in §§ 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not:

(a) A proof of the Claim is filed or deemed filed under § 501 of the Bankruptcy Code;

(b) Such Claim is allowed under § 502 of the Bankruptcy Code; or

(c) The holder of such Claim has accepted the Plan.

2. Rejection of Executory Contracts.

Except for the Collective Bargaining Agreement, any and all unexpired leases and executory contracts of Master Metals not expressly assumed pursuant to order of the Court on or before the Confirmation Date, or as to which a proceeding to assume or assume and assign is not pending before the Court on the Confirmation Date, shall be deemed rejected and disaffirmed upon the entry of the Confirmation Order.

Any damages or Claim resulting from the rejection of any executory contract shall be treated, if allowed, as a Class 10 Claim.

As of the Confirmation Date and only if such executory contract has not terminated, Master Metals assumes the Collective Bargaining Agreement, as it has been continued and supplemented from time to time.

3. Retention of Jurisdiction.

The Court shall retain jurisdiction of the Reorganization Case pursuant to and for the purposes of §§ 105(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3020(d) and for the following purposes, inter alia:

(a) To determine any and all objections to the allowance of Claims or Interests;

(b) To determine any and all applications for allowance of compensation and/or reimbursement of expenses, except as provided in Article VI, Section 6.6 of the Plan;

(c) To determine any and all controversies, disputes or acts under or in connection with the Plan and such other matters as may be provided for in the Confirmation Order;

(d) To effectuate payments under and performance of provisions of the Plan;

(e) To hear and determine any and all pending or subsequently brought motions, applications, adversary proceedings and contested matters;

(f) To hear and determine such motions or proceedings as may be instituted by Master Metals to reject an executory contract, pursuant to Article X of the Plan;

(g) To make such orders, or give such direction as may be appropriate under § 1142 of the Bankruptcy Code or in aid of consummation of the Plan, including the granting of extensions of any deadline set herein, applications for which are filed prior to the time the deadline or bar date for the filing of any proof of Claim has passed.

4. Revesting of Property.

Upon the entry of the Confirmation Order, Master Metals, as the reorganized debtor, shall be revested with all of its property, free and clear of all Claims, liens, security or other interests of Master Metals' creditors, Interest holders or parties in interest, except as otherwise provided in the Plan, and Master Metals, as the reorganized debtor, shall be entitled to manage its affairs without further order of the Court. The reorganized debtor shall manage the resolution of and distributions on account of claims consistent with the Plan and shall make such distributions of cash and Reorganized Debtor Common, from time to time, as are required by the Plan.

5. Payment of Certain Expenses Subsequent to the Confirmation Date.

Master Metals, as the reorganized debtor, shall, without further Court authorization, pay monthly against all bills rendered to the reorganized debtor (unless disputed by the reorganized debtor) for all costs incurred by the reorganized debtor after the Confirmation Date in consummating the Plan and administering the Reorganization Case, including, but not limited to, all professional fees and expenses, and shall pay all professional fees of counsel and accountants to Master Metals.

6. Grant of Continuance of Security Interests.

The distributions to be made to the holders of secured Claims provided for in and subject to Articles III and IV of the Plan shall be secured by the grant or continuance, as the case may be, of security interests in and to the Property securing such Claims and the proceeds thereof as provided for in and subject to Articles III and IV of the Plan. Said security interests shall be evidenced by documentation in form and substance sufficient to effectuate such grant or continuance, as the case may be, and shall run in favor of the holders of the respective secured Claims.

7. Amendment of Certificate of Incorporation.

Master Metals' certificate of incorporation will be amended, as may be required, to accommodate performance of the provisions of the Plan and to include the following:

> "The Corporation shall not issue any non-voting equity securities."
>
> Additional amendments to Master Metals certificate of incorporation may be made, as provided in Article XII of the Plan.

VII. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. Introduction.

The implementation of the Plan will have significant tax consequences for Master Metals as reorganized debtor and for the holders of the Allowed Claims. Although the following discussion is a summary of certain of these tax consequences, it is not intended to be a complete analysis of all tax matters that bear on a decision regarding the Plan. ALL HOLDERS OF ALLOWED CLAIMS ARE THEREFORE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE CONSEQUENCES TO THEM, UNDER FEDERAL AND APPLICABLE STATE AND LOCAL LAWS, OF THE PLAN.

The discussion is based on provisions of the Internal Revenue Code of 1986, as amended (the "Code"), as well as administrative and judicial interpretations thereof, that are applicable to the Plan. Many of the matters discussed herein are of such nature and complexity that no definitive statement can be made as to their eventual resolution. Moreover, Congress recently passed the Tax Reform Act of 1986 (the "1986 Tax Act") and there is little authoritative interpretation of the 1986 Tax Act currently available. Finally, there can be no assurance that future legislative, administrative, or judicial developments will not require a modification of some or all of this discussion. Master Metals has not obtained any rulings from the Internal Revenue Service or any opinions of counsel with respect to any of these matters.

B. Tax Consequences to Master Metals and the Reorganized Debtor.

1. Reduction of Indebtedness.

Upon implementation of the Plan, the principal amount of Master Metals' aggregate outstanding indebtedness will be substantially reduced. A debtor-taxpayer in bankruptcy which does not issue stock to its creditors

won't recognize income on cancellation of the indebtedness of such creditors, but the company must either reduce its net operating losses ("NOLs") and certain other tax attributes or elect to apply the debt discharge amount first to reduce basis in its depreciable assets or any realty held as inventory.

2. Net Operating Loss Carryovers.

The last tax return which was filed by Master Metals relates to its fiscal year ended August 31, 1985. This return indicates that Master Metals' NOL's as of this date are approximately $2 Million. In connection with any audits of any years open under the relevant statute of limitations, the Internal Revenue Service might propose an adjustment that would cause a modification of the NOL's. Also, in years when any NOL's might be used to reduce future taxable income, the Internal Revenue Service will again have the opportunity to review the returns in which NOL's arose and possibly disallow some or all of the NOL's in such future taxable years when they are used to reduce future taxable income, if any.

In addition, there is no assurance that the Internal Revenue Service will not challenge the deductibility of the NOL's in light of the transactions contemplated by the Plan. The 1986 Tax Act has significantly changed the tax law regarding the carryover of NOL's and other tax attributes pursuant to Section 382 of the Code, however, under the transition rules, Section 382 as it existed before taking into account any amendments relating to Section 382 continues to apply to Master Metals. Under Section 382 as it applies to Master Metals, the NOL's will be disallowed if there is both (i) a change in ownership of Master Metals' stock of more than fifty (50) percentage points resulting from either a purchase or decrease in the outstanding shares, and (ii) a change in, or

discontinuation of, Master Metals' trade or business. Since there has not been a more than fifty (50) percentage point change in ownership, Master Metals believes the NOL's will not be limited pursuant to Section 382.

Additionally, Section 269 of the Code authorizes the Commissioner of Internal Revenue Service to disallow any deduction, allowance or credit (e.g., the use of NOL's) if control of a corporation was acquired principally for tax avoidance purposes. Since the Investors jointly owned more than fifty (50) percent of the combined voting power and value of the stock of Master Metals prior to the confirmation of the Plan, Master Metals believes that Section 269 does not apply to the transactions contemplated by the Plan.

C. Federal Tax Consequences to Creditors.

1. Gain or Loss.

A creditor who surrenders his or its Allowed Class 6 or Class 10 Claim in the exchange may recognize income or loss, in respect of the consideration received in the exchange. The character of such income or loss as capital gain or loss, or as ordinary income or loss, will be determined by whether the existing Allowed Claims constitute capital assets in the creditor's hands. A loss with respect to Allowed Claims incurred by trade creditors will normally result in an ordinary loss deduction. However, since the treatment of Allowed Claims as capital assets is not always clear and may depend on factors which may vary with respect to each creditor, all creditors should consult with their tax advisors as to whether their Allowed Claims constitute capital assets.

For those taxpayers for whom the Allowed Claims constitute capital assets, any gain or loss recognized by a creditor will be a long-term capital gain or loss with respect to those existing Allowed Claims for which

the creditor's holding period is more than six (6) months as of the date of the exchange (more than twelve (12) months for assets acquired before June 23, 1984), and a short-term capital gain or loss with respect to those Allowed Claims for which the creditor's holding period is six (6) months or less as of the date of the exchange (twelve (12) months or less for assets acquired before June 23, 1984).

The 1986 Tax Act significantly changes the taxation of capital gains and ordinary income. For long-term capital gains recognized after December 31, 1986, the maximum tax rate will increase from 20% for individuals and 28% for corporations to 28% for individuals and 34% for corporations. The maximum tax rate on ordinary income and short term capital gains for individuals in 1987 is 38 1/2%. For corporations with a taxable year which includes July 1, 1987, the maximum tax rate on ordinary income and short term capital gains in such taxable year is a blended rate determined by prorating the tax rates based on a 46% rate prior to July 1, 1987 and a 34% rate after June 30, 1987. For individuals, beginning on January 1, 1988, ordinary income and capital gains will be taxed at the same rates, with a 28% maximum tax rate. Capital losses of individuals are allowed in full against capital gains and up to a maximum of $3,000 against ordinary income. For corporations, beginning with taxable years which begin after June 30, 1987, ordinary income and capital gains will be taxed at the same rates, with a 34% maximum tax rate. Beginning on January 1, 1988, taxable income of individuals within specified ranges will be subject to an additional 5% tax to phase-out the tax benefits of the lower 15% graduated tax rate and personal exemptions. For tax years beginning on or after July 1, 1987, taxable income of corporations in excess of $100,000 will be

subject to an additional tax equal to 5% up to a maximum of $11,750. Capital losses of corporations are allowed only against capital gains.

The gain or loss recognized in connection with the exchange will be recognized on the effective date of the Plan unless it is determined that on the effective date of the Plan the fair market value of the consideration to be received by a creditor holding a Class 6 or Class 10 Allowed Claim cannot be reasonably ascertained because the amount of Class 6 or Class 10 Allowed Claims is not determined. If the fair market value of the consideration to be received by a creditor is not ascertained on the effective date of the Plan, gain will be recognized when the fair market value is ascertainable.

2. Treatment of Accrued Interest.

A portion of the aggregate reorganization distribution being received by a creditor may be applicable to accrued but unpaid interest. To the extent a cash basis creditor receives such a distribution applicable to accrued but unpaid interest, the distribution will be taxable to such creditor as interest income. An accrual basis creditor will recognize income or loss on such distribution depending on the amount of interest income so received and the amount of interest income previously recognized.

3. Amount of Income or Loss.

For those creditors who recognize income or loss in connection with the transactions described in the Plan, the amount of gain or loss will be equal to the difference between (i) the income tax basis of the creditor in the Allowed Claim, and (ii) an amount equal to the difference between (x) the fair market value of the consideration received by such creditor, and (y) that portion separately treated as a payment to the creditor of accrued, but unpaid, interest.

There may be other federal or state, local or foreign tax considerations applicable to the circumstances of a particular investor. Holders of Allowed Claims should consult with their own tax advisors.

D. Conclusion.

The Plan presents a number of highly complicated federal income tax consequences which are susceptible to different interpretations. Different holders of Allowed Claims may find it advantageous to characterize the transactions contemplated thereunder in differing manners for federal income tax purposes. No advance ruling from the Internal Revenue Service or opinion of counsel as to the tax consequences of the Plan has been sought or will be sought. Also, creditors may be subject to other and possibly different consequences under state or local income tax laws or tax laws of jurisdictions outside the United States. FOR THE FOREGOING REASONS, ALL HOLDERS OF ALLOWED CLAIMS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THEIR SPECIFIC TAX SITUATION.

VIII. CONFIRMATION OF THE PLAN

A. Conditions to Confirmation Under the Bankruptcy Code.

The provisions of the Bankruptcy Code require that Master Metals propose the Plan in good faith and disclose relevant information concerning payments to and compensation of insiders. In addition, the Court must determine that the Plan satisfies the so called "best interest" and "feasibility" requirements of §§ 1129(a)(7) and (a)(11) of the Bankruptcy Code, respectively. Further, the Bankruptcy Code requires, subject to certain exceptions, that the Plan must be accepted by all impaired classes of holders of Claims or Interests. For a discussion of the requirements for acceptance, see Section II of this Disclosure Statement, *infra*.

B. Best Interest of Creditors Test.

Before it may confirm the Plan, the Court must determine (with certain exceptions) that the Plan provides to each member of each class a recovery that has a value that is at least equal to the distribution which such member would receive if Master Metals were liquidated on the Consummation Date under Chapter 7 of the Bankruptcy Code. Such determination is referred to as the "best interest" test because it is intended as a test as to whether the proposed reorganization is truly in the best interest of the creditors. If Master Metals liquidated on the Consummation Date under Chapter 7 of the Bankruptcy Code, holders of all unsecured Claims would not receive compensation or payment on account of their Allowed Claims. As a result, Master Metals believes that the Plan complies with the "best interest" test under § 1129(a)(7) of the Bankruptcy Code by providing the holders of all Allowed Claims consideration of a value above and beyond that which they would receive upon a liquidation of Master Metals under Chapter 7 of the Bankruptcy Code. The following Liquidation Analysis demonstrates that unsecured creditors would receive no payments on account of their respective Allowed Claims if Master Metals were liquidated under Chapter 7 of the Bankruptcy Code.

1. Liquidation Analysis.

LIQUIDATION ANALYSIS

CURRENT ASSETS	NET BOOK VALUE AT 12/31/86	ESTIMATED ACTUAL LIQUIDATION VALUE	
Cash/Deposits	$ 14,608	-0-	
Accounts Receivable	479,882	$239,941	Note A
Inventories	283,960	10,000	Note B
Prepaid Expenses	14,213	3,553	Note C
TOTAL CURRENT ASSETS	$792,663	$253,494	
PROPERTY, PLANT AND EQUIPMENT (At Cost)			
Buildings and Improvements	118,443		
Machinery/Equipment	389,146		
Transportation Equipment	21,621		
Office Equipment	2,557		
Idle Fixed Assets	570,895		
Leasehold Improvements	92,743		
	1,195,405		
Less accumulated depreciation	592,555		
	602,850	61,530	Note D
Land	123,980	117,500	Note E
OTHER ASSETS	24,574	-0-	
	1,544,067	432,524	
Cash Available For Distribution on Liquidation		432,524	
CHAPTER 7 EXPENSES			
Trustee fee (pursuant to 11 U.S.C. § 326(a) based on available cash)		13,155	
Professional fees (estimated)		20,000	
TOTAL CHAPTER 7 EXPENSES		33,155	

N.L. Secured Claim	117,500	Note F
Section 364 Claim	122,000	Note G
CURRENT LIABILITIES		
Trade Accounts Payable	515,508	
Accrued Expenses (Payroll, taxes and other expenses)	77,943	
TOTAL CURRENT LIABILITIES (Administrative Expenses)	593,451	
TOTAL CHAPTER 7 EXPENSES, SECURED CLAIMS AND ADMINISTRATIVE EXPENSES	866,106	
Cash Available for Distribution to General Unsecured Creditors	-0-	

Notes:

A. Accounts receivable not appraised. Liquidation value net of uncollectable accounts and estimated costs of collection.

B. Inventory not appraised. Inventory consists of lead and other alloy bearing raw material, lead ingots and waste products with no value unless refined. Estimated liquidation value.

C. 25% prepaid expenses recovered.

D.

Machinery/Equipment appraised at:	$ 35,120
Motor vehicles appraised at:	26,550
Office equipment appraised at:	2,215
Idle Fixed Assets appraised at:	15,000
Leasehold Improvements (all owned by respective lessors)	-0-
Subtotal	$ 78,885
22% Auctioneer's fees/expenses	(17,355)
Total Net Value	$ 61,530

E. Land, buildings and Improvements appraised at $125,000 as of 1985, net of 6% commercial sales commission.

F. Recovery by N.L. of $117,500 based on net realizable value of the land, buildings and improvements upon which it retains a first lien.

G. Recovery by the Lenders of $122,000, the balance of the Section 364 Claim as of January 31, 1987.

In connection with the liquidation, going concern or any other valuation analysis of Master Metals' assets and/or business, consideration must be given to the health and environmental statutes, rules and regulations which impact upon all such valuations and upon Master Metals' ability to prospectively conduct its business. An EPA or other agency ordered and monitored "cleanup" of the Real Property may cost millions of dollars and possibly destroy the viability of Master Metals' business. Moreover, such environmental factors may have a detrimental impact on the value, and the saleability, of Master Metals as a going concern. Please see Section IV G of this Disclosure Statement for a discussion of the environmental Claims relevant to Master Metals and the operation of its business.

C. Feasibility of the Plan.

Pursuant to § 1129(a)(11) of the Bankruptcy Code, the Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Master Metals as reorganized debtor. The implementation of the Plan is discussed in Section VI, above. Master Metals further believes that the Plan is feasible for the following reasons, among others:

(a) The present management has the required management skills and financial expertise with which to provide competent managerial guidance to, and control of, Master Metals as the reorganized debtor;

(b) Master Metals believes that, based upon its performance and expertise in the lead and mineral-bearing metals business, it will continue to comply with all health and environmental statutes, rules and regulations and that such statutes, rules and regulations do not

pose a material threat to the viability of its ongoing business operation; and

(c) Master Metals believes that as a reorganized debtor it should be able to obtain necessary financing, meet ordinary cash flow requirements and service its obligations under the Plan as it endeavors to rehabilitate and strengthen its business operations.

D. Acceptance.

The Bankruptcy Code requires as a condition to confirmation that each class of Claims or Interests that is impaired under the Plan accept the Plan. The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of two-thirds (2/3) in dollar amount and a majority in number of claims of that class, but for that purpose counts only those who actually vote to accept or to reject the plan. The Bankruptcy Code defines the acceptance of a plan by a class of interests (equity securities) as acceptance by two-thirds (2/3) of the number of shares, but for this purpose counts only shares actually voted. Holders of Claims or Interests who fail to vote are not counted as either accepting or rejecting the Plan.

Classes of Claims and Interests that are not "impaired" under the Plan are deemed to have accepted the Plan. Thus, Master Metals is soliciting acceptances of the Plan only from members of impaired classes. A class is "impaired" if the legal, equitable, or contractual rights attaching to the Claims or Interests of that class are modified, other than by curing defaults and reinstating maturities or by payment in full in cash.

E. Confirmation Over the Objection Of Impaired Classes; Section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code contains provisions for confirmation of a plan even if a plan is not accepted by all impaired classes, as long as at least

one (1) impaired class of claims has accepted it. These "cram-down" provisions provide for confirmation of a plan despite the non-acceptance of one or more impaired classes. Utilization of the "cram-down" provisions of § 1129(b) of the Bankruptcy Code would require Master Metals to meet the standards set forth below.

If the Class 10 unsecured Claims rejected the Plan, the Plan could nevertheless be confirmed, but only if Master Metals demonstrated that the property to be distributed under the Plan would be distributed so that (i) the members of the non-accepting impaired Class 10 received full payment of their Allowed Claims or (ii) if the members of Class 10 are to receive less than full payment, no class junior to Class 10, the non-accepting Class, may receive a distribution under the Plan, before the Plan could be adopted over the objection of such non-accepting Class 10. For the purposes of the "cram-down" of the Plan, the Class 11 Interests are junior to all other Classes.

If Class 10 unsecured Claims rejects the Plan and it is determined that the Plan does not unfairly discriminate against such Class, application of the "cram-down" provisions of the Bankruptcy Code would permit the confirmation of the Plan. Since Class 11 is the most junior class of Claims or Interests treated in the Plan, there would not, by definition, be any distribution to any junior class or interest.

If the Plan does not meet the above requirements, Master Metals would have to determine whether the Plan should be amended to meet the requirements for such confirmation. Any alternative to the Plan would result in a significant delay in the distribution of any recoveries or considerations to the holders of Allowed Claims.

F. Effect Of Failure To Confirm The Plan; Alternative To The Plan.

Master Metals is offering the Plan as a means of providing its creditors with the earliest and greatest possible value that can be realized on their respective Allowed Claims. At this point it appears to Master Metals that the only possible alternative to the Plan would be a liquidation of Master Metals pursuant to Chapter 7 of the Bankruptcy Code. In the opinion of Master Metals, a liquidation of the assets of Master Metals would result in no recovery to the Class 10 unsecured Claims. In addition, any alternative other than confirmation of the Plan may result in substantial delays of the realization by creditors of any consideration upon their respective Allowed Claims.

IX. PROPOSED DIRECTORS AND OFFICERS OF MASTER METALS AS REORGANIZED DEBTOR

Upon confirmation of the Plan, Master Metals' Board of Directors will be comprised of Douglas K. Mickey and Jerry L. Moody, its President-Treasurer and Vice President-Secretary, respectively.

X. RECOMMENDATION

Master Metals believes the Plan is the best and most viable means of enabling all unsecured creditors to realize a recovery upon their respective Allowed Claims. Moreover, the Plan preserves Master Metals' business operation and affords it the ability to maintain -- and enhance -- its respected name and business operation in its particular segment of the lead

industry. Therefore, Master Metals recommends that all holders of Claims entitled to vote on the Plan cast their ballots in favor of the Plan and its acceptance.

Dated: April 28, 1987
Cleveland, Ohio

MASTER METALS, INC.,
Debtor

By: /s/ Douglas K. Mickey, President
Douglas K. Mickey, President

MASTER METALS INC.
BALANCE SHEET

LIABILITIES

(Unaudited)

	August 31, 1985
CURRENT LIABILITIES	
Demand note payable - Secured	$ 217,986
Accounts Payable	512,992
Accounts Payable - Debtor in Possession	1,256,553
Accrued expenses - Debtor in Possession	131,644
Accrued expenses	63,331
Total Current Liabilities	2,182,506
SUBORDINATED NOTES PAYABLE	
Term Notes Payable - Secured	679,287
Shareholders' Notes Payable - Debtor in Possession	107,570
	786,857
COMMITTMENTS	
STOCKHOLDERS' EQUITY	
Common Stock - authorized 750 shares without par value; issued and outstanding 460 shares	230,000
Retained Earnings (Deficit)	(1,847,905)
	$ 1,351,458

MASTER METALS INC.

BALANCE SHEET

LIABILITIES

(Unaudited)

		August 31, 1986
CURRENT LIABILITIES		
Demand Note Payable - Secured	$	178,328
Accounts Payable		476,928
Accounts Payable - Debtor in Possession		1,256,553
Accrued Expenses - Debtor in Possession		131,644
Accrued Expenses -		57,724
Total Current Liabilities		2,101,177
SUBORDINATED NOTES PAYABLE		
Term Notes Payable - Secured		679,287
Shareholders' notes payable - Debtor in Possession		107,569
		786,856
COMMITTMENTS		
STOCKHOLDERS' EQUITY		
Common stock - authorized 750 shares without par value; issued and outstanding 460 shares		230,000
Retained Earnings (Deficit)		(1,789,523)
	$	1,328,510

MASTER METALS INC.

BALANCE SHEET

LIABILITIES

(Unaudited)

		August 31, 1986
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COMMITTMENTS		
STOCKHOLDERS' EQUITY		
Common stock - authorized 750 shares without par value; issued and outstanding 460 shares		230,000
Retained Earnings (Deficit)		(1,789,523)
	$	1,328,510

MASTER METALS INC.
BALANCE SHEET
ASSETS

(Unaudited)

	August 31, 1985
CURRENT ASSETS	
Cash	$ 7,627
Accounts Receivable, less allowance for doubtful receivables of $67,000	308,588
Inventories	
Finished Products	24,244
Work in-process	32,998
Raw Materials	92,989
	150,231
Prepaid Expenses	30,434
Total Current Assets	496,880
PROPERTY, PLANT AND EQUIPMENT - AT COST	
Buildings and Improvements	118,443
Machinery and Equipment	383,520
Transportation Equipment	73,702
Office Furniture and Fixtures	13,027
Idle Fixed Assets	582,763
Leasehold Improvements	80,743
	1,252,198
Less Accumulated Depreciation	546,465
	705,733
Land	123,980
OTHER ASSETS	24,865
	$ 1,351,458

EXHIBIT "A"

MASTER METALS INC.

BALANCE SHEET

ASSETS

(Unaudited)

		August 3
CURRENT ASSETS		
Cash	$	10,
Accounts Receivable, less allowance for Doubtful Receivables of $86,500		339,
Inventories		
Finished Products		3.
Work In-process		17,
Raw Materials		178,
		199,
Prepaid Expenses		5,
Total Current Assets	$	555,
PROPERTY, PLANT AND EQUIPMENT - AT COST		
Building and Improvements		118,
Machinery and Equipment		378,
Transportation Equipment		21,
Office Furniture and Fixtures		2,
Idle Fixed Assets		570,
Leasehold Improvements		92,
		1,184,
Less Accumulated Depreciation		560,
		624,
Land		123,
OTHER ASSETS		24,
	$	1,328,

EXHIBIT "A"

MASTER METALS INC.

BALANCE SHEET

ASSETS

(Unaudited)

		August 31, 1986
CURRENT ASSETS		
Cash	$	10,497
Accounts Receivable, less allowance for Doubtful Receivables of $86,500		339,583
Inventories		
Finished Products		3,271
Work In-process		17,764
Raw Materials		178,906
		199,941
Prepaid Expenses		5,203
Total Current Assets	$	555,224
PROPERTY, PLANT AND EQUIPMENT - AT COST		
Building and Improvements		118,443
Machinery and Equipment		378,520
Transportation Equipment		21,621
Office Furniture and Fixtures		2,557
Idle Fixed Assets		570,895
Leasehold Improvements		92,743
		1,184,779
Less Accumulated Depreciation		560,048
		624,731
Land		123,980
OTHER ASSETS		24,575
	$	1,328,510

EXHIBIT "A"

MASTER METALS INC.
BALANCE SHEET

LIABILITIES

(Unaudited)

	August 31, 1985
CURRENT LIABILITIES	
Demand note payable - Secured	$ 217,986
Accounts Payable	512,992
Accounts Payable - Debtor in Possession	1,256,553
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Accrued expenses	63,331
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Shareholders' Notes Payable - Debtor in Possession	107,570
	786,857
COMMITTMENTS	
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Common Stock - authorized 750 shares without par value; issued and outstanding 460 shares	230,000
Retained Earnings (Deficit)	(1,847,905)
	$ 1,351,458

OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

RECEIVED
SEP 28 1987
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
HAZARDOUS WASTE ENFORCEMENT BRANCH

Toward A Cleaner Environment
15 Year Anniversary 1972 - 1987

Richard F. Celeste
Governor

September 21, 1987

RE: MASTER METALS
CUYAHOGA COUNTY
OHD 097-613-871
GEN-TSD/LAND UNIT

CERTIFIED MAIL

Mr. Doug Mickey
Master Metals
2850 West Third Street
Cleveland, Ohio 44113

Dear Sir:

On September 1, 1987, Teresa Sabol and I conducted a hazardous waste inspection of your Master Metals facility located at 2850 West 3rd Street in Cleveland, Ohio. Mr. David Munson of Envisage and you represented this facility during my inspection. The facility was inspected for compliance with Ohio Hazardous Waste Regulations. A copy of the RCRA Inspection Report is enclosed for your information. These following violations noted in my report will require prompt attention:

Description of Violation

1. Personnel Training - OAC 3745-65-16, 40 CFR 265.16

   The last documented training session for employees in the hazardous waste program was May of 1986. All employees in this program must receive annual training to comply with this requirement.

2. Job Descriptions - OAC 3745-65-16, 40 CFR 226.16

   Each employee participating in your hazardous waste program must have a specific job description which details this job responsibilities for this program.

3. Posted Signs - OAC 3745-65-14, 40 CFR 265.14

   Signs stating "Danger - Unauthorized Personnel Keep Out" must be posted in areas of the facility where hazardous wastes are located. The property perimeter fence should have signs posted at reasonable intervals.

4. Inspection Plan - OAC 3745-65-15, 40 CFR 265.15

   Facility must have a written inspection plan which details how the facility is to be inspected.

5. Inspection Reports - OAC 3745-65-15, 40 CFR 265.15

All required inspections must be documented for daily inspections.

6. Safety Equipment - OAC 3745-65-33, 40 CFR 265.33

The safety fire and communications equipment must be inspected and maintained. Must have documentation.

7. Contingency Plan - OAC 3745-65-52, 40 CFR 265.52

The facility contingency plan must have documented agreements with local and State emergency authorities, must have addresses of all emergency coordinators and a list of all emergency equipment.

8. Operating Log - OAC 3745-65-73, 40 CFR 265.73

A draft operating log has been developed, however, not implemented. The log must contain description and quantity of each waste in storage; common name; EPA hazardous waste identification number; physical state of waste; estimated weight; volume or density; EPA handling code for storage; and location of each hazardous waste in facility.

9. Closure Plan - OAC 3745-66-12, 40 CFR 265.112

The closure plan must be up-dated to include closure of all the on-site hazardous wastes. The maximum amount must agree with the permit limit. The closure plan must also include a schedule for the various phases of closure. The closure plan must be amended within 60 days in response to any changes.

10. Financial Assurance - OAC 3745-66-43, 40 CFR 265.143

The facility has not proven financial assurance with a trust fund, surety bond, letter of credit or combination of financial mechanisms.

11. Closure Cost Estimate - OAC 3745-66-12, 40 CFR 265.112

The closure cost estimate is currently not accurate and has not been revised since March 14, 1986. Must up-date on an annual basis.

