4/3/06 3PM DRAFT

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Chapter 11
WCI STEEL, INC., an Ohio corporation, *et al.*,	)	Jointly Administered Case No. 05-81439 (Akron)
Debtors.	)	Judge Marilyn Shea-Stonum

DECLARATION OF MICHAEL BEEDLE IN SUPPORT OF THE UNITED STATES' APPLICATION (PROOF OF CLAIM) FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I, Michael Beedle, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I make this declaration in support of the United States' Application (Proof of Claim) for Payment of Administrative Expense Claim on Behalf of the United States Environmental Protection Agency. I make this declaration upon personal knowledge and after a review of documents and materials related to this matter maintained by Region V of the United States Environmental Protection Agency ("EPA"). If called upon to do so, I will testify fully concerning the facts stated herein.

2. I received a B.A. in chemistry and biology from Southwest State University in Marshall, Minnesota in 1990. I received a M.S. in public health sciences from the University of Illinois in Chicago, Illinois in 1995.

3. I am currently employed as an environmental scientist in the Compliance Section #2 of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides and Toxics

Division of the United States Environmental Protection Agency ("EPA"), Region 5, Chicago, Illinois. I have been employed by EPA since August 1997. [NOTE - HAVE THE BRANCH/DIVISION NAMES CHANGED]

4. As an EPA employee, my duties include and have included developing, coordinating and tracking Resource Conservation and Recovery Act ("RCRA") enforcement actions.

5. Since May 2002, I have been assigned to the RCRA enforcement case for the steel production facility owned and operated by WCI Steel, Inc. ("WCI") and located in Warren, Ohio ("Warren Facility" or "Facility").

6. Based in part on the April 2002 newspaper article in the Tribune Chronicle (a Mahoning Valley, Ohio newspaper) on oiled birds found at the Warren Facility, as well as the discovery of oil-covered carcasses of birds and bats in certain sludge containment areas used to handle oily wastes at the Facility by the United States Fish and Wildlife Service ("USFWS") in May 2002, EPA initiated an investigation of the Warren Facility.

7. On June 27, 2002, I visited and examined WCI's Warren Facility, including the impoundments at the Facility and the area surrounding the Facility.

8. While at the Warren Facility, I observed impoundments containing oily wastes. These impoundments that managed oily waste have been identified subsequent to my inspection by WCI as #5 Pond, #5A Sludge Containment, #5B Sludge Containment, #5C Sludge/Scum Containment, #5D Sludge/Scum Containment, Pad Sludge Containment, #6 Pond, #6A Pond North and South, 56" Hot Mill Lagoon, 56" Sludge Containment A, and 56" Sludge Containment B (hereinafter collectively, "Impoundments"). Among the things I observed during my inspection

were the following:

a. While at #5 Pond I noticed an oily odor. Sludge on the top of the impoundment bubbled sporadically. I also observed a sampling event by WCI representatives. The samples appeared to be mostly waste oil.

b. While at #5A Sludge Containment and #5B Sludge Containment (which at the time of my inspection I identified as Pond 5b and 5a, respectively) I observed oily sludge. I also observed a Dukes employee (a WCI contract employee), discharging wastewater from a tank truck into #5A Sludge Containment, which then discharged down an embankment to #5 Pond. Although the wastewater did not appear to contain oil as it came out of the truck, it picked up and carried oily sludge from #5A Sludge Containment down an embankment to #5 Pond.

c. While at the 56" Hot Mill Lagoon (which at the time of my inspection I identified as 56 Hot Mill Pond) I observed oil on the bank of the impoundment and oil floating on the surface in the middle of the impoundment. I also observed a dead, oiled, bird in the impoundment.

d. While at the 56" Sludge Containment A and 56" Sludge Containment B areas (which at the time of my inspection I identified as layout ponds) I observed that these impoundments had an oil coating on their surface and oil on their banks. I also observed dragonflies flying over these impoundments and dead dragonflies in or near the oil of these impoundments.

e. While at #6 Pond I observed oily sludge on the impoundment. I also observed a sampling event by contractors of WCI. At the conclusion of the sampling event the boat used for sampling and the sampling equipment were covered with oil.

9. Based on my investigation and other information contained in the Administrative Record prepared by EPA for the September 17, 2002, Administrative Order and its January 21,

2003, amendment issued by EPA to WCI relating to the Warren Facility pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) (collectively hereinafter the "RCRA 7003 Order") (see Attachments A and B), EPA found that oil presents acute and chronic hazards to both birds and wildlife and that the Impoundments contained oily wastes which would be present in the impoundments as long as WCI continued to handle, store, treat and/or dispose of the oily waste in the impoundments. EPA also found that WCI's Warren Facility and the surrounding area contain plants and trees which provide habitat, including cover and food sources, for migratory birds and other wildlife. The Mahoning River divides portions of the facility. Additionally, EPA found, based upon information provided to EPA by USFWS, that some of the oil-covered carcasses recovered from the facility by USFWS in May 2002 were of birds which are protected under the Migratory Bird Treaty Act.

10. Based on my investigation and other information contained in the Administrative Record prepared by EPA for the RCRA 7003 Order, EPA determined that WCI has contributed or is contributing to the handling, storage, treatment or disposal of solid waste at the Facility. EPA further determined that wastes in the WCI Impoundments, specifically oily wastes, have been discarded and thus are solid wastes as defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27). EPA also determined that WCI's past or present handling, storage, treatment, transportation or disposal of solid waste at these Impoundments may present an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

11. As a result of these determinations, EPA issued the RCRA 7003 Order. As required under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), EPA notified the State of Ohio of

the issuance of the RCRA 7003 Order. The RCRA 7003 Order required, among other things, that WCI remove oily wastes and permanently cease managing oily waste in the Impoundments on or before February 28, 2003. For some of the Impoundments (#5 Pond, #5A Sludge Containment, and 56" Hot Mill Lagoon) WCI was given the option, instead, to install netting meeting requirements identified in the RCRA 7003 Order.

12. EPA's amendment of the original September 17, 2002, Administrative Order occurred as a result of comments and a proposed work plan submitted by WCI in response to the original Order.

13. On January 16, 2003, EPA formally disapproved many proposals in the WCI work plan. Since that disapproval, WCI has elected to implement its own work plan, failing and refusing to fully comply with the requirements of the RCRA 7003 Order.

14. Subsequent to issuance of the RCRA 7003 Order, EPA has notified WCI that it is failing to comply with the RCRA 7003 Order. WCI's failure to comply with the RCRA 7003 Order since its petition was filed on September 16, 2003, is set forth in paragraphs 20-23, below.

15. On April 17, 2003, I inspected the facility to determine compliance with the RCRA 7003 Order. During that inspection I observed #5 Pond, #5A Sludge Containment, #5B Sludge Containment, #5C Sludge/Scum Containment, #5D Sludge/Scum Containment, Pad Sludge Containment, 56" Hot Mill Lagoon, 56" Sludge Containment A and 56" Sludge Containment B, #6 Pond, and #6A Pond North and South. Among the things I observed during my inspection were the following:

a. I observed oily waste on the top and sides of the #5 Pond. This oily waste was bubbling during the inspection.

b. I observed oily waste in #5A Sludge Containment.

c. At the time of the inspection, sludge at #5B Sludge Containment was being solidified and removed. There was a oily decay smell at the time of the removal.

d. I observed that #5C Sludge/Scum Containment and #5D Sludge/Scum Containment were covered with slag and graded.

e. I observed that the Pad Sludge Containment area was graded. Correspondence submitted to EPA from WCI indicates that the Pad Sludge Containment area was covered with BOF slag fines. The company indicated that some but not all oily waste materials were removed from the Pad Sludge Containment area prior to placement of BOF slag fines and grading.

f. I observed oily waste on the banks of the 56" Hot Mill Lagoon. Oily waste was also on the surface of the impoundment.

g. I observed that 56" Sludge Containment A was covered with a black plastic tarp. Tom Shepker (a WCI employee) informed me that the oily waste in 56" Sludge Containment B was placed on top of the oily waste in 56" Sludge Containment A.

h. I observed that the #6 Pond was lined with plastic and contained what Tom Shepker informed me was river water.

i. I observed that #6A Pond North and South was completely filled in with slag material.

16. On September 25, 2003, a teleconference was held between EPA, DOJ and WCI representatives regarding non-compliance with the RCRA 7003 Order. Among other things, WCI stated that oily waste would not be removed from the Pad Sludge Containment area until 2005.

17. On January 15, 2004, I inspected the facility to determine compliance with the RCRA 7003 Order. Prior to my arrival a heavy snowfall event had occurred. Snow continued to

fall during my inspection. During that inspection I observed #5 Pond, #5A Sludge Containment, #5B Sludge Containment, 56" Hot Mill Lagoon, 56" Sludge Containment A, and #6 Pond. Among the things I observed during my inspection were the following:

a. I observed oily waste on the surface of #5 Pond. A tar-like odor was present.

b. I observed #5A Sludge Containment and #5B Sludge Containment, which were covered with snow.

c. I observed oily waste on the surface and banks of the 56" Hot Mill Lagoon.

d. I observed 56" Sludge Containment A which appeared to be covered with snow.

e. I observed #6 Pond, which was covered with snow.

18. On March 7, 2006, I again visited the facility and observed the following:

a. I observed that all waste was removed from Pad Sludge Containment, and the concrete foundation was visible.

b. I observed that #6 was filled in and #6A Pond North and South were removed.

c. I observed oily waste on the banks and top of the #5 Pond. I observed that the #5 Pond was bubbling. I observed a WCI contractor removing oily wastes from the top of the #5 Pond with a vacuum truck. At times, the WCI contractor was using a rake to move the oil top sludge into the suction hose of the vacuum truck.

d. I observed oily waste in #5B Sludge Containment, indicating that it was being used to manage oily waste (previously WCI reported in its May 2003 Monthly Progress Report that material was removed from #5B Sludge Containment between March 18, 2003 and May 8, 2003).

e. I observed that #5C and #5D Sludge/Scum Containment had been removed.

f. I observed oil on the banks of the 56" Hot Mill Lagoon. Tom Shepker informed me

that oil on the surface of the 56" Hot Mill Lagoon had just been removed by a WCI contractor.

g. I observed that 56" Sludge Containment A and B had been removed.

h. I observed that #5A Sludge Containment had been divided into two sections. I observed oily waste in both sections, indicating that it was being used to manage oily waste (previously WCI reported in its June 2003 Monthly Progress Report that the contents of #5A Sludge Containment were removed between May 9, 2003 and June 4, 2003). I noted an oily odor in the area of #5A Sludge Containment.

19. During my inspections of the Warren Facility on April 17, 2003 and January 15, 2004, as well as my visit to the facility on March 7, 2006, I observed #5 Pond, #5A Sludge Containment, and 56" Hot Mill Lagoon. The type of netting required by the RCRA 7003 Order was not installed at any of these three impoundments.

20. Based on all of the information available to me as of this date, including but not limited to periodic correspondence and reports such as monthly progress reports from WCI, it is clear to me that WCI has failed to comply with all required actions set out by the RCRA 7003 Order since its petition for bankruptcy on September 16, 2003. WCI has continued to operate the Warren Facility without complying with the requirement to:

a. remove all oily wastes from, and permanently cease managing oily wastes at, #5 Pond and 56" Hot Mill Lagoon or install netting meeting requirements identified in the Order at these Impoundments;

b. permanently cease managing oily wastes at #5A Sludge Containment (or install netting meeting requirements identified in the Order at this Impoundment) and #5B Sludge Containment; and,

c. remove all oily wastes from, and permanently cease managing oily wastes at, Pad Sludge Containment (WCI's February 2006 Monthly Progress Report indicates that removal was completed in February 2006) and 56" Sludge Containment A (WCI's November 2005 Monthly Progress Report, indicates that removal was completed in November 2005) by the deadline specified in the Order.

21. By failing to remove the oily wastes or install netting as required by the RCRA 7003 Order and/or failing to permanently cease managing oily waste, WCI has violated and failed to comply with the RCRA 7003 Order.

22. Violation of the RCRA 7003 Order has occurred continuously since the date required for compliance (February 28, 2003) set forth in the RCRA 7003 Order and is continuing.

23. WCI's violation and failure to comply with the RCRA 7003 Order has occurred even though EPA has notified WCI that it is not in compliance with the RCRA 7003 Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Chicago, Illinois, on the _____ day of_____, 2006.

_____

Michael Beedle
Environmental Scientist
Compliance Section #2
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5
Chicago, Illinois

ATTACHMENT A

September 17, 2002 Unilateral Administrative Order

ATTACHMENT B

January 21, 2003 Unilateral Administrative Order

3/16/06 1:00PM DRAFT

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	**Chapter 11**
WCI STEEL, INC.,	)	**Jointly Administered**
an Ohio corporation, *et al.*,	)	**Case No. 03-44662**
Debtors.	)	
	)	**Judge Kay Woods**

DECLARATION OF MICHAEL BEEDLE IN SUPPORT OF THE UNITED STATES' APPLICATION FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I, Michael Beedle, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I make this declaration in support of the United States' Application for Payment of Administrative Expense Claim on Behalf of the United States Environmental Protection Agency. I make this declaration upon personal knowledge and after a review of documents and materials related to this matter maintained by Region V of the United States Environmental Protection Agency ("EPA"). If called upon to do so, I will testify fully concerning the facts stated herein.

2. I received a B.A. in chemistry and biology from Southwest State University in Marshall, Minnesota in 1990. I received a M.S. in public health sciences from the University of Illinois in Chicago, Illinois in 1995.

3. I am currently employed as an environmental scientist in the Compliance Section #2 of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides and Toxics

a. While at #5 Pond I noticed an oily odor. Sludge on the top of the impoundment bubbled sporadically. I also observed a sampling event by WCI representatives. The samples appeared to be mostly waste oil.

b. While at #5A Sludge Containment and #5B Sludge Containment (which at the time of my inspection I identified as Pond 5b and 5a, respectively) I observed oily sludge. I also observed a Dukes employee (a WCI contract employee), discharging wastewater from a tank truck into #5A Sludge Containment, which then discharged down an embankment to #5 Pond. Although the wastewater did not appear to contain oil as it came out of the truck, it picked up and carried oily sludge from #5A Sludge Containment down an embankment to #5 Pond.

c. While at the 56" Hot Mill Lagoon (which at the time of my inspection I identified at 56 Hot Mill Pond) I observed oil on the bank of the impoundment and oil floating on the surface in the middle of the impoundment. I also observed a dead, oiled, bird in the impoundment.

d. While at the 56" Sludge Containment A and 56" Sludge Containment B areas (which at the time of my inspection I identified as layout ponds) I observed that these impoundments had an oil coating on their surface and oil on their banks. I also observed dragonflies flying over these impoundments and dead dragonflies in or near the oil of these impoundments.

e. While at #6 Pond I observed oily sludge on the impoundment. I also observed a sampling event by contractors of WCI. At the conclusion of the sampling event the boat used for sampling and the sampling equipment were covered with oil.

9. Based on my investigation and other information contained in the Administrative Record prepared by EPA for the September 17, 2002, Administrative Order and its January 21, 2003, amendment issued by EPA to WCI relating to the Warren Facility pursuant to Section

that WCI remove oily wastes and permanently cease managing oily waste in the Impoundments on or before February 28, 2003. For some of the Impoundments (#5 Pond, #5A Sludge Containment, and 56" Hot Mill Lagoon) WCI was given the option, instead, to install netting meeting requirements identified in the RCRA 7003 Order.

12. On January 21, 2003, EPA amended the original September 17, 2002, Administrative Order as a result of comments and a proposed work plan submitted by WCI in response to the original Order.

13. On January 16, 2003, EPA formally disapproved many proposals in the WCI work plan. Since that disapproval, WCI has elected to implement its own work plan, failing and refusing to fully comply with the requirements of the RCRA 7003 Order.

14. Subsequent to issuance of the RCRA 7003 Order, EPA has notified WCI that it is failing to comply with the RCRA 7003 Order. WCI's failure to comply with the RCRA 7003 Order since its petition was filed on September 16, 2003, are set forth in paragraphs 17 and 18, below.

15. On April 17, 2003, I inspected the facility to determine compliance with the RCRA 7003 Order. During that inspection I observed #5 Pond, #5A Sludge Containment, #5B Sludge Containment, #5C Sludge/Scum Containment, #5D Sludge/Scum Containment, Pad Sludge Containment, 56" Hot Mill Lagoon, 56" Sludge Containment A and 56" Sludge Containment B, #6 Pond, and #6A Pond North and South. Among the things I observed during my inspection were the following:

a. I observed oily waste on the top and sides of the #5 Pond. This oily waste was bubbling during the inspection.

RCRA 7003 Order. Prior to my arrival a heavy snowfall event had occurred. Snow continued to fall during my inspection. During that inspection I observed #5 Pond, #5A Sludge Containment, #5B Sludge Containment, 56" Hot Mill Lagoon, 56" Sludge Containment A, and #6 Pond. Among the things I observed during my inspection were the following:

a. I observed oily waste on the surface of #5 Pond. A tar-like odor was present.

b. I observed #5A Sludge Containment and #5B Sludge Containment, which were covered with snow.

c. I observed oily waste on the surface and banks of the 56" Hot Mill Lagoon.

d. I observed 56" Sludge Containment A which appeared to be covered with snow.

e. I observed #6 Pond, which was covered with snow.

18. On March 7, 2006, I again visited the facility and observed the following:

a. I observed that all waste was removed from Pad Sludge Containment, and the concrete foundation ~~of Pad Sludge Containment~~ was visible.

b. I observed that #6 and #6A Pond North and South were all removed and filled in.

c. I observed oily waste on the banks and top of the #5 Pond. I observed that the #5 Pond was bubbling. I observed a WCI contractor removing oily wastes from the top of the #5 Pond with a vacuum truck. At times, the WCI contractor was using a rake to move the oil top sludge into the suction hose of the vacuum truck.

d. I observed oily waste in #5B Sludge Containment.

e. I observed that #5C and #5D Sludge/Scum Containment had been removed.

f. I observed oil on the banks of the 56" Hot Mill Lagoon. Tom Shepker informed me that oil on the surface of the 56" Hot Mill Lagoon had just been removed by a WCI contractor.

REPORTS - WCI reported removal occurred during November 2005) by the deadline specified in the Order.

21. By failing to remove the oily wastes or install netting as required by the RCRA 7003 Order and/or failing to permanently cease managing oily waste, WCI has violated and failed to comply with the RCRA 7003 Order.

22. Violation of the RCRA 7003 Order has occurred continuously since the date required for compliance (February 28, 2003) set forth in the RCRA 7003 Order and is continuing.

23. WCI's violation and failure to comply with the RCRA 7003 Order has occurred even though EPA has notified WCI that it is not in compliance with the RCRA 7003 Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Chicago, Illinois, on the _____ day of_____, 2005.

_____

Michael Beedle
Environmental Scientist
Compliance Section #2
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5
Chicago, Illinois

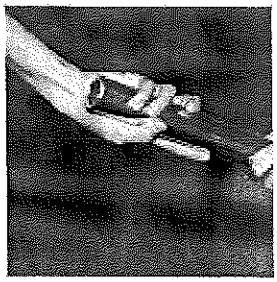
ATTACHMENT B

January 21, 2003 Unilateral Administrative Order

GAD Policy and Guidance Doc

Approval of Project Periods and Incurred Costs for Interagency Agreements

AUG 10, 1988



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

AUG 10, 1988

MEMORANDUM

SUBJECT: Approval of Project Periods and Incurred Costs for Interagency Agreeme

FROM: David P. Ryan /s/
Comptroller

Harvey G. Pippen, Jr. /s/, Director
Grants Administration Division

TO: Addressees

BACKGROUND

Environmental Protection Agency (EPA) Action Officials are frequently asked to exec agreements (IAGS) after the project period has-begun. This often results in a misunc start date of the project. It also causes confusion about the allowable costs which ca between the start of the defined project period and date of execution of the IAG. For intended to begin the first day of the fiscal year may not be prepared by the program allowances are issued several weeks into the fiscal year. Yet it may be essential, for for activity to begin (or continue) on the first day of the fiscal year.

For both direct Federal procurement actions and EPA assistance awards, procedure regulation to deal with pre-award costs issues. However, no such regulatory framew interagency agreements. The purpose of this memorandum is to establish policy for project periods (and related costs) beginning before execution of the agreements.

ACTION

Generally, work should not be initiated under an interagency agreement between EP

agency Until a formal agreement has been executed by both parties. However, valid present for exceptions to this policy, including emergency responses or unplanned d availability. Project periods for interagency agreements beginning before the date of may be approved by the EPA Action Official. This decision is to be based on justifica program Decision Official for costs incurred within the appropriation period in current to provide such justification could jeopardize reimbursement for costs incurred prior t IAG.

Chapter 51 of the Assistance Administration Manual requires that a decision memor each interagency agreement submitted to an EPA Action Official for execution. If it is approve an IAG project period which has already begun, the following information sh incorporated in the decision memorandum:

1. Identification and discussion of IAG project activities conducted prior to execution

2. Explanation of why it was necessary to initiate activities prior to the execution of th

3. A statement that an EPA representative authorized the IAG activities to be conduc execution.

Following evaluation and acceptance of the justification, the Action Official may exec behalf of EPA with project period dates prior to the date of execution.

Questions regarding this memorandum should be directed to: W. Scott McMoran, Ch Information and Analysis Branch, Grants Administration Division (3903F), 202-260-4

Subject: Approval of Project Periods and Incurred Costs for Interagency Agreements
Category: Interagency Agreement Documents
Signer: David P. Ryan
Signed Date:
Document ID:

Catherine Garypie/R5/USEPA/US
09/23/2004 04:42 PM

To
Subject Fw: IAG question

FYI. CG.
----- Forwarded by Catherine Garypie/R5/USEPA/US on 09/23/2004 04:41 PM -----

Lucille Liem /DC/USEPA/US
09/23/2004 04:35 PM

To Padmavati Bending/R5/USEPA/US@EPA
cc Catherine Garypie/R5/USEPA/US@EPA
Subject Re: IAG question

I don't think this is a problem. You're right. By including the services in the approved workplan it should be fine.
-Lucille
Padmavati Bending/R5/USEPA/US

Padmavati Bending/R5/USEPA/US
09/23/2004 05:13 PM

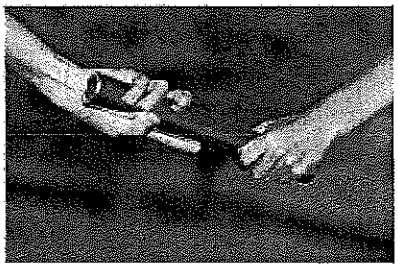
To Lucille Liem/DC/USEPA/US@EPA
cc Catherine Garypie/R5/USEPA/US@EPA
Subject IAG question

Lucille - I have a client who is working on getting an IAG with U.S. Fish and Wildlife Service thru signoff. The services to be provided are related to a RCRA enforcement action and we expect USFWS folks to testify at our trial. Unfortunately, some services were provided to us before the client formalized the arrangement with an IAG. Is there a prohibition on using an IAG to fund services that were provided before the project/budget period starts? As with assistance agreements, can't we authorize the reimbursement of USFWS for those services by having it be in the approved workplan for the IAG? I looked in the Project Officer manual on IAGs and it doesn't get into this detail. There is some urgency to getting this funded by the end of the fiscal year (I assume the money goes away) so a quick response from you would be greatly appreciated! THANKS! - pgb

Padmavati G. Bending
Associate Regional Counsel
U.S. EPA, Region 5, ORC
(312) 353-8917

GAD Policy Documents

Interagency Agreement Funding Package Guidance



GPI-02-01

MEMORANDUM

SUBJECT: Interagency Agreement Funding Package Guidance

FROM: Martha Monell, Director
Office of Grants and Debarment

TO: Headquarters Senior Resource Officials
Regional Senior Resource Officials
EPA Project Officers

I am issuing revised guidance based on a Memorandum: Interagency Agreement Decision Memorandum Guidance Gary Katz signed September 30, 1996. This revised guidance will assist EPA program offices and laboratories in developing and documenting Interagency Agreements (IAG). In particular, it outlines information funds-in and funds-out IAG funding packages should include. If decision memoranda are complete, program offices' rework and Grants Administration Division follow-up will be reduced. This guidance clarifies existing policy, implements the Federal Acquisition Streamlining Act, and responds to IAG management weaknesses identified by the Inspector General. All decision memoranda submitted after January 31, 2002, must reflect this guidance.

This guidance will be posted on the GAD intranet site.

In the near future, we will be canceling the Interagency Agreement Compendium. Before we do so, however, we will review it to determine whether it includes provisions that are still relevant or necessary. If so, those provisions will be included as an addendum to this guidance or otherwise maintained.

If you have questions about the guidance, please call Sandra L. Williams on 202-564-5369.

Attachments

cc: Official Reading
S.McMoran M.Lee
S.Pressman R.Feldman
Grants Customer Relations Council

IAG GUIDANCE ON USE OF INTERAGENCY AGREEMENTS

This document establishes guidance for developing and documenting decisions to award EPA Interagency Agreements (IAG).

I. DECIDING TO USE AN IAG.

An approving office must document the reasons why it wants to use an IAG and include the reasons in the decision memorandum. In general, the decision should be based on a finding that the IAG will be an efficient approach, considering both time and cost. Other reasons should also be described. If the cost is unreasonable, considering efficiency, compared to accomplishing the work through other means, use of an IAG is not appropriate. In particular, provide the following in the decision memorandum:

A. A discussion of the alternatives to an IAG the office considered and why the IAG mechanism was selected.

B. A statement that the cost of the proposed work is reasonable, considering efficiency, based on an independent estimate of cost or other appropriate cost information developed by EPA. This determination must be documented in the program office file and summarized in the decision memorandum.

C. An explanation of why the other agency was selected or why the other agency selected EPA. (If an office experiences any performance problems by the other agency, those problems should be raised, in writing, to the appropriate grants management office.)

II. DOCUMENTING PROJECT OBJECTIVES AND AUTHORITY.

The decision memorandum should describe the proposed project's objectives and explain how the IAG will accomplish them.

A. The objectives should be consistent with the statutory authority for the agreement (see Attachment 1). If the funded work is part of a larger project, the description of the project should be clear as to which parts of the work will be funded by the IAG and which will not.

B. The statutory authority thought to be the basis for the transfer of funds under the IAG should be stated. Generally, the authority will be the Economy Act, EPA's "cooperation" authorities, or one of several special or international statutory authorities (see Attachment 1).

III. ECONOMY ACT IAGS.

When the purpose of an IAG is to obtain goods and services for EPA or for EPA to provide goods and services to another agency, the appropriate authority is the Economy Act, unless another specific statutory authority better fits the circumstances, such as the Information Technology Management Reform Act (ITMRA) for information technology services. EPA must not award or accept funds under Economy Act IAGs to obtain or provide services under a grant or a cooperative agreement. Also, EPA cannot use an Economy Act IAG to acquire goods or services

from another agency or its contractor if EPA does not have the authority to do the work in the first instance.

The requesting agency is required to pay all servicing agency costs under an Economy Act IAG, i.e., the amount of the IAG equals the total estimated cost of the goods and services including all direct and indirect costs. Indirect costs may be included, however, only if the servicing agency has an indirect cost rate. For funds-in IAGs, EPA expects, at this time, to have an indirect cost rate applicable to Oil Spills Response reimbursement IAGs starting in FY 2002. An indirect rate applicable to IAGs initiated in other EPA programs will be implemented after EPA evaluates the Oil Spills IAG experience. For funds out IAGs, see Comptroller Policy Announcement No. 91-04, Interagency Agreements - - Certification of Indirect Cost Rates, for the relevant IAG indirect cost term and condition.

For Economy Act IAGs, the decision memorandum must include:

A.

1. An explanation of how the IAG is in the best interest of the government.

2. An explanation of why the requesting agency cannot obtain the services as conveniently or cheaply by contracting directly with a commercial enterprise. It is especially important to perform and document in the project officer's file the cost evaluation under section I.B. of this memorandum when the authority for an IAG is the Economy Act.

B. In addition, if EPA is obtaining goods or services through another agency's contract, a statement that one of the following criteria will be met--

1. The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar goods or services. To meet this criterion, you must provide assurance that the IAG's statement of work for goods or services falls within the scope of work of the contract; or

2. The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

3. The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

Describe how the proposed IAG meets the appropriate criterion. Also, include, if known, the contractor's name,

the award and end dates of the contract, and the contract number. Based on this information, Grants Administration staff will prepare a "Determination and Finding" for these IAGs and submit it to the Director, Office of Acquisition Management. The Director or designee must sign the Determination and Finding before the award official can sign the IAG. The Senior Resource Official or designee must sign the Determination and Finding for Regional IAGs.

C. If funds under an Economy Act IAG will be used for travel, the decision memorandum must state that the purpose of the IAG and the associated travel is to carry out a project in support of the requesting agency's mission and not to augment the servicing agency's travel ceiling.

IV. COOPERATION AUTHORITY IAGS.

When the purpose of an IAG is to carry out a joint project with another agency or agencies, the appropriate authority is one of EPA's cooperation authorities (See Attachment 1).

A. Cooperation authorities should be cited as the basis for IAGs if the following statements are generally true--

1. The project is directly related to the needs and substantive interests of all involved agencies. The statement of work, project description, or decision memorandum should explain all agencies' substantive interest in the work.

2. Both or several agencies are committing resources to the project, whether in the form of salaries, equipment, travel, contract services, grant funds, indirect costs or other costs.

3. The work is consistent with the language of one or more of EPA's cooperation statutory authorities.

4. If some or all of the funds will be used for grants or cooperative agreements, provided both the following conditions exist:

a. The relationship between the recipient and the involved agencies is one of assistance. The decision memorandum must state that the principle purpose of the work is to support or stimulate the recipient to accomplish a public purpose and not for the direct use or benefit of the Federal government.

b. Both or all agencies must have adequate statutory authority to award the grant or cooperative agreement. The decision memorandum should include citations to the relevant statutes and an assurance that the grant or cooperative agreement falls within the cited EPA authority.

B. If funds under a cooperation authority IAG will be used for travel, the decision memorandum must state that the purpose of the IAG and the associated travel is to carry out the joint project and is not for the purpose of exceeding a travel ceiling or similar limitation.

V. OTHER AUTHORITIES.

Many other agencies also have alternative IAG authorities. Generally, this does not present a problem and EPA can accept the other agency's citation as authority for the agreement (e.g., Section 5112(e) of the Information Technology Management Reform Act of 1996, with respect to IAGs for information technology services with GSA). If you have any questions about another agency's authority, you should contact GAD, the Finance and Operations Law Office (FOLO) in the Office of General Counsel (OGC), or the Office of Regional Counsel as soon as you are aware of the circumstances.

VI. INTERNATIONAL AUTHORITIES.

It is often difficult to determine the appropriate authority for an IAG involving international work. All IAGs involving international work must be approved by the Office of International Activities (OIA) and the Office of General Counsel (OGC). (If necessary, OIA will obtain necessary clearance from the Department of State or the Agency for International Development for agreements with foreign governments and international organizations.) Here are some guidelines that will assist in developing international IAGs.

A. Authority for IAGs involving international work with other federal agencies is usually either the Economy Act or EPA's cooperation authorities, supplemented by Section 102(2)(F) of the National Environmental Policy Act.

B. For funds-in interagency agreements with the Agency for International Development, the authority may be Section 632(a) or 632(b) of the Foreign Assistance Act (22 U.S.C. 2392). There are significant differences between the two. To assure you are citing the correct authority, contact OGC.

C. Funds-in agreements with the Department of State are often authorized by Section 8 of the DOS Basic Authorities Act (22 U.S.C. 2675).

D. Authority for funds-in agreements with most foreign governments or authorized international organizations

(not technically IAGs, but using the IAG form) is Section 607 of the Foreign Assistance Act (22 U.S.C. 2357). In the case of Taiwan, however, agreements usually cite the Taiwan Relations Act (22 U.S.C. 3308).

For assistance in determining the appropriate authority for international agreements, contact FOLO, OGC.

VII. FUND AVAILABILITY.

Funds are not obligated until both agencies sign the IAG. After both parties have signed, the IAG must be sent to the Cincinnati Financial Management Center within 3 working days for timely obligation in the Agency's Integrated Financial Management System.

For funds-in IAGs, provide in the decision memorandum the other agency's Treasury Symbol.

Funds under an Economy Act IAG are available in the same manner as if the requesting agency had retained them. For example, if two year funds are transferred to an agency for payment of salaries or travel and the like, they are available to fund salary and travel expenses that are incurred during their two year period of availability. If the servicing agency properly obligates the funds on a contract within the period of their availability, they are available until the contract ends, the IAG ends, or the work is complete, whichever is first. However, under the Economy Act, the ordering or requesting agency must deobligate remaining funds from the IAG at the end of their period of availability, to the extent the servicing agency has not completed performance or incurred valid obligations before the end of the funds' period of availability.