THOMPSON, HINE AND FLORY

1100 NATIONAL CITY BANK BUILDING

CLEVELAND, OHIO 44114

(216) 566-5500 · TELEX 980217

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 461-8060

IN PALM BEACH, FLORIDA
125 WORTH AVENUE
PALM BEACH, FLORIDA 33480
(305) 833-5900

IN WASHINGTON, D.C.
1920 N STREET, N. W.
WASHINGTON, D.C. 20036
(202) 331-8800 · TELEX 904173

WRITER'S DIRECT DIAL NUMBER

(216) 566-5717

August 14, 1987

Arthur I. Harris, Esquire
Assistant United States Attorney
Northern District of Ohio
1404 East 9th Street
Suite 500
Cleveland, Ohio 44114

Barbara A. Rogers, Esquire
U.S. Department of Justice
Land and Natural Resources Division
Environmental Enforcement Section
Room 1718
10th and Pennsylvania Avenue, N.W.
Washington, D. C. 20530

Mr. Dale Helmers
U.S. Environmental Protection Agency
Region V
5 HE-12
230 South Dearborn Street
Chicago, Illinois 60604

RECEIVED
AUG 17 1987
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
HAZARDOUS WASTE ENFORCEMENT BRANCH

Re: Master Metals

Dear Barbara, Art and Dale:

Pursuant to our settlement discussions and, in particular, our arrangements made pursuant to Barbara's letter of July 20, 1987, I am enclosing copies of Master Metals' Partial Facility Closure Plan of Action for your review and comment. As indicated in the Plan, Master Metals is proposing a multi-phase closure to bring this facility into full compliance with RCRA and other applicable laws. The initial phases set forth in the Plan address the waste piles and other units which were of immediate concern. Financial information is included in the Plan to address the sources of funds needed to implement the immediate Partial Closure. A long-term facility closure plan and trust fund will be developed and implemented immediately following implementation of the Partial Closure Plan.

Your comments and directions would be appreciated at your earliest opportunity. Master Metals has already initiated the Phase I container storage reorganization and has made arrangements for all of the "capital" items in the Plan. We have compressed most of the time schedules so that a majority of the work can be completed by the end of October, 1987. Due to the quantity involved, final depletion of the waste pile of lead dross/D008 wastes will depend upon the installation of the additional rotary kiln furnace.

Thank you for your prompt attention to this matter. We look forward to implementing this Partial Closure Plan.

Sincerely,

Mike Cyphert

Michael A. Cyphert

MAC/nab
Enclosure

cc: Douglas Mickey
William Schonberg, Esq.

Rogers, B

FILED

JUN 17 1987

at ..... o'clock ..... M
CLERK OF COURTS
U. S. Bankruptcy Court, N. D. O.
Cleveland

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	)	In Proceedings For a Reorganization Under Chapter 11
MASTER METALS, INC.,	)	
Debtor.	)	Case No. B82-0078
	)	Judge John F. Ray, Jr.

STATEMENT OF BASIS FOR
THE UNITED STATES OF AMERICA'S OBJECTIONS TO
DEBTOR'S PLAN OF REORGANIZATION

On June 15, 1987, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), filed its objections to the confirmation of debtor's Plan of Reorganization on the grounds that the Plan fails to conform with the requirements of Section 1129(a)(3),(8),(9), and (11) of the Bankruptcy Code ("the Code"). As set forth below, the Plan does not properly and adequately address the environmental obligations of the debtor-in-possession under the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), including obligations to close in an environmentally sound manner certain hazardous waste piles operated by the debtor-in-possession. These obligations will require the expenditure of funds by the debtor. Since the Plan neither addresses the source of such funds nor provides for such funds to be available prior to

6-7-1-390
DEPARTMENT OF JUSTICE RECEIVED
44 JUN 23 1987
LANDS DIVISION
POLLUTION ENFORCEMENT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	)	In Proceedings For
	)	a Reorganization Under
MASTER METALS, INC.,	)	Chapter 11
	)	
Debtor.	)	Case No. B82-0078
	)	
	)	Judge John F. Ray, Jr.
	)	

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payments to creditors, the Plan fails to meet the requirement of Section 1129 and should not be confirmed in its present format.

1. Treatment of Environmental Claims Under The Plan of Reorganization

On March 19, 1987, Master Metals, Inc. ("debtor") filed its Plan of Reorganization ("Plan") and Disclosure Statement. A hearing on the confirmation of the Plan is set for June 24, 1987. The Plan provides for funds to be made available for payments to various secured and unsecured creditors. No funds are either provided or budgeted for environmental obligations under RCRA.

Under Article I of the Plan, "Environmental Claims" are defined as:

> "the claims of all governmental units or agencies arising out of alleged violations by the Debtor of federal, state or local environmental statutes or regulations in connection with the Debtor's operations at the Real Property."

Article III of the Plan provides that:

> "class 4 [environmental] claims are not impaired; and the holders of Class 4 Allowed Claims shall receive payments, if any, or other treatment by the Debtor on account thereof in accordance with the respective rights of the holders of such Allowed Claims."

The Disclosure Statement provides that because environmental claims are purportedly unimpaired, holders of environmental claims, such as EPA, will be deemed to have accepted the Plan (Disclosure Statement at 4, 42 - 43)[1] (hereinafter cited as

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[1]The Disclosure Statement also states that "EPA [has] not cited Master Metals for any violations of [its] guidelines or any an environmental statutes since Master Metals commenced its business" (Discl. St. at 17), and that "Master Metals shall

(continued...)

"Discl. St. at"). As set forth below, this attempt to confirm a plan by ignoring existing environmental responsibilites should not be allowed.

2. RCRA Requirements

In 1976, Congress enacted the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., to create a comprehensive program to regulate the treatment, storage, transportation and disposal of hazardous wastes. The primary mechanism for implementing the regulatory program under RCRA is the issuance of permits to hazardous waste treatment, storage, and disposal facilities. 42 U.S.C. §6925. However, because of the time consuming administrative review necessary to issue such permits, Section 3005(e) of RCRA, 42 U.S.C. §6925(e), provides that facilities that meet certain conditions shall be treated as though they had been issued a permit, until final administrative action had been taken on their permit application, provided that they comply with certain statutory and regulatory requirements. This authorization is known as "interim status." RCRA's interim status requirements, codified at 40 C.F.R. Part 265, are thus the heart of the RCRA regulatory scheme until final permits have been issued.

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[1](...continued)
continue to make such payments to, or otherwise comply with all environmental, health and safety statutes, rules and regulations of, the various governmental units or agencies in Class 4" (Discl. St. at 42). As set forth more fully in Parts 3 and 4 herein, these representations mischaracterize Master Metals' compliance with RCRA. Further, the statement that they have not been sued by EPA is no longer the case as the United States has filed on behalf of EPA a RCRA enforcement action.

In 1984, Congress amended RCRA to provide that all existing hazardous waste land disposal facilities would automatically lose interim status unless they certified before November 8, 1985, that they were in compliance with all applicable groundwater monitoring and financial responsibility requirements. Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2), provides that:

> "In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984 interim status shall terminate on the date twelve months after November 8, 1984 unless the owner or operator of such facility --
>
> (A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after November 8, 1984; and
>
> (B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements." [Emphasis added.]

Thus, a facility's failure either to apply for a final permit or to comply with all applicable groundwater monitoring and financial responsibility regulations by November 8, 1985, caused, as a matter of law, automatic loss on that date of the facility's "interim status" authorization to operate a land disposal facility.

The applicable financial responsibility requirements are codified at 40 C.F.R. Part 265, Subpart H. These regulations require owners and operators of hazardous waste treatment, storage, or disposal facilities to establish and maintain financial assurance for proper closure of the facility, and to

demonstrate liability insurance coverage for potential liability for personal injury and property damage for accidental occurences.

A facility that looses interim status cannot lawfully treat, store, or dispose of hazardous waste. Pursuant to 40 C.F.R. Part 265, Subpart G, a facility that looses interim status must develop, and, upon EPA approval, implement, a written "closure plan" which sets forth the steps necessary to close the land disposal units at the facility in a manner that will eliminate or minimize post-closure escape of hazardous material.

3. EPA's Action Against Master Metals for Violations of RCRA

On June 15, 1987, the United States, on behalf of EPA, filed an action for injunctive relief and civil penalties in the United States District Court for the Northern District of Ohio against Master Metals, Inc., alleging violations of RCRA and its implementing regulations at the Master Metals facility in Cleveland, Ohio.[2] A copy of the Complaint is attached and incorporated herein. From November, 1980, to November 8, 1985, including the period since January 11, 1982, during which Master Metals operated the facility as debtor- in- possession under Chapter 11 of the Bankruptcy Code, Master Metals operated under

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[2]This action is not covered by the automatic stay of Section 362(a) since it is within the exceptions of Section 362(b)(4). It is an action or proceeding to enforce a governmental unit's police or regulatory power. See In the Matter of Commonwealth Oil Refining Co., Inc., 805 F.2d 1175 (5th Cir. 1986), petition for cert. filed 55 U.S.L.W. 3622 (February 23, 1987).

interim status authorization.[3] However, on November 8, 1985, the Master Metals facility lost interim status for the waste piles, due to its failure to certify compliance with the financial responsibility requirements set forth at 40 C.F.R. Part 265, Subpart H, by that date.

EPA's complaint asserts three claims for relief. First, defendant has continued to store hazardous waste in waste piles despite its loss of interim status authorization for so doing, and has not submitted and implemented a proper closure plan which meets the requirements of 40 C.F.R. Part 265, Subpart G.[4] The complaint seeks an order requiring defendant to submit and, upon EPA's approval, implement, a proper closure plan.

Second, the complaint alleges that defendant is storing certain hazardous wastes for which it never obtained authorization to store at the facility.

The third claim for relief alleges numerous violations of interim status standards at 40 C.F.R. Part 265, including inadequacies in the closure plan for the facility. EPA and Ohio

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[3]The violations alleged occurred, and continue to occur, while the facility has been operated by the debtor-in-possession.

[4]By Notice of Deficiency dated January 16, 1986, EPA notified Master Metals of inadequacies in the closure plan submitted on November 8, 1985. Among the deficiencies were failure to submit an estimate of the cost of closure and financial assurance that Master Metals would be able to pay these costs. On March 18, 1986, Master Metals submitted a revised closure plan, which fails to set a schedule for closure. Under the revised plan, which has not been approved by EPA, the cost of closure is estimated at $21,000. Even this amount, which may be significantly less than actual cost of closure, is not provided in the Reorganization Plan.

EPA discovered these violations during inspections of the facility on August 6, 1986, and March 5, 1987. Defendant was thereafter informed of the violations.

4. Basis for the United States' Objections to Confirmation of the Plan

Debtor's Plan should not be confirmed because because it does not provide for compliance with RCRA closure and interim status requirements.

a. The Plan Is Not Feasible:

Section 1129(a)(11) of the Bankruptcy Code, 11 U.S.C. Section 1129(a)(11), requires as a prerequisite to confirmation that the Court find that

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

"Section 1129(a)(11) requires the Court to carefully scrutinize the plan to determine whether it offers a reasonable prospect of success and is workable." Collier Bankruptcy Manual ¶1229.02[11]. Debtor's Plan fails to meet this criterion because it fails to assure that sufficient funds will be available for immediate closure of the waste piles at the facility and for compliance with RCRA's interim status standards. Unless the debtor's environmental obligations are addressed in the Plan, there is no assurance that debtor will be able to properly close under RCRA or that a liquidation would not follow the reorganization.

b. The Plan Does Not Meet The Requirement That It Not Be Proposed By Means Forbidden By Law: The Plan also fails to conform to the requirements of Section 1129(a)(3) that it not be "proposed by any means forbidden by law." The Plan here violates this requirement since it proposes, in essence, to ignore the existing environmental obligations of the debtor in possession and to transfer those obligations to the reorganized debtor. This proposal would allow the debtor in possession, which has operated in violation of RCRA during the pendency of Chapter 11 proceedings, and has obligations to take certain affirmative steps to meet environmental requirements, to avoid those requirements.

In its recent decision in Midlantic National Bank v. New Jersey Department of Environmental Protection, 106 S. Ct. 755 (1986), the Supreme Court made clear that the Bankruptcy Laws were not intended to allow for the avoidance of environmental laws. In that case, the Court held that the abandonment authority of Section 554 could not be exercised with respect to a hazardous waste site, "without formulating conditions that will adequately protect the public health or safety." Id. at 762. See also Ohio v. Kovacs, 469 U.S. 274 (1985)(Court does not question "that anyone in possession of the [hazardous waste] site ... [including] the bankruptcy trustee must comply with the environmental laws of the State of Ohio. Plainly that person or firm may not maintain a nuisance, pollute the waters of the State

or refuse to remove the source of such conditions.") Similarly, here, the Plan proposes to effectively "abandon" the RCRA facility and the obligations to close that facility, back to the reorganized debtor. This should not be allowed. The environmental conditions requiring closure were created during this Chapter 11 proceeding and must be adressed by the Chapter 11 plan.

c. The Plan Fails To Provide For Satisfaction Of Administrative Obligations.

Moreover, the Plan fails to comply with the requirement of Section 1129(a)(9) that administrative obligations be satisfied in full upon consummation of any Plan. Here, an obligation of the estate-- the obligation to close the RCRA facilitiy--is not being satisfied upon consummation. That obligation, which arises from the Chapter 11 operations, is an administrative obligation of the estate. In re Laurinburg Oil Co., Inc., 49 B.R. 652 (Bankr. M.D. N.C. 1984)(expenses of debtor to comply with state water pollution laws were administrative expenses); See In re T.P. Long Chemical, Inc., 45 B.R. 278 (Bankr. N.D. Ohio 1985)(EPA was entitled to recover its expenses in removing hazardous material from property of a Chapter 7 estate as an administrative expense since it fulfilled an obligation of the bankruptcy estate.); In re Electrical Utilities, Co., No. 83-01540-4 Memorandum Opinion (Bankr. E.D.N.C. Jan. 10, 1985) (denying confirmation of a plan where environmental obligation entitled to administrative priority would not be satisified in full) (copy attached).

d. The United States' Environmental Interests Are Imparied Under The Plan.

The Plan also fails to comply with Section 1129(a)(8), which provides that a Court shall confirm a plan only if each class of claims or interests has either accepted the plan or is not impaired by the Plan. The Plan here characterizes EPA's interest as unimpaired. However, the assertion in the Plan that EPA's environmental claims are unimpaired does not provide sufficient assurance that the reorganized debtor will have sufficient assets to meet its obligations under RCRA. See In re Spirited, Inc., 23 B.R. 1004 (Bankr E.D. Pa. 1982) (class of claims or interests should not be deemed to have accepted plan on grounds they were an unimpaired class, where they did not receive any compensation under the plan). Given the nature of the proposed reorganization, after payments are made to other creditors, EPA's concerns here may well be impaired. In fact, given the rather tight nature of debtor's financial plan, it appears unlikely that debtor would be able to properly close the waste piles and meet other requirements of RCRA under the proposed Plan. Confirmation of the Plan without providing for proper closure under RCRA would risk placing on the public the cost of properly closing the facility. This is precisely the situation Congress was seeking to avoid in requiring strict compliance with RCRA's financial responsibility requirements.

WHEREFORE, the United States requests that the Court deny confirmation of the Reorganization Plan unless the Plan is

modified to provide for compliance with environmental obligations under RCRA.

Respectfully submitted,

ROGER J. MARZULLA
Acting Assistant Attorney General
Land and Natural Resources Division

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Certificate of Service

I hereby certify that service of the Statement Of Basis For The United States Of America's Objections To Debtor's Plan Of Reorganization was made by mailing a copy thereof to the following this 17 day of June, 1987:

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Arthur T. Harris
Assistant U.S. Attorney

FILED

JAN 10 1995

PEGGY B. DEANS, CLERK
U. S. BANKRUPTCY COURT
EASTERN DISTRICT OF N. C.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA

IN THE MATTER OF: CASE NO. M-83-01540-4

ELECTRICAL UTILITIES COMPANY,

Debtor

MEMORANDUM OPINION

This matter comes on to be heard upon confirmation of the debtor's proposed Plan of Reorganization. The hearing was conducted on November 21, 1984. At the hearing, the United States of America was represented by Mr. Rudy Renfer, Assistant United States Attorney; the State of Illinois was represented by Mr. Finis Williams, Assistant Attorney General for the State of Illinois.

The Court finds the facts to be as hereinafter set out.

FINDINGS OF FACT

The United States and the State of Illinois have filed objections to the proposed Plan of Reorganization. The State of North Carolina has filed a ballot rejecting the proposed Plan. The United States and the State of Illinois have filed claims for the estimated costs of cleaning up a contaminated plant site in LaSalle, Illinois, in the amount of Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00) and contend that their claims are cost of administration claims. The State of North Carolina has filed a claim for the estimated

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costs of cleaning up a toxic waste storage site in Farmville, North Carolina, in the amount of Thirty Thousand and No/100 Dollars ($30,000.00) and contends that its claim is a cost of administration claim.

Article IV.1 of the proposed Plan provides that if the debtor has not sold its interest in the real property on which the toxic waste storage site is located in Farmville, North Carolina, by December 31, 1984, then Branch Banking & Trust Company may proceed with a foreclosure sale of its security interest in the Farmville property.

Article IV.2 of the proposed Plan provides that if the debtor's real property in LaSalle, Illinois, is not transferred to Lake Shore Bank (a secured creditor) or to the United States, then the property will be abandoned. This property is subject to a Two Million Five Hundred Thousand and No/100 Dollar ($2,500,000.00) cleanup cost which is in excess of the value of the property.

Lake Shore Bank has not accepted the Plan and the United States has objected to the Plan. The debtor's interest in the real property in Farmville, North Carolina, has not yet been disposed of by the debtor.

At the confirmation hearing thirty-seven (37) creditors voted for the Plan in a dollar amount of One Million Eighty-Seven Thousand Five Hundred Seventy-Seven and 77/100 Dollars ($1,087,577.77) and nine (9) creditors voted against the plan in a dollar amount of Eighty-One Thousand Four Hundred Thirty-Four

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and 46/100 Dollars ($81,434.46). The Court allowed the United States and the State of Illinois additional time to file objections to the proposed Plan and their objections are treated as votes against the Plan. When the claims of the United States and the State of Illinois are added to the vote against the Plan, the total claims voting against the Plan are eleven (11) and the total amount voting against the Plan is Two Million Five Hundred Eighty-One Thousand Four Hundred Thirty-Four and 46/100 Dollars ($2,581,434.46). The claim of the State of North Carolina is estimated to be Thirty Thousand and No/100 Dollars ($30,00.00). If this claim is shown as voting against the Plan, then twelve (12) creditors voted against the Plan in a total amount of Two Million Six Hundred Eleven Thousand Four Hundred Thirty-Four and 46/100 Dollars ($2,611,434.46). The debtor does not have acceptances from the unsecured class if the claims of the governmental entities are treated as unsecured.

The debtor has an estimated Sixty Thousand and No/100 Dollars ($60,000.00) for payment of cost of administration and unsecured creditors. If the claims of the governmental entities are allowed as cost of administration claims, then the total cost of administration will exceed Two Million Five Hundred Thirty Thousand and No/100 Dollars ($2,530,000.00).

ISSUE

The issue is whether the debtor's proposed Plan may be confirmed by the Court.

CONSIDERATION OF ISSUE

11 U.S.C. § 1129(a)(9) requires costs of administration to be paid in full upon confirmation of a Plan. If the claims of the United States, the State of Illinois and the State of North Carolina are allowed as costs of administration, then the debtor does not have sufficient funds or assets to pay the costs of administration claims.

11 U.S.C. § 1129(a)(8) requires the debtor to have the acceptances of each class of impaired creditors. If the claims of the United States, the State of Illinois and the State of North Carolina are allowed as general unsecured claims and are voted in rejection of the Plan, then the debtor does not have the necessary acceptances from the class of unsecured creditors, and the Plan may not be confirmed.

CONCLUSIONS OF FACT AND LAW

The Court concludes that the Plan proposed by the debtor and filed on August 6, 1984, is not a confirmable Plan; accordingly,

A separate Order will be entered denying confirmation of the debtor's proposed Plan which was filed on August 6, 1984.

Dated JAN 16 1985 at Wilson, North Carolina, in said District.

S/THOMAS M. MOORE

Thomas M. Moore
United States Bankruptcy Judge

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NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

IN RE:

MASTER METALS, INC..	)	Case No. B82-78
	)	
	)	Judge Ray
	)	
	)	Chapter 11
	)	
Debtor.	)	UNITED STATES' OBJECTION TO
	)	CONFIRMATION OF PLAN

Now comes the United States, on behalf of its agencey, the Environmental Protection Agency (EPA), and hereby objects to confirmation of the debtor's plan of reorganization for failure to meet the requirements of 11 U.S.C. § 1129(a). In particular, the plan does not properly and adequately address the environmental obligations of the debtor under the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., including the obligation to close in an environmentally sound manner certain hazardous waste piles operated by the debtor. The United States, on behalf of the EPA, has this date filed an action against the debtor in United States District Court alleging violations of RCRA. (A copy of the Complaint is attached.)

The plan, as it is presently constituted, is deficient in at least four respects:

1. The plan fails to meet the requirement that it be proposed "not by any means forbidden by law." 11 U.S.C. § 1129(a)(3).

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LANDS DIVISION
ENVIRONMENT

2. The EPA's environmental interests are impaired. 11 U.S.C. § 1129(a)(8).

3. The plan fails to provide for the satisfaction of all administrative obligations. 11 U.S.C. § 1129(a)(9).

4. The plan is not feasible. 11 U.S.C. § 1129(a)(11).

Accordingly, since the plan neither addresses the source or availability of funding necessary to comply with RCRA, the plan fails to meet the requirements of section 1129 and should not be confirmed as presently constituted. Counsel anticipate filing a brief supplementing this objection within the next few days, and, in any event, prior to the confirmation hearing.

PATRICK M. MCLAUGHLIN
United States Attorney

By: _____
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Certificate of Service

I hereby certify that service of the foregoing United States' Objection To Confirmation of Plan was made by mailing a copy thereof to the following this 10th day of June, 1987:

William E. Schonberg
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Arthur I. Harris
Assistant U.S. Attorney

United States District Court

NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

JUDGE BATCHELDER

UNITED STATES OF AMERICA,

Plaintiff,

v.

MASTER METALS, INC.,

Defendant.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: C87-1471

TO: (Name and Address of Defendant) Master Metals, Inc.
c/o Thomas J. Onusko
Arter & Hadden
1144 Huntington Bldg.
Cleveland, Ohio 44114

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address) Arthur I. Harris
Assistant U.S. Attorney
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES S. GALLAS
CLERK

DATE

BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MASTER METALS INC., Defendants	)	CIVIL ACTION NO. C87-1471 JUDGE BATCHELDER

COMPLAINT

Plaintiff, the United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for permanent injunctive relief and civil penalties pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C § 6928(a), arising from defendant's violations of the requirements of RCRA at defendant's hazardous waste management facility in Cleveland, Ohio.

2. Specifically, the United States seeks an order permanently enjoining defendant from placing hazardous waste onto waste piles located at its facility, and from storing hazardous waste at the facility without a permit or interim status; requiring defendant to submit and implement a proper closure plan for the waste piles which contain hazardous waste and for the facility as a whole; and requiring defendant to comply with

financial responsibility requirements and interim status standards established under RCRA. The United States also seeks an order that defendant is liable for civil penalties in an amount to be assessed by this Court for its violations of RCRA.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to 42 U.S.C. § 6928(a) and 28 U.S.C. § 1391(b), because the violations occurred in this district and because defendant's hazardous waste management facility is located in this district.

DEFENDANT

5. Defendant, Master Metals, Inc., is a corporation organized under the laws of the State of Ohio.

6. Defendant owns and operates a secondary lead smelter at 2850 West Third Street, Cleveland, Ohio ("Master Metals Facility").

7. Defendant is an "owner" and an "operator" of the Master Metals Facility, as those terms are defined at 40 C.F.R. § 260.10.

8. On January 11, 1982, defendant filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankrupcty Court for the Northern District of Ohio. Defendant is the debtor in possession during the ongoing bankruptcy proceeding.

STATUTORY AND REGULATORY BACKGROUND

9. RCRA establishes a regulatory program for the management of hazardous waste. 42 U.S.C. §§ 6901 *et seq*. EPA

promulgated regulations, codified at 40 C.F.R. Parts 260-271, governing owners and operators of facilities which treat, store, or dispose of hazardous waste.

10. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that a state may obtain federal authorization to administer the RCRA hazardous waste program in that state. When a state obtains such authorizaton, state regulations apply in lieu of federal RCRA regulations in that state.

11. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the operation of any hazardous waste treatment, storage or disposal facility except in accordance with a RCRA permit.

12. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), provides that a hazardous waste facility which was in existence on November 19, 1980 could obtain "interim status" to continue operating until final action is taken by EPA or an authorized State with respect to the facility's permit application, so long as the facility satisfies certain conditions. Those conditions include filing a timely notice with EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application ("Part A application") for a hazardous waste permit for those particular activities. Section 3005(e)(2) of RCRA further provides that, in order to retain such interim status, each land disposal facility was required to certify compliance with RCRA's financial responsibility requirements and submit a final hazardous waste permit application ("Part B application") by November 8, 1985.

13. The owner or operator of a facility with interim status must comply with standards set forth in 40 C.F.R. Part 265 or equivalent state regulations.

14. On July 15, 1983, EPA granted the State of Ohio Phase I interim authorization to operate the RCRA hazardous waste program in Ohio, thereby making Ohio interim status regulations applicable to Ohio hazardous waste facilities. On January 31, 1986, EPA withdrew Phase I authorization from the State of Ohio, making the federal regulations thereafter applicable.

15. Federal regulations codified at 40 C.F.R. Part 265 establish interim status operating standards.

THE FACILITY OPERATIONS

16. Hazardous wastes have been and continue to be generated, treated and stored at the Master Metals Facility.

17. Defendant stores hazardous waste in three waste piles at the Master Metals Facility.

18. The waste piles at the Master Metals Facility referred to in paragraph 17 are "land disposal" units within the meaning of Sections 1004(3) and 3004(k) of RCRA, 42 U.S.C. §§ 6903(3) and 6924(k).

19. Defendant generates emission control dust at the Master Metals Facility.

20. Defendant stores emission control dust in two waste piles at the Master Metals Facility.

21. Emission control dust is "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. Part 261, Subpart D, designated by hazardous waste code no. K069.

22. Defendant stores battery plates from spent lead acid batteries ("lead acid battery plates") in a waste pile at the Master Metals Facility.

23. Defendant stores containerized industrial lead acid batteries ("lead acid batteries") at the Master Metals Facility.

24. Defendant reclaims lead acid battery plates and lead acid batteries at the Master Metals Facility.

25. Lead acid batteries are cracked at the Master Metals Facility.

26. During the process of cracking of lead acid batteries, acid is released into the environment.

27. Lead acid batteries and acid therefrom are "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. Part 261, Subpart C, due to their corrosivity and E.P. toxicity.

28. Under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), the term "hazardous waste" means:

> "a solid waste or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may -
>
> (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

29. Under 40 C.F.R. Part 261, a material is a hazardous waste if it is a solid waste and is listed at 40 C.F.R. Subpart

D, or if it exhibits any of the characteristics of ignitability, corrosivity, reactivity, or EP toxicity, as set forth in 40 C.F.R. Part 261, Subpart C.

30. Pursuant to 40 C.F.R. § 261.6(a)(2)(v) and 40 C.F.R. Part 266, Subpart G, owners and operators of facilities that store spent lead acid batteries before reclaiming them are subject to 40 C.F.R. Parts 264 and 265, Subparts A-L, and Part 270, except §§ 264.13, 264.71, 264.72, 265.13, 265.71 and 265.72.

31. The Master Metals Facility is a "facility" and an "existing hazardous waste management facility" as those terms are defined at 40 C.F.R. § 260.10.

ADMINISTRATIVE BACKGROUND

32. On August 15, 1980, defendant notified EPA, as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), that it was generating, transporting, and treating, storing, or disposing of hazardous waste at the Master Metals Facility. On March 17, 1985, defendant submitted an amended notification.

33. Defendant's first Notification of Hazardous Waste Activity states that defendant generates, transports, and treats, stores or disposes of, hazardous waste. Defendant's amended Notification of Hazardous Waste Activity states that defendant generates, and treats, stores or disposes of, hazardous waste.

34. On November 19, 1980, defendant submitted its Part A application, as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 40 C.F.R. § 270.10. On April 18, 1985, defendant submitted an amended Part A application.

35. Defendant's Part A and amended Part A applications (collectively referred to as "Part A") state that the Master Metals Facility treats, stores or disposes of hazardous wastes.

36. Defendant's Part A does not state that containerized spent lead acid batteries are stored at the Master Metals Facility.

37. By submitting the notifications and Part A, defendant attained interim status under Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), which authorized defendant to treat, store, or dispose of hazardous waste at the Master Metals Facility in the manner set forth in the Part A application, pending final administrative disposition of the permit application.

38. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. 6925(a), as an owner or operator of a land disposal facility with interim status, and pursuant to 40 C.F.R. Part 266, Subpart G, defendant was required to comply with EPA's Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, codified at 40 C.F.R. Part 265. For the period of time that the State of Ohio had Phase I authorization, from July 15, 1983 to January 31, 1986, defendant was required to comply with the analogous requirements under laws of the State of Ohio.

FIRST CLAIM FOR RELIEF: VIOLATIONS SUBSEQUENT TO LOSS OF INTERIM STATUS

39. The allegations set forth in paragraphs 1 through 38, inclusive, are realleged and incorporated herein by reference.

40. Under Section 3005(e)(2) of RCRA, 42 U.S.C. § 6925(e)(2), if an owner or operator of a land disposal facility with interim status which contains waste piles fails to certify compliance with applicable financial responsibility requirements, and to submit a

Part B application, by November 8, 1985, the land disposal units at the facility will lose interim status.

41. The applicable financial responsibility requirements are codified at 40 C.F.R. Part 265, Subpart H. These regulations require defendant, as an owner or operator of a hazardous waste treatment, storage, or disposal facility, to establish financial assurance for closure and post-closure costs and to provide a demonstration of financial responsibility for potential liability to third parties.

42. Defendant did not meet the federal or state financial responsibility requirements on or before November 8, 1985, and presently has not met them. Specifically, defendant failed to certify that it was in compliance with financial responsibility requirements set forth at 40 C.F.R. Part 265, Subpart H.