For IAGs executed under any other authority other than the Economy Act, if funds are properly obligated on the IAG, a performing agency may in turn obligate these funds until the IAG ends or the work is complete , whichever is first.

For details concerning fund availability, please see Scott McMoran's May 11, 1994 memo, Availability of IAG Funds, the guidance document on the GAD intranet site.

VIII. PAYMENTS.

If IAG payments will be made in advance, the decision memorandum should include a justification for use of the advance payment method. Generally, advance payments are authorized by statute such as the Economy Act. Under the Economy Act advances are credited to a "special working fund" established by Treasury.

IX. HUMAN SUBJECTS.

If an IAG involves human subjects, you must obtain and the funding package must document approval from EPA's Human Subjects Research Review Official, currently the Director, National Center for Environmental Research in the Office of Research and Development.

X. PREAWARD COSTS.

Except as noted below, EPA staff may not authorize work under IAGs to begin until the IAG is awarded. There are, however, cases where such authorizations are necessary. The circumstances must be documented in the decision memorandum. In such cases, review the August 10, 1988, memorandum from Dave Ryan, Comptroller and Harvey Pippen, Director of the Grants Administration Division on GAD's intranet site.

XI. OTHER INFORMATION AND GUIDANCE.

Transmittal notes may be used to transmit amendments to agreements provided there have been no significant changes from the original agreement. In general, significant changes in the scope of an IAG should be supported by a complete decision memorandum consistent with this guidance. The project officer may request no cost amendments, including time extensions, in an E-Mail or memorandum to the grants specialist.

Each complete funding package must include an EPA IAG Form (EPA Form 1610-1). If EPA is transferring funds to another agency the funding package must also include a commitment notice.

Additional guidance, Office of General Counsel opinions, and related IAG information may be found on the Grants Administration Division intranet site.

If you have questions on this guidance, please call Sandra L. Williams in Grants Operations Branch B on (202) 564-5369 or contact her by E-Mail at Williams.Sandral@epa.gov.

ATTACHMENT

ATTACHMENT 1

EPA'S INTERAGENCY AGREEMENT AUTHORITIES

ECONOMY ACT

The Economy Act should be cited for the authority under which an IAG is to be awarded only if all the following statements are true--

- The IAG involves one agency "providing goods or services" to another agency. That is, the servicing agency does not need the goods and services and would not have bought the goods or done the work but for the request of another agency.

- The amount of the IAG equals the total estimated cost of the goods and services including all direct and indirect costs. Indirect costs may be included only if the servicing agency has an indirect cost rate. At this time, EPA expects to have an indirect cost rate applicable to Oil Spills Response reimbursement IAGs starting in FY 2002. An indirect rate

applicable to IAGs initiated in other programs will be implemented after an evaluation of the Oil Spills implementation is performed. For disbursement IAGs, see Comptroller Policy Announcement No. 91-04, Interagency Agreements - - Certification of Indirect Cost Rates, for proper IAG language providing greater assurance of cost allocability.

- None of the funds will be used for a grant or cooperative agreement.
- The servicing agency will be able to perform the service or obligate the funds within the period of fund availability. If the servicing agency will be using a contractor to carry out the work, it is necessary that the funds be obligated by the servicing agency within their period of availability.
- The decision official has determined that the requested services cannot be provided as conveniently or cheaply by contracting with a commercial enterprise.
- If EPA is obtaining goods or services through another agency's contract, one of the criteria below must be met--
    - The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency; or
    - The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within EPA; or
    - The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

COOPERATION AUTHORITIES

One or more of EPA's cooperation authorities listed below, depending on the statute involved, should be cited for authority when the project is a joint effort of the involved agencies and EPA's proposed activity is authorized by an EPA statute. Some agencies may not be familiar with alternatives to the Economy Act and may be uncomfortable relying on EPA's cooperation authorities for an interagency transaction. EPA's Office of General Counsel believes, and a Comptroller General opinion supports the fact, that EPA's cooperation authorities are sufficient authority for both agencies to enter into a funds transfer agreement. OGC should be contacted if another agency raises the issue. This is especially important if the project conflicts

with any of the statutory restrictions of the Economy Act explained above.

Cooperation authorities should be cited as the basis for IAGs if the following statements are generally true--

- The project is directly related to the needs and substantive interests of both agencies. The statement of work, project description, or decision memorandum should explain all agencies' substantive interest in the work.

- Both or several agencies are committing resources to the project, whether in the form of salaries, equipment, travel, contract services, or grant funds.

- The work is consistent with the language of one or more of EPA's cooperation authorities.

- If some or all of the funds will be used for grants or cooperative agreements, provided both the following conditions exist.

1. The relationship between the recipient and the involved agencies is one of assistance. The funding package must include a statement that the principle purpose of the work is to support or stimulate the recipient to accomplish a public purpose and not for the direct use and benefit of the Federal government.

2. All agencies must have adequate authority to award the grant or cooperative agreement. The decision memorandum should include the assurance that this is the case.

3. EPA cooperation and other agency authorities we are aware of at this time include--

- Clean Water Act, Section 104(b)(2).
- Clean Water Act, Section 117.
- Clean Water Act, Section 501(b) (funds out only).
- Clean Water Act, Section 518(c).
- Clean Air Act, Section 103(b)(2).
- Clean Air Act, Section 102(b).
- Solid Waste Disposal Act, Section 8001.
- Solid Waste Disposal Act, Section 6003.
- Toxic Substance Control Act, Section 10.
- Toxic Substance Control Act, Section 26 (funds out only).
- Federal Insecticide, Fungicide, and Rodenticide Act, Section

17(d).

- Federal Insecticide, Fungicide, and Rodenticide Act, Section 20.
- Federal Insecticide, Fungicide, and Rodenticide Act, Section 22.
- Comprehensive Environmental Response, Compensation and Liability Act, Section 105(a)(4) and Section 115 read together with Executive Order 12580.
- Marine Protection, Research, and Sanctuaries Act, Section 203.
- The Safe Drinking Water Act, Section 1412(b)(12)(A) (Arsenic).
- The Safe Drinking Water Act, Section 1450(b), (funds out for services).
- The Safe Drinking Water, Section 1442.
- The National Environmental Education Act, Section 4(b)(3) and 4(b)(11).
- National Community Service Trust Act, Section 121(b) .

OTHER AUTHORITIES

Many other agencies also have alternative IAG authorities. This does not generally present a problem and EPA can accept the other agency's citation as authority for the agreement (e.g., Section 5112(e) of the Information Technology Management Reform Act of 1996, with respect to IAGs for computer services with GSA). In such situations, you should contact OGC or GAD as soon as you are aware of such circumstances (You should also contact OGC if the other agency has cited the Economy Act and any restrictions of that Act identified above pose a problem).

INTERNATIONAL AUTHORITIES

Authority for international IAGs with other federal agencies is usually either the Economy Act or EPA's cooperation authorities, supplemented by Section 102(2)(F) of the National Environmental Policy Act. In the case of funds-in interagency agreements with the Agency for International Development, the authority may be Section 632(a) or 632(b)of the Foreign Assistance Act (22 U.S.C. 2392). There are significant differences between the two--contact OGC. Funds-in agreements with the Department of State are often authorized by Section 8 of the DOS Basic Authorities Act (22 U.S.C. 2675). Authority for funds-in agreements with most foreign governments or authorized international organizations (not technically IAGs, but using the IAG form) is Section 607 of the Foreign

Assistance Act (22 U.S.C. 2357). In the case of Taiwan, however, agreements usually cite the Taiwan Relations Act (22 U.S.C. 3308). For assistance in determining the appropriate authority for international agreements, contact OGC.

Subject: Interagency Agreement Funding Package Guidance, GPI-02-01
Category: Grants Policy Issuance, Interagency Agreement Documents
Signer: Martha Monell
Signed Date: 01/16/2002
Document ID: GPI-02-01

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

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

UNITED STATES OF AMERICA,	)	CASE NO. 4:98-CV-1082
Plaintiff,	)	
v.	)	Judge James S. Gwin
WCI STEEL, INC.,	)	
Defendant.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this action, the Plaintiff United States alleges that three wastewater ponds at Defendant WCI Steel's Warren, Ohio steelmaking facility (Ponds 5, 6, and 6A) are hazardous waste units, and as such are subject to regulation under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.* As grounds for this allegation, the United States claims that Ponds 5, 6, and 6A once contained wastewater having a pH[1] of 2.0 standard units ("s.u.") or lower, and thus had a

[1] The measure of pH provides an estimate of the acidic agent (hydrogen ion) and the basic agent (hydroxide ion).

corrosive characteristic.[2]

Plaintiff United States filed this action on May 11, 1998. To establish WCI's use of corrosive substances, the United States principally relies upon sampling it did in May and June 1993 and upon data supplied by WCI in early 1994.

The parties having waived a jury, this matter went to trial before this Court. After observing the demeanor of the witnesses and considering the parties' evidence and arguments, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. History of WCI Steel

The Defendant WCI Steel, Inc. ("WCI") is an Ohio corporation with its principal place of business at 1040 Pine Avenue, Warren, Ohio.[3] At this facility, Defendant WCI operates the last remaining integrated steel mill in the Mahoning River Valley.

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[2] The United States' complaint alleges, in part:

24. One or more of the surface impoundments at the facility, including Ponds 5, 6 and 6A, have contained wastewaters which exhibited a pH of 2 or less during the time period relevant to this Complaint.

25. Wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A have exhibited the characteristic of corrosivity and are a hazardous waste within the meaning of 40 C.F.R. § 261.20 and 261.22.

26. Ponds 5, 6 and 6A at the facility are hazardous waste management units as defined by 40 C.F.R. § 260.10, and O.A.C. § 3747-50-10(A)(49) and are subject to regulation as hazardous waste management units subject to the provisions of RCRA and the O.A.C.

Complaint, ¶¶ 24-26.

[3] All of the United States' claims relate to WCI's Warren facility.

WCI Warren facility manufactures hot rolled strip steel, pickled and oiled hot rolled steel strip, cold rolled steel, and coated flat steel products. Employing approximately 2,200 employees, WCI is the largest steel employer in the Mahoning Valley.

Steel production began at the Warren facility in 1912. Beginning in the 1930s, Republic Steel Corporation owned the facility. In 1984, Republic Steel Corporation merged with J&L Steel Corporation to form LTV Steel Company. In 1988, LTV Steel Company went into bankruptcy. With little potential to operate profitably, the bankruptcy trustee decided to sell the Warren facility to Defendant WCI for an insignificant price compared with the facility's physical assets.[#]

In August 1988, Defendant WCI purchased the Warren facility during a time of major decline in United States integrated steelmaking production.[#] By saving the facility from shutdown, WCI greatly benefitted its workers and the Warren, Ohio, community.

After purchasing the Warren facility, Defendant WCI made major investments in production equipment and facilities. WCI spent more than $300 million on capital improvements. These capital expenditures also reduced the amounts of pollution.

[#] On August 31, 1988, Warren Consolidated Industries, Inc., acquired the facility from LTV Steel Company. In December 1991, Warren Consolidated Industries, Inc. changed its corporate name to WCI Steel, Inc.

[#] Product had declined by nearly 50% in a decade. The year WCI purchased the Warren facility marked the seventh consecutive year of loss for the steel industry.

B. Wastewater System

At its Warren Ohio, facility, WCI has a system for the collection and treatment of wastewater generated in its steel production. The WCI steel facility first collects wastewater from manufacturing areas. This wastewater is then distributed to Pond 5 through a system of underground sewers, pumps, and pipes.

After settling and oil separation processes take place in Pond 5, WCI conveys the wastewater to Pond 6. From Pond 6, WCI pumps the wastewater across the Mahoning River to a central treatment plant.

In 1986, LTV installed Pond 6A to intercept and collect seepage from Pond 6 before it reached the Mahoning River. The seepage collected in Pond 6A is pumped back into Pond 6.

WCI primarily intends the pond system to equalize flow to the central treatment plant, to give storm water surge protection, and to allow the skimming of a substantial portion of oil from the wastewater. Taken together, the areal extent of the Ponds is slightly more than one acre.

This wastewater treatment system was constructed before WCI purchased the Warren facility in 1988. Ponds 5 and 6 have been in use at the Defendant's facility since before 1950. Pond 6A was added in 1986. Ponds 5, 6, and 6A have been in continuous use to the current date.

Ponds 5, 6, and 6A are each unlined earthen surface impoundments.[5] At

[5] 40 C.F.R. § 260.10, defines a "surface impoundment" as:

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relevant times, these surface impoundments were not equipped with impermeable liners.

Spent pickle liquor is listed by U.S. EPA as a corrosive and toxic hazardous waste under RCRA regulations at 40 C.F.R. § 261.32. However, if the acid was neutralized by the addition of lime, then the pickle liquor would be exempt from RCRA's hazardous waste regulations under the iron and steel industry exemption in 40 C.F.R. § 261.3(c)(2)(ii)(A).[7]

By its nature, the steel industry often uses corrosive materials. WCI uses spent hydrochloric pickling acids, acidic rinse waters, and acidic fume scrubber wastewaters. Occasionally, WCI would inadvertently release quantities of these substances. When such spills occurred, they more often occurred near the picklers than anywhere else. The picklers provided secondary containment for the acid tubs, designed to retain acid leaks or spills. WCI experienced leaks from the acid tubs on an infrequent basis. When such leaks occurred, WCI sought to isolate and neutralize the spilled acid, or

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a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes of wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

[7] 40 CFR § 261.3(c)(2)(ii) provides, in part:

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

"pickle liquor."

Before 1993, WCI used a procedure of manually adding lime to the wastewaters when the wastewater pH fell to between 3 and 4 s.u. as measured by the influent probe at the central treatment plant. Under this procedure, employees would add a certain number of 50-pound bags of lime to the wastewater. As to this decision, Environmental Engineer Richard Gradishar usually decided how many bags to add based upon the pH of the wastewater. However, WCI did not conduct any testing to learn whether the lime succeeded in neutralizing the acid.

In the early 1990s, WCI considered replacing Ponds 5, 6, and 6A with a second-hand four million gallon above-ground tank. WCI obtained a permit from the EPA to install the tank. After obtaining this permit, WCI discovered that the tank was no longer in usable condition. Defendant WCI therefore did not complete the project.

C. History of Environmental Review

With this action, the Plaintiff United States alleges that WCI was subject to RCRA because it dealt with hazardous substances without a permit. Defendant WCI does not have a permit issued pursuant to 42 U.S.C. §§ 6925 and 6926 to manage, treat, or store hazardous wastes in Ponds 5, 6, and 6A. Nor does WCI qualify for interim status under § 6925, which would temporarily exempt WCI from the permit requirement.[8]

[8] In order to qualify for such interim status, a facility had to demonstrate that: 1) it was in existence on November 19, 1980; 2) it had complied with Section 3010(a) of RCRA concerning notification

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Gwin, J.

Shortly after purchasing the WCI facility in 1988, Defendant WCI applied for a National Pollutant Discharge Elimination System Permit. After approving this application, the Ohio EPA allowed WCI to use Ponds 5, 6, and 6A as sedimentation units under the Clean Water Act. However, the permit did not authorize WCI to treat, store, or dispose of hazardous wastes in Ponds 5, 6, or 6A.

Defendant WCI next applied for and received an EPA Part B permit, authorizing the storage of spent pickle liquor processed through tanks. The EPA Part B permit required WCI to manage hazardous waste only according to the permit's provisions. The Part B permit forbade any management of hazardous waste not authorized by the permit or otherwise exempted by law. In particular, the Part B permit did not authorize WCI to treat, store or dispose of spent pickle liquor or corrosive characteristic wastes in Ponds 5, 6, or 6A.

As part of its Part B permit, Defendant WCI installed groundwater monitoring wells near Ponds 5, 6, and 6A in April 1998. The results from these wells do not indicate that the Ponds adversely affect the groundwater.

Within Ohio, the Ohio EPA administers the RCRA hazardous waste management program as the U.S. EPA's delegee under authorization by the U.S. EPA.[9] As the U.S. EPA's authorized delegee, the Ohio EPA had authority to inspect

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of hazardous waste activity; and 3) it had made an application for a permit. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). Here, WCI neither provided notice of its hazardous waste activity nor made an application for a permit.

[9] On June 30, 1989, the Ohio EPA was granted final authorization to administer and enforce the RCRA program as the U.S. EPA's authorized delegee pursuant to Section 3006 of RCRA.

WCI 's facility and to decide whether WCI met the standards of RCRA and analogous Ohio law.