43. Because defendant failed to certify on or before November 8, 1985, that it was in compliance with RCRA's financial responsibility requirements, and because it did not obtain a Part B permit by that date, under Section 3005(e)(2) of RCRA, 42 U.S.C. § 6925(e)(2), the Master Metals Facility on that date lost its interim status authority to treat, store, or dispose of hazardous wastes in the land disposal units at the Master Metals Facility.

44. A land disposal facility that possesses neither a RCRA permit nor RCRA interim status cannot lawfully treat, store, or dispose of hazardous waste.

45. Defendant continued after November 8, 1985, and is continuing at present, to place and store hazardous waste in

land disposal units at its facility despite its loss of interim status.

46. Pursuant to 40 C.F.R. Part 265, Subpart G, defendant was required, as an owner or operator of a hazardous waste management facility, to develop a written "closure plan" which sets forth the steps necessary to close the facility in a manner that will minimize or eliminate post-closure escape of hazardous material and will minimize the amount of post-closure maintenance required. 40 C.F.R. § 265.112(c) requires the "closure plan" to be submitted to EPA no later than 15 days after termination of interim status.

47. Defendant failed to develop and submit a proper closure plan by November 23, 1985, 15 days after termination of its interim status.

48. Defendant violated and continues to violate Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and regulations promulgated under RCRA, by placing hazardous waste in land disposal units at the Master Metals Facility without a permit or interim status, and by failing to submit a proper closure plan by November 23, 1985.

49. Under Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), further storage or disposal of hazardous waste in land disposal units at the Master Metals Facility by defendant without complying with RCRA's permitting requirements is prohibited.

50. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the United States to commence a civil action for appropriate

relief, including injunctive relief, when any person has violated or is in violation of any requirement of Subchapter III of RCRA.

51. Injuntive relief is necessary to restrain defendant from the continued storage of hazardous wastes at the Master Metals Facility in violation of RCRA and its implementing regulations.

52. Section 3008(g) of RCRA, 42 U.S.C. § 6929(g), provides that any person who violates any requirement of Subchapter III of RCRA will be liable to the United States for a civil penalty of up to $25,000 per day for each violation.

53. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), defendant is liable for civil penalties of up to $25,000 per day for each violation of RCRA and its implementing regulations.

SECOND CLAIM FOR RELIEF: STORAGE WITHOUT INTERIM STATUS OR A PERMIT

54. The allegations set forth in paragraphs 1 through 38 and 50 through 53, inclusive, are realleged and incorporated herein by reference.

55. On March 5, 1987, an employee of the Ohio Environmental Protection Agency ("OEPA") inspected the Master Metals Facility.

56. The inspection revealed that spent lead acid batteries are stored in a container storage area at the facility.

57. Defendant never obtained interim status for storage of lead acid batteries.

58. Defendant is storing lead acid batteries in violation of Section 3005(a) of RCRA and 40 C.F.R. §§ 270.10, 270.13, and 270.71, since the facility never obtained a permit or interim status to store this waste.

59. Unless restrained by an order of this Court, defendant will continue to violate RCRA by storing lead acid batteries without a permit or interim status.

THIRD CLAIM FOR RELIEF: VIOLATIONS OF INTERIM STATUS STANDARDS

60. The allegations set forth in paragraphs 1 through 38, 50 through 53, and 55 through 58, inclusive, are realleged and incorporated herein by reference.

61. On August 6, 1986, an employee of EPA conducted an inspection of the Master Metals Facility.

62. The inspection revealed that the Master Metals Facility was in violation of several interim status requirements.

63. Defendant has violated RCRA and interim status requirements of 40 C.F.R. Part 265 including, but not limited to, those violations set forth in paragraphs 64 through 76 and 78 through 79.

64. Defendant has not conducted a detailed chemical and physical analysis of a representative sample of all hazardous waste prior to storage or disposal thereof, as required by 40 CFR 265.13(a).

65. Defendant has not developed and followed a written waste analysis plan which describes the procedures that will be followed to comply with 40 C.F.R. 265.13(a), as required by 40 C.F.R. § 265.13(b).

66. Warning signs with the legend "Danger -- Unauthorized Personnel Keep Out", have not been posted at each entrance to the active portion of the facility and at other locations, in sufficient numbers to be seen from any approach, as required by 40 C.F.R. 265.14(c).

67. Defendant has not, as required by 40 C.F.R. 265.15, inspected the facility for malfunctions and deterioration, operator errors, and discharges which may be causing or lead to: (1) a release of hazardous waste constituents to the environment, or (2) a threat to human health.

68. Facility personnel have not, as required by 40 C.F.R. 265.16(c), taken part in an annual review of training required under 40 C.F.R. 265.16(a).

69. Written descriptions of personnel training records are not maintained at the facility as required by 40 C.F.R. 265.16(e).

70. Defendant has not developed a contingency plan designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water, which meets the requirements of 40 C.F.R. 265.52. In particular, defendant's contingency plan does not, as required by 40 C.F.R. 265.52(c), (d) and (e), describe any arrangements agreed to by local emergency authorities, does not contain addresses of emergency coordinators, or a list of all emergency equipment, and does not include the location, physical description and outline of the capabilities of each piece of emergency equipment.

71. Copies of defendant's contingency plan have not been submitted to state and local emergency authorities, as required by 40 C.F.R. 265.53.

72. A written operating record has not been maintained at the facility, as required by 40 C.F.R. 265.73.

73. Defendant has not submitted biennial reports to EPA as required by 40 C.F.R. 265.75.

74. Defendant did not prepare a closure plan which met the requirements of 40 C.F.R. 265.112. In particular, defendant's closure plan does not address the steps needed to decontaminate facility equipment, as required by 40 C.F.R. 265.112(a)(3).

75. Defendant does not manage hazardous waste piles in a manner that controls wind dispersal, as required by 40 C.F.R. 265.251.

76. Defendant has not taken measures to prevent or control the creation of hazardous waste leachate by protecting the waste from precipitation, or to prevent or control run-on or run-off of leachate created by precipitation, as required by 40 C.F.R. 265.253.

77. The inspection referred to in paragraph 55 revealed that defendant was in violation of RCRA and interim status requirements of 40 C.F.R. Part 265 including, but not limited to, those violations set forth in paragraphs 78 and 79.

78. Defendant has not, as required by 40 C.F.R. §265.31, maintained and operated the facility in a manner which minimizes the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

79. Acid is spilled from spent lead acid batteries onto the ground in violation of 40 C.F.R. § 265.31, which requires that the facility be operated to minimize the possibility of any unplanned release of hazardous waste or hazardous waste constituents.

80. Unless restrained by an order of this Court, defendant will continue to violate RCRA and the interim status standards promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

1. Permanently enjoin defendant from further unauthorized treatment, storage or disposal of any hazardous wastes or spent lead acid batteries or battery plates at the Master Metals Facility without a permit or interim status;

2. Order defendant to comply with all financial responsibility requirements of RCRA and its implementing regulations;

3. Order that, within 15 days after the order, defendant submit to EPA an approvable closure plan that meets requirements of 40 C.F.R. Part 265, Subpart G, for defendant's land disposal units and container storage area, and order that defendant implement the plan upon approval by EPA;

4. Order defendant to comply with all RCRA interim status standards;

5. Enter an order adjudging defendant liable for civil penalties of up to $25,000 per day for each violation of RCRA and regulations promulgated thereunder; and

6. Award such additional relief as the court may deem appropriate.

Respectfully submitted,

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APR 21 1987

Master Metals, Inc.
OHD 097 613 871

Dale Helmers, Environmental Scientist
OH/MN Unit - RCRA Enforcement Section

Linda Bullen, Assistant Regional Counsel
Office of Regional Counsel

The purpose of this memorandum is to provide you with additional information regarding the above-referenced facility. This information was supplied to me by Mark Bergman of the Ohio Environmental Protection Agency (OEPA), during a telephone conversation on April 13, 1987.

OEPA received a complaint concerning the activities of J & S Contractors on Master Metals property. In response to the complaint, OEPA stopped by Master Metals and interviewed Jerry Moody of Master Metals. Mr. Moody indicated that J & S Contractors were Master Metal employees who "crack" industrial batteries on their own time.

The industrial batteries range in size from about the size of a two drawer file cabinet to that of a desk. These lead-acid batteries consist of an outer steel casing and an inner plastic casing. Inside of the plastic casing is lead cells and acid. To crack the battery, the inner casing is removed from the outer steel casing. During the process, acid is spilled onto the ground. Currently J & S Contractors use soda ash to neutralize the acid. After being removed from the steel casing, the inner casing is placed into the rotary furnace. No attempt is made to separate the lead cells from the plastic casing or acid which surround the cells. The batteries are stored behind the facility offices prior to cracking. They are cracked near the pile of battery plates.

On March 24, 1987, OEPA notified Master Metals that several of their practices were unacceptable. This notification listed the unacceptable practices, but did not cite the specific regulations which were violated. Master Metals was asked to respond within thirty (30) days.

In reviewing the information concerning the cracking of the batteries, it appears that the following regulations were violated:

a. 40 CFR 265.31 - In spilling the acid onto the ground, the facility is not being operated to minimize the possibility of any unplanned release of hazardous waste or hazardous waste constituents;

b. 40 CFR 270.10 and §3005(a) of RCRA - The facility is operating a container storage area (batteries) for waste which is hazardous because of corrosivity and E.P. toxicity (lead) without a permit or interim status; and

c. 40 CFR 270.10 and §3005(a) of RCRA - The facility is operating an incinerator (rotary furnace) for the treatment of corrosive waste and E.P. toxic waste (battery acid and casings) without a permit or interim status.

There would also probably be several "paperwork" violations in areas such as the operating record, the contingency plan and training. However, the OEPA inspector did not examine these areas so we have no documentation that the violations exist.

In summary there are at least 3 additional violations of RCRA or the implementing regulations which were not addressed in our previous referral. OEPA has taken an initial action on these violations and a response is due on April 24, 1987. Upon receipt of Master Metals' response, I will provide you with any additional data.

5HE-12:DHELMERS:fharris:6-7566:4/15/87

	TYPIST	AUTHOR	OTHER STAFF	UNIT CHIEF	SECT. SEC'Y	SECT. CHIEF	BRANCH CHIEF	BRANCH DIR
INIT. DATE	FH 4/21/87	DH 4/21/87		DH for JB 4/21/87				

APR 21 1987

Master Metals, Inc.
OHD 007 413 871

Dale Heimers, Environmental Scientist
GW/MM Unit - RCRA Enforcement Section

Linda Kullen, Assistant Regional Counsel
Office of Regional Counsel

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SHF-12:DHELMERS:fharris:6-7566:4/15/87

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DRAFT
5/14/87

UNITED STATES OF AMERICA, Plaintiff, v. MASTER METALS INC., Defendants	CIVIL ACTION NO. JUDGE

COMPLAINT

Plaintiff, the United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for permanent injunctive relief and civil penalties pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C §§ 6928(a), arising from defendant's violations of the requirements of RCRA at defendant's hazardous waste management facility in Cleveland, Ohio.

2. Specifically, the United States seeks an order permanently enjoining defendant from placing hazardous waste onto waste piles located at the defendant's facility, and from storing hazardous waste at its facility without a permit or interim status; requiring defendant to submit and implement proper closure and post-closure plans for the waste piles which contain hazardous waste and for the facility as a whole; and

requiring defendant to comply with financial responsibility requirements and interim status standards established under RCRA. The United States also seeks an order that defendant is liable for civil penalties for its violations of RCRA.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to 42 U.S.C. § 6928(a) and 28 U.S.C. § 1391(b), because the violations occurred in this district and because defendant's hazardous waste management facility is located in this district.

DEFENDANT

5. Defendant, Master Metals, Inc., is a corporation organized under the laws of the State of Ohio.

6. Defendant owns and operates a secondary lead smelter at 2850 West Third Street, Cleveland, Ohio ("Master Metals Facility").

7. Defendant is an "owner" and an "operator" of the Master Metals Facility, as those terms are defined at 40 C.F.R. § 260.10.

8. On January 12, 1982, defendant filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code. Defendant is the debtor in possession of the Master Metals Facility.

STATUTORY AND REGULATORY BACKGROUND

9. RCRA establishes a regulatory program for the management of hazardous waste. 42 U.S.C. §§ 6901 *et seq*. EPA

promulgated regulations, codified at 40 C.F.R. Parts 260-271, governing owners and operators of facilities which treat, store, or dispose of hazardous waste.

10. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the operation of any hazardous waste treatment, storage or disposal facility except in accordance with a RCRA permit.

11. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), provides that a hazardous waste facility which was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by EPA or an authorized State with respect to the facility's permit application, so long as the facility satisfies certain conditions. Those conditions include filing a timely notice with EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application ("Part A application") for a hazardous waste permit for those particular activities. Section 3005(e)(2) of RCRA further provides that, in order to retain such interim status, each land disposal facility was required to certify compliance with RCRA's financial responsibility requirements and submit a final hazardous waste permit application ("Part B application") by November 8, 1985.

12. The owner or operator of a facility with interim status must comply with standards set forth in 40 C.F.R. Part 265 or equivalent state regulations.

13. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that a state may obtain federal authorization to administer the RCRA hazardous waste program in that state. When a state obtains

such authorization, state regulations apply in lieu of federal RCRA regulations in that state.

14. On July 15, 1983, EPA granted the State of Ohio Phase I interim authorization to operate the RCRA hazardous waste program in Ohio, thereby making Ohio interim status regulations applicable to Ohio hazardous waste facilities. On January 3, 1986, EPA withdrew Phase I authorization from the State of Ohio, making the federal regulations thereafter applicable.

15. Federal regulations codified at 40 C.F.R. Part 265 establish interim status operating standards.

THE FACILITY OPERATIONS

16. Hazardous wastes have been and continue to be generated, treated and stored at the Master Metals Facility.

17. Defendant stores hazardous waste in three waste piles at the Master Metals Facility.

18. The waste piles at the Master Metals Facility referred to in paragraph 17 are "land disposal" units within the meaning of Sections 1004(3) and 3004(k) of RCRA, 42 U.S.C. §§ 6903(3) and 6924(k).

19. Defendant generates emission control dust at the Master Metals Facility.

20. Defendant stores emission control dust in two waste piles at the Master Metals Facility.

21. Emission control dust is "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6904(5), and 40 C.F.R. Part 261, Subpart D, designated by hazardous waste code no. K069.

22. Defendant stores battery plates from spent lead acid batteries ("lead acid battery plates") in a waste pile at the Master Metals Facility.

23. Defendant stores containerized industrial lead acid batteries ("lead acid batteries") at the Master Metals Facility.

24. Defendant reclaims lead acid battery plates and lead acid batteries at the Master Metals Facility.

25. Lead acid batteries are cracked at the Master Metals Facility.

26. During the process of cracking of lead acid batteries, acid is released into the environment.

27. Lead acid batteries and acid therefrom are "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6904(5), and 40 C.F.R. Part 261, Subpart C, due to their corrosivity and E.P. toxicity.

28. Pursuant to 40 C.F.R. § 261.6(a)(2)(v) and 40 C.F.R. Part 266, Subpart G, owners and operators of facilities that store spent lead acid batteries before reclaiming them are subject to 40 C.F.R. Parts 264 and 265, Subparts A-L, and Part 270, except §§ 264.13, 264.71, 264.72, 265.13, 265.71 and 265.72.

29. The Master Metals Facility is a "facility" and an "existing hazardous waste management facility" as those terms are defined at 40 C.F.R. § 260.10.

ADMINISTRATIVE BACKGROUND

30. On August 15, 1980 defendant notified EPA, as required by Section 3010(a) of RCRA, 42 U.S.C. § 6903(a), that it was generating, treating, storing, or disposing of hazardous waste at the Master Metals Facility. On March 17, 1985 defendant submitted an amended notification.

31. Defendant's Notification of Hazardous Waste Activity states that defendant generates, transports, and treats, stores or disposes of, hazardous waste. Defendant's amended Notification of Hazardous Waste Activity states that defendant generates, and treats, stores or disposes of, hazardous waste.

32. On November 19, 1980 defendant submitted the first part ("Part A") of its RCRA hazardous waste permit application, as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 40 C.F.R. § 270.10. On April 18, 1985 defendant submitted an amended Part A permit application.

33. Defendant's Part A and amended Part A applications (collectively referred to as "Part A application") state that the Master Metals Facility treats, stores or disposes of hazardous wastes.

34. Defendant's Part A application does not state that containerized spent lead acid batteries are stored at the Master Metals Facility.

35. By submitting the notifications and Part A permit application defendant attained interim status under Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), which authorized defendant to treat, store, or dispose of hazardous waste at the

Master Metals Facility in the manner set forth in the Part A application, pending final administrative disposition of the permit application.

36. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. 6925(a), as an owner or operator of a land disposal facility with interim status, and pursuant to 40 C.F.R. Part 266, Subpart C, defendant was required to comply with EPA's Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, codified at 40 C.F.R. Part 265. For the period of time that the State of Ohio had Phase I authorization, from July 15, 1983 to January 31, 1986, defendant was required to comply with the analogous requirements under laws of the State of Ohio.

FIRST CLIAM FOR RELIEF: LOSS OF INTERIM STATUS

37. The allegations set forth in paragraphs 1 through 36, inclusive, are realleged and incorporated herein by reference.

38. Under Section 3005(e)(2) of RCRA, 42 U.S.C. § 6925(e)(2), if an owner or operator of a land disposal facility with interim status which contains waste piles fails to certify compliance with applicable financial responsibility requirements, and to submit a Part B application, by November 8, 1985, the land disposal units at the facility will lose interim status.

39. The applicable financial responsibility requirements are codified at 40 C.F.R. Part 265, Subpart H. These regulations require defendant, as an owner or operator of a hazardous waste treatment, storage, or disposal facility, to establish financial assurance for closure and post-closure costs and to provide a

demonstration of financial responsibility for potential liability to third parties.

40. Defendant did not meet the federal or state financial responsibilty requirements on or before November 8, 1985, and presently has not met them. Specifically, defendant failed to certify that it was in compliance with financial responsibility requirements set forth at 40 C.F.R. Part 265, Subpart H.

41. Defendant failed to submit a complete Part B application by November 8, 1985.

42. Because defendant failed to certify on or before November 8, 1985, that it was in compliance with RCRA's financial responsibility requirements, and because it failed to submit a complete Part B application by that date, under Section 3005(e)(2) of RCRA, 42 U.S.C. § 6925(e)(2), the Master Metals Facility on that date lost its interim status to treat, store, or dispose of hazardous wastes in the land disposal units at the Master Metals Facility.

43. A land disposal facility that possesses neither a RCRA permit or RCRA interim status cannot lawfully treat, store, or dispose of hazardous waste.

44. Defendant continued after November 8, 1985, and is continuing at present, to place and store hazardous waste in land disposal units at its Facility despite its loss of interim status.

45. 40 C.F.R. Part 265, Subpart G, requires defendant, as an owner or operator of a hazardous waste management facility,

to develop a written "closure plan" which sets forth the steps necessary to close the facility in a manner that will minimize or eliminate post-closure escape of hazardous material and will minimize the amount of post-closure maintenance required. 40 C.F.R. § 265.112(c) requires the "closure plan" to be submitted to EPA no later than 15 days after termination of interim status.

46. 40 C.F.R. Part 265, Subpart G, also requires defendant, as an owner or operator of a hazardous waste management facility, to develop a written "post-closure plan" designed to ensure that the disposal facility will be properly maintained for 30 years after closure. The post-closure plan must be submitted to EPA no later than 15 days after termination of interim status.

47. Defendant failed to develop and submit a post-closure plan by November 23, 1985, 15 days after termination of interim status.

48. Defendant failed to develop and submit a closure plan by November 23, 1985, 15 days after termination of its interim status.

49. Defendant violated and continues to violate Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and regulations promulgated under RCRA, by placing hazardous waste in land disposal units at the Master Metals Facility without a permit or interim status, by failing to certify compliance with financial responsibility requirements by November 8, 1985, and failing to submit closure and post-closure plans by November 23, 1985.

50. Under Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), further storage or disposal of hazardous waste in land disposal units at the Master Metals Facility by defendant without complying with RCRA's permitting requirements is prohibited.

51. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the commencement of a civil action by EPA for appropriate relief, including injunctive relief, when any person has violated or is in violation of any requirement of Subchapter III of RCRA.

52. Section 3008(g) of RCRA, 42 U.S.C. § 6929(g), provides that any person who violates any requirement of Subchapter III of RCRA will be liable to the United States for a civil penalty of up to $25,00 per day for each violation.

53. Injuntive relief is necessary to restrain defendant from the continued placement, treatment, storage, or disposal of hazardous wastes at the Master Metals Facility in violation of RCRA and its implementing regulations.

SECOND CLAIM FOR RELIEF: STORAGE WITHOUT INTERIM STATUS OR A PERMIT

54. The allegations set forth in paragraphs 1 through 36, inclusive are alleged and incorporated herein by reference.

55. On March 5, 1987, an employee of the Ohio Environmental Protection Agency ("OEPA") inspected the Master Metals Facility.

56. The inspection revealed that spent lead acid batteries are stored in a container storage area at the facility.

57. Defendant never obtained interim status for storage of containerized lead acid batteries.

58. Defendant is storing lead acid batteries in violation of Section 3005(a) of RCRA and 40 C.F.R. § 270.10 and 270.13,

since the facility never obtained a permit or interim status to store this waste.

59. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the commencement of a civil action by EPA for appropriate relief, including injunctive relief, when any person has violated or is in violation of any requirement of Subchapter III of RCRA.

60. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates any requirement of Subchapter III of RCRA shall be liable to the United States for a civil penalty of up to $25,000 per day for each violation.

61. Unless restrained by an order of this Court, defendant will continue to violate RCRA by storing lead acid batteries without a permit or interim status.

THIRD CLAIM RELIEF: VIOLATIONS OF INTERIM STATUS STANDARDS

62. The allegations set forth in paragraphs 1 through 36, and 55 through 58, inclusive, are realleged and incorporated herein by reference.

63. On August 6, 1986, an employee of OEPA conducted an inspection of the Master Metals Facility.

64. The inspection revealed that the Master Metals Facility was in violation of several interim status requirements.

65. Defendant has violated RCRA and interim status requirements of 40 C.F.R. Part 265 including, but not limited to, the following:

a) Defendant has not conducted a detailed chemical and physical analysis of a representative sample of all hazardous waste prior to storage or disposal thereof, as required by 40 CFR 265.13(a).

b) Warning signs with the legend "Danger -- Unauthorized Personnel Keep Out", have not been posted at each entrance to the active portion of the facility and at others locations, in sufficient numbers to be seen from any approach, as required by 40 CFR 265.14(c).

c) Defendant has not inspected the facility for malfunctions and deterioration, operator errors, and discharges which may be causing or lead to: (1) Release of hazardous waste constituents to the environment, or (2) a threat to human health, as required by 40 CFR 265.15.

d) Facility personnel have not taken part in an annual review of training required under 40 CFR 265.16(a), as required by 40 CFR 265.16(c).

e) Written descriptions of personnel training records are not maintained at the facility as required by 40 CFR 265.16(e).

f) Defendant has not developed a contingency plan designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water, which meets the requirements of 40 CFR 265.52. In particular, defendant's contingency plan does not describe any arrangements agreed to by local emergency authorities, contain addresses of emergency coordinators, or a list of all emergency equipment, or include the location, physical description and outline of the capabilities of each piece of emergency equipment, as required by 40 CFR 265.52(c), (d) and (e).

g) Copies of the contingency plan have not been submitted to state and local emergency authorities, as required by 265.53.

h) A written operating record has not been maintained at the facility, as required by 40 CFR 264.73.

i) Defendant has not submitted biennial reports to EPA as required by 40 CFR 265.75.

j) Defendant did not submit a closure plan which meets the requirements of 40 CFR 265.112. In particular, defendant's closure plan does not address the steps needed to decontaminate facility equipment, as required by 40 CFR 265.112(3).

k) Defendant does not manage hazardous waste piles in a manner that controls wind dispersal, as required by 40 CFR 265.251.

l) Defendant has not taken measures to prevent or control the creation of hazardous waste leachate by protecting the waste from precipitation, or to prevent or control run-on or run-off of leachate created by precipitation, as required by 40 CFR 265.253.

66. The inspection referred to in paragraph 55 revealed that defendant was in violation of RCRA and interim status requirements of 40 C.F.R. Part 265 including, but not limited to the following:

> Acid is spilled from spent lead acid batteries onto the ground in violation of 40 C.F.R. § 265.31, which requires that the facility be operated to minimize the possibility of any unplanned release of hazardous waste or hazardous waste constituents.

67. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the commencement of a civil action by EPA for appropriate relief, including injunctive relief, when any person has violated or is in violation of any requirement of Subchapter III of RCRA.

68. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates any requirement of Subchapter III of RCRA shall be liable to the United States for a civil penalty of up to $25,000 per day for each violation.

69. Each day of each violation of a RCRA interim status requirement constitutes a separate violation of RCRA.

70. Unless restrained by an order of this Court, defendant will continue to violate RCRA and the Interim Status Standards promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the court:

1. Permanently enjoin defendant from further treatment, storage or disposal of any hazardous wastes or spent lead acid batteries or battery plates at the Master Metals Facility without a permit or interim status;

2. Order defendant to comply with all financial responsibility requirements of RCRA and its implementing regulations;

3. Order that, within 15 days after the order, defendant submit to EPA approvable closure and post-closure plans for its land disposal units that meet requirements of 40 C.F.R. Part 265, Subpart G, and that defendant implement the plans upon approval by EPA;

4. Order defendant to comply with all RCRA interim status standards;

5. Enter an order adjudging defendant liable for civil penalties of $25,000 per day for each violation of RCRA and regulations promulgated thereunder; and

6. Award such additional relief as the court may deem appropriate.

Respectfully submitted,

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MASTER METALS, INC., 2850 W. THIRD ST., CLEVELAND, OHIO 44113 • (216) 621-2361

Lead Smelter and Refiner

April 14, 1987

Mr. Mark Bergman
Division of Solid & Hazardous Waste Mgt.
Ohio Environmental Protection Agency
2110 East Aurora Road
Twinsburg, Ohio 44087

Dear Mr. Bergman,

Master Metals is willing to cooperate with the agency to solve the compliance issues arising from the OEPA inspection conducted on March 5, 1987 by Mr. Mark Bergman of the Twinsburg office.

To this end, we are submitting this response and proposal, which addresses the storage and handling of industrial lead-acid batteries at the facility.

Also included in this mailing is a copy of the report, "An Impending Crisis". This article will provide you with an overall perspective of the Secondary Lead Smelting Industry. This study points out the importance of recycling lead-acid batteries.

I would like to take this opportunity to thank you for attending the March 30, 1987 meeting at the Master Metals facility. These meetings are invaluable and will assist us in making progress toward addressing and solving compliance issues at our facility.

If you have any questions regarding this proposal, please feel free to call me. We are available to meet with you at any time to discuss this proposal.

Respectfully Submitted,

Douglas K. Mickey
President

RECEIVED
APR 20 1987
U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
HAZARDOUS WASTE ENFORCEMENT BRANCH

Encl: Master Metals Response Report
Permit to Operate #0-3408
Article: "An Impending Crisis

cc: Mr. Dale Helmers, USEPA - Region V
Ms. Mary Logan, USEPA - Region V
Mr. Gary Neid, Division of Air Pollution Control
Mr. David K. Munson, Envisage Environmental

MASTER METALS

RESPONSE REPORT

04-14-87

OEPA Statement #1:

"Storing of the waste industrial batteries on-site is illegal and will require a RCRA storage permit."

Response:

At this time, industrial steel-cased batteries are delivered to Master Metals for reclamation. These industrial batteries are stored on-site prior to the breaking operation. Once broken, the battery plates and casing material is stored in a waste pile. The acid content of industrial steel-cased batteries is minimal. The Lead plates and casings are fed into the industrial rotary kiln furnace, where the Lead is recovered.

In response to the storage issue, Master Metals is proposing to implement "storage controls" for the Lead batteries, which will conform to 40 CFR Part 266.80 - Spent Lead-Acid Batteries Being Reclaimed. The following physical and procedural changes are proposed:

1) The arriving batteries will be segregated on a secure concrete storage pad.

   The concrete pad will only contain batteries prior to the breaking operation. The pad will be designed with six inch berms along all edges, therefore providing secure storage and the prevention of acid spill run-off resulting from leaking batteries.

2) The industrial batteries will be dismantled on the concrete pad.

   Dismantling of the industrial steel-cased batteries is performed using a cutting tool. The casing shell is removed so that the battery plates can be exposed and separated. Industrial batteries contain only minimal amounts of acidic liquid.

3) A concrete sump will collect acid leaks, spills and contaminated rainwater.

   The sump collection procedure will ensure that surrounding soil and rainwater runoff is not contaminated by battery acid.

   The collected acidic water will be "neutralized" using soda ash. The resulting wastewater will be discharged, with permission, to the Northeast Ohio Regional Sewer District. The resulting small volume of sludge will be reinjected into the rotary kiln furnace as a beneficial fluxing agent.

4) <u>The battery casings and plates will be stored in secure storage containers.</u>

Once broken into smaller pieces, the battery is transfered to a secure storage container. This container holds the battery casings and plates prior to their processing in the industrial rotary furnace.

These containers will conform to the requirements of 40 CFR Part 264, Subpart I - Use and Management of Containers. The containers will be situated on a secured concrete pad. The pad will be large enough to hold two to three portable dumpster containers. Each container will be tarped to prevent the entry of rainwater into the storage container.

Spill protection will be provided at this concrete pad using dike walls/berms, a sloped gradient, and a spill collection sump.

As required, inspections of all concrete pads, berms, and storage containers will be conducted and documented on a weekly basis.

OEPA Statement #2:

"Spillage or leakage of battery acid onto the ground is not an acceptable practice."

Response:

Although purposeful spilling of battery acid onto the ground does not occur at Master Metals, incidental spilling of residual acid may occur occasionally. In the past, the spilled material was cleaned up by neutralizing with soda ash, and shoveling the remaining residue into a storage container.

With the implementation of these proposed storage controls, the arriving batteries, along with the dismantled casings and lead plates, will be stored on secured concrete pads and in secured storage containers. This containment design will prevent incidental acid spills or leaks from contaminating surrounding soil or entering the environment.

OEPA Statement #3:

"Burning of the acid (and possibly the plastic casings which could be contaminated) constitutes disposal of hazardous waste. Your facility does not have the proper permit to conduct this type of an operation."

Response:

The industrial steel-cased batteries received at Master Metals for processing contain very little "free-liquid" acid. The dismantled casings and battery plates reclaimed in the industrial furnace may have a residual acidic coating, but "free liquid" battery acid is never injected into the furnace.

The residual acid coating on the casings and battery plates is easily neutralized by the soda ash (sodium carbonate fluxing agent) added to each batch processed in the rotary kiln furnace. The soda ash added to each batch, prior to processing, averages 25-35% of the total furnace loading. Therefore, the minimal residual acid is easily controlled.

OEPA Statement #4:

"The Cleveland Air Agency may have some concerns about the burning of plastic and acid. (I am sending them a copy of this letter)."

Response:

The Cleveland Division of Air Pollution Control is very familiar with the type of processing and raw materials utilized at Master Metals. Master Metals has received the Permit to Operate # 0-3408 for the 12-Ton Columbia Rotary Smelting Furnace. The "Special Terms and Conditions" section of the Permit aknowledge the following types of raw material feed:

- -Battery Plates/Scrap
- -Drosses
- -Flue dusts
- -Sodium Carbonate (Soda Ash)
- -Petroleum Coke
- -Iron Borings

The emissions resulting from the Smelting operation are monitored and must meet New Source Performance Standards(NSPS) as described in the Permit to Operate included in this letter.

Final Statement:

Master Metals will await your review of this proposal prior to implementation of these changes. We encourage the Agency to approve these plans, as a significant improvement will occur in the storage and handling of the industrial batteries. The OEPA should encourage industrial batteries to be reclaimed rather than sent for final disposal in a landfill.

Once approved, Master Metals will install this proposed system in order to satisfy the requirements for safe and proper storage of lead-acid batteries prior to the reclamation operation.

We are available to meet with you at any time to discuss this proposal.

AN IMPENDING CRISIS?

WHAT WOULD BE THE IMPACT ON THE NATION'S ENVIRONMENT IF 70 MILLION SPENT LEAD ACID BATTERIES EACH YEAR WERE NOT RECYCLED?

THIS REPORT DEVELOPED BY:

JAMES G. PALMER
EXECUTIVE VICE PRESIDENT
GNB, INCORPORATED
ST. PAUL, MN

In Collaboration with
MICHAEL L. SAPPINGTON, P.E.
PRESIDENT
LAKE ENGINEERING AND DEVELOPMENT, INC.
ATLANTA, GA

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FOREWORD

This paper represents the personal opinion of the authors with respect to trends developing in the secondary lead industry. It also raises questions regarding the possible consequences of those trends. Numerous interviews have been conducted with many individuals in key management positions in the secondary and primary lead industries, U.S. battery manufacturers, and well-recognized consultants specializing in metals markets regarding the subject of this paper. The authors have found that, on the basis of these interviews, there is widespread and general concurrence with the conclusions presented herein.

Statistical data were derived from a combination of industry and government publications, the publications of trade associations and well recognized consulting firms. Although the authors cannot assure one hundred percent accuracy of some of the data (since some variations were present in similar data from different sources), the consensus of the data shows that the trends and potential consequences presented herein are certainly correct and valid.

JAMES G. PALMER

MICHAEL L. SAPPINGTON

April, 1986

AN IMPENDING CRISIS?

WHAT WOULD BE THE IMPACT ON THE NATION'S ENVIRONMENT IF 70 MILLION SPENT LEAD ACID BATTERIES EACH YEAR WERE NOT RECYCLED?

EXECUTIVE SUMMARY

The U.S. secondary lead industry is teetering on the brink of collapse due to two basic problems:

o Low market prices for lead have forced the industry to reduce the price it can afford to pay for its principal raw material - spent lead acid batteries. Consequently, little economic incentive exists for those spent batteries to be collected and delivered to the smelters. When the price of scrap is reduced sufficiently to maintain the margins required for economic recycling of the lead, the reduced scrap price will not support the collection system and the smelters are faced with a feed shortage. This classic "margin squeeze" has forced over 60 percent of the secondary smelters operating in the U.S. in 1982 subsequently to cease operation and close.

o Increasingly stringent environmental regulations have drastically increased production costs to the point where many of the currently operating smelters may also be forced to close. Recently imposed requirements under the Resource Conservation and Recovery Act and the Clean Water Act may ultimately be impossible for any plant in the industry to meet at any price. A TOTAL COLLAPSE BY THIS INDUSTRY COULD HAVE A DEVASTATING ENVIRONMENTAL IMPACT. The industry provides a valuable environmental service by having the ability to reclaim the nearly 70,000,000

spent lead acid batteries generated annually in the U.S. Without the industry, most of the approximately 70,000,000 gallons of highly corrosive, lead containing, sulfuric acid and the approximately 1,250,000,000 pounds of toxic lead contained in these batteries could be dispersed to the nation's environment, lacking some alternative collection system.

Alarming trends are already evident. Around 60 operational smelters existed in 1982 - around 24 operational smelters exist today, a reduction of 60 percent. IN 1980, APPROXIMATELY 94 PERCENT OF THE SPENT LEAD ACID BATTERIES GENERATED IN THE U.S. WERE DELIVERED TO SECONDARY LEAD SMELTERS FOR RECLAMATION. IN 1985, THE FIGURE IS ESTIMATED TO BE 66 PERCENT. It is a reasonable assumption that many of the uncollected batteries could have been improperly disposed of in trash dumps, sanitary landfills and along road sides. We have no statistics on the disposition of uncollected spent batteries. Many of these batteries "disappear" in the reclamation of steel from old automobile bodies. Some of these batteries do go to battery rebuilders, but these are a small portion of the total. If these trends are not reversed, it is possible that by 1990 over 3 billion pounds of spent lead acid batteries will have been improperly disposed of in the environment during the decade! We have evidence to confirm this statement in that we are aware of instances wherein truckload quantities of lead acid batteries are being disposed of in municipal sanitary landfills. This is exactly the opposite of the intent of the various environmental regulations.

THERE IS NO KNOWN VIABLE SUBSTITUTE FOR THE LEAD-ACID BATTERY. It is by far the most efficient source of power for starting, lighting and ignition applications known. Even if it were possible to develop a suitable substitute, environmental disposal problems and/or technical problems could be more serious than is currently the case. We have examined all known existing and future technologies, all of which have major disadvantages.

Corrective actions necessary to reverse these trends should take the following forms:

o Devise economic incentives to insure that the vast majority of all scrap lead acid batteries enter the "collection chain" for delivery to secondary lead smelters for reclamation rather than being disposed of in an uncontrolled fashion.

By the term "collection chain", we refer not only to scrap metal processors and dealers who sell to secondary lead smelters, but also to battery manufacturers who deliver new product to mass merchandisers and pick up the spent batteries located at the stores for delivery to their own smelters and/or other secondary lead smelters or scrap dealers within their geographic region for reclamation.

o Devise economic incentives to offset or compensate for the smelters' continually rising environmental compliance costs.

o Review, revise and relax where appropriate certain environmental standards which may be unnecessary and which may, if fully enforced, cause the complete demise of the lead recycling industry.

The EPA has initiated a study to determine the impact on the

nation's environment of the decline in battery recycling. We believe that the facts and figures contained in this report will begin to define the extent of the problem. We are concerned that EPA officials have publicly stated that this initial study will be "a modest effort". Due to the current magnitude of this problem and alarming trends showing the problem worsening, a much more extensive effort is needed. Trade Associations such as the Secondary Lead Smelters Association, Lead Industries Association, Battery Council International, Independent Battery Manufacturers Association, National Electrical Manufacturers Association, National Association of Recycling Industries, and others should offer, and EPA, Department of Commerce and other governmental agencies should accept, their assistance in investigating this problem. A coalition consisting of members of these associations should be formed in order that the full resources of these groups are combined to assist the governmental agencies in completely assessing these problems and making recommendations to improve the situation.

INTRODUCTION

For the past five years the US secondary lead industry has been teetering on the brink of financial collapse. It is an industry which, in 1981, had the capacity to recycle approximately 1.2 million tons of lead contained in scrap, primarily scrap batteries. Today that capacity stands at only slightly more than 700,000 tons, of which only about two-thirds is actually operational.

Since the early 1980's six companies in the industry have filed for bankruptcy. Of the six, only one has emerged from bankruptcy, but without the ability to recycle lead scrap. Most recently, Bergsoe Metals of St. Helens, Oregon, the newest smelter in the U.S., has announced it will cease operation before July 1, 1986, due to its inability to comply with the requirement to obtain environmental impairment liability insurance.

THE SCRAP RECYCLING SERVICE PROVIDED BY THE SECONDARY LEAD INDUSTRY IS FUNDAMENTAL TO THE PRESERVATION OF THE ENVIRONMENT IN THE UNITED STATES. IT IS IN THE NATIONAL INTEREST TO PRESERVE THIS VITAL SERVICE. The process of lead scrap collection and recycling is, however, rapidly breaking down and threatens to be brought to a complete standstill. This is because of the absence of economic incentive to continue this service and the promulgation of certain environmental regulations which are, ironically, intended to protect the environment from lead contamination, but, in fact, may achieve the opposite results.

ECONOMIC CONSIDERATIONS

It is important to look at what impact the declining demand for lead and the resultant low lead prices have had on the scrap collection and recycling process since 1980. Some general conclusions can be drawn for the future.

Statistical evidence is available to quantify trends in scrap collection rates in the United States. Data on replacement lead acid battery shipments and vehicles scrapped, when put together with information on the average lead content of batteries, identifies the amount of lead potentially recoverable.

A comparison of this total with data on the amount of lead actually recovered produces a good estimate of the proportion of scrap batteries collected and those not collected. The statistical evidence for the period 1980-85 has been calculated and is presented in Table 1 (page 8) and is our best estimate.

Figure 2 (page 9) shows a correlation of the collection rate to the price of lead. The reason for the increase in the lead price and collection rate of junk batteries in 1984 was a temporary tightness in the lead market due to labor disruptions at some US primary lead operations and concurrent disruptions abroad.

In terms of lead not collected or recycled, Table 2 (page 9) summarizes what has occurred during the past five years. If nothing else changes; that is, if the lead market continues to be depressed and there are no further closures in the US secondary industry, then the accumulation of unrecycled lead in scrap could total more than <u>three billion pounds</u> by the end of this decade!

This is a rather startling number by itself but becomes alarming upon closer examination of the secondary lead industry today and the very real threat to its existence from federal environmental regulations, most notably the RCRA amendments of 1984, EPA's Ambient Air Standard and Effluent Guidelines and pending CERCLA ("Superfund") legislation.

The secondary lead industry is composed of approximately 17 companies which currently operate a total of approximately 24 plants. Most of these plants are located in or near the major

population centers in the United States.

Approximately 60 secondary lead smelters were operational in 1982. THEREFORE, THE NUMBER OF OPERATIONAL SMELTERS IN THE UNITED STATES HAS DECREASED BY 60 PERCENT IN LESS THAN FOUR YEARS. The reasons for this dramatic decrease in the number of smelters are readily apparent. An abundant world wide supply of lead coupled with flat demand has resulted in an historical lowest price for the smelters' product (see Figure 1). In order to survive, drastic cost cutting measures were and are necessary. However, the industry's cost cutting efforts have been more than offset by the additional costs it has incurred from the host of new environmental regulations placed upon it in recent years, apparently with more to come.

FIGURE 1

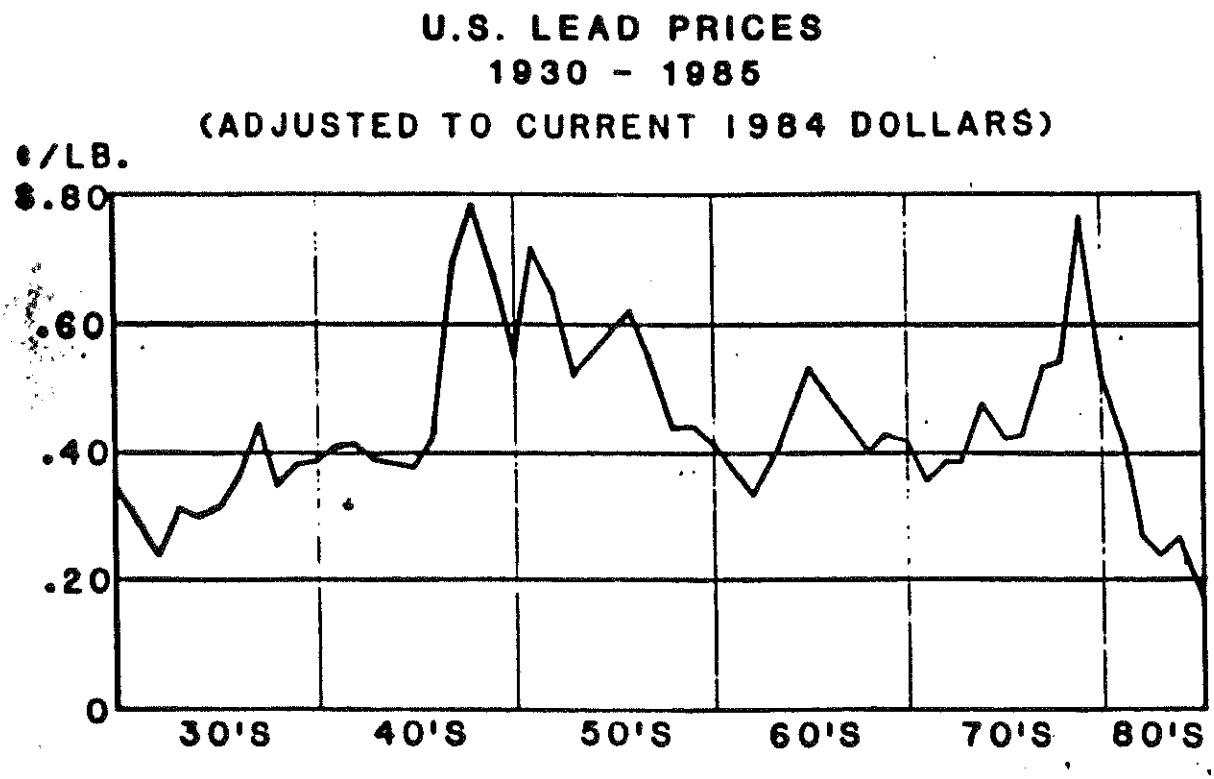

Table 1: Calculation of Collection Rate for SLI (Automotive) Battery Scrap in the USA, 1980-1985

	1980	1981	1982	1983	1984	1985
Potential Supply of Recoverable Lead						
SLI Batteries Replaced (m)	50.1	53.6	56.0	56.1	59.3	58.7
Vehicles Scrapped (m)	9.6	8.7	8.1	8.0	10.6	11.3
Total Supply of Scrap Batteries (m) *	59.7	62.3	64.1	64.1	69.9	70.0
(multiplied by)						
Recoverable lead per unit (lbs)	19.4	18.7	18.5	18.1	18.0	18.0
Potential Recoverable Lead in SLI Batteries ('000t)	579	582	593	580	629	630
Actual Recovery of Lead in Scrap Batteries						
By Domestic Smelters ('000t)	530	530	482	410	488	435
By Non-US Smelters ('000t)	73	35	32	31	28	39
Total ('000t)	603	565	514	441	516	474
(less)						
Recovery from Industrial Units ('000t)	57	55	55	61	66	61
Total Lead from SLI batteries ('000t)	546	510	459	380	450	413
Estimated Collection Rate	94%	88%	77%	66%	72%	66%

NOTE: (m) = Million units

('000t) = Thousand short tons

* (Statistics not available on number of batteries rebuilt or relabeled. This amount, thought to be less than 5% of the total, could be deducted from these figures.)

FIGURE 2

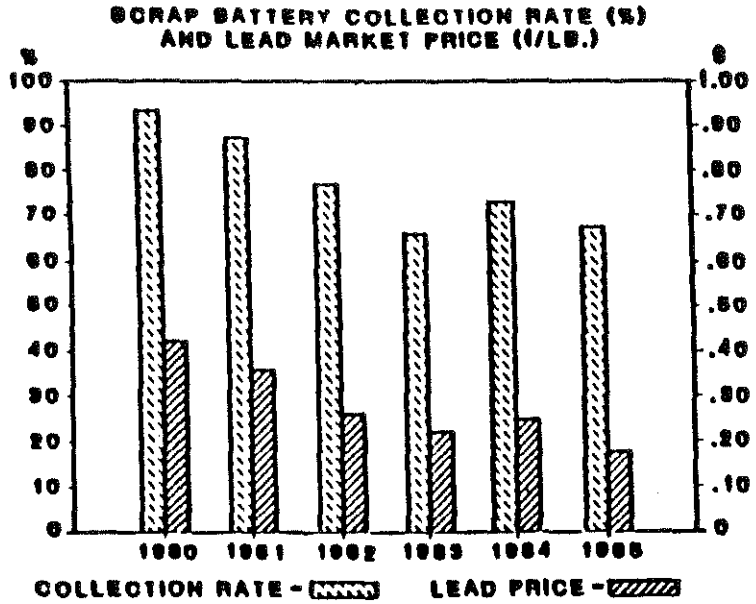

TABLE 2

Table 2: Cumulative "Loss" of Battery Scrap in the United States, 1981-1985.

m. units - million batteries

lead content - thousand short tons

Calculated Potential Losses of Lead In Scrap Batteries

	Annual Total		Cumulative	
	m.units	lead content	m.units	lead content
1981	7.5	70	7.5	70
1982	14.7	136	22.2	206
1983	21.8	197	44.0	403
1984	19.6	176	63.6	579
1985	23.8	214	87.4	793

ENVIRONMENTAL CONSIDERATIONS

The necessary and well-intended trend toward stricter environmental regulations began in the United States in the early 1970's. The secondary lead industry had, even prior to that time, provided a valuable environmental protection service. Lead is a material that is very conducive to reclamation and recycling. Although the new regulations required new environmental controls and cleanups at all secondary lead smelters, the smelters never posed the degree of hazard to human health and the environment that was posed by hundreds of chemical waste dumps such as Love Canal. The secondary lead industry took the necessary steps to install control equipment to comply with the requirements of the Clean Air Act, Clean Water Act and the Occupational Safety and Health Act. Costs of compliance were passed on in those days primarily through lowered scrap prices. However, beginning in the late 1970's with the Carter Administration and continuing through today, increasingly stringent environmental regulations have been placed upon the industry. The following are examples:

o In 1978, OSHA promulgated a strict and comprehensive Standard for Occupational Exposure to Lead. The standard lowered the permissible exposure level of a worker to lead in air from 200 micrograms of lead per cubic meter of air (ug/M^3) to 50 ug/M^3. It required employers to reduce the blood lead level of all of their employees to 50 micrograms of lead per 100 grams of whole blood (ug/100 g) where 80 ug/100g had been the level previously considered safe. Workers whose blood lead level exceeded that specified in the standard were required to be

placed on "Medical Removal Protection" or "Rate Retention" where they were removed from their regular jobs but still received full pay and benefits. The industry spent and is spending millions of dollars for engineering controls, medical surveillance programs and employee training programs to comply with the requirements of this standard.

o At approximately the same time, EPA established a National Ambient Air Quality Standard for Lead at a value of 1.5 micrograms of lead per cubic meter of air (ug/M^3) averaged over a three month period. The level previously thought to be entirely safe for the general population was 5.0 ug/M^3. Ultimate compliance with this standard will again cost the secondary lead industry millions of dollars to install additional air cleaning equipment and to enclose raw material storage areas.

EPA is currently reviewing this standard as required by the Clean Air Act. EPA's staff is reportedly recommending a further lowering or tightening of the standard. To put the issue into perspective, the OSHA Standard discussed above says that a value of 50 ug/M^3 is protective for workers exposed to lead in air for eight hours a day over a 40 year working career.

o In 1984, EPA promulgated wastewater effluent guidelines for the industry which are believed by many companies in the industry to be entirely unattainable with currently available technology. Many companies already employ the "lime, settling, and filtration" systems recommended by EPA; however, they do not meet the new limits. The industry sued EPA in Federal Court on the grounds that EPA's data were flawed and that the standard was

simply unachievable. The Fourth Circuit Court of Appeals ruled that, since it didn't understand the technical issues, the Court would defer to EPA's judgement. The ruling is currently being appealed to the Supreme Court.

o The regulations with the potentially most devastating impact on the secondary lead industry are those promulgated under the Resource Conservation and Recovery Act. The regulations under the very Act whose stated purpose is to promote the recycling and recovery of resources in the United States are virtually impossible to meet by an industry which has classically existed for this purpose. Amendments to the Act in November, 1984, and to the regulations in January, 1985, classify spent lead acid batteries (and arguably some of their components) as a "hazardous waste" subject to full regulation at secondary lead smelters. That fact could subject many smelters to requirements to submit RCRA Permit Applications, implement strict operational and recordkeeping procedures, install groundwater monitoring systems, and be required to purchase liability insurance for environmental impairments. SUCH INSURANCE CANNOT BE PURCHASED AT ANY PRICE ON TODAY'S MARKET. AS OF THIS WRITING IT IS SIMPLY NOT AVAILABLE.

According to an American Metal Market article dated Friday, March 28, 1986, EPA itself has hired a consultant to study the problem of unrecycled batteries. It has been asked to determine how much scrap is being recycled, what is happening to the unrecycled batteries and if the unrecycled batteries are posing a threat to the public health. Results are expected in the near

future, according to EPA's Office of Policy, Planning and Evaluation.

The secondary lead industry has historically provided a valuable environmental service by reclaiming a resource which would have otherwise been a toxic waste, possibly disposed of in the environment. IRONICALLY, REGULATIONS DESIGNED TO PROTECT THE ENVIRONMENT NOW APPEAR TO BE A PRIMARY FACTOR THREATENING THE EXISTENCE OF THE INDUSTRY.

FUTURE OUTLOOK

An alarming trend has been established which indicates that the percentage of spent lead acid batteries being reclaimed is rapidly decreasing. For example, a noted Ph.D. recently performed a study for a U.S. secondary lead smelter and came up with the conclusion that the collection rate is currently decreasing at a rate of 5.7% per year and the number of scrap batteries lost is currently increasing at the rate of 4.1 million units per year. The number of operational facilities in the business of reclaiming spent lead acid batteries is even more rapidly decreasing. Market analysts predict that lead will remain in abundant supply and that prices will remain below levels necessary to support the "collection chain" for the foreseeable future. Increasingly stringent environmental regulation and enforcement of those regulations is expected to accelerate both of these trends. The only remaining secondary lead smelter in the northwestern United States announced in March, 1986, that it will cease operation and close by July 1, 1986, due to its inability to obtain environmental impairment liability insurance

required under RCRA regulations. The states of Oregon, Washington, Idaho and Montana are expected to generate approximately 2,500,000 spent lead acid automobile batteries this year. The nearest secondary lead smelters are over 1000 miles away located in the Los Angeles, California area. Freight costs to transport the spent batteries to Los Angeles are greater than the market price the Los Angeles plants pay for their raw materials. SOME OF THE SPENT BATTERIES MAY BE EXPORTED TO SMELTERS IN THE FAR EAST, BUT THE MOST LIKELY SCENARIO IS THAT THE NORTHWESTERN UNITED STATES COULD VERY SOON HAVE A SERIOUS DISPOSAL PROBLEM WITH JUNK BATTERIES!

Low lead prices dictate low scrap prices. Currently, a spent lead acid battery is worth around $1.00 delivered to the smelters. At this low level, and after subtracting the freight costs involved in getting the battery to the smelter, there is very little economic incentive for the "collection chain" to operate. For example, if a spent battery is only worth $0.25 to the local service station, it is easier to place the battery in the trash rather than to save it for pickup. Suppose the entrepreneur who collects batteries from service stations in his pickup truck for delivery to a collection center pays the service station the $0.25 for the battery. His truck holds 100 batteries which he can sell to the collection center for $0.50 each. The $25.00 he nets on his load hardly pays for the fuel for his truck - much less his labor and other expenses. Additionally, should that entrepreneur be required to obtain environmental permits to transport the spent batteries, such a requirement could be the

"final blow" to any incentive to collect the batteries. Since worldwide lead prices quoted by the London Metal Exchange are based on an abundant supply versus demand, the secondary lead smelter cannot pass forward its increasing environmental compliance costs. Consequently, they must be passed backward to the scrap batteries, which acts as a disincentive to the "collection chain". As stated earlier, under current conditions, WE ESTIMATE NEARLY 35 PERCENT OF THE SPENT BATTERIES BEING GENERATED IN THE UNITED STATES ARE NOT NOW BEING COLLECTED AND RETURNED TO THE SMELTERS! As the smelter's environmental compliance costs increase, further downward pressure on the scrap prices will certainly exacerbate this problem.

THE PROBLEM

The problem is both economic and environmental in nature, but the two are directly interrelated as stated above. IF SECONDARY LEAD SMELTING WERE TO CEASE TO EXIST IN THE UNITED STATES AND NO ALTERNATE COLLECTION SYSTEM EXISTED, THEN AN ENVIRONMENTAL PROBLEM OF TREMENDOUS PROPORTIONS WOULD BE INEVITABLE. Some 70,000,000 spent lead acid batteries are generated annually (1985 rate) in the United States from replacement sales and junked automobiles. Due to market conditions now and in the foreseeable future, all of those batteries do not and will not have a high enough value to pay freight for export to foreign smelters. Each battery contains approximately eighteen pounds of lead metal and lead in compounds and approximately one gallon of highly corrosive, lead contaminated, sulfuric acid. IF THESE BATTERIES ARE ALLOWED TO

BE DISPOSED OF IN SANITARY LANDFILLS NEAR THE MAJOR METROPOLITAN AREAS WHERE THE HIGHEST CONCENTRATION OF SPENT BATTERIES OCCUR, GROUNDWATER CONTAMINATION AND OTHER ENVIRONMENTAL IMPAIRMENT IS NOT ONLY VERY LIKELY BUT HIGHLY PROBABLE!

What if EPA were to require that all spent lead acid batteries not being reclaimed be disposed in a secure hazardous waste landfill? (Their regulations currently imply this but it is almost impossible to enforce.) First, there is the cost of transporting the battery to the secure landfill. Since EPA Regulations prohibit the disposal of "free liquids" in landfills, the sulfuric acid would have to be drained and neutralized. The remaining "dry" batteries would be mostly lead by weight and certainly much more readily reclaimable than a host of other wastes that EPA is currently preparing to ban from land disposal. From an environmental protection standpoint, the idea makes no sense. Similarily, such a plan would be in direct contradiction to the stated purpose of the Resource Conservation and Recovery Act.

What if EPA were to "ban" lead acid batteries as it has recently done with lead in gasoline and asbestos? There are viable substitutes for asbestos in insulation and friction products applications. Engine timing adjustments allow most internal combustion engines to operate satisfactorily, although probably not as efficiently or as economically, on unleaded gasoline. HOWEVER, THERE IS NO VIABLE SUBSTITUTE FOR THE LEAD ACID BATTERY. U.S. battery manufacturers have conducted research

for decades in attempts to develop a better or substitute starting/ignition source. The tens of millions of dollars spent in those efforts have produced little more than an impressive list of disadvantages for all theoretical alternatives. A list of alternative technologies and their primary disadvantages is presented in Table 3 (as shown below).

Table 3: Disadvantages of Alternate Technologies

TECHNOLOGY	DISADVANTAGES
Currently Available Technologies	
Nickel - Cadmium	- More toxic for disposal than lead acid - Cost 5 to 10 times equivalent sized lead acid battery - 20-30% lower power density - Exhibits memory effect - More susceptible to thermal runaway in voltage controlled charging conditions
Nickel - Zinc	- Low power density - Poor cycle life . . . 50-200 cycles - Poor reliability - Poor charge retention characteristic - Thermal instability during continued constant potential charging - High cost - 2 to 3 times cost of equivalent sized lead acid battery
Nickel - Iron	- Very low power density - one fourth to one third that of equivalent sized lead acid battery - Very poor low temperature performance - Poor charge retention
Silver - Zinc	- Highest cost system in the alkaline battery family - 20 to 100 times more than equivalent sized lead acid battery. - Low life cycle - around 250 cycles - Decreased performance at low temperature - Very sensitive to overcharge

Table 3 continued

Advanced Secondary Battery Systems - Future

Zinc - Chlorine	- Complex system design - requires expensive plumbing and refrigeration system - Danger of chlorine leakage in the event of an accident - Extremely bulky with all accessories
Zinc - Bromine	- Safety problems preclude general usage in automotive ignition application - Bulky, complex cell design - Reliability unknown
Aqueous Redox Flow Cells	- Being considered only for energy storage or standby power
Secondary Metal/Air Batteries	- Low energy efficiency - Operational difficulties - Anode passivation at high discharge rates - Polarization and instability of air electrode
Lithium metal/sulfide and sodium/sulfur high temperature systems	- Not suited for cranking source due to low power density - High temperature required for operation (300 - 400° C) presents unacceptable safety problems. - Unproven reliability - High cost
Conductive Polymer Batteries	- Low power density - Very poor performance characteristics at both high and low temperatures (at high temperatures, doped organic electrolyte undergoes explosive decomposition) - Instability of oxidized polymer results in self discharge problem - Very sensitive to overcharge

The Vice President and Chief Engineer for one major U.S. battery manufacturer was asked recently to discuss the consequences of a ban on lead acid batteries. The purpose of the

question was to seek his ideas on the next most viable system. His answer was frank and forthright. "You would have to install a hand crank on all new cars," he said. "What about ten or fifteen year from now?" he was asked. He replied, "I assure you, the lead acid battery will be the starting/lighting/ignition system well into the twenty-first century."