Since 1981, the Ohio EPA has conducted at least twelve hazardous waste compliance inspections of the facility. In conducting these inspections, the Ohio EPA had access to all WCI facilities. At the time of the inspections, WCI told the Ohio EPA that these surface impoundments were used as solid waste management units for waste waters from the cold rolling, coated products, and pickling operations.[10] After conducting these reviews, the Ohio EPA has never alleged or determined that the Ponds were hazardous waste units under RCRA.

II. Sampling

A. Consultant Sampling

As indicated, the Plaintiff United States alleges that WCI handled corrosive wastes that were hazardous. Because it has scant sampling data of its own, the United States relies upon studies undertaken by others at various times.

Defendant WCI employed engineers who took samples on at least two occasions. On June 20, 1989, Duncan, Lagnese & Associates conducted hourly sampling of the wastewater in the surface impoundments.[11] Of twenty-four grab samples collected by these engineers, twenty-one had a pH value of 2.0 s.u. or below. These samples were

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[10] Testimony of Ohio EPA employee Kristen Switzer at 27-28.

[11] One sample was gathered every hour for twenty-four hours.

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not taken as part of a sampling plan of the whole ponds.

In 1990, WCI's contractor, Remcor, Inc., sampled the sludges in Ponds 5 and 6 following a formal sampling plan. After conducting this sampling, Remcor found the sludges were not corrosive or hazardous.

In October 1993, engineers Killam Associates conducted a study for WCI. While doing this study, Killam collected three grab samples from the bosh box that channels wastewater to the surface impoundments. The three samples collected by Killam had pH values of 1.3, 1.7 and 2.0 s.u., respectively. After completing this sampling of the bosh box, Killam Associates gave the opinion that the pH of the wastewater in the surface impoundments was between 1.9 and 2.0 s.u. These Killam Associates samples were not taken as part of a sampling plan that sought to find the average properties of the whole ponds.

B. 1993 U.S. EPA Multimedia Inspection

Beginning on May 12, 1993, the U.S. EPA conducted a "multimedia" inspection of WCI's facility under the Clean Water Act, the Clean Air Act, RCRA, and the Toxic Substances Control Act. During this inspection, the U.S. EPA collected a grab sample of wastewater being pumped from Pond 6A to Pond 6. U.S. EPA took the sample from the flow of the wastewater as it entered Pond 6. The field measurements of this sample revealed a pH of 1.81 s.u., below the regulatory limit of 2.0 s.u.

On June 15, 1993, the U.S. EPA inspectors returned and took another grab

sample of water from Pond 6A. The sample's pH was above 2.0 s.u.

During this June 1998 inspection, the U.S. EPA also collected a sample of wastewater from a process that uses acid pickle liquor to treat steel. The U.S. EPA field measurements of this sample showed a pH of 1.65 s.u. The U.S. EPA also collected a grab sample from wastewater flowing from Pond 6 at the point where it commingles with wastewater from the Basic Oxygen Furnace. The field measurements of the sample showed a pH of 1.67 s.u.

C. Central Treatment Plant Aeration Influent Probe

WCI's wastewaters are pumped from Pond 6 to an inlet box outside the central treatment plant. In support of its claim that WCI's wastewater was corrosive, the United States principally relies upon WCI's own pH readings taken at the influent probe outside the central treatment plant.

While EPA regulations did not require WCI to monitor the pH at the central treatment plant, it nonetheless did so. To treat its wastewater, WCI has measured the pH of the wastewater as it flows through the central treatment plant. At this point, the influent box receives wastewater from Pond 6 and other process sources.

To make these measurements, WCI uses several pH probes that continuously monitor the pH of the wastewater as it flows through the central treatment plant. WCI put one inflow pH probe at the aeration influent box.

The pH meter at the aeration influent box measures the pH of the wastewater

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as it flows from Pond 6 into the central treatment plant. WCI submerges this probe in the flow of the wastewater as it enters the aeration influent box.[19]

At least once a week, WCI Combustion Department personnel calibrate the pH meter used to measure the pH of Pond 6 influent wastewater. Defendant WCI argues that the method used to calibrate this probe resulted in inaccurate.

EPA guidelines recommend a two-standard calibration technique to calibrate pH meters. To calibrate the probe, the Combustion Department personnel use two buffer solutions with specified pH. Typically, they use buffer solutions with pH of 2.0 and 4.0. In contrast, pH calibration is better done using a neutral buffer solution of 7.0 with a second solution with pH of either 4.0 or 10.0. It is unlikely that the maintenance crew could achieve completely accurate probe calibrations using the buffer solutions with pH of 2.0 and 4.0.

Amounts of oil and grease were usually in the wastewater influent as it enters the central treatment plant. The oil and grease can quickly coat a pH probe, rendering its readings less accurate. Oil and grease can foul a probe if they are present in sufficient concentration.

Because of the presence of oil and grease in the wastewater flowing into the central treatment plant, plant operators cleaned the influent pH probe by removing the

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[19] The pH meter used by WCI to measure the pH of Pond 6 influent wastewater is a glass membrane electrode selective for hydrogen ion in combination with a pH meter. The pH meter used by WCI to measure Pond 6 influent pH is equipped with a microprocessor that handles the mathematics of the measurement. The pH meter used by WCI to measure the pH of Pond 6 influent wastewater displays the numerical pH value.

submerged probe from the flow of the wastewater and dipping the probe in acid. The operators cleaned the influent pH probe in an acid solution once per shift, or three times per day. Though a brief exposure to an acid solution can effectively clean mineral deposits from a pH electrode, it is not an effective cleaning agent for oil and grease deposits. These problems make the influent probe readings less accurate.

Defendant WCI recorded the readings from the pH meters at the aeration influent box every two hours from September 1, 1988 to February 22, 1995, and every hour from February 23, 1995 to July 31, 1998.

Between September 1, 1988 and July 31, 1998, WCI's central treatment plant operators recorded more than 11,000 pH values of 2.0 s.u. or less for Pond 6 wastewater entering the central treatment plant. Such readings occurred on 1,361 different days. At least one reading of 1.7 s.u. or less occurred on 577 different days. Also, the central treatment plant operators recorded at least 31 pH measurements of 12.5 s.u. or above for Pond 6 wastewater entering the central treatment plant. Taken as a whole, these measurements did not significantly vary from 1989 to December 1993.

In December 1993, WCI installed an automated lime slurry injection system at the No. 9 Lift Station. For a period, this lime injection system reduced, but did not completely stop pH readings of 2.0 s.u. or less.[13] The system has now eliminated

[13] After installation of the lime injection system in December 1993, central treatment plant operators recorded an additional 858 measurements on 77 separate days of 2.0 s.u. or less for the wastewater in Pond 6 over the next two years.

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measurements with a pH of 2.0 s.u. or less at the influent probe to the central treatment plant.

D. Grab Samples

Beyond measurements made with the influent probe, the central treatment plant operators also recorded grab sample pH measurements for Pond 6 wastewater as it entered the aeration influent box at the central treatment plant. WCI made 197 pH measurements via such grab samples. Operators took these samples by placing a laboratory beaker in the flow of the wastewater as it enters the aeration influent box. The central treatment plant operators then measure the pH of the grab samples with a bench meter in the central treatment plant office. The taking of grab samples is a method for checking the accuracy of in-line pH probes.

These grab samples showed pH readings of 2.0 s.u. or less on many occasions.

E. Sludge Sampling

Several samples of sludge from Pond 6 were also tested for pH values. In October 1985, an LTV contractor tested 30 samples of sludge from Ponds 5 and 6 and found an average pH of the sludges to be 6.3, with all measurements falling within the range of 5.5 to 7.5.

In 1990, a WCI contractor sampled the sludges in Ponds 5 and 6 and found they were nonhazardous. And in 1996 and 1998, sampling performed by a WCI consultant

again found the pH of the Ponds' sludges ranged between 5.4 s.u. and 10.9 s.u.

Thus, there is no evidence that any sludge from Ponds 5 or 6 was ever hazardous. Only wastewater measurements indicate potential corrosiveness.

Having set forth relevant findings of fact, the Court now offers its conclusions of law.

III. CONCLUSIONS OF LAW

A. Overview of RCRA

The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA") was enacted in 1976 to regulate the treatment, storage, transportation, and disposal of hazardous wastes. RCRA seeks to ensure that such wastes are "managed in a manner which protects human health and the environment." 42 U.S.C. § 6902(a)(4) and (b). Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. §§ 6921-6939.

42 U.S.C. § 6925(a) prohibits the operation of any facility that treats, stores, or disposes of hazardous wastes, except in accordance with a permit. *United States v. Heuer*, 4 F.3d 723, 730 (9th Cir. 1993) ("It is fundamental that an entity which performs a hazardous waste activity for which a permit is required under RCRA may not legally perform that activity unless it has a permit for the relevant activity."). Moreover, a party receiving a permit to store or dispose of hazardous waste must thereafter comply with the requirements of the permits.

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If certain requirements are met, RCRA allows states to operate hazardous waste regulatory programs in lieu of the federal program. 42 U.S.C. § 6926(b). Even where a state is given authority to operate such a regulatory program, the United States retains the right to enforce the state authorized programs. 42 U.S.C. § 6928(a)(2). On June 30, 1989, the U.S. EPA granted final authorization to the State of Ohio to administer and enforce the State's hazardous waste program in the State of Ohio. 42 U.S.C. § 6926(b). The Ohio EPA administers the RCRA program within Ohio.

Under 42 U.S.C. § 6928(a), the United States may file a civil action in federal district court to obtain appropriate relief, including a temporary or permanent injunction upon obtaining information that any person has violated or is violating any requirement of RCRA. If a violation is shown, 42 U.S.C. § 6928(g) provides for a civil penalty in an amount not to exceed $27,500 per day of noncompliance for each violation.[14]

The Plaintiff United States has the burden to establish each of the elements of liability under RCRA. In showing liability, the applicable statute of limitations, 28 U.S.C. § 2462, stops any claim for penalty for a violation before May 11, 1993.[15]

To establish a violation of RCRA, the United States must prove four general elements: (1) that WCI is a "person" within the meaning of RCRA; (2) that WCI's

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[14] 42 U.S.C. § 6928(g) provides for a civil penalty in an amount not to exceed $25,000 per day of noncompliance for each violation. This amount has been adjusted pursuant to the U.S. EPA Civil Monetary Penalty Inflation Adjustment Rule, to $27,500 per day.

[15] Pretrial Order, Uncontroverted Fact No. 3.

Warren, Ohio steel plant is a "facility" within the meaning of RCRA; (3) that WCI did not have a permit or interim status for the treatment, storage, or disposal of hazardous waste in the ponds; and (4) that WCI treated, stored, or disposed of hazardous waste in the ponds. *United States v. T & S Brass & Bronze Works, Inc.*, 681 F. Supp. 314, 317 (D.S.C. 1988); *United States v. Conservation Chemical Co.*, 733 F. Supp. 1215, 1220 (N.D. Ind. 1989).

Defendant WCI acknowledges that it is a "person" within the meaning of 42 U.S.C. § 6903(15) and that WCI's integrated steel plant, and all buildings, structures, and surface impoundments located there, comprise a "facility" within the meaning of 40 C.F.R. § 260.10. WCI also concedes it did not have a permit for the treatment, storage, or disposal of hazardous waste. WCI disputes only that it treated, stored or disposed of hazardous waste.

The Court now addresses the standards by which hazardous waste is identified. The Court then determines whether, upon applying these standards, WCI has violated RCRA.

B. Standards for Determining "Hazardous Waste"

1. Regulatory Classification and Corrosivity

RCRA controls the release of a "hazardous waste." If a substance exhibits certain characteristics, industrial wastewaters are subject to regulation under RCRA. *United States v. Dean*, 969 F.2d 187, 194 (6th Cir. 1992).

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42 U.S.C. § 6921 provides two ways in which a waste will be considered "hazardous." First, a waste will be classified as "hazardous" where the EPA has specifically listed the waste as hazardous. By regulation, the EPA has listed a number of wastes as hazardous. 40 C.F.R. §§ 261.31-261.33 (1989). For example, spent pickle liquor, which the United States claims WCI discharged into Ponds 5, 6, and 6A, is a listed hazardous waste under 40 C.F.R. § 261.32.

The EPA will also classify a waste as "hazardous" if it has one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity. 40 C.F.R. §§ 261.21-.24. Here, the United States claims that WCI stored or disposed of corrosive waste.

Corrosiveness is the property that enables a substance to dissolve material with which it comes in contact. Improperly managed corrosive wastes can pose a substantial present or potential danger to human health and the environment.

As explained in further detail below, under 40 C.F.R. § 261.22 and O.A.C. § 3745-51-22, a waste is corrosive if it is aqueous and has a pH of 2.0 s.u. or less or greater than or equal to 12.5 s.u. Where a surface impoundment contains aqueous water with a pH of 2.0 s.u. or less, on at least one occasion, the water in the surface impoundment is hazardous waste. The United States here principally contends that substances in Ponds 5, 6, and 6A are corrosive, as having had pH of 2.0 s.u. or less.

As noted above, 42 U.S.C. § 6925(a) prohibits the operation of any facility that treats, stores, or disposes of hazardous wastes, except in accordance with a permit.

United States v. Heuer, 4 F.3d 723, 730 (9th Cir. 1993). Moreover, a party receiving a permit to store or dispose of hazardous waste must thereafter comply with the requirements of the permits.

If WCI treated, stored, or disposed of waste at the Warren facility, it was required under RCRA to have a permit to do so. It is undisputed that WCI had no permit to treat, store, or dispose of hazardous waste. Therefore, if the Court finds WCI maintained hazardous waste at its Warren facility, WCI has violated RCRA and is subject to fines under RCRA.

The parties offer differing views regarding how the Court should determine whether hazardous waste is treated, stored, or disposed of at WCI's Warren facility. Defendant WCI says the evidence offered by the United States is insufficient to support a finding that WCI maintains hazardous waste at the facility because the substances at the site were improperly sampled. The United States contends that even if the available samples do not conform to a specific methodology described in RCRA's regulations, the weight of evidence supports its contention that WCI treated, stored, or disposed of hazardous waste at the Warren facility.

The Court now examines whether RCRA's regulations require a particular sampling methodology.

2. Sampling Methodology

The United States claims WCI violated RCRA's prohibitions against hazardous

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waste by maintaining "corrosive" waste at the Warren facility. The regulations currently define "corrosivity" in the following way:

> Sec. 261.22 Characteristic of corrosivity.
>
> (a) A solid waste exhibits the characteristic of corrosivity if a *representative sample* of the waste has either of the following properties:
>
> (1) It is *aqueous and has a pH less than or equal to 2* or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Sec. 260.11 of this chapter.

40 C.F.R. § 261.22(a)(1) (emphasis added). Plaintiff United States asserts that WCI violated RCRA by maintaining wastewater with a pH of less than or equal to 2. Under the regulations, the United States must show such violation via a "representative sample" of the water.

RCRA regulations define "representative sample" as "a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole." 40 C.F.R. § 260.10. This definition has remained unchanged since originally promulgated by U.S. EPA in 1980. 45 Fed. Reg. 33066, 33075 (May 19, 1980).

This definition suggests that a finding of a RCRA violation must depend upon reliable and accurate sampling. WCI urges that the Court interpret the regulations to require a particular sampling method before results may be viewed as a reliable and accurate indication of corrosivity. WCI says that the sampling method used makes a

difference because the Pond substances were heterogeneous.[16] Therefore, unless an appropriate sampling method is used, WCI says the results will not reflect "the average properties of the universe or whole." WCI says that the sampling presented here by the Plaintiff United States does not meet the requirements adopted in the EPA's own regulations.

In contrast, the United States first disputes that a sample needs to reflect the average properties of the whole.[17] Further, the United States argues that adoption of a sampling plan, and sampling in conformity with such a plan, is not a prerequisite to showing a violation of RCRA. The United States says that the failure to adopt a sampling plan and to comply with that plan goes to the weight of the evidence, rather

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[16] In an October 1985 study, the engineering firm Duncan, Lagnese & Associates sampled sludge from Ponds 5 and 6. It reported that the waste in the Ponds was heterogeneous, due to "considerable variation from point to point for all parameters measured." Exh. CJ.

Expert Charles Blumenscheim testified credibly on this issue:

> Q. Do you know whether the waste material in the ponds at WCI is homogeneous or heterogeneous?
>
> A. In my opinion it is not homogeneous its heterogeneous.
>
> Q. And what's the basis for that opinion?
>
> * * *
>
> A. These the water entering this pond 5, the way the pond is configured, this is a classic example of what we call plug-flow region. In the term of art. But what it means is that as the water enters the pond, it will move down the pond as a river would flow, if you can just visualize this as a river and any water entering here will move down this pond in segments. There is no mixers in this to make it homogeneous, and as the water enters this pond and then ultimately leaves the pond, enters the pipeline and enters this pond and again this water will move through this pond to these pumps and be pumped out and any water here again will enter this pond and be pumped to this pond so this is a classic example of a plug flow region.