In summary, the lead acid battery starts the approximately 175,000,000 automobiles driven by Americans and no viable substitute exists today or in the foreseeable future. However, a severe environmental problem now exists with the disposal of many of those batteries at the end of their useful life which is getting worse at an increasing rate. It is being caused by low market prices for lead (and consequently for lead scrap) and by increasing environmental compliance costs incurred by secondary lead smelters. Corrective actions are necessary to reverse these trends and to avert further environmental impairment.

HOW SHOULD WE APPROACH THE PROBLEM?

The corrective actions necessary to attack the problem described above can be summarized as follows:

o Devise economic incentives to insure that the vast majority of all scrap lead acid batteries enter the "collection chain" for delivery to secondary lead smelters for reclamation rather than being disposed of in the environment.

o Devise economic incentives to offset or compensate for the smelters' continually rising environmental compliance costs.

As illustrated in this report, economics is the primary reason that approximately 30 to 35 percent of the scrap lead acid

batteries currently being generated are believed to be bypassing the "collection chain" and being disposed of in the environment. Therefore, potentially effective solutions to this problem should be economic in nature. Some economic incentive must be created to encourage the "collection chain" to operate.

Some people have advocated that there be a federal law modeled after the State of Delaware's beverage container law which would apply to all automotive batteries sold in the United States. This concept was discussed at the Battery Council International meeting in April, 1986. Delaware prohibits the sale of soft drinks in disposable containers and imposes a significant deposit requirement on the sale of returnable bottles. The consumer has a clear economic incentive to return the containers rather than discard them. Such a system could be instituted on a national level for original equipment and replacement battery sales. A $5.00 to $10.00 deposit could be collected from the consumer by new auto dealers and retail battery outlets. A new deposit would not be charged if the consumer brings in his old battery at the time he purchases a new one. As with beverage containers, some batteries will be returned to the "collection centers" by persons other than the original purchaser or by persons not purchasing a replacement battery. These persons could be rewarded by receiving approximately one-half of the deposit ($2.50 to $5.00 per battery). The excess money in the "fund" could be used to compensate the retail dealers' costs of administering the collection of the deposits and possibly to defray the smelters'

costs for environmental compliance. Obviously, it would be an economic and administrative burden on those businesses responsible for collecting such deposits. Adequate compensation for those costs must be provided in order for this type of system to be even considered.

The devastating impact of ever increasingly stringent environmental regulations on the secondary lead smelters must be brought under control. Not only are environmental compliance costs rising at an intolerable rate, but some regulations currently in effect (e.g., environmental impairment liability insurance requirements and wastewater effluent limitations) are likely to be impossible to meet at any price. THE UNITED STATES CONGRESS AND THE ENVIRONMENTAL PROTECTION AGENCY MUST BE LED TO REALIZE THAT THE ELIMINATION OF THE SECONDARY LEAD SMELTING INDUSTRY WILL CREATE AN ENVIRONMENTAL PROBLEM ORDERS OF MAGNITUDE GREATER THAN IS PRESENTLY THE CASE! The nation's environment is much better off with 20 to 25 (or more) operating secondary lead smelters that may not be immediately as pristine as the regulators would like than it would be with none at all. As soon as Congress and the EPA realize this obvious fact, measures can be taken to control the devastating regulatory impact.

Environmental regulation has rapidly accelerated, systematically, closing the avenues of uncontrolled distribution of pollutants. The central thrust of these programs is valid and necessary. Many elements of specific regulations are, however, designed and administered in arbitrary ways without consideration

of negative results. During recent rule making, an EPA official publicly counselled industry staff on methods for defeating the EP Toxicity test. This was in order to represent the costs of his proposed regulation as meeting the "minor" rule criteria.

Here we see the incongruity and parochialism which operate in the compartmentalized regulatory scheme. In this case it was pointed out that this activity could result in hazardous materials being disposed of in unregulated sanitary landfills. The response was "that's somebody else's problem; I'm concerned with water"!

A balanced, cross-media regulatory approach is required. EPA estimates that, if its new wastewater effluent guidelines are fully implemented so that all nonferrous metals manufacturers comply, a total of 1,265 tons of lead per year will be prevented from discharge into the environment. Contrast this to over 200,000 tons of lead lost in 1985 by failure to recycle all available scrap batteries. Also contrast this to the potential environmental impairment which will result from additional shrinkage in recycling rates if present trends are not reversed.

EPA has spent twenty years regulating the removal of lead from gasoline so as to eliminate release to the environment of an estimated 250,000 tons of lead per year. THE PROBLEM WE ARE NOW FACING WITH UNRECYCLED LEAD ACID BATTERIES IS OF NEARLY THE SAME MAGNITUDE AND COULD BECOME EVEN GREATER IF CURRENT TRENDS ARE NOT REVERSED.

It is critical that Congress establish means to accomplish cross regulatory coordination and review of related programs in

order to keep specific programs from defeating the overall effectiveness of a system. Catch 22 situations will not help the environment, and elimination of lead recycling capability surely is not in the national interest.

The Bureau of Mines, Department of Commerce and Department of Energy have all recently expressed concern over the condition of the U.S. secondary lead smelting industry. The Bureau of Mines is currently conducting a survey to further document and confirm the facts addressed in this report. These agencies, along with EPA, could be directed by Congress to form a Task Force to investigate in detail the overall actual impact of current environmental regulations on the secondary lead industry and be directed to report on what steps should be taken to insure the long term viability and survival of the industry. There is precedent for undertaking efforts such as this in other industries. "Delayed Compliance Orders" have been entered into by EPA and other industries in the past when it became apparent that immediate compliance with a regulation was impossible for the industry. Regulations can be amended so that environmental protection is achieved without imposing unwarranted economic hardship. THE SECONDARY LEAD INDUSTRY SHOULD AND MUST OPERATE IN A MANNER SUCH THAT ENVIRONMENTAL PROTECTION IS MAXIMIZED! The task force should decide if the additional environmental regulations are both necessary and feasible, if so on what time schedule and through what regulatory means. The above described actions should take place on a federal level if they are to be effective. Conflicting state laws and regulations could create a

disparity which could actually be detrimental to the overall situation.

CONCLUSION

The secondary lead industry has provided the nation with a valuable environmental service for many decades. The continued existence of this industry is vital to the national interest. Steps must be taken now to insure that this vital industry survives.

PERMIT TO OPERATE

Permit No. 3408
Issuance Date April 3, 1987
Termination Date April 3, 1990

City of Cleveland
Division of Air Pollution Control
2735 Broadway Ave.
Cleveland, Ohio 44115

Control No. 3470(I-1945)
Fee $ 125.00

Permission is hereby granted for the operation of A 12 ton capacity Columbia machine works rotary lead smelting furnace with a max. lead production rate of 2500 lb/hr. Emissions are controlled by a 38,000 ACFM lime injected metallurgical baghouse control system. (OEPA no. 13-18-00-0222 P008)

Special Terms and Conditions Subject to the attached terms and conditions.

at Master Metals, Inc. Address 2850 W. 3rd St., Cleve., 44113
Applicant Same Address Same
Att'n: Douglas K. Mickey

This permit does not authorize emissions of air contaminants in excess of City, State and Federal air pollution laws and regulations, nor does it exempt the holder from complying with the requirements of other Departments of the City of Cleveland, as well as State and Federal Agencies.

The Commissioner, or his authorized representative(s) may enter your premises at any reasonable time, or when a source is being operated or when a violation has occurred or may occur, for the purpose of making inspections, conducting tests and examining records or reports pertaining to the above described source of contaminant emissions.

The Commissioner may require this permit to be renewed at an earlier date, as specified in Section 259.06 of the Air Pollution Code of the City of Cleveland.

Breakdown of this equipment shall be reported to this Division in accordance with the procedures outlined in Section 279.01 of said Code.

This permit may be revoked as provided in Section 259.07 of said Code.

Gary J. Fried
COMMISSIONER

THIS PERMIT MUST BE POSTED NEAR THE DEVICE FOR WHICH IT IS ISSUED

Special Terms and Conditions
Permit to Operate O-3408
April 3, 1987

Master Metals, Inc. - 2850 West 3rd Street

Rotary Secondary Lead Smelting Furnace

A. The operations covered by this Permit-to-Operate consist of the charging of battery plates, dross, flue dust, sodium carbonate, coke and/or iron borings into a Columbia Machine Works Rotary Type Secondary Lead Smelting Furnace, the melting/mixing of this material, the alloying (second charge) and the tapping of the molten lead into molds. Particulate emissions generated by these operations are captured by a canopy hood (with side walls and a sliding door) over the charging end of the furnace and a hood at the other end of the furnace. These hoods are ducted to a 38000 ACFM Lime Injected Baghouse Control System manufactured by NL Industries. Emissions from this Rotary Type Secondary Lead Smelting Furnace are subject to the New Source Performance Standards (NSPS) requirements of 40 CFR 60.122 "Standards of Performance for Secondary Lead Smelters" and the Best Available Control Technology (BACT) determination as follows:

1. The baghouse control system shall be maintained and operated at sufficient volume flow rate to capture all of the emissions (gases) generated by this furnace.

2. Particulate emissions from the baghouse stack shall not exceed 0.022 grains per dry standard cubic foot of exhaust gases.

3. Sulfur Dioxide emissions from the baghouse stack shall not exceed 3 pounds per ton of material produced and a maximum of 15 ppm (by volume) in the exhaust gases.

4. Visible emissions from the baghouse stack shall not exceed 10% (ten percent) opacity at any time.

B. During the stack test conducted on June 5, 1985, the source owner or operator demonstrated compliance with the applicable requirements with no visible emissions (zero percent opacity) in the exhaust gases from the baghouse stack and no visible emissions of uncaptured gases. These values are less than those permitted by the applicable regulations; accordingly, if visible emissions are observed from this operation on a continued basis, the source owner or operator may be required to conduct additional testing to demonstrate compliance with the applicable requirements at the higher opacity levels.

(Continued)

C. This baghouse control system shall be maintained and operated in accordance with good engineering practices which includes startups, shutdowns, maintenance and repair. In addition, this baghouse shall be visually inspected daily (during operating periods) to insure proper operation of the cleaning mechanism, pressure drop and other components.

D. Records of baghouse system inspections and any corrective actions taken shall be kept in a bound notebook and shall be maintained for a minimum of 24 months. Such records shall be available for review during normal business hours by personnel from the Cleveland Division of Air Pollution Control (or any other agent of the Ohio EPA) upon request.

E. An inventory of not less than 30 percent of the total number of bags in the baghouse must be available on the premises at all times.

F. Any malfunction of this source or its associated air pollution control system shall be reported immediately to:

The Cleveland Division of Air Pollution Control
2735 Broadway Avenue
Cleveland, Ohio 44115
Telephone Number: (216) 664-3564

in accordance with Section 279.01 "Breakdown of Equipment (Malfunctions)" of the Cleveland Air Pollution Code. Except as provided by Section 279.02 "Source Operation Without Control Equipment and Exceptions" any malfunction necessitating the shutdown or bypassing of this baghouse control system shall be accompanied by the shutdown of this source.

Gary J. Ried

Gary J. Ried, Commissioner
Division of Air Pollution Control

OhioEPA
State Of Ohio Environmental Protection Agency

Northeast District Office
2110 E. Aurora Road; Twinsburg, Ohio 44087-1969
(216) 425-9171

Richard F. Celeste, Governor

RECEIVED
MAR 27 1987
U.S. EPA REGION V
WASTE MANAGEMENT DIVISION
HAZARDOUS WASTE ENFORCEMENT BRANCH

March 24, 1987

RE: MASTER METALS
CUYAHOGA COUNTY
COMPLAINT #671

Mr. Jerry Moody
Master Metals
2850 W. Third Street
Cleveland, Ohio 44113

Dear Sir:

On March 5, 1987, I visited your facility located at 2850 West Third Street in Cleveland, Ohio. I spoke with you about J & S contractors. Our office received a complaint which stated that J & S contractors were tearing apart batteries to recover the lead. You clarified that J & S is Master Metal employees who tear down used industrial batteries on their own time. This process is conducted on Master Metal's property and some acid spillage during storage and removal from the steel casing does end up on the ground. You state that soda ash is sprinkled on these areas to neutralize the acid. You further stated that most of the acid remains in the plastic casings with the lead cells. Then the entire unit is placed into your rotary furnace to recover the lead. You claimed that the plastic and acid/soda ash help improve the furnace fire.

I have discussed your operation with my supervisor, Mr. David Wertz and Mr. Dan Fisher, from our Central Office. Upon reviewing the RCRA Recycling Regulations we have come to the following conclusions:

1. Storing of the waste industrial batteries on-site is illegal and will require a RCRA storage permit.

2. Spillage or leakage of battery acid onto the ground is not an acceptable practice.

3. Burning of the acid (and possibly the plastic casings which could be contaminated) constitutes disposal of hazardous waste. Your facility does not have the proper permit to conduct this type of an operation.

4. The Cleveland Air Agency may have some concerns about the burning of plastic and acid. I am sending them a copy of this letter.

Your battery recycling operation is in violation of the RCRA regulations and must cease immediately, until proper permits are obtained. Please respond in writing within 30 days receipt of this letter. Address how these above concerns have been corrected to satisfy the RCRA Regulations.

If you have any further questions, you may contact me at (216) 425-9171.

Yours truly,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste
Management

MB/sp

cc: Dan Fisher, DSHWM, Central Office
Tony Sasson, DSHWM, Central Office
Mr. Gary Neid, Division of Air Pollution Control
Dale Helmers, U.S. EPA, Region V

OCT 0 6 1986

Master Metals, Inc.
OHD 097 613 871

Dale Helmers
OH/MN RCRA Enforcement Unit

Compliance File

On August 6, 1986, an inspection was conducted at the above-referenced facility. The results of that inspection were included in a memorandum dated August 18, 1986. In that memorandum, it was stated that Master Metals, Inc, should have certified compliance with the applicable groundwater and financial responsibilty requirements for the waste pile containing spent lead-acid batteries by July 5, 1986. That conclusion was reached after preliminary discussions with Region V, Office of Regional Counsel (ORC).

After further discussion with ORC and the Office of General Counsel in Washington, it has been determined that this preliminary conclusion was not correct. Because spent lead-acid batteries being reclaimed did not become hazardous waste in Ohio until January 30, 1986, the certification required under §3005(e) is not required until January 30, 1987. Therefore, Master Metals, Inc. has not lost interim status for the waste pile containing lead-acid battery plates. The status of the piles containing the baghouse dust (K069) has not changed. Certification for these piles was due on November 8, 1985.

cc: Mark Bergman, OEPA-NEDO

bcc: Linda Bullen

5HE-12JCK:DHELMERS:fharris:6-7566:10/2/86:DAH2

MA 10-3-86

	TYPIST	AUTHOR	OTHER STAFF	UNIT CHIEF	SECT. SEC'Y	SECT. CHIEF	HWEB CHIEF	WMD DIR
EST. DATE	FH 10/3/86	DH 10/3/86		RJB 10-3-86				

1986

AUG 18 1986

Master Metals, Inc.
OHD 097 613 871

Dale Helmers
RCRA Enforcement Section

Compliance File

On August 6, 1986, a surprise inspection was conducted at Master Metals, Inc., 2850 West Third Street, Cleveland, Ohio. The purpose of this inspection was to determine the facility's compliance with the RCRA interim status standards found in 40 CFR Part 262 and 265.

Master Metals has submitted two §3010 notifications (August 18, 1980, and March 17, 1985) and two Part A's of the permit application (November 19, 1980, and April 8, 1985). Master Metals withdrew its original Part A on September 25, 1985. Mr. Douglas Mickey stated that there had been some confusion in the past as to whether Master Metals was a regulated facility or not. Mr. Mickey stated that second Part A was submitted after discussions with the Ohio Environmental Protection Agency (OEPA). The current Part A lists six waste piles for storage of D008 waste. It lists no piles for the storage of K069 waste.

Per Mr. Mickey, Master Metals currently processes only 3 types of waste. They are K069 dust, D008 waste (spent battery plates) and dross. The dross is considered to be a by-product under RCRA and is therefore not considered to be solid or hazardous waste when reclaimed. He indicated that many generators are unsure of the regulatory status of dross and still manifest and label it as hazardous waste. The dross was not considered to be hazardous waste during this inspection.

NO — WRONG — IS SUBject to storage TODAY —

During the inspection, hazardous waste was being stored in three waste piles (See Attached Map). K069 waste was present in two piles and D008 (battery plates) was in the third pile. Initially, Mr. Mickey stated that there was only one pile of K069 waste and that they only handled K069 waste generated on-site. During a review of manifests however, it was noted that K069 waste had been accepted from off-site. When confronted with this information, Mr. Mickey then stated that one pile of material he had previously stated contained dross, actually contained K069 from off-site sources. Copies of several current manifests were obtained.

According to Mr. Mickey, there are currently no drums of hazardous waste on-site. There were however, several hundred drums of dross. These drums were scattered throughout the site and generally in very poor condition.

11) 40 CFR 265.112(c) Closure plans were not submitted within 15 days of the waste piles losing interim status;

12) 40 CFR 265.251 The K069 waste was not protected from wind dispersal;

13) 40 CFR 265.253 There was no run-on and run-off control for the K069 waste piles; and

14) 40 CFR 270.71 The Part A did not include K069 as a waste handled in waste piles.

5HE-12JCK:DHELMERS:fharris:8/14/86:6-7566:

	TYPIST	AUTHOR	OTHER STAFF	UNIT CHIEF	SECT. SEC'Y	SECT. CHIEF	HWEB CHIEF	WMD DIR
INIT. DATE	8/18/86	DH 8/18/86						

Master Metals has not certified compliance with all applicable groundwater and financial responsibility requirements for its waste piles. This certification was required by November 8, 1985, for any piles containing K069 waste and by July 5, 1986, for the battery plate piles. Because this certification was not made, Master Metals lost interim status for these waste piles and should have submitted closure plans by November 23, 1985 and July 20, 1986, respectively.

In summary, the following violations of RCRA and its implementing regulations were observed:

1) 40 CFR 265.13(a) There was no analyses available for the K069 waste generated from the facility's baghouse;

2) 40 CFR 265.13(b) The waste analysis plan only discusses K069 wastes. It fails to consider any D008 wastes;

3) 40 CFR 265.14 There were no "Danger - Unauthorized Personnel Keep Out" signs at the active areas;

4) 40 CFR 265.15 The only inspection plan the facility could produce was the one in the Part B. No inspections were being conducted;

5) 40 CFR 265.16 There were no training records available. Also employees have not received annual refresher courses;

6) 40 CFR 265.52 The contingency plan does not:

   a. Describe any arrangements agreed to by local police departments, fire departments, hospitals, contractors and State or local emergency response teams;

   b. Contain the addresses of the emergency coordinators;

   c. Contain a list of all emergency equipment; and

   d. Include the location, a physical description and a brief outline of capabilities of each piece of emergency equipment.

7) 40 CFR 265.53 Copies of the contingency plan have not been submitted to emergency authorities;

8) 40 CFR 265.73 There was no operating record;

9) 40 CFR 265.75 Master Metals did not submit an annual report in 1984 or 1985;

10) 40 CFR 265.112 The closure plan failed to contain an adequate description of how the facility will be decontaminated;

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: OCT 0 6 1986

SUBJECT: Master Metals, Inc.
OHD 097 613 871

FROM: Dale Helmers
OH/MN RCRA Enforcement Unit

TO: Compliance File

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cc: Mark Bergman, OEPA-NEDO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: AUG 18 1986

SUBJECT: Master Metals, Inc.
OHD 097 613 871

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS

FROM: Dale Helmers
RCRA Enforcement Section

TO: Compliance File

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5) 40 CFR 265.16 There were no training records available. Also employees have not received annual refresher courses;

6) 40 CFR 265.52 The contingency plan does not:

   a. Describe any arrangements agreed to by local police departments, fire departments, hospitals, contractors and State or local emergency response teams;

   b. Contain the addresses of the emergency coordinators;

   c. Contain a list of all emergency equipment; and

   d. Include the location, a physical description and a brief outline of capabilities of each piece of emergency equipment.

7) 40 CFR 265.53 Copies of the contingency plan have not been submitted to emergency authorities;

8) 40 CFR 265.73 There was no operating record;

9) 40 CFR 265.75 Master Metals did not submit an annual report in 1984 or 1985;

10) 40 CFR 265.112 The closure plan failed to contain an adequate description of how the facility will be decontaminated;

11) 40 CFR 265.112(c) Closure plans were not submitted within 15 days of the waste piles losing interim status;

12) 40 CFR 265.251 The K069 waste was not protected from wind dispersal;

13) 40 CFR 265.253 There was no run-on and run-off control for the K069 waste piles; and

14) 40 CFR 270.71 The Part A did not include K069 as a waste handled in waste piles.

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS LW

State of Illinois)
) ss.
County of Cook)

I, Fayola Wright, hereby depose and state that I reside at Chicago, Illinois [address]. I am an employee of the United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, who was designated to receive certification that the facility is in compliance with the financial responsibility requirements of the Solid Waste Disposal Act and regulations as required by Section 3005(e)(2).

I further state that as of November 8, 1985, I have not received such certification from the owner or operator of Master Metals, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Fayola E. Wright [signature] Executed on Sept. 26, 1986 [date]

State of Illinois)
) ss.
County of Cook)

DATE 5/8/98
RIN # 011-98
INITIALS tgw

I, Mary Logan, hereby despose and state that I reside at 7212 S. Coles, Chicago IL. [address] I am an employee of the United States Environmental Protection Agency, Region V, who is designated to receive facility closure plans submitted to the United States Environmental Protection Agency.

I further state that as of November 23, 1985, I have not received an adequate closure plan from the owner or operator of Master Metals, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Mary P Logan [signature]

Executed on 9/26/86. [Date]

PRC Engineering
Suite 600
303 East Wacker Drive
Chicago, IL 60601
312 938-0300
TWX 910-221-5112
Cable CONTOWENG

prc
Planning Research Corporation

MASTER METALS, INC.

(OHD 097 613 871)

U.S. EPA REGION 5

LOSS OF INTERIM STATUS INSPECTION

REPORT-CHECKLIST

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Waste Programs Enforcement
Washington, D.C. 20460

Work Assignment No.	:	507
EPA Region	:	V
Site No.	:	OHD 097 613 871
Date Prepared	:	June 24, 1986
Contract No.	:	68-01-7037
PRC No.	:	15-5070-00
Prepared By	:	PRC Engineering (Daniel T. Chow)
Telephone No.	:	312/938-0300 ext. 429
EPA Primary Contact	:	William E. Muno
Telephone No.	:	312/886-4434

RELEASED
DATE 5/8/98
RIN # 1011-98
INITIALS gs

ENFORCEMENT CONFIDENTIAL

PRIVILEGED WORK PRODUCT PREPARED IN ANTICIPATION OF LITIGATION

INSPECTION CHECKLIST

LOIS INSPECTIONS - REGION 5

Facility Name: Master Metals, Inc.

Site I.D.: OHD 097 613 871

Inspection Date: March 11, 1986

Inspector(s): Laurie Redeker and Susan Burns

Completed	Not Required	Item	Page
X		General Information	B-1
X		Summary Report	C-1
X		Notes, Other Observations, and Recommendations	D-1
X		List of Site Contacts	E-1
X		List of Site Documents	F-1
X		List of Inspected Waste Management Units	G-1
X		Inspection Questionnaire	H-3

GENERAL INFORMATION

Facility I.D. Number: OHD 097 613 871

Facility Name: Master Metals, Inc.

Facility Contact (Name and Title): Douglas K. Mickey, President

Facility Contact (Phone): 216/621-2361

Facility Mailing Address:

(Street) 2850 West Third Street

(City) Cleveland

(State) Ohio (Zip) 44113

Facility Location:

(Street) 2850 West Third Street

(City) Cleveland

(County) Cayahoga

(State) Ohio (Zip) 44113

Site ID Number OHD 097 613 871

SUMMARY REPORT

Facility Name: Master Metals, Inc.

PART A APPLICATION STATUS

Submitted	[X]	Yes	[ ]	No
Additions	[ ]	Yes	[X]	No
Deletions	[ ]	Yes	[X]	No

3007 U.S. EPA REQUEST LETTER

Received	[ ]	Yes	[X]	No
Response	[ ]	Yes	[X]	No

LOIS CERTIFICATION

Submitted	[ ]	Yes	[X]	No

CLOSURE PLAN

(Place number of waste management units in the appropriate box)

Submitted	[ ]	Yes	[6]	No
Approved	[ ]	Yes	[6]	No
Implemented	[ ]	Yes	[6]	No
Certified Closure	[ ]	Yes	[6]	No

Site ID Number OHD 097 613 871

SUMMARY REPORT (Continued)

CURRENT RCRA ACTIVITIES

Waste Generator	[ ]	Yes	[X]	No
Waste Storage	[X]	Yes	[ ]	No
Waste Land Disposal	[ ]	Yes	[X]	No
Waste Transporter	[ ]	Yes	[X]	No
Land-Based Waste Treatment	[ ]	Yes	[X]	No
Waste Treatment other than Land Disposal	[X]	Yes	[ ]	No

Additional Remarks: Waste storage refers to six waste piles which the facility used to temporarily store waste.

Site ID Number OHD 097 613 871

NOTES, OTHER OBSERVATIONS AND RECOMMENDATIONS

According to Mr. Mickey, Master Metals receives emission control dust or sludge from secondary lead smelting facilities. This waste is classified as K069. When Master Metals receives this waste, it stores on site in waste piles. Within 90 days of receiving the waste, the facility processes this waste in a rotary furnace to reclaim the lead. Mr. Mickey also stated that the end products from this treatment are not hazardous.

According to Mr. Mickey, Master Metals submitted a Part B application before November 8, 1985. U.S. EPA, Region V requested changes, and Master Metals is currently preparing a revised Part B. Master Metals' consultant is Envisage Environmental Incorporated.

When asked about LOIS, Mr. Mickey believed that the financial statement included in the Part B application can substitute for LOIS certification. He also stated that his consultant had requested an exemption from the ground-water monitoring requirements, which makes it unnecessary for him to submit a LOIS ground-water certificates. Mr. Mickey is planning on submitting the revised Part B permit application on March 13, 1986. He will mail PRC copies of this application and the request for an exemption from ground-water monitoring requirements.

Site ID Number OHD 097 613 871

LIST OF SITE CONTACTS

	Name	Title	Telephone
1.	Douglas Mickey	President	216/621-2361
2.			
3.			
4.			
5.			
6.			
7.			

Site ID Number OHD 097 613 871

LIST OF SITE DOCUMENTS

1.* Title Letter to U.S. EPA, Region V, Re: Request to Withdraw Part A Permit

Author Douglas Mickey, President, Master Metals, Inc.

Date September 25, 1984 Number of Pages 1

2.* Title Letter to Master Metals, Re: Regulation Concerning Recycling Operations

Author Mark Bergman, Ohio EPA

Date February 15, 1985 Number of Pages 1

3. Title Part A Permit (Forms 1 and 3)

Author Master Metals

Date April 8, 1985 Number of Pages 8

4. Title Table of Contents for Original Part B Permit Application

Author Master Metals, Inc.

Date Rec'd by U.S. EPA Region V on November 8, 1985 Number of Pages 5

5. Title Letter to Mr. Douglas Mickey, Re: Notice of Part B Application Deficiencies

Author Edith M. Ardiente, P.E., U.S. EPA

Date January 16, 1986 Number of Pages 2

* Obtained from U.S. EPA files for background information before site inspection.

Site ID Number OHD 097 613 871

LIST OF SITE DOCUMENTS

6. Title RCRA Permit Application Revision, Part B, Cover and Table of Contents

   Author Envisage Environmental Incorporated

   Date March 14, 1986 Number of Pages 11

7. Title Letter, To: L. Redeker, Re: LOIS Inspection Information

   Author Douglas K. Mickey, President, Master Metals, Inc.

   Date April 4, 1986 Number of Pages 1

8. Title _____

   Author _____

   Date _____ Number of Pages _____

9. Title _____

   Author _____

   Date _____ Number of Pages _____

10. Title _____

    Author _____

    Date _____ Number of Pages _____

Site ID Number OHD 097 613 871

LIST OF INSPECTED WASTE MANAGEMENT UNITS

	U.S. EPA Process Code/Unit	Field Observations
1.	S03, Waste Piles Storage	Three of the six areas are currently being used as waste piles for K069 waste. These piles were approximately 4-feet high. In one area, a man was shoveling the waste to neaten the pile. A fourth waste pile area contained used batteries and battery plates. The last two piles contained scrap metals, mostly empty, used 55-gallon drums.
2.		

CODES FOR COMPLETING QUESTIONNAIRE

INSTRUCTIONS:

All questions must be answered with at least one of the codes listed below. Questions answered with an "I" (insufficient information) require further explanation. In these cases, or whenever additional information needs to be reported, write notes in the "Remarks" area provided at the bottom of each questionnaire page or on a separate sheet of paper (extra sheets of paper should be numbered and inserted into the work sheets using the number of the preceding page and a lower case letter -- for example, p. H-5a). Also note that when parentheses are used around a blank, the information should be filled in before the interview.

Codes for Answering Questions	Usage
Y	Yes
N	No
NA	Question not applicable
I	Insufficient information; need explanation

Process Codes	Usage
S01	Container storage
S02	Tank storage
S03	Waste pile storage
S04	Surface impoundment storage
D79	Injection well disposal
D80	Landfill disposal
D81	Land application disposal
D83	Surface impoundment disposal
T01	Tank treatment
T02	Surface impoundment treatment

Process Codes	Usage
T03	Incineration
T04	Other physical, chemical, thermal, or biological treatment processes not using tanks, surface impoundments, or incinerators

Closure Status Code	Usage
CPS	Closure Plan has been submitted (obtain a copy of the plan or transmittal letter)
CPA	Closure Plan has been examined and approved by the responsible agency (obtain a copy of the approval letter)
CPI	Approved Closure Plan submitted to the EPA is now being implemented
CC	The facility has completed closure in a manner acceptable to the responsible agency and in accordance with the Closure Plan (obtain a copy of the certification letter)

Note: Anytime a closure status code is used, a verification code is required.

Verification Code	Usage
F	Verified by field inspection
R(#)	Verified by review of a document; use List of Documents (see p.F-1) to supply document number in parentheses
I(#)	Verified by interview; use List of Site Contacts (see p.E-1) to supply interviewee number in parentheses

Example No. 1: Y. R(2); the answer to the question is affirmative and was verified by reviewing site document number 2.

Example No. 2: N. I(1); the answer to the question is negative and was verified by interviewee number 1.

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

INSPECTION QUESTIONNAIRE	ANSWER AND VERIFICATION CODE
1) Is this facility presently owned or operated by (owner-Master Metals /operator-Master Metals)? Yes - Skip to question 3. No - Write the name of the present owner below and continue to the next question. Name of the present owner _____	Y, I (1)
2) Was a revised Part A application sent to the U.S. EPA 90 days prior to the change of ownership/operator? Yes - In the space provided below, write the name of the person who signed the Part A owner/operator certification and the date signed (this information is found on page(s) 4 of 5 of the application). Skip to question 4. No - Skip to question 4. Owner Certification was signed by _____ on __-__-__. Operator Certification was signed by _____ on __-__-__.	NA
3) Is the most recent Part A application in your possession certified by (Douglas Mickey) and signed on (4-8-85)? Yes - Continue to the next question. No - In the space provided below, write the name of the person who certified the most recent Part A and the date signed. Obtain a copy of the most recent Part A, then continue to the next question. Owner Certification was signed by _____ on __-__-__. Operator Certification was signed by _____ on __-__-__.	Y, I (1) R (2,3)

Remarks: Mr. Mickey stated that he resubmitted the Part A at the advise of Ohio EPA.

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

4) Is hazardous waste presently generated, disposed of, stored, treated, or received at this facility? Y, I (1)

Yes - Continue to next question.

No - In the space provided below, list the status of any closed hazardous waste operations, obtain a copy of all pertinent closure documents, and visit the closed units; then skip to question 16.

General Description of Unit Process	U.S.EPA Process Code	Closure Status
	(____)	
	(____)	
	(____)	
	(____)	
	(____)	

Remarks: Mr. Mickey stated that the facility receives and processes hazardous waste, but the effluents from this process are not hazardous.

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

5) Does this facility have any inactive landfills, surface impoundments, waste piles, or land treatment sites? N, I (1)

Yes - In the space provided below, list the status of any inactive hazardous waste operation, obtain a copy of all pertinent closure documents, and visit the closed units.

No - Continue to the next question.

General Description of Unit Process	U.S.EPA Process Code	Closure Status

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

6) Is hazardous waste being generated at this facility? N, I (1)

Yes - Continue to the next question.

No - Continue to the next question.

Remarks: _____

_____

_____

7) In the past, was hazardous waste other than those listed in Question No. 6 generated at this facility? N, I (1)

Yes - Continue to next question.

No - Continue to next question

Remarks: Mr. Mickey stated that he does not know about facility operations before 1979; however, since 1979, no hazardous waste have been generated at the facility.

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

8) Is hazardous waste being stored in surface impoundments (S04) or waste piles (S03) at this facility? Y, I (3) R (6)

Yes - In the space provided below, list storage unit currently being used and EPA process codes; continue to the next question.

No - Continue to the next question.

General Description of Waste Storage Unit	EPA Process Code
Waste Pile	S03
Waste Pile	S03
Waste Pile	S03
Waste Pile	S03
Waste Pile	S03
Waste Pile	S03

Remarks: As listed on the Part A permit, six areas are designated as waste piles; however, when the original Part A permit was submitted, all six contained hazardous waste (K069). Currently, three contain K069 waste, one contains battery plates, and the remaining two contain nonhazardous material. Mr. Mickey stated that the three waste piles not containing K069 waste were depleted in 1982 but have not been closed because they may be needed in the future.

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

9) In the past, was hazardous waste stored in surface impoundments (S04) or waste piles (S03) other than those listed in Question No. 8 at this facility? N, I (1)

Yes - In the space provided below, list inactive storage waste units, EPA process codes, and closure status. Obtain pertinent closure documents and inspect storage units. Continue to the next question.

No - Continue to the next question.

General Description of Waste Storage Unit	U.S.EPA Process Code	Closure Status

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

10) Is hazardous waste being treated in surface impoundments (T02) at this facility? N, I (1)

Yes - In the space provided below, list the active surface impoundments and indicate whether or not the end product is considered hazardous by the facility. Continue to the next question.

No - Continue to the next question.

Active Impoundments	Hazardous End Product (Yes or No)

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

11) In the past, was hazardous waste treated in surface impoundments (T02) at this facility other than those listed in Question No. 10? N, I (1)

Yes - Complete the information requested below; list the inactive surface impoundments and indicate whether or not the end product is considered hazardous by the facility; obtain pertinent closure documents; and inspect the closed units. Continue to next question.

No - Continue to next question.

Inactive Impoundments	Hazardous End Product (Yes or No)	Closure Status

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

12) Are hazardous wastes being shipped from this site? N. I (3)

Yes - Complete the information requested below; obtain a copy of the first manifest after the closure of the land-based waste management unit(s) (if available); skip to question 14.

No - Continue to the next question.

Type of Wastes	First Shipping Date	Manifest Availability (Yes or No)

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

13) In the past, was hazardous waste other than those listed in Question No. 12 shipped from this site? N. I (1)

Yes - Complete the information requested below; obtain a copy of the first manifest after closure of the land-based waste management unit(s) and the last manifest (if available); and continue to the next question.

No - Continue to the next question.

Type of Wastes	First Shipping Date	Last Shipping Date	Manifest Availability (Yes or No)

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

14) Is hazardous waste being disposed of in landfills (D80), disposed of in surface impoundments (D83), or being land applied (D81) at this facility? N, I (1) ___

Yes - In the space provided below, list the active disposal units and EPA process code; continue to the next question.

No - Continue to the next question.

Active Disposal Units	U.S. EPA Process Code

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

15) In the past, was hazardous waste land applied (D81) or disposed of in landfills (D80), or in surface impoundments (D83), other than those listed in Question No. 14, at this facility? N, I (1)

Yes - In the space below, list the inactive (closed) disposal units, U.S. EPA process codes and closure status. Obtain pertinent closure documents and inspect the closed units; continue to the next question.

No - Continue to the next question.

Inactive Disposal Units	U.S. EPA Process Code	Closure Status

Remarks: _____

PRC Inspector(s) Laurie Redeker & Susan Burns RCRA Site I.D. OHD 097 613 871
Inspection Date March 11, 1986

16) Did this facility submit a Part B application? Y, I (1) R (6)

Yes - Continue to the next question.
No - Continue to the next question.

17) Is this facility aware of the loss of interim status (LOIS) provision? N, I (1)

Yes - Skip to question 20.

No - Briefly explain what the LOIS provision provides and how it applies to this facility, then continue to the next question.

18) Did this facility receive a 3007 request letter from the U.S. EPA? (Show an example of the request letter) N, I (1)

Yes - Continue to the next question.

No - No more questions

19) Did this facility respond to this request letter? NA

Yes - Obtain a copy of the response. No more questions.

No - No more questions.

20) Did this facility submit a LOIS certification? N, I (1)

Yes - Obtain a copy of the certification and transmittal letters, no more questions required.

No - Back up to question 18.

Remarks: Mr. Mickey stated that he did not remember receiving a 3007 letter (he reviewed the sample) and thought he would have remembered such a letter. However, he is not positive he did not receive it. Mr. Mickey then called his contact at Envisage Environmental Incorporated (consultant assisting in the preparation of his Part B Permit). After the telephone call, Mr. Mickey stated that a request for an exemption from ground-water monitoring was submitted by the consultant. Mr. Mickey seemed to believe that a LOIS certification was not required because of the request for exemption.

inter-office communication

to: Tony Sasson, TA&WM Section, DSHWM date: July 23, 1985

from: Debbie Tegtmeyer, S&E Section, DSHWM

subject: Master Metals, Inc.

I have reviewed two sets of balance sheets (1983 and 1984), as well as the Debtor's (bankruptcy) Petition filed February 18, 1982.

Trends indicate that Master Metals, Inc. has able to hold its own, and improve to some degree its financial position. The company has not yet filed a reorganization plan, however, though the company's attorney has assured me that they want to file a plan as soon as possible. The company has been meeting all its obligations, and has reached agreement with a committee of creditors for the meantime.

According to the company's attorney, Bill Schonberg (216/363-4634), a reorganization plan has been delayed by the inability to date to work out particulars with several financing institutions. Mr. Schonberg did indicate, however, that negotiations with one financial institution are close to being finalized. He would not specify a completion date for either the financial negotiations or the reorganization plan.

I recommend that we proceed with caution. The company appears to have proven itself to its creditors over the last two years, so we can probably give Master Metals, Inc. the benefit of the doubt. I realize time is of the essence on the part of the company, as potential clients are waiting for an answer. We could give them an exemption with stiff stipulations (penalties, etc.), and work out a highly structured compliance schedule. I trust we can work out mutually agreeable financing arrangements with whatever financial institution the company finally settles with.

Let me know as soon as possible what the closure cost estimate should be, as it should be included in the financing arrangements.

DT/maf

cc: Mark Bergman, NEDO
Joan DeMartin, Legal
Chris Bowers, ES, DSHWM

1008S

June 14, 1985

Master Metals
Cleveland

RELEASED
DATE 5/8/98
RIN # 1 10/1-98
INITIALS

PRESENT: Doug Mickey - Master Metals
Bob Anderson - Envirosage Environmental
Tony Sarson - Ohio EPA
Tom Carlisle - Ohio EPA
Mark Bergman - Ohio EPA

Secondary lead smelter primarily for battery companies also custom smelt lead for other manufacturers. Rotary Furnace can take garbage metals which the traditional furnaces couldn't handle. Two out-of-state generators of (FLUE DUST) lead dust sludge (K069) are very interested in dealing with Master Metals. They are in Georgia and Illinois. Lead dross can have 80-40% lead and flu dust has approx. 60% lead content. Both materials look very much alike in physical appearance. The new rotary furnace generates very little baghouse dust. The

Lead is currently valued at $.19/lb.. New furnace will cost approx. $ 300,000.00. Facility is willing to do any work to obtain the necessary permits, however, the time frame might put them out of business. They are currently in Chapter 11 and their legal council is Benish, Freellander of Cleveland. New storage bin will be totally enclosed and can hold 500 tons of flue dust. Master Metals will only store about one month's inventory due to finances. They should be able to get the flue dust for free and transportation negotiable, then the profit margin should be in the black. Master Metals will submit a map of lead smelters, plans on bin and names of companies they want to get flue dust from. Tom will get back with them in two weeks and advise them how best to approach situation.

OhioEPA

RECEIVED
FEB 25 1985
WASTE MANAGEMENT
BRANCH

OHD 097613871

Master Metals, Inc.
2850 West 3rd Street
Cleveland, Ohio 44113

February 15, 1985

Attn: Mr. Doug Mickey

Dear Sir:

On January 10, 1985, you contacted our office to discuss Lead Flue Dust. You stated that USS Lead Refiners, in Chicago, were hesitant to ship their Lead Flue Dust to Master Metals unless a manifest was used. The Hazardous Waste Regulations classify Lead Flue Dust as a listed Hazardous Waste Material (K069). Therefore, all shipments of this waste material must be manifested and accepted by a licensed Treatment, Storage or Disposal Facility only. Your facility withdrew from the Hazardous Waste Program on September 25, 1984.

On January 16, 1985, I visited your facility at 2850 West 3rd Street in Cleveland. You showed me the new furnace being installed and explained that it will smelt secondary lead and can efficiently recover the lead from Lead Flue Dust. You also stated that off-site sources of Flue Dust are very important for the financial success of your new furnace.

I recommend that you carefully read the January 4, 1985, Federal Register. It contains all of the new regulations governing Hazardous Waste Recycling Operations. Your facility may be required to file for a Hazardous Waste License, even if you don't accept Lead Flue Dust (K069). If you are required to file, then proper notification must be made to the U.S. EPA and State of Ohio before April 4, 1985. The effective date of these regulations will begin on July 5, 1985.

In conclusion, your facility can not currently accept any off-site sources of Lead Flue Dust (K069) until you are a licensed hazardous waste facility. If you have any further questions or concerns, please contact me at (216) 425-9171.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid & Hazardous Waste Management

cc: Lisa Pierard, U.S. EPA
Don Bidwell, USS Lead Refiners

MB:kr

Northeast District Office
2110 E. Aurora Road, Twinsburg, Ohio 44087 · (216) 425-9171

OhioEPA

PRELIMINARY
DATE 5/8/98
RIN # 1911-98
INITIALS tp

Master Metals, Inc.
2850 West 3rd Street
Cleveland, Ohio 44113

July 11, 1983

Attn: Mr. Doug Mickey

Dear Sir:

On June 14, 1983, I conducted an inspection of your facility located at 2850 West 3rd Street in Cleveland, Ohio. It was determined during my inspection that your facility is presently a small quantity generator. I would like to clarify one point concerning the baghouse dust from your blast furnace.

The baghouse dust is a listed waste and it meets the hazardous waste definition of a sludge. The regulations (OAC 3745-51-06 (B)) specify that a listed sludge remains subject to all applicable generator, transporter, treater, storage and disposal hazardous waste regulations. Therefore, if your blast furnace operation should be resurrected in the future, your facility may qualify as a generator. If you reclaim the lead from your baghouse dust be using it as a raw material, proposed regulations (April 4, 1983) may exempt this sludge.

If you have any further questions, feel free to contact me.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Hazardous Materials Management

MB:km

cc: Paula Cotter, DHMM, Central Office
Ken Westlake, U.S. EPA - Region V

Northeast District Office
2110 E. Aurora Road, Twinsburg, Ohio 44087-1969 (216) 425-9171

OhioEPA

DATE 5/8/98
RIN # 1911-98
INITIALS

Master Metals, Inc.
2850 West 3rd Street
Cleveland, Ohio 44113

February 15, 1985

Attn: Mr. Doug Mickey

Dear Sir:

On January 10, 1985, you contacted our office to discuss Lead Flue Dust. You stated that USS Lead Refiners, in Chicago, were hesitant to ship their Lead Flue Dust to Master Metals unless a manifest was used. The Hazardous Waste Regulations classify Lead Flue Dust as a listed Hazardous Waste Material (K069). Therefore, all shipments of this waste material must be manifested and accepted by a licensed Treatment, Storage or Disposal Facility only. Your facility withdrew from the Hazardous Waste Program on September 25, 1984.

On January 16, 1985, I visited your facility at 2850 West 3rd Street in Cleveland. You showed me the new furnace being installed and explained that it will smelt secondary lead and can efficiently recover the lead from Lead Flue Dust. You also stated that off-site sources of Flue Dust are very important for the financial success of your new furnace.

I recommend that you carefully read the January 4, 1985, Federal Register. It contains all of the new regulations governing Hazardous Waste Recycling Operations. Your facility may be required to file for a Hazardous Waste License, even if you don't accept Lead Flue Dust (K069). If you are required to file, then proper notification must be made to the U.S. EPA and State of Ohio before April 4, 1985. The effective date of these regulations will begin on July 5, 1985.

In conclusion, your facility can not currently accept any off-site sources of Lead Flue Dust (K069) until you are a licensed hazardous waste facility. If you have any further questions or concerns, please contact me at (216) 425-9171.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid & Hazardous Waste Management

cc: Lisa Pierard, U.S. EPA
Don Bidwell, USS Lead Refiners

MB:kr

Northeast District Office
2110 E. Aurora Road, Twinsburg, Ohio 44087 • (216) 425-9171

MASTER METALS, INC., 2850 W. THIRD ST., CLEVELAND, OHIO 44113 • (216) 621-2361

Lead Smelter and Refiner

April 10, 1985

RECEIVED
OHIO EPA
APR 12 1985
DIV. of SOLID & HAZ. WASTE MGT.

Mr. Tom Carlisle
Ohio E.P.A.
Solid and Hazardous Waste Management
361 E. Broad Street
Columbus, Ohio 43215

RELEASED
DATE 5/8/98
RIN # 1911-98
INITIALS tjo

Dear Mr. Carlisle:

I am sending you a revised Part A application for Master Metals, Inc. On November 19, 1980 we submitted an original Part A application to Region V in Chicago. Upon a subsequent inspection by Region V engineers they had advised us to withdraw our application from the Ohio E.P.A. A copy of a receipt of our fee and a determination to rebate our fee are included.

00.00 funded 3/15/82 il

K069

It was then determined by local E.P.A. officials that we would only be able to consume seconday lead flue dust from our own operation but none from outside our own facility. (See letter dated July 11, 1983 and February 15, 1985.

We normally consume in our operation batteries, battery plates, lead drosses and residues, flue dust and battery manufacturing scrap as indicated on our original Part A application. Apparently the flue dust poses a problem regarding the RCRA regulations. We would like to consume in our operation other secondary smelters flue dust. This material is currently in surplus at several locations across the county and would be an attractive feed material. Metallurgically flue dust differs from the remaining feed materials in lead content only.

In discussing this with Ms Lisa Pierard of Region V, she suggested that we re-submit Part A in order to be given interim status. After talking with Mark Bergman he asked that I submit this for your consideration. We would appreciate your attention to this matter and I will be in touch with you after you have had time to look at it.

Sincerely,

Douglas K. Mickey
President

RECEIVED
APR 30 1985
OHIO EPA-N.E.D.O.

DKM:kz
encl:

May 15, 1985

Master Metals
Cleveland

RELEASED
DATE 5/8/95
RIN # D11-98
INITIALS TK

PRESENT:

Doug Mickey - Master Metals
Tony Sasson - Ohio EPA
Mark Bergman - Ohio EPA

Met with company about their Part A to handle the off-site K069 Baghouse Dust. The only needed parts on the application will probably be the Baghouse Dust storage bin and the battery cracking operation (IF THEY DECIDE TO KEEP IT). Only the K069 waste will need to be permited and possibly one other waste stream. Tony will check into the recycling regs more closely and decide where Master Metals needs to go from here. If a Part B is needed then Master Metals will proceed. A protective roof and sound base would be necessary in waste pile regs.

M. Bergman

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,	)	
	)	JUDGE PAUL R. MATIA
vs.	)	Case No. 5:92CV1245
	)	
ERCO HOUSEWARES, INC., DEFENDANT.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAUL R. MATIA

APPEARANCES:

U.S. Department of Justice

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FOR THE DEFENDANT

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VOLUME 3

Recorded by mechanical stenography: transcript produced by computer-aided transcription.

OFFICIAL COURT REPORTER -- C.A.T.

1 THURSDAY SESSION, OCTOBER 21, 1993, AT 9:30 A.M.
2 THE COURT: Please proceed.
3 THE COURT: You want to call your next witness.
4 MR. EDER: Thank you, your Honor.
5 Good morning. The United States calls to the stand
6 Dr. Peter Valberg.
7 PLAINTIFF'S WITNESS, PETER VALBERG, SWORN
8 DIRECT EXAMINATION
9 BY MR. EDER:
10 Q. Good morning, Dr. Valberg.
11 A. Good morning.
12 Q. Would you please state your name for the record
13 please?
14 A. Dr. Peter Valberg.
15 Q. And could you summarize for us your educational
16 training?
17 A. My educational training includes degrees in physics
18 from Harvard University, degrees in physiology from
19 Harvard University, and my undergraduate degree was from
20 Tayler University.
21 Q. And have you received training in any of the sciences
22 besides those you just mentioned.
23 A. In the course of my training I have included in that
24 courses in chemistry, biology, epidemiology, statistics.
25 Q. Doctor Valberg, have you ever taught any of these

1 disciplines?

2 A. Yes, I have. I have been a facility member of the

3 Harvard University School of Public Health for 18 years.

4 And during that time I have taught physiology, toxicology,

5 environmental health.

6 Q. All right. And could you state your responsibilities

7 besides teaching in your current occupation?

8 A. Currently I also work for the Gradient Corporation,

9 which is an environmental consulting company, which does

10 toxicological analysis for chemicals, ionizing radiation,

11 and nonionizing radiation. We do health risk assessments.

12 Q. Where do you practice these occupations?

13 A. The Harvard University School of Public Health, in

14 Boston, in the so called medical area, and Gradient

15 Corporation is in Cambridge Corporation in Harvard Square.

16 Q. I believe you indicated how long you served as

17 professor at the school of public health. Could you also

18 explain for the court how long you worked at the Gradient

19 Corporation?

20 A. At the Gradient Corporation I am a principal of the

21 corporation. I have been there for four years.

22 THE COURT: Excuse me. Are you a M.D. or Ph.D.

23 THE WITNESS: A Ph.D.

24 BY MR. EDER:

25 Q. In your current position at Gradient Corporation he

1 many people do you supervise, if any?
2 A. Gradient Corporation has a total staff of about 75.
3 And I am personally responsible for supervising
4 approximately five people that are doing health risks
5 assessments and doing toxicological evaluations.
6 Q. Could you summarize the fields of specialty, if any,
7 of people that you supervise directly?
8 A. Most of these individuals have training in
9 environmental health and public health and in toxicology.
10 Q. Could you summarize briefly what prior positions you
11 have held and for how long.
12 A. My longest career, of course, has been with the
13 Harvard School of Public Health, which is 18 years, but
14 prior to that I was at Amherst College for about five
15 years. And at various times I have been assisting
16 scientist, visiting scientist, at Inhalation Toxicology
17 Research Laboratory. I was a visiting scientist at the
18 Institute of Occupational Health, and I have also
19 contributed to courses at Tufts Medical School, Harvard
20 Medical School, and Simmons College of Nursing.
21 Q. [illegible] part of your training and job responsibilities [illegible]
22 [illegible] reviewed scientific data and literature regarding the
23 toxicological effects of certain substances?
24 A. Yes, I do that type of review on a very regular basis.
25 I do it both in the context of preparing health risk

1 assessments and also in the process of reviewing the
2 toxicity of individual compounds.
3 Q. Are you familiar and knowledgeable with respect to the
4 toxicological effects of substances in the environment?
5 A. Yes, indeed. The work that I do at the Harvard School
6 of Human Health has to do specifically with environmental
7 health. And so the courses, which are there included
8 components where we discuss with the students health
9 impact of substances. And at Gradient Corporation that is
10 in fact by far the majority of our work which has to do
11 with environmental toxicology.
12 Q. I see. Are you generally familiar with the RCRA
13 Management Environmental Waste Management Program?
14 A. I am familiar with it mostly by name only.
15 Q. Okay. Have you engaged in work evaluating toxicology
16 or risk associated with the storage or disposal of
17 hazardous substances in the land?
18 A. Yes, I have.
19 Q. For how long?
20 A. Certainly during the period that I have been at
21 Gradient Corporation, namely, four years, that has been in
22 increase focus of my activity.
23 Q. Do you recall approximately how many projects you
24 worked on that involve such storage or disposal?
25 A. During the time that I have been there there probably

1 have been about 20 projects that dealt with that topic.
2 Q. What exactly is toxicology briefly?
3 A. Toxicology is basically a science of poisons. It's a
4 matter of investigating via an animal experiment, human
5 epidemiology, vital chemistry experiments, how substances
6 can have a toxic impact on the human body and what organ
7 system there impacts, how reversible they are, and how
8 serious they are.
9 Q. And have you taught toxicology courses per se?
10 A. I have participated in the teaching of toxicology
11 courses.
12 Q. Is that in your current position at the Harvard School
13 of Public Health?
14 A. Yes, throughout the time that I have been there.
15 Q. Have you presented at professional associations
16 concerning subjects that in involve toxicology or risks
17 assessments?
18 A. Yes, I have.
19 Q. Can you elaborate briefly for us?
20 A. There have been meetings of the Federation of
21 [illegible]cience, meetings with the American Society
22 [illegible]tal Geochemistry and Health. Most recently
23 there was an international meeting in New Orleans on
24 arsenic. And most recently one in New Orleans. I
25 presented papers.

1 Q. All right. Have you served as witness at hearings?
2 A. Yes, I have.
3 Q. And has your testimony been as a toxicologist?
4 A. Yes, it has.
5 Q. Have you evaluated toxicology as a component of risk
6 assessment?
7 A. Yes, it is an important component for risk
8 assessments. So, yes, indeed, I have.
9 Q. Have you performed that evaluation for, I'll call them
10 clients at Gradient. I am not sure if that's how you
11 refer to them. Have you performed such evaluation for
12 clients at private industry?
13 A. Yes.
14 Q. On approximately how many occasions?
15 A. I would say that of the work that we do at Gradient
16 approximately two-thirds of it is for private clients and
17 the rest of it is for others.
18 Q. Have you performed such evaluation for the government?
19 A. Yes.
20 Q. Have you had experience in evaluating toxicology and
21 risk assessment matters that pertain to volatile organic
22 chemicals?
23 A. Yes, I have.
24 Q. In approximately what percentage of your works have
25 you done so?

1 A. In the risk assessments that I referred to earlier I
2 would say that approximately half of those were organic,
3 were very important components as to that, probably comes
4 up to about ten.
5 Q. Have you had experience in evaluating toxic risks?
6 assessment matters, what I will refer to as heavy metals?
7 A. Yes.
8 Q. Can you describe briefly any trade association or
9 academic affiliation you held that relates to toxic risk
10 assessments beyond what you have already described?
11 A. Well, I might add to what I already described that I
12 served on various Government panels for toxicology, the
13 National Academy of Sciences, National Institute of
14 Health, The Health Affects Institute, which is an EPA
15 sponsored institute in Cambridge. I'm on the board of
16 editors for the Journal Aerosol Medicine.
17 Q. Have you published in professional journals articles
18 that you authored that relate to toxicology or risk
19 assessment?
20 A. Yes, I have.
21 Q. [illegible] right. And approximately how many publications?
22 A. [illegible] approximately 70 articles.
23 [illegible] EDER: Your Honor, may I approach the
24 witness?
25 THE COURT: Yes.

1 Q. Doctor Valberg I place before you Plaintiff's Exhibit
2 105. I'd like you to review it briefly. And I will ask
3 you if you are familiar with the document?
4 A. Yes, I am. This is the curriculum vitae that I
5 provided.
6 Q. All right. Did you assemble this?
7 A. Yes, I did.
8 Q. All right. And does it summarize some of the matters
9 that I asked you questions concerning today?
10 A. It does, yes.
11 Q. Is it accurate to the best of your knowledge?
12 A. It is.
13 MR. EDER: United States offers this into
14 evidence Plaintiff's Exhibit 105.
15 MR. DEAN: No objection, your Honor.
16 MR. EDER: Your Honor, the United States
17 respectfully moves the court to recognize Doctor Valberg
18 as an expert in toxicology and risk assessment, thus the
19 effects of chemicals on human health and the environment.
20 We ask that Doctor Valberg be allowed to testify as an
21 expert after opinion testimony consistent with the rules.
22 MR. DEAN: May I have some brief voir dire, your
23 Honor?
24 THE COURT: Yes.
25

1 BY MR. DEAN:
2 Q. Good morning, Doctor Valberg, my name is John Dean and
3 I represent Exco Housewares in this proceedings.
4 In the course of doing risk assessments work do you
5 come in contact with hydrogeologist?
6 A. Yes, I do.
7 Q. And do you understand the field of hydrogeology to be
8 the study of, among other things, how water, how
9 groundwater, moves through the subsurface?
10 A. Yes.
11 Q. And do hydrogeologist also study how contaminants that
12 might be in the groundwater move along with the
13 groundwater to the subsurface?
14 A. Yes, I do.
15 Q. And you are not an expert hydrogeologist?
16 A. No, I am not.
17 MR. DEAN: With that understanding, your Honor,
18 we have no objection to the witness being qualified as an
19 expert.
20 THE COURT: All right. Fine. The Court will so
21 [illegible]
22 [illegible] MR. EDER: Thank you, your Honor.
23 BY MR. EDER:
24 Q. Doctor Valberg, have you reviewed scientific data and
25 studies that concern the substance known as

1 trichloroethylene?
2 A. Yes, I have.
3 Q. And do you know an abbreviation for that substance.
4 A. TCE.
5 Q. With your understanding I am going to refer to it by
6 its initials.
7 Have you reviewed scientific data and studies
8 concerning 1,1,1, - trichloroethane?
9 A. Yes, I have.
10 Q. And I will refer to that by the initials TCA?
11 A. That's correct.
12 Q. I shall do so.
13 Have you reviewed scientific data, studies,
14 concerning 1,1, - dichloethylene?
15 A. Yes, I have.
16 Q. And is it referred commonly as DCE?
17 A. Yes, it is.
18 Q. Have you reviewed scientific data and studies
19 concerning vinyl chloride?
20 A. Yes, I have.
21 Q. [illegible]ly are those four substances referred to by
22 [illegible]
23 A. Yes. These substances are commonly referred to as
24 volatile organic.
25 Q. Also referred to as VOC?