[17] Plaintiff United States proposed conclusion of law No. 24b.

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than its admissibility.

Thus, the Court must first determine whether a sample needs to reflect the average properties of the whole. As to this issue, the United States' argument would turn the language of 40 CFR § 261.22 and 40 C.F.R. § 260.10 on its head. 40 CFR § 261.22 says corrosivity is determined based upon a "representative sample of the waste." 40 C.F.R. § 260.10 says the sample must reflect "the average properties of the universe or whole." In arguing that this Court disregard the ponds as a whole, the United States pushes aside its own regulations.

The Court therefore finds that the samples must be representative of the whole pond before a RCRA violation may be found. The key issue is what sampling method will produce a "representative sample" of the ponds and whether the methods used here produce a sufficiently reliable picture of the average properties of the ponds as a whole.

Defendant WCI argues that Plaintiff United States does not give evidence of representative samples because it failed to use the proper testing method found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846 ("SW-846"). WCI says use of Method 9040, as specified in the Second Edition of SW-846, is required.

In contrast, the United States claims that samples not taken in conformity with Method 9040 can satisfy the requirement that samples exhibit the average properties of the universe or whole. First, the United States contests the applicability of Method

9040. The United States argues that before 1993, Method 5.2, as set forth in the First Edition of SW-846, was the method for deciding whether a waste was corrosive. Method 5.2's sampling requirements are less strict than the requirements suggested by Defendant WCI. Method 5.2 does not specify methods for determining the number of samples needed to obtain the average properties of the universe or whole. In contrast, Method 9040 does.

Alternatively, the United States says that SW-846 intends only to give guidance, not to mandate requirements. As a guidance document, the United States says SW-846 affords flexibility to use alternative test methods.

To decide this issue, the Court first considers the general applicability of Method 9040. During the relevant periods, RCRA regulations have always referenced certain test methods that are to be use to support a finding of "corrosivity," and, by extension, the presence of hazardous waste. 40 C.F.R. § 260.11 (citing test methods); 40 C.F.R. § 261.22(a)(1) (defining "corrosivity"). As the language of § 260.11 has altered over the years, the parties dispute which test method applied during the relevant period.

The United States argues that until August 31, 1993, 40 C.F.R. § 261.22(a)(1) required use of Method 5.2, as set forth in the First Edition of SW-846.[19] Specifically, until August 31, 1993, Section 261.22 provided, in pertinent part:

> (a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

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[19] 40 C.F.R. §§ 260.11 and 261.22(a)(1) (1988-1993 Editions).

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> (1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either an EPA test method or an equivalent test method approved by the Administrator .... *The EPA test method for pH is specified as Method 5.2 in "Test Methods for Evaluation of Solid Waste, Physical/Chemical Methods"* (incorporated by reference, see 260.11).

40 C.F.R. § 261.22(a)(1) (1993 edition) (emphasis added).

The Second Edition of SW-846 was formally adopted as part of Section 260.11 on September 21, 1982.[18] The Second Edition of SW-846 contains a "Conversion Table" which correlates the section and method numbers used in the First Edition of SW-846 with "the location of their replacements" in the Second Edition. SW-846 describes this conversion table as giving "the replacements" of the methods used in the First Edition of SW-846. In this Table, Method 5.2 is expressly replaced with Method 9040. However, the language of the regulation, 40 C.F.R. § 261.22(a)(1), retained its reference to Method 5.2 even as it referred parties to SW-846. The Second Edition of SW-846, and the conversion table within it, remained in effect until August 31, 1993, when the Third Edition of SW-846 was adopted.[19]

Defendant WCI points out that the Second Edition of SW-846's cross-index supports the conclusion that Method 5.2 was replaced by Method 9040. Also, soon after the formal adoption of the Second Edition of SW-846, the U.S. EPA issued a Technical Amendment which also noted the change from Method 5.2 to Method 9040. 48 Fed.

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[18] 47 Fed. Reg. 41562 (1982).

[19] 58 Fed. Reg. 46040 (1993).

Reg. 15256 (1983). Further, WCI also points to communication made in 1993 by the EPA at the time it adopted the Third Edition of SW-846. In August 1993, the Agency formally clarified that "[t]he EPA method number for pH is incorrectly referenced in Section 261.22(a)(1) as Method 5.2. Therefore, the Agency is deleting the reference to Method 5.2 in that section and replacing it with the correct reference to Method 9040." 58 Fed. Reg. 46047 (1993). Thus, the EPA changed the regulations to reflect what had already been indicated in SW-846 for years: that Method 9040 replaced Method 5.2

In short, WCI argues that even though the *regulations* did not specifically mention Method 9040 until 1993, 40 C.F.R. § 261.22(a)(1) always defined corrosivity by reference to SW-846, in which Method 9040 replaced 5.2. Therefore, WCI argues that Method 9040 applied from at least 1984 to August 1993.

WCI makes a strong argument that Method 9040 was effective for the times relevant here. However, assuming the applicability of Method 9040, the Court finds that strict adherence to Method 9040 is not required to show that WCI violated RCRA. Reliability and accuracy of samples may be shown by methods other than Method 9040.

Arguing otherwise, WCI contends that corrosivity can only be established if the Plaintiff United States shows that Ponds 5, 6, and 6A had a pH of 2.0 or less using a pH meter in accordance with Method 9040. To comply with Method 9040, WCI says sampling must follow a statistically-valid sampling plan prepared in accordance with Section One of SW-846. Method 9040, §6.1.

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However, relevant language in SW-846 belies WCI's argument. SW-846 provides that a sampling plan is more statistically valid if it provides for "some form of random sampling" so that "every unit of the population (*e.g.* every location in a lagoon used to store a solid waste) has a theoretically equal chance of being sampled and measured," thus ensuring that "the sample is representative of the population." Section One, SW-846, Second Edition, § 1.1.2.

"Sampling precision is *most commonly achieved* by taking an appropriate number of samples from the population." Section One, SW-846, Second Edition (emphasis added). SW-846 provides a statistical equation to be used in determining the "appropriate number of samples."[21] Compliance with the statistical calculations in SW-846 establishes "a scientifically credible sampling plan" for characterizing waste." *Id.* at Section 1. Specifically, SW-846 says that "solid wastes contained in a landfill or lagoon are [usually] *best* sampled using the three-dimensional random sampling strategy." *Id.* (emphasis added).

SW-846 also says that "[l]agooned waste that is either liquid or semisolid is often best sampled using the methods recommended for large tanks." In describing the method used for sampling large tanks, SW-846 says "a representative set of samples is best obtained using the three-dimensional simple random sampling strategy described in Section 1.4.1."

In Section 1.4.1 of SW-846, the EPA says:

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[21] Table 1, Equation 8, in Section One of SW-846.

> The number of samples required for reliable sampling will vary depending on the distribution of the waste components in the container. As a minimum with unknown waste, a sufficient number and distribution of samples should be taken to address any possible versicle anomalies in the waste.

SW-846 at 1.4.1.

Under these provisions, sampling of Ponds 5, 6, and 6A *should* involve "a three-dimensional grid of sampling points and then using random number tables or generators to select points for sampling." *Id.* at 1.4.4.

As indicated, Method 9040 suggests that sampling *should* be done consistent with a sampling plan involving a sufficient number of samples. While such sampling is preferred, WCI does not show that the Plaintiff United States cannot proceed absent sampling in conformity with Method 9040.

Other courts have come to similar conclusions. In *United States v. Self*, 2 F.3d 1071 (10th Cir. 1993), the defendant, facing criminal charges, argued that the government failed to present evidence that certain hazardous wastes were sampled in accord with an EPA-approved test method. Rejecting this argument, the Tenth Circuit held that "[w]hile an EPA-approved test of the material would have been persuasive evidence as to whether the material was hazardous waste, the government was not required to prove this element through test data." *Id.* at 1086.

To like effect, in *United States v. Baytank, Inc.*, 934 F.2d 599 (5th Cir.1991), the government brought a criminal claim under RCRA. In that case, the government did not have sampling of the relevant drums, nor other sampling taken in conformity with

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EPA regulations. Instead, it relied upon company documents and testimony from persons in contact with the relevant drums. In finding the evidence sufficient to support a criminal conviction, the Fifth Circuit held:

> The government admits no drum samples were taken, but relies on Baytank records, and testimony as to its practices at the times charged, to show that the drums were used to store the 'slops' or residue of hazardous chemicals that had been extracted either for sampling or line cleaning purposes. We agree that these documents, including drum inventories, a hazardous waste log, and internal memoranda, as well as the testimony at trial, all amply demonstrate that many of these drums containing hazardous wastes were stored for longer than 90 days.

Id. at 614.

Other courts have held that the failure to adhere to SW-846's precise framework does not stop a finding of hazardous substances. *See, e.g.*, *United States v. Taylor*, 802 F. Supp. 116, 119 (W.D. Mich. 1992), *vacated on other grounds*, 8 F.3d 1074 (6th Cir. 1993) (sample analyzed under a test method not approved by EPA sufficient to establish threat of contamination under CERCLA). Further, failure to rigidly adhere to SW-846 does not render the sampling evidence inadmissible. *People v. Hale*, 29 Cal. App. 4th 730, 734 (1994) ("We discern no per se rule which automatically precludes the introduction of evidence of disposal of hazardous waste just because the gathering of the sample does not follow every jot and tittle of the EPA manual."). Any deviation from the guidance goes to the weight of the evidence and not its admissibility. *People v. Sangani*, 22 Cal. App. 4th 1120, 1136-1137 (1994) ("Failure to follow precise regulatory or statutory requirements for laboratory tests generally does not render the

test results inadmissible, but instead goes to the weight accorded to the evidence.").[29]

Consequently, although Method 9040 controlled sampling before 1993, the Court finds that strict adherence with Method 9040, including grid sampling pursuant to a plan, is not required to show that Ponds 5, 6, and 6A were corrosive. While sampling done in conformity with Method 9040 is preferable and more persuasive, evidence not conforming with the sampling provisions of SW-846 can support a finding that WCI generated hazardous substances subject to RCRA.

3. Required Showing

To show that Ponds 5, 6, and 6A contained hazardous substances and were, as a result, subject to the cradle-to-grave restrictions of RCRA, the Plaintiff United States must show, via representative samples, only that the surface impoundment contained aqueous water with a pH of 2.0 s.u. or less, on at least one occasion. *United States v. Conservation Chemical Co.*, 733 F. Supp. 1215, 1224 (N.D. Ind. 1989) (finding that an aqueous solid waste exhibits the characteristic of corrosivity if it is properly tested and found to have a pH less than or equal to 2 "on at least one occasion"); *State v. PVS*

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[29] Courts show deference to the interpretation of regulation given by administrative agencies charged with their enforcement. *United States of America v. Mobil Oil Corporation*, 1997 WL 1048911 (E.D.N.Y. 1997). In *Mobil Oil*, the company sought to offer evidence not in conformity with the regulations given by the U.S EPA. Rejecting Mobil's evidence, the court set forth a standard of review applicable to a claim that the sampling methods utilized are invalid. Under the court's test, it is not enough for WCI simply to "offer[ ] an alternative reading of the law." *Id.* at *9. Instead, WCI must establish that EPA's interpretation is "plainly erroneous" and that WCI's reading is "'compelled by the regulation's plain language' or the Administrator's intent at the time the regulation was promulgated." *Id.* (quoting *Thomas Jefferson University Hospital v. Shalala*, 512 U.S. 504, 512 (1994)).

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Chemicals, Inc., 50 F. Supp.2d 171 (W.D.N.Y. 1998) (finding discharges of acidic water that fell below pH of 2 on 4 occasions out of 51 samples taken over course of 6 years was hazardous).

In order to be valid, sampling must show that it is random, that is, that "every unit of the population (e.g., every location in a lagoon used to store a solid waste) has a theoretically equal chance of being sampled and measured," thus ensuring that "the sample is representative of the population." Section One, SW-846, Second Edition, at 1.1.2.

With these principles in mind, the Court examines the samples presented by the government as evidence of RCRA violations.

C. Assessment of Samples

In claiming that Defendant WCI's Pond 5, 6, and 6A are subject to regulation under RCRA, the United States relies upon a limited number of testings done by U.S. EPA personnel and the large number of tests recorded by Defendant WCI 's personnel at the intake to the central treatment plant.

WCI says the limited number of samples taken by the U.S. EPA are insufficiently representative of the ponds to serve as proof of a violation. WCI also says the 11,000 samples it recorded are insufficiently representative of wastewaters held in Ponds 5, 6, and 6A because the measuring probes were miscalibrated. Because none of the samples the government relies on were taken pursuant to Method 9040, WCI

says there is insufficient evidence that it maintained hazardous waste at the Warren facility.

As discussed, the Court finds Method 9040 preferable for showing a RCRA violation, but it is not the exclusive means with which the government can support its case. The Court must now determine whether the available samples provide a reliable indicator that WCI maintained hazardous waste at the Warren facility.

Plaintiff United States shows sampling performed by WCI at the influent to Pond 6. The government produced WCI's internal "Turn Audit" forms reflecting pH measurements taken between 1988 and 1998. WCI tested over 300 samples a month at Pond 6 during these years.[23] The turn audit forms indicate that over 11,000 samples taken during these years had a pH of 2.0 or less.[24] WCI's operators made readings of 2.0 s.u. or less for Pond 6 wastewater entering the central treatment plant on 1,361 separate days, including 577 days during which readings of 1.7 s.u. were taken at the influent probe.

During several months, virtually all the samples indicated low pH levels. In May 1991, 96.7% of the 369 samples taken that month indicated a pH level of 2.0 or below. In August 1991, 99.2% of the 372 samples taken that month registered at 2.0 or below, with 297 samples reflecting a pH of 1.7 or below. In May 1993, 90.9% of the

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[23] In July 1990, WCI took 240 samples. In every other month during the ten-year period, WCI took more than 300 samples.

[24] There were only 13 readings of 2.0 or less in 1995 and none in 1996 through 1998. Therefore, the bulk of the low pH readings date from 1988 to 1994.

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372 samples taken that month had a pH level of 2.0 or below, with 268 samples reading 1.7 or below.

At the rate WCI pumps water out of the pond, there is a complete turnover of pond water every three to four days. Thus, months during which low pH levels were the norm provide strong evidence that the samples were representative of the pond water as a whole during that time and that the water contained hazardous waste.

Though WCI levels valid criticism at the reliability of the influent pH probe, the measurements obtained from the probe are nevertheless probative of the wasterwater's hazardous nature. An extremely large number of influent probe pH readings show corrosivity, including many readings with very acidic pH levels. Even if the pH calibration were not precise, any error was unlikely to account for the extremely low pH readings.

This is so because pH is measured on a logarithmic scale: as pH measurements move down the scale, the measure of acidity in a substance increases exponentially. A substance with a pH of 1.8 s.u. has twice the hydrogen ion (or acid) concentration of a substance with a pH of 2.0 s.u.. The difference between the measurement units is .2. But because of the logarithm, the .2 difference between 1.6 and 1.8 represents a greater increase in acidity level than does the .2 difference between 1.8 and 2.0. Therefore, even if WCI's probes were not calibrated precisely in relation to 2.0, the extremely low readings represent strong evidence of acidity because they represent such exponential change in acid levels.

Indeed, even SW-846 notes that when measurements fall far below the threshold allowed level, a method with lower accuracy and precision is tolerable:

> It is now apparent that a judgment must be made as to the degree of sampling accuracy and precision that is required to reliably estimate the chemical characteristics of a solid waste for the purpose of comparing those characteristics to applicable regulatory thresholds. Generally, high accuracy and high precision are required if one or more chemical contaminants of a solid waste is present at a concentration that is close to the applicable regulatory threshold. *Alternatively, relatively low accuracy and low precision can be tolerated if the contaminants of concern occur at levels far below or far above their applicable thresholds.*

SW-826, §1.1.1, ¶ 3 (emphasis added). Although high accuracy and precision is preferred, the reading of 1.3, for example, reliably shows corrosivity even if taken through a less than ideal sampling method because it falls so far below the threshold of 2.0.

The United States does not rely solely on the measurements from the influent probe. The United States gives evidence from a WCI consultant engineer who took grab sample pH measurements on October 14 and 15, 1993, which showed pH of 2.0 or lower at the bosh box location.[26] Importantly, one of these samples had the extremely low pH value of 1.8 s.u. while another had the extremely low value of 1.7 s.u. Also, a large number of grab bag samples, tested on bench pH meters, indicate corrosivity. Finally, although limited, U.S. EPA sampling shows corrosivity.

In light of the substantial evidence presented by the United States, the Court

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[26] Consultant Killam collected three grab samples from the bosh box that channels wastewater to the surface impoundments. The three samples had pH values of 1.8, 1.7 and 2.0 s.u., respectively.

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finds that during periods of WCI's ownership, the wastewater treated, stored, and disposed of by WCI in Ponds 5, 6, and 6A exhibited the hazardous waste characteristic of corrosivity, within the meaning of 40 C.F.R. § 261.22. Thus, WCI Ponds 5, 6, and 6A were subject to RCRA.

However, the Government fails to show spent pickle liquor, subject to RCRA, was deposited into Ponds 5, 6, and 6A. The Court finds that WCI always neutralized any spent pickle liquor or acid spillage with excess lime. Lime-neutralized spent pickle liquor is exempt from the RCRA's hazardous waste regulations under the iron and steel industry exemption in 40 C.F.R. § 261.3(c)(2)(ii)(A).

IV. Violations of RCRA

The Court has determined that there is sufficient evidence that WCI treated, stored, or disposed of hazardous waste at its Warren facility. Maintaining such hazardous waste triggers several requirements under RCRA. As detailed below, WCI's failure to comply with these requirements subjects it to penalties under RCRA.

A. First Claim for Relief

40 C.F.R. § 260.10 provides, in part:

> [A] "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying

containment system and a container storage area.

40 CFR § 260.10. Ponds 5, 6, and 6A at the WCI's Warren facility are hazardous waste management units. As hazardous waste management units, Ponds 5, 6, and 6A are subject to the provisions of RCRA and analogous state law.

Under 42 U.S.C. § 6925(a) and (e) and Ohio Rev. Code §§ 3734.02(F) and 3734.04, the owner and operator of a hazardous waste management unit is prohibited from operating a hazardous waste management unit except in accordance with a permit issued pursuant to RCRA, unless the facility had interim status.

The wastewater treated, stored, and disposed of through the impoundments was a "solid waste," under 40 C.F.R. § 261.2(a)(2). During periods from 1988 to 1993, the wastewater stored and disposed of by WCI in Ponds 5, 6, and 6A, was also hazardous waste because it exhibited the characteristic of corrosivity, having a pH of 2 or less. Further, Defendant WCI has neither a permit issued pursuant to the provisions of 42 U.S.C. § 6925, nor does WCI have interim status.

Defendant WCI's operation of Ponds 5, 6, and 6A without a permit and without interim status violates RCRA and the federally approved hazardous waste management program for the State of Ohio. Each day that WCI operated Ponds 5, 6, and 6A without a permit or without interim status is a separate violation of RCRA.

B. Second Claim for Relief

Ponds 5, 6, and 6A were hazardous waste management units during periods

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from 1988 to 1998. WCI operated these hazardous waste management units without including these hazardous waste management units in any RCRA Part A application, as required by 40 C.F.R. § 270.13 and O.A.C. § 3645-50-43, and without amending any RCRA Part A application.

Each day that Defendant operated Ponds 5, 6, and 6A without including these hazardous waste management units in any Part A application and without amending any Part A application is a separate violation of 42 U.S.C. § 6930 and O.A.C. § 3745-50-43.

C. Third Claim for Relief

WCI operated Ponds 5, 6, and 6A as hazardous waste management units without including these hazardous waste management units in any RCRA Part B application, and without amending any RCRA Part B application to include information pertaining to Ponds 5, 6, and 6A. 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44.

Each day that WCI operated Ponds 5, 6, and 6A as hazardous waste management units without including these hazardous waste management units in any RCRA Part B application, and without amending any RCRA Part B application to include information pertaining to Ponds 5, 6 and 6A is a separate violation.

D. Fourth Claim for Relief

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Under 42 U.S.C. § 6928(a) and 40 C.F.R. § 270.1(b), a party also may not store hazardous waste in a surface impoundment without a permit or interim status. Ponds 5, 6, and 6A are "surface impoundments" within the meaning of 40 C.F.R. § 260.10.

Under 42 U.S.C. § 6925(j), surface impoundments existing on November 8, 1984, were required to meet minimum technological requirements unless granted an exemption by the U.S. EPA or the State.[28] WCI did not receive interim status. As a facility that did not have a permit and did not have interim status, WCI was required to cease accepting hazardous waste and commence closure. 40 C.F.R. § 265.1(b). As explained earlier, the Court finds that WCI continued to receive hazardous waste after it was not eligible to do so. In continuing to receive hazardous substances, WCI violated RCRA.

WCI continued accepting hazardous wastes at Ponds 5, 6, and 6A, even though it failed to meet the technological requirements of 42 U.S.C. § 6924(o)(1)(A). WCI failed to close Ponds 5, 6, and 6A as required by 40 C.F.R. § 264.228 and O.A.C. § 3745-56-28.

Each day that WCI continued accepting hazardous wastes at Ponds 5, 6 and 6A, even though it failed to meet the technological requirements of 42 U.S.C. § 6924(o)(1)(A) is a separate violation.

E. Fifth Claim for Relief

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[28] 42 U.S.C. § 6924(o).

Under 40 C.F.R. § 264.112 and O.A.C. § 3745-55-12, WCI, as the owner or operator of a hazardous waste management unit, was required to have a written closure plan. The closure plan must identify the steps needed to perform a partial or final closure of the facility.

Defendant WCI failed to have a written closure plan that identified the steps necessary to perform partial or final closure of Ponds 5, 6, and 6A. WCI thus violated RCRA closure requirements described at 40 C.F.R. § 264.112 and O.A.C. § 3745-55-12.

Each day that WCI failed to have a written closure plan that identified the steps necessary to perform partial or final closure of Ponds 5, 6, and 6A is a separate violation.

F. Sixth Claim for Relief

Under 40 C.F.R. §§ 264.140 - 264.151 and O.A.C. §§ 3745-55-40 - 3745-55-51, WCI, as the owner or operator of a hazardous waste management facility, was required to have a detailed written estimate in current dollars of the cost of closing hazardous waste management units. WCI was also required to comply with the financial assurance provisions of 40 C.F. R. § 264.143 and O.A.C. § 3745-55-43.

Defendant WCI has failed to comply with the closure costs and financial assurance requirements of 40 C.F.R. Part 264 and O.A.C. § 3745-55-40 - 3745-55-51. Each day that WCI failed to have and maintain a detailed written estimate, in current dollars, of the cost of closing hazardous waste management units to comply with the

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financial assurance requirements is a separate violation.

G. Seventh Claim for Relief

The owner or operator of a surface impoundment is required to install, operate, and maintain a ground-water monitoring system which satisfies the criteria contained at 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 - 3745-54-99 and 3745-55-01 - 3745-55-02. During periods after November 8, 1988, WCI failed to install, operate, and maintain a ground-water monitoring system that meets the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 - 3745-55-02.

The failure to operate such a ground-water monitoring system violates RCRA and the federally approved hazardous waste management program for the State of Ohio.

H. Eighth Claim for Relief

At times from 1988 to 1993, Defendant WCI disposed of corrosive hazardous waste, having a pH of less than or equal to 2.0, from Ponds 5, 6 or 6A, which did not meet the treatment standards specified at O.A.C. § 3745-59-40 - 3745-59-43, in violation of 40 C.F.R. §§ 268.32 and 268.35(a) and O.A.C. §§ 3745-59-32 and 3745-59-35(A).

In disposing of such waste, WCI violated RCRA and the federally approved hazardous waste management program for the State of Ohio.

V. Penalty

Under 42 U.S.C. § 6928(a) and (g), this Court has power to enjoin WCI and to impose civil penalties for each violation of RCRA and the hazardous waste management program for the State of Ohio. This Court can impose penalties up to $25,000 per day for each day of violation prior to January 30, 1997 and $27,500 for each day of violation thereafter.

In determining the appropriate civil penalties, the Court considers the seriousness of the violation, what efforts were made to comply with regulations, the harm caused by the violation, the economic benefit derived from noncompliance, the violator's ability to pay, the government's conduct, and the clarity of the obligation involved. *United States v. Ekco Housewares, Inc.*, 62 F.3d 806, 815 (6th Cir. 1995). In determining the penalty, this Court exercises its discretion. *Id.* (citing *United States v. Midwest Suspension and Brake*, 49 F.3d 1197, 1205 (6th Cir. 1995)).

A. WCI's Past Compliance and Seriousness of the Violation

From the time it assumed operation of the Warren facility in 1988, WCI has denied that it managed hazardous wastes in Ponds 5, 6 and 6A. Because it denied its management of hazardous wastes, WCI failed to provide notice to the U.S. EPA and the State that it managed hazardous wastes in Ponds 5, 6 and 6A and failed to obtain any permit or interim status under RCRA for management of the hazardous waste it maintained in Ponds 5, 6, and 6A.

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42 U.S.C. § 6925(a) prohibits the treatment, storage or disposal of hazardous waste except in accordance with an authorized permit. *Ekco Housewares, Inc.*, 62 F.3d at 809. The receipt of a permit, and compliance with that permit are at the core of the federal hazardous waste management system. *United States v. Heuer*, 4 F.3d 723, 730 (9th Cir. 1993) ("It is fundamental that an entity which performs a hazardous waste activity for which a permit is required under RCRA may not legally perform that activity unless it has a permit for the relevant activity."). WCI's failure to obtain a permit and to comply with that permit disregards RCRA's "'cradle-to-grave' regulatory structure overseeing the safe treatment, storage and disposal of hazardous waste." *United Technologies Corp. v. EPA*, 821 F.2d 714, 716 (D.C. Cir. 1987).

Yet, WCI has made capital investments that have improved environmental quality. By 1992, WCI had invested $135 million in a continuous caster and ladle metallurgical facility that lowered costs and improved environmental performance.[21] In addition, WCI used a vigorous recycling program and eliminated about 80,000 tons of materials that formerly went to a landfill. In 1996, the Ohio EPA reported that: "WCI has achieved an 86 percent reduction in their toxic chemical releases from 1988 to 1994 . . . 1994 was WCI's most productive year in their eight-year history. The facility increased production by 5.8 percent over 1993 while reducing toxic release commission by 32.9 percent." In March 1999, the Environmental Defense Fund placed

[21] The continuous caster and ladle facility eliminated approximately a hundred tons of air pollutants per year.

WCI in the top third of twenty integrated steel mills in the nation for its pollution control efforts.

In summary, while Defendant WCI failed to comply with RCRA requirements as to Ponds 5, 6, and 6A, it otherwise made efforts to reduce pollution.

B. Discussion of Harm Caused by Noncompliance

The Court finds no credible evidence of harm caused by Defendant WCI's RCRA violations. First, though long-term effects of hazardous wastewater may be reflected in the sludge that collects in the beneath the wastewater, the Plaintiff United States does not allege that sludge in the Ponds ever had a pH of 2.0 or below. Second, monitoring wells placed downstream from Ponds 5, 6, and 6A show no impact on the environment resulting from the use of these ponds as wastewater treatment units. Finally, the United States does not allege that the Ponds currently contain wastewater with a pH of 2.0 or below.

Where a proven violation of RCRA does not result in "the creation of a situation with the potential to seriously harm the environment," civil penalties have been substantially reduced. *United States v. Lacks Industries, Inc.*, 1990 WL 261387, *4 (W.D. Mich. June 22, 1990). Thus, in determining an appropriate penalty, this Court takes into consideration the fact that WCI's use of Ponds 5, 6, and 6A has not resulted in any harm to human health or the environment.

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C. Economic Benefit and Costs Saved

The Court also considers the economic benefit derived by WCI as the result of its failure to comply with RCRA. On this issue, the parties sharply disagree.

The Plaintiff United States says that WCI benefitted because it avoided expending monies to close Ponds 5, 6, and 6A, including dredging, disposal of dredged materials, and backfilling the ponds. The United States argues that WCI benefitted because it was otherwise required to install tanks to store wastewater with low pH; to set up a groundwater monitoring program; and to provide a closure and post closure plan together with necessary financial assurance. The United States says WCI delayed or avoided expending monies for these purposes and received an economic benefit.

In seeking to quantify this benefit, the United States says the benefit should be measured as the current value of the capital cost of the various expenditures needed to avoid RCRA violations, and the annual operating costs that would have attended earlier compliance, all expressed in today's dollars.

Plaintiff United States claims that Defendant WCI received a total economic benefit of approximately $9.1 million. According to the United States, the delayed capital expenditures gave WCI a $6,427,000 benefit and the avoidance of operating and maintenance costs gave WCI a $2,631,000 benefit.

In reaching its position that WCI obtained economic benefit of $9.1 million, the United States relies on several core assumptions. The United States relies upon the argument that remediation required moving the majority of the sludges from their

current locations and depositing them in a toxic waste disposal site. If the sludge did not have to be removed, WCI did not receive the benefit of $2,615,102 for the dredging and backfilling of the impoundments and $3,696,690 for its disposal.

The Court finds credible WCI's testimony that Ponds 5, 6, and 6A are subject to a risk- based closure that gives consideration to human health and the environment. Under such a closure, the sludge would be left in place, it would be stabilized, and a cover would be placed upon it. Such a risk-based closure might involve moving the sludges from Ponds 6 and 6A to Pond 5, and then putting a cover on Pond 5. A risk-based closure would be significantly less expensive than the dredging and removal plan proposed by the United States. Dr. Kenneth Wise testified credibly that a risk-based resulted in a present value economic benefit of $732,086, including the cost of a storage tank.

D. Present Value Determination

As to the economic benefit derived by WCI from delayed compliance with RCRA, the parties also dispute what rate should be used to determine the present value of the benefit. The Plaintiff United States claims that this Court should use a weighted average cost of capital rate of 8.5 percent for both past amounts benefitted and for future benefits.

In contrast, the Defendant WCI suggests that the rate should be different for both past and future benefit. For past costs, WCI suggests the use of an after-tax, risk-

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free rate is correct. WCI argues that no uncertainty attends the amount and the risk-free return is the only economic benefit that a company earns from delaying an expenditure. WCI argues that any return above the risk-free rate does not reflect delay, but instead reflects risk.

As to future benefit, WCI says there is uncertainty. Future benefits are not risk free. As a result, WCI says a discount rate reflecting this risk should be used. Specifically, WCI argues that future benefits should be computed by using an after-tax corporate borrowing rate. WCI suggests a 9.6 % rate should be used, based upon the current yield of WCI bonds.

The central issue is whether a rate reflecting risk should be used as to past benefits or obligations. Any return above the risk-free rate is earned not from delay but by assuming risk, and therefore is not properly considered economic benefit from noncompliance. Because this amount is known and the existence and solvency of the party is also known, it is inappropriate to increase the rate to reflect risk. As to this issue, the Court finds Defendant WCI 's argument to be more persuasive. After observing the testimony of all the experts, the Court finds WCI's expert Kenneth Wise most credible.

In determining economic benefit, the Court therefore finds an after-tax, risk-free rate is correct.

E. Period for Determination of Economic Benefit.

For determining economic benefit, the Plaintiff United States says that computation should accrue from the initial dates of noncompliance until actual compliance is achieved. Thus, the United States argues that economic benefit should be calculated from November 1988, the first date of noncompliance.

RCRA encompasses both current and continuing violations, even if the latter originated in activities occurring before the applicable date of the statute. *State v. PVS Chemicals, Inc.*, 50 F. Supp.2d 171, 180 (W.D.N.Y. 1998). Thus, there is little doubt that the Court may consider WCI's conduct prior to May 11, 1993, to determine whether WCI is subject to, and violated, RCRA.

However, the assessment of a civil fine for such a violation is limited by the federal statute of limitations found in 28 U.S.C. § 2462:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, . . . [or] penalty . . . shall not be entertained unless commenced within five years from the date when the claim first accrued.

28 U.S.C. § 2462. Thus, while the economic benefit WCI received from violating RCRA prior to May 11, 1993 may be relevant to an examination of the extent of the violations, the scope of injunctive relief, and WCI's good faith in remedying known violations, it is not determinative of this Court's assessment of a fine.

F. Ability to Pay

The Plaintiff United States and Defendant WCI dispute WCI's ability to pay a substantial penalty. The United States argued that WCI could and should pay a

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penalty of $34 million. In major part, the United States bases this position upon certain high dividends that WCI paid its corporate owner in recent years.

WCI challenges its ability to pay such a penalty with impunity. WCI says it needs to invest $40 million in capital annually and this investment would be impaired by such a penalty.