1 A. Yes, exactly.
2 Q. I may refer to it as VOC.
3 Is it is your understanding that those four
4 substances comprise the universe of VOC?
5 A. No, not at all. There are many others.
6 Q. Is it your understanding when I refer to the VOC in
7 the context of your discussion today I am going to be
8 using it to summarize those four substances?
9 A. That's understood.
10 Q. Have you reviewed scientific data and studies
11 concerning cadmium?
12 A. Yes, I have.
13 Q. Have you reviewed scientific data and studies
14 concerning lead?
15 A. Yes.
16 Q. And have you reviewed scientific data and studies
17 concerning chromium?
18 A. Yes.
19 Q. Are those last three referred to as a category name?
20 A. Those fall into the heavy metal.
21 Q. Do they comprise all of the heavy metals?
22 A. No, they don't.
23 Q. Again, with your understanding, I am going to refer in
24 my questioning to heavy metals. I want you to understand
25 those refer in this case to those three compounds I am

1 examining?
2 A. I understand.
3 Q. Doctor Valberg, are any of these seven materials that
4 we just itemized here hazardous substances?
5 A. Yes, they are.
6 Q. Are all of them hazardous substances?
7 A. They are all hazardous substances.
8 Q. What do you mean by hazardous substances?
9 A. Well, a hazardous substances is one that has the
10 potential to influence human health in a dilatory way.
11 Q. From a human health prospective can the toxicity of
12 different hazardous substances be compared?
13 A. Yes, they can.
14 Q. In what fashion?
15 A. Well, different substances have not only different
16 kinds of effects, different kinds of serious effects, that
17 they produce, such as, for example, cancer is a very
18 serious effect, but different substances have different
19 avenues by which they are most active. And they also have
20 different doses which cause different kinds of effects.
21 Q. All right. For each of these hazardous substances of
22 the seven that we identified is there a point or threshold
23 level at which substances pose a danger to the health of
24 humans who are exposed to the substance?
25 A. Some of them have threshold levels. However, it's

1 important to remember that the majority of the ones that
2 you have mentioned are carcenogenic and carcenogenicity.
3 It has a threshold level. So in effect the carcenogenic
4 effect can be produced by doses going all the way down to
5 zero.
6 Some substances that are not carcenogenic do have a
7 minimum does, which is often called a reference dose,
8 which defines the borderline between a lack of adverse
9 effects and possible adverse effects.
10 Q. All right. Of the seven substances we just discussed
11 are any to your recollection not a carcenogenic -- well,
12 let me change. Let me withdraw the question.
13 Of the seven substances we just discussed is the
14 reference dose approached that you described used?
15 A. For the TCA dose is applied. Each TCA has been shown
16 to be carcenogenic in animals, but the strength of the
17 evidence in humans is sufficiently low that the reference
18 dose approach is used for that one.
19 Q. Doctor Valberg, are you familiar with documents and
20 data regarding conditions that are associated with the
21 surface impoundment in Massillon, Ohio that I am going to
22 refer to as the Ekco Housewares facility and Ekco
23 Housewares surface impoundment?
24 A. Yes, I am. And I reviewed a number of documents with
25 regard to that facility.

1 Q. All right. Have you reviewed documents -- I am going
2 to present you with four at this time, and present each
3 one to you, or five documents.
4 I suppose I would like you to tell me if you
5 reviewed the documents please. I present to you
6 Plaintiff's Exhibit 98.
7 MR. EDER: For the Court's reference it also
8 appears in the joint set of exhibits.
9 MR. DEAN: I don't have it.
10 MR. EDER: The joint -- May we have one, minute
11 your Honor.
12 THE COURT: Yes.
13 (Pause.)
14 MR. EDER: Okay. I am going to refer to it as
15 Plaintiff's Exhibit 98. For clarification for the court
16 and reference this appears in the cross reference of the
17 joint binder, but I am going to continue to use the
18 nomenclature to Plaintiff's Exhibit 98.
19 THE COURT: I don't think we have the joint
20 binder.
21 MR. EDER: We will remedy that.
22 MR. GRADY: Your Honor, may I address the issue?
23 Apparently, at one point there was an attempt to
24 combine the joint exhibit, the document I believe Mr. Eder
25 is referring to is known as an August, 1988 draft RCRA

1 closure plan. Apparently, we have pulled it from our
2 exhibit book in the effort to create a joint exhibit, and
3 it has now been identified in the notebook I just provided
4 to counsel as Joint Exhibit 1.
5 Perhaps, if we can have a minute to verify this is
6 the document that has been referred to in this litigation
7 as the August 28th closure plan, and we will provide the
8 Court a copy as well.
9 MR. EDER: Yes. Here is a copy for the court.
10 BY MR. EDER:
11 Q. Now, then, Doctor Valberg, have you had an opportunity
12 to look at the --
13 A. It's this one. It's the one that I had.
14 Q. I present to you, or Mr. Grady presents to you,
15 Plaintiff's 98. The closure plan I referred to as
16 Plaintiff's Exhibit 98?
17 A. Yes, that one I have seen.
18 Q. I also would like you to look at Plaintiff's Exhibit
19 111?
20 A. Yes, this one I have seen.
21 Q. [illegible] to refer to this as the -- well, it's
22 [illegible] comprehensive ground water monitoring
23 evaluation of Ekco Housewares, dated June 27, 1988.
24 Do you see that?
25 A. Yes.

1 Q. I am going to refer to this as a CME or 1988 CME. Is
2 that understood?
3 A. That's understood.
4 Q. Or as Plaintiff's Exhibit 111.
5 Next I'd like you to look at the next exhibit
6 Plaintiff's Exhibit 112 entitled comprehensive ground
7 water monitoring evaluation of Ekco Housewares dated June
8 7th of 1991?
9 A. Yes, I see that. I have looked at that.
10 Q. You have looked at that previously. All right.
11 And I'd like you to look at, and I would ask that
12 you be shown, a copy of Plaintiff's Exhibit 78?
13 A. Yes, it's Wadsworth Testing Laboratory, that one I
14 have seen.
15 Q. All right. I also would like you to look at
16 Plaintiff's Exhibit 73. I believe you already have that?
17 A. Yes, I have that here. And I have seen that.
18 Q. All right. I'm going to refer to that as Plaintiff's
19 Exhibit 73, or the Wadsworth Sampling for Ekco Housewares
20 dated March 23, 1984.
21 Do you see the date and the nameplate Wadsworth
22 Testing Laboratory on it?
23 A. Yes, I do.
24 Q. Okay. All right. That's fine. Thank you, Doctor
25 Valberg.

1 From your review of -- let me first ask you have
2 you reviewed other documents in addition to these
3 documents in preparation for your testimony today?
4 A. Yes, I have. A number of other documents were
5 provided to me that I also reviewed.
6 Q. And were you informed when documents were presented to
7 you that these documents were taken from the State of Ohio
8 EPA files that have been the subject of a subpoena for
9 discovery purposes by the defendants?
10 A. Yes, I was. That's correct.
11 Q. From your review of the documents, Doctor Valberg, do
12 you have an opinion as to whether any of the hazardous
13 substances that you have discussed earlier today, those
14 seven that we've identified, whether any of these
15 hazardous substances have been identified at or emanating
16 from the surface impoundment of Ekco in Massillon?
17 A. Yes, I have formed an opinion on the substances that
18 we just discussed.
19 MR. DEAN: Your Honor, objection, he has been
20 asked, or he is starting to give an opinion as to whether
21 these things emanated from the Lagoon. He said he is not
22 a hydrogeologist, the people who study the way things
23 move. I don't think he is qualified to give an opinion on
24 that.
25 THE COURT: He can certainly testify to the

1 effects these things have on the human body, but I don't
2 think he is qualified to testify they emanate from any
3 particular place.
4 MR. EDER: Could I inquire briefly as a follow up
5 to Mr. Dean's inquire of Doctor Valberg's use of the term
6 hydrogeology as it is compared to the leaching of
7 substances, testability, review data, and whether it's
8 within Doctor Valberg's practice as a toxicologist to
9 determine if it has leached, whether doctor --
10 THE COURT: I presume he reviewed reports that
11 state that it has leached. He is qualified as an expert
12 on toxicology, the effect of these things on the human
13 body. I don't know what you are asking him to do other
14 than accept the information that's contained in a report
15 that was done by someone else that says that these things
16 did leach from a certain area.
17 MR. EDER: That is what I am asking Doctor
18 Valberg to do and build from that review.
19 THE COURT: He doesn't need to be an expert in
20 order to accept those findings to testify as to what the
21 effects would be on the human body.
22 MR. EDER: Maybe my question was poorly phrased.
23 Okay. I understand the problem now. It was in the
24 phraseology of my question. I will restate it.
25

1 BY MR. EDER:
2 Q. From your review of documents do you have an opinion
3 as to whether you have seen documentation that any of the
4 hazardous substances we just discussed have been
5 identified at or having emanated from the impoundment in
6 Ekco Housewares?
7 THE COURT: The question is all right. It didn't
8 need the word opinion.
9 MR. EDER: That's true.
10 THE COURT: Have you seen any documents.
11 Q. Have you seen any documents?
12 A. Yes. The documents I reviewed do show that at the
13 compound we discussed at high levels in the environmental
14 media, both in terms of the lagoon and material
15 surrounding the lagoon.
16 Q. When you say at high level, what do you mean by the
17 word at high level?
18 A. Generally far above background and at levels that
19 should be analyzed for health effects.
20 Q. What do you mean by background?
21 A. Well, of these substances, particularly, heavy metals
22 are of course present in the natural soils of the earth
23 at some low concentration.
24 Q. And have you reviewed -- were you finished?
25 A. Yes -- and the material I reviewed did have some

1 information about background concentrations in the area.
2 Q. Okay. Based on your review of the data in this case
3 do you have an opinion as to whether -- or let me just
4 rephrase that.
5 Has your review of data in this case indicated
6 whether ground water had been affected by hazardous
7 substances that was located at any point in the surface
8 impoundment?
9 A. Well, the --
10 MR. DEAN: Again, just so it's clear, your Honor.
11 I think the question was a little bit unclear. We are not
12 asking for his opinion. I think we need to have him say
13 whether he reviewed --
14 THE COURT: I think that's correct.
15 MR. EDER: I am laying a foundation, your Honor.
16 A. In the documents that I reviewed there were wells for
17 groundwater in the area surrounding the lagoon that were
18 affected.
19 Q. Okay. And when you refer to the surrounding lagoons
20 are you excluding -- are you restricting your testimony to
21 [illegible] wells?
22 A. [illegible] were a wide variety of wells that were reported
23 on. So it may be necessary to refer to some other wells,
24 but in --
25 THE COURT: Well, there are test wells, and there

1 are water source wells. We ought to be specific about
2 which wells we're talking about.
3 Q. Are you familiar from your review of documents with
4 different types of wells being in and around the Ekco
5 facility?
6 A. Yes, I am.
7 Q. In your statement as to the presence of any of these
8 substances in the wells are you referring to a water
9 supply well?
10 A. There were contaminants detected in the Ohio Water
11 System Well that was a considerable distance away from the
12 lagoon, but the wells I was referring to were the one test
13 well in the immediate vicinity of the lagoon.
14 THE COURT: All right. Fine.
15 BY MR. EDER:
16 Q. Now, Doctor Valberg, I'd like to ask you a few
17 questions about each substance, and for each substance
18 concluded with your review of documents pertaining to this
19 facility.
20 I'll start with cadmium. One of the heavy metals
21 you identified.
22 Do you know of any primary toxicological effects
23 that are associated with exposure to cadmium?
24 A. Yes, I do. Cadmium is a toxic metal that you can get
25 exposure to either by inhalation or ingestion. As a toxic

1 metal it has peculiarity that is really avidly retained by
2 body. It's retained in the kidney and liver tissues. And,
3 retention time is quite long. The half time -- the time
4 to get rid of approximately half of it is ten to 30 years.
5 And so in the case of cadmium exposure one of the primary
6 thing you are concerned about is the possibility of
7 accumulation.
8 Now, for human exposure the kinds of things cadmium
9 has been shown to cause are lung inflammation, and
10 emphysema of the lung, and lung cancer. In addition, in
11 human beings cadmium has been shown to damage the kidney;
12 cause the condition of proteinuria, which are things you
13 are excreting, you have both protein and glucose which
14 would normally be contained in the body. In the case of
15 animals it has been shown to cause Central nervous system
16 effects. It also been shown to cause developmental
17 effects and kidney cancers. I think overall in the case
18 of cadmium the carcenogenicity is probably the primary
19 concern.
20 Q. Are there any other health effects that are associated
21 with exposure to cadmium. Are you just hitting --
22 A. Yes, there are. If I were to go through it in great
23 detail I think we could probably stay easily a half hour
24 or hour on each chemical. I am trying to sort of outline
25 the major systems that it affects, and then give an idea

1 of what the health effects of greatest concern is likely
2 to be.
3 Q. That's fine. And we would like to focus on these
4 primary concerns. And I would like you to understand that
5 in my continuing questions regarding this and other
6 substances when I'm referring to primary toxicological
7 effects, or toxicological effect, I'd like you to respond
8 in the context of what your view to be on those primary
9 concerns with the understanding that they are not all of
10 the effects?
11 A. Exactly.
12 Q. Okay. Fine.
13 Are you aware of any documents that reflect cadmium
14 having been or continuing to be present in or around the
15 surface impoundment at Ekco Massillon facility?
16 A. Yes, I am.
17 Q. And what's the basis for your statement?
18 A. Cadmium has been found in the surface soils of the
19 lagoon in very high concentrations.
20 Q. All right. Are you aware of any documentation that
21 [illegible] the propensity of cadmium in or near the surface
22 [illegible] to leach?
23 A. Yes, there has been some test performed by Wadsworth
24 Laboratories where they in fact took soil from the lagoon
25 and did what is called and EP toxicity test, where they

1 mix it with water that is slightly acidity and then they
2 analyze for the presence of dissolved cadmium in the
3 water. And they found it was in deed leaching from the
4 soil.
5 Q. And are you aware of the documents that reflect a
6 level of cadmium in or around the surface impoundment at
7 the Massillon facility that possesses a concern to a
8 toxicologist for the effect it could have on humans?
9 A. Yes. In the case of cadmium and, in fact, for the
10 three metals that we're considering, the natural
11 background concentration is generally below ten parts per
12 million. And the concentration of cadmium that would be
13 of health concern is approximately one or 200 parts per
14 million. And the concentration of cadmium we are looking
15 at in here are in the thousands of parts per million.
16 Q. All right. I ask you now to focus now on lead as one
17 of the substances under discussion.
18 Do you know the primary toxicological effects
19 associated with human exposure to lead?
20 A. Yes, lead is another toxic, heavy metal that has been
21 [illegible] in a fair amount of detail. Lead, again, like
22 [illegible] it has a propensity to accumulate in time. Lead
23 accumulates in the bone because it looks very much like
24 iron calcium, which is the natural iron that occurs in the
25 body.

Lead

1 Lead exposure can occur in inhalation or ingestion
2 and the kind of effects associated with lead are primarily
3 neurological. In addition, there have been effects on
4 bone forming elements of the body, the bone marrow,
5 hemoglobin that says there has been in humanization of
6 reproduction effects of lead exposure, and also kidney
7 cancer.
8 However, in the case of lead probably the most
9 important toxicological effect is its possible toxicity to
10 children, because children have been shown to be
11 particularly sensitive to lead for several reasons.
12 Number one, they get exposed to lead, or particular lead
13 in soils, they get exposed to that in far greater amounts
14 than adults would. Adults have a higher body weight, so
15 that the concentration that you get out of that exposure
16 is higher.
17 Thirdly, they actually absorb lead for into the
18 gastrointestinal tract at a time greater rate than adults
19 do. They also do not sequester the lead into the bone as
20 fast as adults do. So it remains in the blood, and can
21 potentially get in the brain and cause damage there.
22 Finally, the overall sensitivity to the effects
23 of lead is much greater because the nervous system in the
24 developmental stages has greater impact, irreversible
25 effect in developmental stages in children

1 So I think in the case of lead the primary toxic
2 effect would be neurological in children. And I think it
3 is important to note that our current understanding of how
4 lead exerts its toxic effects there does not have any of
5 the threshold gain. So, Again, it is one of these
6 chemicals that produces effects down to extremely low
7 levels.
8 Q. When you say you refer to irreversible effect in
9 developmental stages in children. I am not sure I
10 understand that. Can you explain what you mean by that?
11 A. When you are talking about toxic effects, as I
12 mentioned at the very beginning of my testimony, one of
13 the things is how serious it effects another. The
14 criteria would be how irreversible that it is.
15 Now, as I may have mentioned earlier, cancer is not
16 irreversible generally, it's progressive. The
17 neurological effects of lead, current studies of lead
18 scalms shows that it is an irreversible effect because the
19 nervous system is laid down early in life, and then does
20 not, you know, develop any further after that. It's
21 permanently fixed. And whatever deficits have been
22 incurred early in the developmental stages, you retain
23 those.
24 Q. Doctor Valberg, from your review of documents and data
25 are you aware of documents that show lead being or having

1 been in or around the surface impoundment of the Ekco
2 facility?
3 A. Yes, I've reviewed those documents and they show that
4 particularly in the lead the present gain at extremely
5 high levels.
6 Q. All right. And do you recall from your review of
7 documents any that relate to the propensity of lead to be
8 mobile at the time in the environmental media?
9 A. Yes, again, I would refer to the Wadsworth Laboratory
10 report where EP toxicity, which show slight toxicity water
11 mixed with the soil does in fact dissolve lead way from
12 those soils.
13 Q. Now, I'd like to turn your attention to a discussion
14 of chromium.
15 Q. Do you know whether primary toxicological effects are
16 associated to the exposure to chromium?
17 A. Chromium is, again, a toxic metal that can be taken
18 into the body by ingestion or inhalation exposure. There
19 is also some evidence in the case of chromium that dermal
20 exposure is an important route of access into the body.
21 The effects of chromium are primarily on the lungs.
22 Chromium has been shown to cause lung inflammation
23 and is associated with lung cancer. In the case of animal
24 studies, chromium has been shown to cause depression of
25 the immune system and has also been associated with

1 cancers.

2 One of the things that we have to remember about
3 chromium is that it exist in different chemical formation
4 in the environment. And one of the ways that chromium is
5 combined with other chemicals is through hexavalent
6 chromium versus trivalent chromium. It has to do with a
7 number of electrons actually taken away from chromium in
8 the chemical process. And toxics of hexavalent chromium
9 is greater than toxics of trivalent chromium, but I think
10 the chromium is, the overall effect we need to be most
11 concerned about here, is cancer.
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1 Q. All right.
2 From your review of documents, do you recall lead
3 being or having been present in or around the surface at
4 the Ohio Massillon Facility?
5 A. I guess you must be referring to chromium in this
6 particular case.
7 Q. Did I say lead?
8 A. Chromium, yes.
9 Yes, again chromium is present in the soils
10 underlying the lagoon at high levels.
11 Q. And what's your basis for that?
12 A. The basis for that are the -- I guess the Weston
13 report that we referred to earlier, both the 1988 and
14 the 1991 versions. And then in addition, there is a --
15 one of those comprehensive groundwater monitoring
16 evaluation reports, I believe it's the 1988 one that we
17 referred to that has also a summary of metals
18 concentrations in the soils.
19 Q. That appears at Exhibit 111, the June, 1988 report.
20 Could you -- do you have that in front of you?
21 A. I think I do here. Let's see.
22 Q. Could you turn to Page 33?
23 A. Yes, I have 33.
24 Q. Did your rely on -- you referred to this document.
25 Did you refer to any information on this page?

1 A. Well, I think one of the relevant sentences occurs
2 at the very bottom of Page 33, where it states that all
3 lagoon samples were analyzed for cadmium and chromium
4 and lead maximum concentrations of metals in the surface
5 deposits of the lagoon where 8400 parts per million for
6 cadmium, 2630 parts per million for chromium, 19,500
7 parts per million for lead.
8 Q. For each of those levels you're reviewing there, do
9 any of those pose health concerns?
10 A. They all do.
11 Those are above levels that -- they're far above
12 background levels, and they're also above levels that
13 would be of health concern.
14 Q. Now, from your review of sampling data analysis, the
15 data itself and the analysis of the data, can you tell
16 what type of sampling for metals, if any, was done in
17 the groundwater in sampling that occurred?
18 A. The -- not only was the soil itself analyzed for its
19 metal content, but there were a number of groundwater
20 samples taken in the wells immediately around the
21 lagoon, and those were clearly stated to be dissolved
22 metals. And I think the one thing that did not appear
23 evident in the material that I reviewed was a
24 concentration of total metals in the water. So that if
25 you were to drink the water, what would be of most

1 concern is the total metal content and not so much the
2 dissolved metal content, insofar as the metals can also
3 exist in the water as fine particulate.
4 Q. When you refer to dissolved metals, if it's not a
5 dissolved particulate, what is it?
6 A. Well, when you do the analysis of the water, at
7 least the way that it was described for many of the
8 samples, you actually filter the water very carefully to
9 make sure that there are no suspended particulates in
10 the water. And so what you are getting are those
11 components of the metal that are really dissolved on a
12 molecular basis; that is individual molecules of the
13 metals surrounded by molecules of water.
14 However, the water that you pump up from the well
15 also contains particulate materials, which are very
16 fine; in fact, are not visible to the eye, but you know,
17 could be small particles of metals that you should also
18 include in your analysis.
19 Q. All right.
20 And is it your understanding of the data that you've
21 seen to date that total metals analysis for groundwater
22 sampling in the area in or around the surface and with
23 the facility as a whole was categorically not done?
24 A. It was interesting. There were some samples from
25 1988 that had high levels of various metals reported.

1 particularly arsenic, and then suddenly, those very same
2 samples reported at later dates were much lower in
3 arsenic.
4 And so, it occurred to me that perhaps that initial
5 sample was taken for a total metals analysis and that
6 was the value that was reported, but the later samples
7 then had been filtered so that only dissolved metals
8 were reported.
9 MR. DEAN: Your Honor, I'm going to move to
10 strike those speculations.
11 THE COURT: I'll overrule that motion.
12 He's offered possible explanations for different
13 reportings.
14 MR. EDER: Thank you, your Honor.
15 Q. Dr. Valberg, I want to place before you an exhibit
16 of the Defendant.
17 I direct your attention to Exhibit I of the
18 Defendant's set. Do you have that before you?
19 A. Yes, I have Page 1-2 of that exhibit before me.
20 Q. Okay.
21 And what is the title of the document that contains
22 not the actual cover page of the exhibit, but
23 the --
24 A. You mean -- the title of the table is called Range
25 of Metals Concentrations Present in Surface Impoundment

1 Soils and Sludges.
2 Q. Okay. And what is the title --
3 MR. DEAN: I'm sorry. I didn't get the page
4 reference you are reading from.
5 MR. EDER: Looking at Page 1-2 of the report
6 attached to the transmittal letter in Exhibit I.
7 THE WITNESS: Table 1-1.
8 MR. EDER: Yes.
9 Q. Do you -- can you look at the title of the document
10 of which that is a table and read that into the record?
11 A. The title of the document is Evaluation of
12 Stabilization Processes for Closure of the Surface
13 Impoundment at the Ekco Housewares, Incorporated
14 Massillon, Ohio Facility. June, 1990.
15 Q. All right.
16 MR. EDER: Your Honor, does the Court have a copy
17 of this?
18 THE COURT: I don't think so.
19 MR. EDER: All right.
20 Q. Dr. Valberg, are you familiar with this table? Have
21 you seen it before?
22 A. I saw it for the first time this morning for just a
23 few moments.
24 Q. Um-hum.
25 And you've read into the record the title of it as

first, surface impoundment.

To your knowledge, what is the surface impoundment under discussion, do you know?

A. It's the same thing that I have referred to earlier as the lagoon.

Q. Okay.

Now, the categories of that table, I see the constituent, and under that cadmium, hexavalent chromium, total chromium, and lead.

And then the other column headings are Total Metals a, Total Metals b, EP Leachate, and Maximum Concentration for Characteristic of EP Toxicity.

Do you see those?

A. Yes, I do.

Q. Are you familiar with those terms in conjunction with the sampling of materials in soils and sludges?

A. Yes, I am.

Q. All right.

You've just finished the discussion of what total metals sampling analysis entails when the sample is from a groundwater or water source.

Can you explain for the Court what does total metal analysis entail when the sample is of what's been called here a soil or a sludge?

A. Again, it refers to the fact that you're looking at

1 the metal constituents within the soil without any
2 regard to their actual chemical form.
3 Q. Okay.
4 And what is the meaning of the reference to EP
5 Leachate in connection with sampling and soils and
6 sludges?
7 A. That was the procedure that I described earlier
8 where you mix the soils with water that is slightly
9 acidic, and then you look for the amount of metals in
10 that soil that dissolved into the water that you added.
11 Q. Okay.
12 And what is the meaning of the last column heading
13 there?
14 A. There are characteristic concentrations that are
15 designated. As you exceed those concentrations, they
16 are -- those particular wastes then have the
17 characteristic of a hazardous waste.
18 Q. All right.
19 Looking at the row now, the data in the rows of the
20 table, I see N.A. under two column headings for the
21 hexavalent chromium. You see that?
22 A. Yes, I do.
23 Q. I'm confused by the reference. Do you understand
24 it?
25 A. Well, I understand what they did there was since the

1 title of the columns is Total Metals, that when they
2 analyzed for chromium, again, they did not speciate it
3 in terms of its chemical form. They were really looking
4 just at what are the total number of chromium atoms
5 within the soil, and they're expressing it on a
6 milligram per kilogram basis.
7 And so the term hexavalent chromium is a particular
8 chemical species of chromium. So I believe they put
9 N.A., meaning not applicable, in that column to mean
10 that they just analyzed for the total amount of
11 chromium.
12 Q. Okay.
13 Are you familiar with sampling techniques involving
14 sampling for chromium or involving chromium?
15 A. In a general way.
16 Q. Um-hum.
17 Is it difficult to sample for hexavalent chromium,
18 to speciate it?
19 A. No, there are procedures to define the species of
20 trivalent versus hexavalent chromium.
21 Q. And are those procedures difficult to implement to
22 your knowledge.
23 Q. Not to my knowledge.
24 Q. Now, can you look at the table and give me your
25 opinion as to the numerical data presented there as to

1 levels of these substances in soils and sludges and the
2 toxicological concerns you have, if any?
3 A. Well, first of all, if you look at the
4 concentrations of the metals in the soils, those were
5 the concentrations that I was referring to earlier as
6 very high. And so the quantity of metals in the soils
7 are, you know, definitely elevated.
8 The EP Leachate column, as we mentioned earlier,
9 defines to some extent how this particular procedure
10 might dissolve materials from -- dissolve the metals in
11 question. And as you can see in the case of cadmium,
12 the Leachate concentration is kept as high as 2
13 milligrams per liter, which definitely exceeds the
14 characteristic level to determine that that was a toxic
15 substance by what is now called T.C.L.P. Leachate
16 procedures.
17 In the case of chromium, it does look like they in
18 fact analyzed leachability by chromium species, in that
19 they have an entry in the column that says that the
20 amount of hexavalent chromium leaching from the soils
21 was below detection limits. However, for total
22 chromium, they also have that as leaching below
23 detection limit. So we really have no information from
24 that column as to the proportion of hexavalent chromium
25 in the -- in the soils.

1 In the case of the lead leaching from the material,
2 it goes as high as half a milligram per liter, which
3 does not exceed the level of 5 milligrams per liter,
4 which is given in the last column. However, that does
5 provide for us evidence that the lead is in a mobile
6 form and can in fact leach out.
7 I probably should adhere to the same caveat I
8 mentioned earlier, is that the Leachate is analyzed for
9 dissolved metals. And so this may not tell the whole
10 story in terms of whether there could be particulate
11 movement, again fine particulates of these metals that
12 could be coming out of the soils in the Leachate and
13 perhaps moving into groundwater.
14 Q. In a physical or chemical sense, to your knowledge,
15 is it any more difficult or -- let's call it, is it any
16 less likely for a particulate to move in the -- in an
17 aqueous form, within an aqueous form than it would be
18 for a dissolved metal to move in an aqueous -- within an
19 aqueous form?
20 MR. DEAN: Objection, your Honor.
21 That's outside the area of expertise, the moving of
22 metals.
23 MR. EDER: I'm not asking about the --
24 THE COURT: I think --
25 MR. EDER: -- application or interpretation of

1 particular data here.

2 I'm asking if in his experience and work, he's

3 knowledgeable as to the comparative propensities for --

4 well, the comparison between a particulate and a

5 dissolved particle.

6 Dr. Valberg has testified that he's trained as a

7 Ph.D. and has extensive training in the sciences, in the

8 physical sciences, in chemical sciences, and frankly and

9 has reviewed a lot of data.

10 It's on that basis that I ask the question.

11 THE COURT: Are you asking whether different

12 kinds of metals move differently than other kinds of

13 metals in --

14 MR. EDER: I'm sorry.

15 I'm asking for a clarification as to the statements

16 he was making earlier about what we -- what he derives

17 from a presentation of the data he sees here and that

18 he's seen in other reports because I want to clarify for

19 the Court Dr. Valberg's understanding as to the

20 propensity of -- that's a bad word -- his understanding

21 as to whether the form in which the metal is present, as

22 particulate or as a dissolved metal, for instance, could

23 impede its movement in an aqueous solution or whether

24 it's six and one-half dozen in the other.

25 THE COURT: All right.

1 That may be within his area of expertise. That's
2 not a question dealing with the way groundwater moves.
3 It's a different question.
4 MR. DEAN: Maybe I misunderstood Mr. Eder.
5 I thought what he was saying was he wanted to ask if
6 the different form of the metal had any difference on
7 how it would impede the movement of the metal, and that
8 sounds to me like movement of contaminants through an
9 environmental --
10 THE COURT: Well --
11 MR. DEAN: -- which he's not an expert.
12 THE COURT: I don't take it to be that way.
13 take it to be a question more about the quality of --
14 the qualities of the metal as opposed to movement of
15 groundwater.
16 MR. EDER: Thank you, your Honor.
17 Q. You understand the question, Doctor?
18 A. Yes, I do.
19 The particulates can move through groundwater also.
20 However, you have to realize that the bigger the
21 particulate, then of course, its movement is impeded.
22 When you're talking about total metals in a
23 non-soluble form moving through the groundwater, you're
24 talking about very fine particles.
25 Q. Okay. Thank you.