WCI has made profits in some recent years. However, it faces increased competition, especially during business downturns, from numerous competitors. First, cheap Asian steel has flooded the U.S. and world markets. As a result, U.S. steel imports increased 33% from 1997 to 1998, despite the fact that 1997 itself recorded high imports. As a result of these imports and the consequent competition, prices will remain low, with lower profit margins.[22]

Second, mini-mill capacity has also increased, resulting in lower prices and margins. This problem is likely to continue.

Third, this price competition with resulting pressure on margins has occurred during a time of economic expansion. When the inevitable downturn occurs, the pressure on producers will increase. As an unaffiliated operation, WCI will likely face even greater pressure during the next contraction.

Operating income, after taking away unrelated financial expenses, declined from $77 million ($58 per ton) in 1997 to $62 million ($44 per ton) in 1998. For the most recent quarter, ending January 31, 1999, WCI's operating income was a $613,000 loss

[22] Hot rolled steel prices declined from $25.82 per 100 pounds in 1995 to $22.46 in 1996, to $18.12 in 1997, and to about $14 in 1998.

compared to a $14,279,000 profit in the first quarter of the previous year. Capital expenditures declined from $39.9 million in 1997, to $35.4 million in 1996, to $15.6 million in 1998.

Taken as a whole, the Court finds that Defendant WCI does not have ability to pay any significant penalty and remain extant in the long term. Simply put, the Court credits testimony that WCI faces long odds for survival in an industry characterized by excess capacity, unrestrained dumping by foreign producers, and uncertain future demand in the next downturn.

G. The Government's Conduct

In fashioning a penalty, the Court considers the government's conduct. Since 1981, the Ohio EPA has conducted at least twelve hazardous waste compliance inspections of the WCI facility. After making these inspections, the Ohio EPA did not allege that Ponds 5, 6, and 6A were hazardous waste units subject to RCRA. In 1993, the Ohio EPA gave WCI a RCRA Part B permit for the storage of acid prior to recycling.

The U.S. EPA also inspected WCI's facility under the Clean Water Act and RCRA in 1990, 1991, and 1992. After conducting these inspections, the U.S. EPA inspectors did not allege that the Ponds were hazardous waste units.

Beginning in May 1993, the U.S. EPA made a "multimedia" inspection at WCI's Warren facility. This multimedia inspection was made under the Clean Water Act, the

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Clean Air Act, RCRA, and the Toxic Substances Control Act. Shortly after conducting this inspection, the U.S. EPA requested documents from WCI.

By early spring, 1994, Defendant WCI had produced documents requested by the U.S. EPA. With this production, WCI gave the U.S. EPA the "Turn Audits" forms recording the readings from the pH meters located at the aeration influent box, the aeration tank, the rapid mix tank, and the No. 3 clarifier. This data reflected readings every two hours from September 1, 1988. The Turn Audits also reflected the records of the grab sample pH measurements for Pond 6 influent wastewater.

Despite having this most important evidence in early 1994, the government delayed filing this action until May 11, 1998. The government delayed filing even though it had filed a Clean Water Act action against WCI in June 1995.[22] The U.S. EPA delayed filing even though the EPA and WCI had reached a settlement of the Clean Water Act suit in April 1998 and even though that settlement made provision for the remediation of Pond 6 and to fill in Pond 6A.

As described above, the government delayed resolution of this dispute. First, the government delayed investigation of WCI's wastewater handling methods despite knowledge that WCI used processes that are acidic. While RCRA requires self-reporting, the government's inattention delayed this action.

Second, even when it had suspicion and necessary information, the United States delayed this action more than four years. Moreover, it delayed this action

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[22] *United States v. WCI Steel, Inc.*, Civil Action No. 4:95CV1443 (N.D. Ohio).

despite expending large resources for discovery in the 1995 Clean Water Act case and despite settlement efforts in that case.

The government's delay and the government's splitting of causes of action are taken into account in setting the penalty imposed upon WCI. *United States v. Bethlehem Steel Corp.*, 829 F.Supp. 1047, 1056-58 (N.D. Ind. 1993). "[C]ourts should respond to EPA's undue agency delay by reducing penalties in an enforcement action in order to counteract any incentive the agency might have to place itself in a superior litigating position." *United States v. Marine Shale Processors*, 81 F.3d 1329, 1337 (5th Cir. 1996).

H. Penalty Finding

The United States requests a per diem penalty for each violation. This Court will not do so as it is within this Court's discretion to determine the total amount of penalty that WCI should pay. However, the Court considers the total days of violation in setting the penalty. *Bethlehem Steel Corp.*, 829 F. Supp. at 1056 (citing *United States (EPA) v. Environmental Waste Control, Inc.*, 710 F. Supp. 1172, 1242 (N.D. Ind. 1989)). The Court does not assume a $25,000 or $27,500 per day fine but rather views the evidence in total to determine a single penalty. In setting the penalty, the Court recognizes that deterrence is the major purpose of a civil penalty. *Id.*

After considering Defendant WCI's violations, the economic benefit it has obtained, the government's undue delay in bringing this action, the Court hereby

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assesses a civil penalty against WCI in the amount of $1 million.

I. Injunctive Relief

42 U.S.C. § 6928(a) gives the Plaintiff United States the power to file a civil action to obtain appropriate relief. The relief sought can include a temporary or permanent injunction.

Normally, to obtain injunctive relief, a party must prove that there is no adequate remedy at law, that the plaintiff may suffer an irreparable injury if an injunction is not granted and that the balance of the equities justifies an injunction. However, when the government brings the action and shows that an activity endangers public health, injunctive relief is proper without undertaking a balancing of the equities. *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337-38 (4th Cir.1983); *United States v. Bethlehem Steel Corp.*, 38 F.3d 862, 868 (7th Cir. 1994). In cases of public health legislation, the emphasis shifts from consideration of irreparable injury to concern for the general public interest. *Id.*

The United States does not allege that Ponds 5, 6, and 6A currently contain wastewater with a pH of 2.0 or below. There have been no influent probe readings of 2.0 or below after 1995. The sludge lining Ponds 5, 6, and 6A does not have a pH of 2.0 or lower and there is no evidence that it ever did have such a low pH. Consequently, the United States' request for injunctive relief does not purport to correct ongoing conditions that pose any type of public health risk or risk to the environment.

In deciding whether the strong remedy of injunctive relief should be given, the Court is most concerned with whether this relief is necessary to stop the danger that might result from violations of RCRA. Specifically, is injunctive relief necessary to stop WCI from receiving, handling, or disposing of corrosive wastes into Ponds 5, 6, and 6A? In circumstances where no evidence shows that corrosive wastes have been present in Ponds 5, 6, and 6A since at least 1995, the Court finds that injunctive relief is not necessary.

As described above, the Plaintiff United States filed an action in June 1995, alleging Clean Water Act violations with regard Ponds 5, 6, and 6A. With regard to that action, the United States used the same basic evidence that it uses in this case. The United States then settled this Clean Water Act case. As part of this settlement, the United States agreed to a Consent Decree. In that Consent Decree, the United States agreed that WCI should install a liner in Pond 6 and to fill in Pond 6A. Given the United States's agreement that WCI install a liner, it is inconsistent to now argue that Pond 6 must be closed to preserve public health.

Finding that the Plaintiff United States fails to show any imminent threat to health or the environment, the Court denies the United States request for injunctive relief.

VI. CONCLUSION

For the reasons stated herein, the Court assesses a $1 million fine against

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Case No. 4:98-CV-1082
Gwin, J.

Defendant WCI. The Court finds injunctive relief inappropriate in this case.

Accordingly, this action is terminated pursuant to Fed. R. Civ. P. 58.

IT IS SO ORDERED.

Date: October 22, 1999

Hon. James S. Gwin
U.S. District Court

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

UNITED STATES OF AMERICA,	)	CASE NO. 4:98-CV-1082
	)	
Plaintiff,	)	
	)	
v.	)	Judge James S. Gwin
	)	
WCI STEEL, INC.,	)	
	)	
Defendant.	)	ORDER
	)	

The Court has entered its findings of fact and conclusions of law in the above-captioned case. For the reasons set forth therein, the Court orders Defendant WCI Steel, Inc. to pay a civil fine of $1 million. Finding that WCI's RCRA violations pose no threat to the public health, the Court denies the United States' request for injunctive relief.

Accordingly, this action is terminated pursuant to Fed. R. Civ. P. 58.

IT IS SO ORDERED.

Date: October 22, 1999

Hon. James S. Gwin
U.S. District Court

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

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

UNITED STATES OF AMERICA,	)	CASE NO. 4:98-CV-1082
	)	
Plaintiff,	)	
	)	
v.	)	Judge James S. Gwin
	)	
WCI STEEL, INC.,	)	
	)	ORDER
Defendant.	)	

On November 5, 1999, Plaintiff United States moved the Court to amend or alter its judgment entered in the above-captioned case on October 22, 1999. [Doc. 71]. With this motion, the plaintiff says the Court erred in failing to grant injunctive relief as a remedy for Defendant WCI Steel, Inc.'s ("WCI Steel") violations of the Resource Conservation and Recovery Act ("RCRA"). The plaintiff asks the Court to amend its judgment to grant an injunction requiring the defendant to comply with RCRA's requirements. In the alternative, the plaintiff requests that the Court alter its judgment to "make clear" that the defendant is "not excused from future compliance with applicable requirements of RCRA."

Case No. 4:98-CV-1082
Gwin, J.—

The Court finds no legal error in its refusal to grant injunctive relief. As an equitable remedy, an injunction "is not a remedy which issues as a matter of course." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982). In determining whether to issue an injunction, the Court "is not mechanically obligated to grant an injunction for every violation of law." *Id.* at 313. Rather, in the context of a RCRA violation, an injunction should issue only if the violation endangers public health. *See United States v. Bethlehm Steel Corp.*, 38 F.3d 862, 868 (7th Cir. 1994); *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337-338 (4th Cir. 1983).

In this case, the Court determined that the defendant's RCRA violations did not pose an imminent threat to public health or the environment. Accordingly, the Court did not grant the plaintiff's request for injunctive relief.

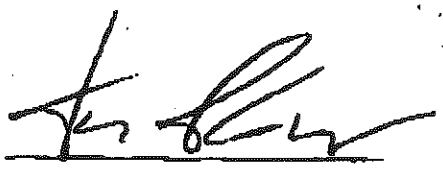
Contrary to the plaintiff's suggestion, the Court's judgment in no way countenances the defendant's future noncompliance with RCRA. In imposing a $1,000,000 civil penalty, the Court penalized the defendant for its past failure to comply with RCRA, and sought to deter the defendant from future noncompliance. The Court finds no compelling reason to amend its judgment to state the obvious, namely that the defendant has no license to violate RCRA.

For the reasons discussed above, the Court denies Plaintiff United States's motion to amend or alter judgment.

Case No. 4:98-CV-1082
Gwin, J.

IT IS SO ORDERED.

Date: December 7, 1999



Hon. James S. Gwin
U.S. District Court

9/28/98

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	Judge James S. Gwin
	)	
Defendant.	)	

WCI STEEL, INC.'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES

Defendant WCI Steel, Inc. ("WCI Steel") for its responses and objections to Plaintiff United States of America's First Set of Requests for Production of Documents and Interrogatories (hereinafter "Discovery Request") under Fed. R. Civ. P. 26, 33 and 34, states as follows:

GENERAL OBJECTIONS

The following General Objections are applicable throughout the following responses to each particular interrogatory and request for production contained in the Discovery Request, even where not specifically referred to in such responses. As used in these responses, the terms "you," "your," and "Plaintiff" refer to Plaintiff United States, its departments, divisions, agencies and delegees, including U.S. EPA and Ohio EPA, and the officials, employees, representatives, attorneys, contractors, investigators, consultants, agents or others acting on behalf of any of the foregoing.

A. WCI Steel objects to the discovery requests because of their excessive number and unreasonable scope. The magnitude of these discovery requests appear to far exceed the United States' legitimate need for discovery in this case, particularly in light of the voluminous material previously provided by WCI Steel to U.S. EPA. It appears that the Discovery Request is intended to inflict undue burden, cost and inconvenience to WCI Steel and for that reason exceeds the scope of permissible discovery under Fed. R. Civ. Proc. 26.

B. WCI Steel objects to the extent any discovery request seeks privileged information, work product, material prepared in anticipation of litigation or trial, mental impressions, conclusions, opinions or legal theories of any attorney of WCI Steel, or facts known or opinions held by experts not expected to be called to testify in this action, on the ground that they exceed the permissible scope of discovery under the Federal Rules of Civil Procedure. Any inadvertent production of any such information shall not constitute a waiver of any privilege applicable thereto or to any similar information pursuant to the Inadvertent Waiver Agreement between the parties dated September 17, 1998.

C. WCI Steel objects to the extent that the Discovery Request seeks exhaustive discovery of all information relating to any matter at this early stage on the ground that WCI Steel has not yet completed either its investigation or discovery with respect to this case. WCI Steel's responses necessarily reflect the current state of its knowledge, understanding and belief. Notwithstanding its response to any particular discovery request, WCI Steel notes that it is likely to obtain or discover additional

responsive information over the course of its trial preparation, and intends to make full use of such additional information at trial.

D. WCI Steel objects to the extent any discovery request is inconsistent with or exceeds the obligations imposed on WCI Steel by the Federal Rules of Civil Procedure and/or the local rules of the United States District Court, Northern District of Ohio.

E. WCI Steel objects to the extent any discovery request is vague, ambiguous or susceptible to more than one interpretation. Without waiving this objection, WCI Steel will attempt to respond based on a reasonable interpretation of each particular discovery request.

F. WCI Steel objects to the extent any discovery request seeks information that can only be obtained from individuals not currently employed by it, and to the extent that such request purports to be applicable to persons other than WCI Steel. WCI Steel has no obligation to provide information not available to it or to produce documents not in its current possession, custody or control.

G. WCI Steel objects to the extent any discovery request is overbroad, unreasonably burdensome or seeks information that is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence in this case.

H. WCI Steel objects to the extent the interrogatories seek information which may be derived or ascertained from WCI Steel's business records by Plaintiff with substantially the same burden. In such cases, WCI Steel will allow Plaintiff to inspect such records upon request at a mutually convenient time.

I. WCI Steel objects to the extent any discovery request assumes or is based upon erroneous or disputed facts or facts otherwise not supported by evidence.

J. WCI Steel objects to the extent any discovery request seeks conclusions of law or appear to assume conclusions of law as a premise. WCI Steel's responses are not intended, and shall not be construed, to acknowledge, concede or admit any legal conclusions whatsoever.

K. WCI Steel objects to any discovery request to the extent it seeks information or documents already in the possession, custody or control of Plaintiff, its agents or its delegees, including Ohio EPA, or information or documents that are publicly available.

L. WCI Steel objects to the scope of the Discovery Request to the extent it seeks information relating to any time prior to May 11, 1993 on the ground that any potential enforcement claims of Plaintiff relating to such time would be barred by the applicable statute of limitations, and therefore the information sought is irrelevant.

M. WCI Steel objects to the scope of the Discovery Request to the extent it seeks information relating to any time prior to WCI Steel's acquisition of the Warren Facility on September 1, 1988 on the ground that any potential enforcement claims of Plaintiff against WCI Steel relating to such time would be barred because WCI Steel did not own the Facility.

N. WCI Steel objects to Instruction Nos. 4 and 10 of the Discovery Request to the extent they seek to enlarge or modify any obligation WCI Steel may have with respect to withheld information under Fed. R. Civ. P. 26(b)(5).

O. WCI Steel objects to Instruction No. 5 to the extent it seeks home and work telephone numbers of current WCI Steel employees and principals. Because Plaintiff may not contact such persons except through undersigned legal counsel, Plaintiff has no need for such information.

P. WCI Steel objects to Instruction No. 11 to the extent it seeks to enlarge or modify any obligation WCI Steel may have with respect to production of documents under Fed. R. Civ. P. 34(b).

Q. WCI Steel objects to Instruction No. 12 to the extent it seeks to enlarge or modify any obligation WCI Steel may have with respect to documents not within its possession, custody and control. WCI Steel has no obligation to provide information not available to it.

R. WCI Steel objects to Instruction No. 13 of the Discovery Request to the extent it seeks to enlarge or modify any obligation WCI Steel may have to supplement its responses under Fed. R. Civ. P. 26(e).

S. WCI Steel objects to Instruction No. 14 of the Discovery Request to the extent it seeks to impose any additional obligations on WCI Steel beyond those established by the Federal Rules of Civil Procedure.

T. WCI Steel objects to the definition of "document" in the Discovery Request to the extent it exceeds the definition of such term set forth in Fed. R. Civ. P. 34(a).