1 Now, I understand from your earlier comment that you
2 have only this morning reviewed any portion of this
3 document, and I wanted to know have you reviewed any
4 supporting data that is either attached to this document
5 or that may be used in support of this -- may have been
6 used in support of this table to compare the table with
7 the underlying data?
8 A. It appears that, you know, the data that is on this
9 table has appeared in earlier documents so that I
10 probably have reviewed those. I have not reviewed any
11 of the remainder of this document.
12 Q. Okay. Fine.
13 Before we move on to a review of toxicological
14 effects and risks associated with the V.O.C.'s that are
15 identified here, I wonder if you could state for the
16 Court any general phenomenon that are associated with
17 these three metals or metals in general from a health or
18 toxicological view that you haven't stated earlier that
19 you deem to be useful knowledge for the Court?
20 A. Well, metals generally exert their toxicity by
21 virtue of the fact that they impair enzyme systems in
22 the body. And so your body uses within enzymes metals
23 that it has chosen to incorporate; things like iron,
24 calcium, zinc, and so forth. And one of the reasons
25 that these metals are particularly toxic is that they

1 can interfere with those enzyme systems.

2 I did want to mention that because it bears upon

3 this general question of how do you discriminate more

4 non-toxic metals from highly toxic ones, and because the

5 three metals that we're discussing fall into the

6 category of interfering with enzyme systems in the body,

7 that is believed to be the mechanism by which they exert

8 their toxicity.

9 Q. All right.

10 Dr. Valberg, I'd now like to ask you a couple

11 questions concerning TCE, not TCA but TCE, and not DCE.

12 You got that?

13 Do you know of any primary toxicological effects

14 that are associated with human exposure to TCE?

15 A. Maybe I should begin just a little bit by talking

16 about volatile organics generally.

17 The volatile organics are things that are soluble in

18 fatty substances. And to that extent, they -- their

19 mechanism of action is different than the metals. I

20 just mentioned a moment ago that the metals interact

21 with enzyme systems in the body.

22 The volatile organics, because they're soluble in

23 fatty substances, usually interact with the membrane of

24 the cell. The coating of a cell is an oily membrane

25 that has within it many protein molecules important to

1 the normal functioning of the cell, and when these
2 volatile organics dissolve in that membrane, they
3 disrupt the function of these important proteins and TCE
4 is one of those components.
5 The other thing that's characteristic of volatile
6 organics is that there are occasions in which the
7 toxicity is exerted not by the compound itself but
8 because the material gets to the liver, and it gets
9 metabolized into toxic compounds. So that as opposed to
10 the situation with metals, where it's usually the metal
11 itself that is the primary toxicant, in the case of
12 organic substance, like the volatile organics, it's
13 interesting that your liver actually metabolizes them,
14 and that may be the source of the toxicity.
15 Now, in the case of TCE, its primary toxicological
16 effect is neurological.
17 Q. Can I stop you there?
18 A. Yes.
19 Q. When you say that it is in the liver that the V.O.C.
20 metabolizes into compounds, what do you mean by
21 metabolizes into compounds? What kind of reaction are
22 you talking about?
23 A. Well, that is to say the chemical reaches the liver,
24 and because the liver has various other enzymes that can
25 actually act on it, chemical groups are either added to

1 the compound or they're taken away from the compound so
2 that chemically, it actually becomes a different
3 substance.
4 Q. All right. Thank you.
5 Now, I would like you to continue with your
6 statement concerning TCE toxicological effects.
7 A. Now, one of the primary toxicological effects of TCE,
8 is on the central nervous system because of its ability
9 to interlocate in the cell membrane. However, the other
10 primary toxicological effect is at the liver because it
11 is at the liver that these compounds are formed.
12 And so in the case of TCE, this has association both
13 with kidney cancer and with lung cancer.
14 TCE, upon inhalation, can cause problems in the
15 lung. And so that's because it's one of the primary
16 target tissues there.
17 In the case of animals, it has been shown that TCE
18 reduces functioning of the immune system. And also TCE
19 has an impairment of developmental effects as determined
20 in -- as determined in animals.
21 In the case of humans, the cancer that it has been
22 linked with are bladder carcinoma and lung carcinoma.
23 And so I would say the primary toxicological effects
24 of this volatile organic are those carcinogenic effects.
25 Q. Are there important human effects resulting from

1 exposure or potentially resulting from exposure to TCE
2 besides the carcinogenic effects?
3 A. Those are the ones I mentioned earlier, the effects
4 that have to do with actual toxicity in the liver. It
5 can cause, you know, liver necrosis, and there's also
6 some evidence that, you know, TCE causes damage in the
7 kidney because you see, as soon as a compounds are
8 metabolized in the liver, they circulate to the kidney
9 where they can also accumulate because the kidney is a
10 route by which they're excreted from the body.
11 Q. All right.
12 From your view of documents, do you recall documents
13 or data that address any levels of TCE that are or have
14 been in or emanating from the surface impoundment at the
15 Massillon facility?
16 A. There were documents that indicated that TCE is
17 found -- was found in lagoon waters when there was water
18 there. Some TCE is found in association with lagoon
19 soils, and there is TCE found in the groundwater wells
20 that are in the vicinity of the lagoon.
21 Q. Are you familiar with the interaction of TCE within
22 a water solution?
23 A. Well, TCE does dissolve readily in the water and,
24 therefore, it can be transported quite readily wherever
25 the water goes. And it's difficult to get out because

1 it really -- the air stripping method is the main method
2 by which you can remove TCE from water, and once water
3 is in an underground aquifer system, it is not being
4 aerated. So it persists there and can move along with
5 the groundwater.
6 Q. All right.
7 Based on your review of documents, have you seen
8 levels in, or in the vicinity of the facility, levels of
9 TCE that exceed levels of concern for human health?
10 A. Yes, I have.
11 The concentrations both that were in the lagoon and
12 in the groundwater currently, that's in the -- that
13 surrounds the lagoon are high.
14 Q. All right.
15 I'd like to direct your attention to a discussion of
16 TCA.
17 Do you know the primary toxicological effects that
18 are associated with exposure to TCA?
19 A. Yes, I do.
20 And again, because it's a volatile organic, it has
21 the same propensity to cause central nervous system
22 effects. TCA has not been shown to be a carcinogen in
23 humans. However, animal experiments have shown it can
24 act as a carcinogen.
25 In addition, if you apply TCA to bacterial systems

1 and check for mutations, this is the so-called AIMB test
2 for mutaticity, it is found TCA is mutogenic. And so
3 there is some concern for possible genetic effects
4 arising from TCA exposure.
5 Q. All right.
6 Based on your review of documents and data in
7 this -- your preparation for testimony today, do you
8 recall seeing evidence of levels of TCA being in or
9 emanating out of the surface impoundment at Ekco's
10 Massillon facility that pose concern for human health?
11 A. Well again, the levels of TCA in the -- in the water
12 of the lagoon and in the underlying aquifer, I mean the
13 shallow wells in the vicinity of the lagoon, those are
14 definitely far elevated above background levels.
15 However, because TCA is not a carcinogen, that those
16 levels -- I mean, the current classification of it is
17 not a carcinogen -- those levels are probably not of as
18 much concern as the other compounds.
19 Q. All right.
20 And based on your review of documents, have you seen
21 evidence of TCA being present in groundwater sampling in
22 the vicinity of the Ekco facility? And I'm not asking
23 you for an opinion as to whether this lagoon was the
24 source of that particular TCA that was sampled.
25 A. Yes, it was definitely present in those groundwater

1 samples.

2 Q. All right.

3 Turning now to DCE, D as in David, do you know the

4 primary toxicological effects that are associated with

5 exposure to DCE?

6 A. Yes.

7 Again in the case of DCE, it's a neurotoxin. And in

8 the case of DCE, we have some evidence that it's

9 carcinogenic. It's very definitely carcinogenic in

10 animal systems.

11 The evidence for human carcinogenicity is somewhat

12 suggested, but it is still classified as a human

13 carcinogen.

14 In animals, it causes additional things, like immune

15 system depression, and it's toxic to the fetus in the

16 developing female animal, and so it has not only fetal

17 toxicity but developmental toxicity.

18 In the case of human exposure, again, the overriding

19 concern is the carcinogenic effect.

20 Q. All right.

21 Q. Is there any relation between DCE and TCE?

22 A. Yes. DCE and vinyl chloride are all on the pathway

23 of TCE degradation.

24 Each one has less chlorine than the one immediately

25 previous to it. Trichloroethylene has 3, dichloethylene

has two, and vinyl chloride has one.

So it has been found as trichloroethylene exists in the groundwater, over a period of time, it's degraded first to DCE and then to vinyl chloride.

Q. Based on your familiarity with sampling with evaluating V.O.C. parameters in samples and your knowledge of this degradation life of TCE, let's call it, with the presence of DCE, in a sample, does this indicate necessarily that TCE -- that this had started out as TCE and is now being measured as DCE?

A. Not necessarily.

There's no particular way to determine that this is a DCE which is a degradation product or was there initially. In the documents I reviewed, there was evidence that DCE was present in the waters of the lagoon. So that it appears that in terms of whatever was disposed of in the lagoon, DCE already existed there.

And in terms of what you detect in groundwater, some of it may come from the DCE that was originally present in the lagoon, and some of it may come from degradation of the TCE.

Q. Okay.

And do you recall from documents that you've reviewed seeing data indicating the presence of DCE in

1 the groundwater that is sampled around or near the
2 Massillon facility of Ekco?
3 A. Yes, DCE was definitely present there.
4 Q. And was it a sample analyzed at levels that exceed
5 concern for human health?
6 A. Yes, they do exceed concern for human health.
7 Q. All right.
8 Finally, I wanted to ask you about our seventh
9 substance, vinyl chloride.
10 Do you know the primary toxicological effects that
11 are associated with exposure to vinyl chloride?
12 A. Yes, I do.
13 Of the organics that we have discussed, vinyl
14 chloride is perhaps the most toxic one, and you can be
15 exposed to it by inhalation or injection exposure.
16 I might add for all of these compounds, dermal
17 absorption is also a possible pathway of vinyl chloride.
18 In particular, dermal absorption is more likely even
19 than in the case of the others. So they do cross the
20 skin.
21 [illegible] chloride exposure has been associated in
22 [illegible] quite toxic effects in the lungs, things
23 [illegible] lung fibrosis and lung emphysema, which are
24 processes in the lung that inhibit your ability to move
25 air in and out of your lung. They impair the

1 respiratory function.

2 Vinyl chloride has, in humans, been associated with

3 a rare form of liver cancer called angiocarcinoma. So,

4 in the case of human exposures, we know quite

5 definitively that vinyl chloride is the active agent

6 there because that cancer is quite rare normally.

7 In the case of animal exposure, again, a variety of

8 liver -- I mean a variety of cancers have been caused;

9 bladder cancer, liver cancer, brain cancer and lymphoma.

10 Also for vinyl chloride, one of the characteristics

11 that is unique for it is it has what is called

12 transplacentocarcinogenicity. It has been shown in

13 animals, that is to say in the female animal, the

14 pregnant female animal is exposed to vinyl chloride and

15 then that exposure stops, there's an increased chance of

16 cancer in that offspring. So that that was an exposure

17 that occurred while the animal was inutero and then

18 expresses itself later in life once the animal is born

19 and matures, and so forth.

20 So again in the case of vinyl chloride, the

21 overriding concerns are this liver cancer because,

22 there's good human evidence that that's a cancer caused

23 by that chemical substance.

24 Q. Dr. Valberg, do you recall if from your review of

25 data, vinyl chloride being and/or having been in or

emanating from this surface impoundment at the Massillon facility?

A. Yes, vinyl chloride has been detected in the groundwater.

Q. Okay.

In your opinion -- well, strike -- let's start that again.

Based on your review of this data, do you recall seeing evidence of vinyl chloride present in the groundwater surrounding or near the Massillon facility?

A. Yes, I did see that in the groundwater samples.

Q. All right.

Now, with regard -- and can you break it down for me. With regard to the presence of vinyl chloride in or near the surface impoundment, as well as vinyl chloride that you saw evidence of in these groundwater samples, did the -- were the levels of vinyl chloride elevated to a degree that it would pose a concern for human health?

A. Yes, they do.

In fact, vinyl chloride was not only detected in the A-wells and D-wells, and so forth, the ones that were around the lagoon, vinyl chloride was also detected in. I believe it was Ohio Water Service Well Number 4, and I'm not sure I know all the details behind that, but it's probably the case that that particular well was

1 shut down because of the vinyl chloride content in it.
2 And so vinyl chloride of concentrations much in
3 excess of about one part per billion are of a health
4 concern, and those concentrations are present in the
5 wells in the vicinity of the lagoon.
6 Q. I don't want you to speculate on the motivations of
7 whoever apparently shut down this municipal well, but
8 what makes you say that it was probably -- speaking from
9 your experience now as a toxicologist in risk
10 assessment, what makes you say it was probably shut down
11 due to measures of vinyl chloride?
12 A. Only because of the substances that they detected in
13 that particular well. Our current understanding of the
14 toxicology is the vinyl chloride was the most toxic one.
15 Q. Okay.
16 MR. EDER: May I approach the bench and retrieve
17 some photos that were introduced as exhibits?
18 Does the Court have a copy of the photographs that
19 have been marked as Plaintiff's Exhibit 113-A through --
20 THE COURT: Well, we have the large ones.
21 MR. EDER: Yeah, okay.
22 Q. Dr. Valberg, I present to you Plaintiff's Exhibit
23 113, which is a series of photographs. Could you review
24 those briefly?
25 A. Yes, I've looked at those.

1 Q. All right.

2 Dr. Valberg, I will represent to you that this Court

3 has heard testimony that these photographs were taken by

4 an Ohio EPA official during a visit to the Massillon

5 Ohio facility of Ekco Housewares, and in particular, she

6 was photographing and reviewing closure-related work at

7 the impoundment.

8 And I'll further represent that this is a photograph

9 of such work taking place on and within the impoundment.

10 Do you see in these photos any evidence of the top

11 layer of soil being disturbed?

12 A. Well, there appears to be a plume of pretty high

13 concentration dust rising from the vicinity of the

14 operation of one of those machines.

15 Q. Um-hum.

16 But, not only -- I'm not asking you really to look

17 at the dust so much as the position of the machine. And

18 I'm asking you if you can see any evidence of the

19 disturbing of the groundwater?

20 A. Well, the machine appears to be penetrating the

21 [illegible], so that in fact, the suspended dust that we

22 [illegible] could very well derive from the soil that's

23 being --

24 MR. DEAN: Objection, your Honor.

25 He's got no expertise to tell us where that dust is

1 coming from.

2 MR. EDER: I'm not asking for his expertise, your

3 Honor. I'm asking to lay a foundation for following

4 questions just as to what he is perceiving in the

5 photographs, so that the Court may understand the basis

6 for his statement.

7 THE COURT: I think you're asking him for

8 something that's obvious. It's obvious from the

9 photographs that the groundwater is being disturbed.

10 MR. EDER: Okay.

11 Q. Dr. Valberg, based on your recollection of data you

12 have seen -- and feel free to request and review any

13 documents containing such data or data analysis -- do

14 you recall whether there were sampling results showing

15 the presence of elevated levels of any of the substances

16 we've just discussed, any of these seven, in let's say

17 the first -- the top three feet of material at the top

18 level of the surface impoundment? And by top level, I'm

19 not referring to the embankment, I'm talking about the

20 lateral surface.

21 A. Yes, indeed.

22 In fact, the general trend for most of those

23 measurements were that the highest concentrations for

24 metals appear to be in the historical upper layers of

25 the lagoon. So that if indeed the surface that we're

1 looking at here is the historical upper surface of the
2 lagoon, then the soils have high concentrations of those
3 metals.
4 Q. All right.
5 Now, without asking you to speculate as to what is
6 the composition of this dust that you referred to here,
7 I do want to ask you based on your knowledge of data
8 concerning the substances that we've discussed as it
9 relates to this impoundment, and based on your
10 observation of what's taking place here, do you believe
11 that any -- that the activity here could potentially
12 pose a concern for human health?
13 A. Well, I would answer that sort of in two ways.
14 I think first of all I would refer back to my
15 research work that I do at the Harvard School of Public
16 Health, to estimate that when a cloud is visible to this
17 degree, that the airborne particulate concentration is
18 quite high.
19 The National Ambient Air Quality Standard for
20 particulate is 50 micrograms per cubic meter. That's
21 totally invisible.
22 If you want to have something that's visible, you
23 have to probably go up a factor of about 100 above that.
24 So that would bring it to five milligrams per cubic
25 meter.

1 So by virtue of the fact this is quite visible, I
2 would say that the mass concentration that we're looking
3 at here is considerable in excess of five milligrams per
4 cubic meter. And so if in fact that dust derives from
5 the surface soils of the lagoon, then inhalation of that
6 concentration of dust is hazardous.
7 Q. Okay.
8 And I direct your attention to the upper left corner
9 of Exhibit 113-A. Do you see a figure in the upper left
10 corner?
11 A. Yes, I do see an individual who appears to be
12 standing at the edge of the lagoon.
13 Q. Do you see an individual in the center of the --
14 represented in the center of the photograph?
15 A. There is someone in the center of the photo also.
16 Q. And do you see any protective clothing that appears
17 to be on either --
18 MR. DEAN: Objection, your Honor.
19 THE COURT: I thought we were here involving a
20 penalty for failure to comply with regulations,
21 basically delay.
22 Are you trying to make out a violation now for the
23 method by which the facility is being closed?
24 MR. EDER: No, your Honor.
25 A significant portion of evidence that we put on at

1 this trial is an effort to inform the Court as to
2 enhanced risk that is -- that is associated with this
3 impoundment and surrounding media by virtue of the past
4 practices of the company, and how that enhanced risk
5 during the periods of violations played into the lack --
6 THE COURT: Yes, but that enhanced risk is a
7 general risk to the general populous and not
8 specifically toward those who are closing the facility.
9 MR. EDER: Okay.
10 I wasn't trying to establish much by this line of
11 questioning, except to ask whether --
12 THE COURT: That's what I was afraid of.
13 MR. EDER: Okay.
14 Well then, I think it's best if I left the question.
15 Thank you, your Honor. Thank you, Dr. Valberg.
16 THE COURT: All right. Let's take a break.
17 (Recess.)
18 (Go to Next Page.)
19
20
21
22
23
24
25

1 CROSS-EXAMINATION

2 BY MR. DEAN:

3 Q. Doctor Valberg, have you visited the Ekco site?

4 A. No, I have not.

5 Q. In all the documents that you reviewed for forming

6 your opinion, did any of them state that any material from

7 the lagoon had migrated to any drinking water wells?

8 A. None made that statement. Although, the potential for

9 that migration was mentioned several times.

10 Q. But nobody drew the conclusion that it did happen?

11 A. I don't recall that anyone drew that conclusion.

12 Q. Has cadmium ever been detected in the ground water in

13 the vicinity of the Ekco lagoon?

14 A. As I recall, almost all of the cadmium analysis were

15 non detect, but, again, that was only for the dissolved

16 metal.

17 Q. You answered my question then as no.

18 Cadmium had not been detected in the ground water

19 in the vicinity of the Ekco lagoon; is that correct?

20 A. Well, I can't answer your question quite the way you

21 [illegible] because I can only say dissolved cadmium was

22 [illegible]. Because if you ask the general question, if

23 I were to take some water from a ground water well would

24 there be any cadmium in it, I don't think I have the data

25 that would really answer that question.

1 Q. And that wasn't the question I had asked.

2 I simply wanted to know whether cadmium in any form

3 had been detected in the ground water beneath or in the

4 vicinity of the Ekco lagoon?

5 MR. EDER: Your Honor, I believe it has been

6 asked and answered twice.

7 THE COURT: Yes, I think he has answered the

8 question.

9 BY MR. DEAN:

10 Q. Do you know whether U.S. EPA at any time ever told

11 Ekco that it should look for total metal when it was

12 monitoring the ground water as opposed to dissolved metal?

13 A. I don't recall seeing any correspondence to that

14 effect.

15 Q. Do you recall seeing any correspondence from Ohio EPA

16 wherein Ohio EPA told Ekco that it should monitor for

17 total metal as opposed to dissolved metal?

18 A. No, I do not.

19 Q. Do you still have Exhibit I up there in front of you?

20 A. Let's see. It was taken away. There was a blue

21 [illegible]

22 [illegible] again, I ask you to look at the table you were

23 discussing in your direct examination.

24 A. Yes.

25 Q. As I understand your testimony --

THE COURT: What page are we on again?

MR. DEAN: I'm sorry. Page 1-2, your Honor.

Q. As I understand your testimony, this table reports data that you have seen in other documents: is that correct?

A. I, not having reviewed this document, I can't say with certainty it includes only data that I looked at. I see some similarities with data that I have looked at, and it was on that basis I made that statement.

Q. Well, looking at the results reported there --

A. Yes.

Q. Do you see them down there at the bottom?

The EP leachate numbers that are reported for lead, those are consistent with the EP leachate numbers that you testified you had seen in other documents; is that right?

A. That's correct.

Q. And as I understand it the EP leachate number levels for lead reported there are all below maximum concentration for EP characteristics, or below maximum concentration for the characteristics for EP toxicity; is that correct?

A. Yes, that's correct.

Q. And what that means, if I understand your testimony correctly, is that if I've got a waste that test at those levels for lead, namely, the .068 to .52, if that's the

1 waste that I've got, that waste is not a hazardous waste;
2 am I correct?
3 A. Well, according to the standard to which those set,
4 that's correct.
5 Q. And that's the standard set by EPA; is that correct?
6 A. That's correct.
7 Q. So what this means is that from that waste lead could
8 be leaching, but nonetheless EPA would not regard it as a
9 hazardous waste; is that correct?
10 A. Under those regulations it would not consider it a
11 hazardous waste.
12 Q. And I would not have to deposit it -- never mind. I
13 won't ask you that.
14 Also, you talked about notable hazards to children.
15 Are you aware of any children that got exposed to
16 soil in the lagoon at any time?
17 A. I did not read of any children that had been exposed.
18 I would just add that, in terms of the kind of site
19 assessments that we --
20 Q. Well, you answered the question. It's a yes or no
21 question essentially.
22 And I take it your answer is no?
23 A. No.
24 Q. Are you familiar with the [illegible]?
25 A. Yes, I am.

1 Q. And what does that mean?

2 A. That's a maximum contaminant limit.

3 Q. And essentially that's a standard set by EPA?

4 A. That's correct.

5 Q. It's a standard set for drinking water?

6 A. That's correct.

7 Q. It's a standard -- it's a standard permissible level

8 of a particular substance in drinking water; is that

9 correct?

10 A. It's a standard whose basis is not only health, but

11 it's also economic consideration into that standard. So

12 it's is not a pure health basis standard.

13 Q. Do you know whether EPA believes MCLs are protective

14 to have human health?

15 A. MCL are constantly being revised because new

16 information comes up, and they turn out not too protective

17 of health.

18 Q. That wasn't my question. My question is do you know

19 whether EPA believes the present MCL is protective of

20 human health?

21 A. I don't know that. I have read a statement from EPA

22 that it's definitively the case.

23 Q. Okay. I have a document I would like to have marked

24 as the next exhibit in order.

25 I'm going to place before you a document that I had

1 marked as Defendant's Exhibit PP.
2 Q. Which I will describe for the record as an excerpt
3 from the Federal Register of March 29, 1990 and
4 specifically announcing a final rule issued by the
5 environmental protection agency concerning the hazardous
6 waste management system and certain other aspects of that.
7 Could you look at page 11813.
8 A. This is fine print.
9 Q. Do you have that page, Doctor Valberg?
10 A. Yes, I do. That's right.
11 Q. And I'm looking at the third column on that page. And
12 I'm looking at the last sentence of the first full
13 paragraph, is a carry over paragraph, and I'm looking at
14 the last sentence of that paragraph.
15 A. Yes.
16 Q. And that sentence states as follows: "The MCLs are
17 set as close to the MCLGs as is feasible, and the agency
18 believes that MCLs are protective of human health."
19 The acronym MCLG appears.
20 A. It means maximum contaminate level goals.
21 Q. And continuing with my reading into the first sentence
22 of the next paragraph it states, "It should be noted that
23 EPA evaluates the health risks that are associated with
24 various contaminant levels in order to insure that the MCL
25 adequately protects the public health."

1 Do you see that statement?
2 A. Yes.
3 Q. Has EPA ever reputed that statement to your knowledge.
4 MR. EDER: Objection. I simply object because
5 the witness is being asked to examine a single sentence
6 without reviewing the contents that have been made. It's
7 not clear it's specifically MCL referred to. It is not
8 clear whether it's referred to generically.
9 THE COURT: I think the document speaks for
10 itself.
11 MR. EDER: And I agree the document does, but the
12 witness has had absolutely no opportunity to review the
13 document.
14 THE COURT: You are not suggesting that something
15 that appeared in the Federal Register is not to be taken
16 at face value, are you?
17 MR. EDER: I read this and take it at face value
18 myself. I am not sure if the witness read the document.
19 THE COURT: I don't think there is much
20 disagreement on this particular point. And he may ask the
21 witness if the witness knows whether there has ever been a
22 retraction of his statement.
23 MR. EDER: Thank you, your Honor.
24 MR. DEAN: On second thought, your Honor, I'll
25 just move its admission.

1 MR. EDER: We have no objection to it.

2 THE COURT: All right. It will be admitted

3 without objection.

4 BY MR. DEAN:

5 Q. Do you know whether there is a MCL for cadmium?

6 A. Yes, there is a MCL for cadmium.

7 Q. Do you know what that MCL is?

8 A. For cadmium I guess I have to really consult the

9 table. It's probable in the vicinity of 50 parts per

10 billion.

11 Q. I'll just put this in front of you just to refresh

12 your recollection. I don't want it marked as an exhibit.

13 I don't want to make it a memory test on MCLs.

14 THE COURT: That's right. I don't think even an

15 expert should have to be able to remember all the figures.

16 MR. DEAN: That's right.

17 A. Here it has the MCL is actually ten parts per billion.

18 Q. And that means, I take it, that if I've got drinking

19 water with cadmium in it, that had cadmium in it, but less

20 than ten parts per billion, that EPA thinks it's safe to

21 drink that water, isn't that correct?

22 A. That's correct.

23 Q. There is not a MCL for lead, is there?

24 There is something called an action level instead;

25 is that right?

1 A. That's right.
2 Q. Do you recall that the action level is 15 parts per
3 billion?
4 A. Again, I have to consult --
5 Q. Okay. I'll give you something to refresh your
6 recollection once again.
7 A. Yes, that's right, as to 15 micrograms -- 15 parts per
8 billion, right.
9 Q. And EPA regulation provides that if a public water
10 system has lead levels above 15 parts per billion the
11 public water system has to take various actions to try to
12 get that level down; is that right?
13 A. That's correct.
14 Q. And conversely, if a public water system has lead in
15 it at less than 15 parts per billion it doesn't have to do
16 anything to get that lead level down, according to the EPA
17 regulation; is that right?
18 A. That's right.
19 Q. Do you know whether lead that has been detected at the
20 ground water in the vicinity of Ekco lagoon had levels
21 above 15 parts per billion?
22 A. Dissolved lead was not detected above that level.
23 Q. Has total lead been detected above that level?
24 A. I don't know of any tests that have been made in that
25 regard.

1 Q. Has chromium ever been detected in the ground water in
2 the vicinity of the Ekco lagoon?
3 A. I recall there may have been some detection for
4 chromium.
5 Q. Chromium has a MCL as well, doesn't it?
6 A. That's correct.
7 Q. Do you know whether it was detected above the MCL?
8 A. Again, for dissolved chromium it was not.
9 Q. Was it detected at a total chromium level above the
10 MCL?
11 A. There were no test as far as I could see.
12 Q. Are there any drinking water wells at the site of the
13 Ekco facility?
14 A. Not at the site, there is the reference made in the
15 various documents that there are drinking water wells near
16 by.
17 Q. But none on the site?
18 A. None at the site.
19 THE COURT: You want to define what you mean by
20 on the site.
21 [illegible] the property boundaries?
22 [illegible] believe so.
23 Q. Are there any currently active drinking water wells
24 within a half mile of the Ekco property boundary?
25 A. There may be. I saw a reference to the fact that in

1 the western documents that private wells do exist in the
2 vicinity, but there was no quantitative data, in as far as
3 their distribution, their distance, and their depth.
4 Q. You also referred in your testimony briefly to
5 arsenic.
6 Have you seen any documents concluding that arsenic
7 ever was deposited in the Ekco lagoon?
8 A. I haven't seen any document that suggested that.
9 MR. DEAN: No further questions, your Honor.
10 THE COURT: All right.
11 MR. EDER: Your Honor, I have one question.
12 THE COURT: All right.
13 REDIRECT EXAMINATION
14 BY MR. EDER:
15 Q. Doctor Valberg, in response to Mr. Dean's questioning
16 concerning what you recall of levels for cadmium as to
17 whether they exceeded MCL levels, I believe you responded
18 that there were measurements for dissolved chromium
19 content. You didn't recall seeing any above MCL?
20 A. That's right.
21 Q. Is that right?
22 A. And I recall hearing you say you don't recall
23 seeing any testing for total metal to know whether total
24 metal sampling MCL were exceeding?
25 A. That's correct.

1 Q. Is that right?

2 I didn't hear the same delineations for lead that

3 concerns the line of questions Mr. Dean asked you about.

4 Is it is your testimony the same for lead or

5 different for lead?

6 A. The lead concentrations in the ground water wells were

7 also low. I don't believe they exceeded MCL.

8 Q. But I am talking about whether the delineation between

9 total on dissolved metal and sampling being taken for one

10 or for both?

11 A. Again, for lead it was only for dissolved lead.

12 Q. What was only?

13 A. The ground water sampling for wells in the vicinity of

14 the lagoon reported concentration was for dissolved, not

15 total.

16 Q. Is your prior testimony to Mr. Dean's question about

17 lead to be understood with that in mind?

18 A. Yes.

19 MR. EDER: Thank you very much for your

20 testimony, Doctor Valberg.

21 [illegible] DEAN: Nothing, your Honor.

22 [illegible] COURT: Okay. You may step down.

23 [illegible] EDER: The witness maybe excused, your

24 Honor?

25 THE COURT: Yes.