U. WCI Steel objects to the definition of "impoundments" in the Discovery Request to the extent it includes the "6a" basin. WCI Steel denies that the "6a" basin

constitutes a surface impoundment within the meaning of the statutory and regulatory provisions cited in the Complaint.

V. WCI Steel objects to all other definitions in the Discovery Request to the extent they vary from common dictionary meanings of the terms defined.

W. WCI Steel does not interpret the Discovery Request to require production of pleadings, correspondence between counsel, or documents or other materials exchanged during the course of this litigation. To the extent that such materials are sought, WCI Steel objects on the grounds that the requests are unreasonably burdensome.

X. _WCI Steel submits these responses without conceding the relevancy, materiality or admissibility of any information produced, and without prejudice to its right to object to further discovery or to the admissibility of any proffered evidence.

Each of the following particular responses incorporates the General Objections set forth above.

RESPONSES TO REQUESTS FOR PRODUCTION

Request No. 1:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of any wastewaters or other substances in any or all of the impoundments.

Response:

WCI Steel objects to Request No. 1 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable.

Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 2:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of any flows, wastewaters or other substances placed in, conveyed or sent to any or all of the impoundments.

Response:

WCI Steel objects to Request No. 2 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 3:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of any wastewaters or other substances removed from or transferred from any or all of the impoundments.

Response:

WCI Steel objects to Request No. 3 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive

discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 4:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of any wastewaters or other substances sent to or entering the central wastewater treatment plant from any or all of the impoundments.

Response:

WCI Steel objects to Request No. 4 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 5:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of any wastewaters or other substances at, entering or leaving, Lift Station No. 9, the Bosh Box, the sump, or any lime addition system.

Response:

WCI Steel objects to Request No. 5 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive

discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 6:

All documents that record, discuss, refer or relate to the design or construction of any impoundment, including but not limited to design specification/criteria, improvement, alteration construction and/or remodeling documents, engineering studies, experiments and/or evaluations, bid specifications, bid submittals, maintenance, inspection, repair, improvements and/or changes to the impoundments, impoundment capacity, cost estimation and budgeting relating to the impoundments.

Response:

WCI Steel objects to Request No. 6 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No.7:

All documents that discuss, refer or relate to the reason, purpose or effects for the creation or any expansion or improvement of Pond 6A, or to any work to raise or extend the dike surrounding Pond 6A.

Response:

WCI Steel objects to Request No. 7 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession. Without waiving any objection, WCI Steel states that to the

extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 8:

All manuals, manufacturer's literature, operating or maintenance instructions, repair records and logs, and other documents by any person that relate to the pH sensor or probe or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, including but not limited to all design data and assumptions and specifications, construction specifications, engineering studies, experiments and/or evaluations, bid specifications, bid submittals, maintenance records, operations manuals, repair records, inspection, cost estimates, cost data and justifications, budget and budget justifications.

Response:

WCI Steel objects to Request No. 8 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, information not in WCI Steel's current possession, custody or control, and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 9:

All documents that discuss, refer or relate to the accuracy, margin of error, sampling methodology, analysis reference method, or calibration or any pH sensor or probe or related measuring equipment that monitors influent or flows to the impoundments, or from the impoundments to or at the central wastewater treatment plant.

Response:

WCI Steel objects to Request No. 9 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, information not in WCI Steel's current possession, custody or control, and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 10:

All documents that discuss, refer or relate to whether the pH is too low, or below any specified value, or the acidity or corrosiveness is too high, of any flows, wastewaters or other substances conveyed to, moving towards, entering, leaving, or in, the impoundments, or at or entering the central wastewater treatment plant.

Response:

WCI Steel objects to Request No. 10 on the grounds that it is argumentative, based upon erroneous factual assumptions or legal conclusions, vague, overbroad, unreasonably burdensome and compound and seeks materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 11:

All documents that record, discuss, refer or relate to any reason or factor that caused, or may have caused, the pH to be too low, or below any specified value, or the acidity or corrosiveness to be too high, of any flows, wastewaters or other substances conveyed to, moving towards, entering, leaving, or in, the impoundments, or at or entering the central wastewater treatment plant.

Response:

WCI Steel objects to Request No. 11 on the grounds that it is argumentative, based upon erroneous factual assumptions or legal conclusions, vague, overbroad, unreasonably burdensome and compound and seeks materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 12:

All documents that discuss, refer or relate to increasing the pH, or to reducing the acidity or corrosiveness, or to any measure, system or project to increase the pH, or to reduce the acidity or corrosiveness of, any wastewaters or other substances conveyed to, moving towards, entering, leaving, or in, the impoundments, or at or entering the central wastewater treatment plant.

Response:

WCI Steel objects to Request No. 12 on the grounds that it is argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 13:

All documents that discuss, refer or relate to the identity, source, amount or constituents of flows, wastewaters or other substances conveyed to, moving towards,

entering, leaving, or in, the impoundments, or at or entering the central wastewater treatment plant.

Response:

WCI Steel objects to Request No. 13 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 14:

All documents that record, discuss, refer or relate to the pH, acidity or corrosiveness of the effluent wastewaters of the rolling and finishing department, the galvanizing, pickling, terne lines and acid fume scrubbers, and the acid regeneration plant, including, but not limited to, documents concerning placement, maintenance, all design data and assumptions and specifications, construction specifications, engineering studies, feasibility experiments and/or evaluations, bid specifications, bid submittals, maintenance records, operations manuals, repair records, inspection, sampling data and analysis, the cost estimates, cost data and justifications, budget and budget justifications, manufacturer's literature.

Response:

WCI Steel objects to Request No. 14 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent

responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 15:

All documents that discuss, refer or relate to any function, purpose, need for, or reason for acquiring or installing, an automated lime slurry system for the facility.

Response:

WCI Steel objects to Request No. 15 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 16:

All documents that discuss, refer or relate to the design, construction or installation of the automated lime slurry system, including but not limited to, all design data and assumptions and specifications, construction specifications, engineering studies, experiments and/or evaluations, bid specifications, bid submittals, maintenance records, operations manuals, repair records, inspection, cost estimates, cost data and justifications, budget and budget justifications.

Response:

WCI Steel objects to Request No. 16 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, and materials that are privileged or otherwise non-discoverable.

Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 17:

All documents that discuss, refer or relate to the effectiveness or reliability of, or to any problem with or inadequacy of, the automated lime slurry system, the bulk lime system, the central wastewater treatment plant lime addition system, or to any repair or need for repair to any such system.

Response:

WCI Steel objects to Request No. 17 on the grounds that it is argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably burdensome and compound, and seeks information already within Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 18:

All documents that constitute, discuss, refer or relate to any closure plan, or the need for a closure plan, whether or not in accordance with RCRA, for any or all of the impoundments.

Response:

WCI Steel objects to Request No. 18 on the grounds that it is argumentative, based upon erroneous factual assumptions and legal conclusions, vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's

possession, legal conclusions and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 19:

All documents that record, discuss, refer or relate to the closure of any impoundment, including but not limited to, engineering studies, experiments and/or evaluations, design specifications/criteria, improvement, alteration, remodeling, construction plans or documents, bid specifications, bid submittals, inspections, sampling, repair, improvements/changes to the impoundments, disposal and/or routing of the solid wastes, cost estimates, cost data and cost justifications, and budget and budget justifications for the closure and/or potential closure of any impoundment.

Response:

WCI Steel objects to Request No. 19 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 20:

All documents that constitute, discuss, refer or relate to any detailed written estimates, of the cost of closing Ponds 5, 6 or 6A in accordance with RCRA.

Response:

WCI Steel objects to Request No. 20 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in

Plaintiff's possession, expert opinions, legal opinions and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 21:

All other documents that discuss, refer or relate to the cost of closing any or all of the impoundments, or to the cost of replacing any or all of them with any alternative system.

Response:

WCI Steel objects to Request No. 21 on the grounds that it is argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 22:

All documents that discuss, refer or relate to financial assurance for closure, the need for financial assurance for closure, or to the amount of money needed or which should be set aside for closure, for any or all of the impoundments.

Response:

WCI Steel objects to Request No. 22 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in

Plaintiff's possession, expert opinions, legal opinions and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 23:

All documents that discuss, refer or relate to any groundwater monitoring program, or the need for a groundwater monitoring program, for any or all of the impoundments.

Response:

WCI Steel objects to Request No. 23 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in Plaintiff's possession, expert opinions, legal opinions and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 24:

All documents that discuss, refer or relate to whether any or all of the impoundments meet, should meet, or are required to meet, the minimum technology requirements of RCRA (i.e., 40 C.F.R. §§ 264.221 and 265.221; §§ OAC 3745-56-20 through 33).

Response:

WCI Steel objects to Request No. 24 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in Plaintiff's possession, expert opinions, legal opinions and material that is privileged or

otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 25:

All documents that discuss, refer or relate to whether any wastewaters or other substances or other contents of any impoundment have spilled, leaked or otherwise gotten onto or into any area outside of or beneath the impoundments, including into any surface or groundwater.

Response:

WCI Steel objects to Request No. 25 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 26:

All documents that discuss, refer or relate to whether WCI was required to, or should obtain, any permit regarding the management, treatment or storage of hazardous waste in any or all of the impoundments.

Response:

WCI Steel objects to Request No. 26 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in Plaintiff's possession, expert opinions, legal opinions and material that is privileged or

otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 27:

All documents that discuss, refer or relate to whether any or all of the impoundments were subject, or potentially subject, to any requirement of any state or federal RCRA law, code, regulation or requirement.

Response:

WCI Steel objects to Request No. 27 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in Plaintiff's possession, expert opinions, legal opinions and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 28:

All documents that discuss, refer or relate to whether WCI has submitted, or should submit, or amended or should amend, any RCRA Part A or Part B permit application for, or with respect to, any or all of the impoundments.

Response:

WCI Steel objects to Request No. 28 on the grounds that it is argumentative, based upon erroneous factual assumptions and vague and seeks information already in Plaintiff's possession, expert opinions, legal opinions and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the

extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 29:

All WCI organization charts and phone directories which include the following functions or components of WCI: central wastewater treatment plant, impoundments, environmental compliance, or the approval or authorization of expenditures or budgets for the treatment plant, impoundments, or environmental compliance.

Response:

WCI Steel objects to Request No. 29 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and irrelevant information not reasonably calculated to lead to discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 30:

All documents that record, discuss, refer or relate to the evaluation or analysis of any waste streams, including all solid wastes entering or conveyed to, either directly or indirectly, the impoundments, including but not limited to, all studies, evaluations, assessments, inspections of any wastestream and solid waste entering all pump stations, drains, cross connections, overflow devices, bosh boxes, culverts leading to or tributary to the impoundment system.

Response:

WCI Steel objects to Request No. 30 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in

Plaintiff's possession, irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 31:

All documents that record, discuss, refer or relate to pinhole leaks of process acid, including but not limited to evaluations, studies, process line evaluation studies (including the results of testing of process lines), and process line repair records.

Response:

WCI Steel objects to Request No. 31 on the grounds that it is argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably burdensome and compound, seeks materials that are privileged or otherwise non-discoverable and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 32:

All documents that record, discuss, refer or relate to the discharge of fume scrubber water to the sewer system tributary to the impoundments but not limited dates,

and amounts of such discharges, evaluation studies (including the results of testing of process lines), line repairs.

Response:

WCI Steel objects to Request No. 32 on the grounds that it is non-sensical, argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably burdensome and compound, and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 33:

All documents that record, discuss, refer or relate to the use of the impoundments to break down soluble oil emulsion in the influent waters from the cold mill and to allow variances in influent concentration of dissolved metals and other ions to even out.

Response:

WCI Steel objects to Request No. 33 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 34:

All documents that record, discuss, refer, relate and/or analyze the mass balance of flows in pickling lines, terne lines, galvanizing lines and the acid regeneration plant, including but not limited to actual and estimated acid regeneration plant influent amounts, actual and projected regeneration plant production amounts, and amounts of virgin acid added to such lines.

Response:

WCI Steel objects to Request No. 34 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 35:

All documents that record, discuss, refer or relate to the operation and maintenance of the acid regeneration plant tank, including tank washing and cleaning information, including but not limited to information concerning any waste determinations and sampling data related to tank washing and cleaning, the dates of the washing and cleaning, the volume of any wash or rinse water during each washing and/or cleaning cycle, and method of disposal of any wash or rinse water.

Response:

WCI Steel objects to Request No. 35 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and materials that are privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that to the extent

responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 36:

All documents that record, discuss, refer or relate to any leaks from the sump tank containing galvanizing waste pickle liquor which occurred in or around November, 1996.

Response:

WCI Steel objects to Request No. 36 on the grounds that it is vague, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 37:

All documents and information that record, discuss, refer or relate to the operation of the acid regeneration plant during the period from August 20 through August 28, 1990, including but not limited to information about an explosion at the facility, the operation of the impoundments during the period from August 20 through September 20, 1990, including all pH readings, flow information, and the handling of all wastes from the picking lines.

Response:

WCI Steel objects to Request No. 37 on the grounds that it is argumentative, based upon erroneous factual assumptions, vague, overbroad, unreasonably

burdensome and compound, seeks information already in Plaintiff's possession, and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that to the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Request No. 38:

All documents identified in response to the attached Interrogatories.

Response:

To the extent responsive discoverable documents are available to WCI Steel and are relevant to the claims in the Complaint, WCI Steel will make them available for inspection upon request at a mutually convenient time.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify each person involved in the sampling.

Response:

WCI Steel objects to Interrogatory No. 1 on the grounds that it is vague, overbroad and unduly burdensome, seeks information already in Plaintiff's possession,

and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. WCI Steel further objects to the extent Interrogatory No. 1 seeks information protected from disclosure under Fed. R. Civ. Proc. 26(b)(3) or (4). Without waiving any objection, WCI Steel states it has, on occasion, sampled water and/or sludge from Ponds 5, 6 and/or the 6a basin. The following WCI Steel employees who may possess information related to this interrogatory include: (1) Richard Gradishar; (2) Keith McLaughlin; and (3) Dave Calderwood. In addition, the following employees of Remcor may possess such information: Glen Reiger, David Rykaczewski, and Vincent Visco.

Without waiving any objection, WCI Steel further states that discoverable responsive information available to WCI Steel can be derived or ascertained from the documents produced in response to this Discovery Request.

Interrogatory No. 2:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify each person involved in the analysis.

Response:

See objections and answers to Interrogatory No. 1. Without waiving any objection, WCI Steel further states that it has, on occasion, caused water and/or sludge samples from Ponds 5 and 6 and/or the 6a basin to be analyzed. WCI Steel further states that the following persons may possess information related to this interrogatory: (1) Wadsworth/Alert Laboratories employees Thomas Tomayko and John Flaherty; (2)

American Analytical Laboratories, Inc. employees T.J. Lavey and Irina Evseeva; and (3) Environmental Control Laboratories employee Robert Crookston.

Interrogatory No. 3:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, state the dates of such sampling and analysis.

Response:

See objections and answers to Interrogatory No. 1.

Interrogatory No. 4:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory No. 1.

Interrogatory No. 5:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, state in detail the results and conclusions of all such analyses.

Response:

See objections and answers to Interrogatory No. 1.

Interrogatory No. 6:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, describe in detail the sampling technology and technique, sampling reference methods and QA/QC procedures employed.

Response:

See objections and answers to Interrogatory No. 1. Without waiving any objection, WCI Steel further states that, to the extent discoverable responsive documents exist and are available to WCI Steel, WCI Steel will make them available for inspection upon request at a mutually convenient time.

Interrogatory No. 7:

State whether WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify all documents which discuss, refer or relate to such sampling or analysis.

Response:

See objections and answers to Interrogatory No. 1. Without waiving any objection, WCI Steel further states that discoverable responsive information available to WCI Steel can be derived or ascertained from the documents produced in response to this Discovery Request.

Interrogatory No. 8:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be

analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify each person involved in the sampling.

Response:

WCI Steel objects to Interrogatory No. 8 on the grounds that it is vague, overbroad and unduly burdensome, seeks information already in Plaintiff's possession, and would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that U.S. EPA obtained samples from the 6a basin as part of its multimedia inspection of the Warren Facility in May-June, 1993. WCI Steel further states that U.S. EPA obtained samples from Ponds 5 and 6 as part of its inspection of the Warren Facility in June 1997. Information responsive to Interrogatory No. 8 may be derived or ascertained from documents which are already in Plaintiff's possession.

Interrogatory No. 9:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify each person involved in the analysis.

Response:

See objections and answers to Interrogatory No. 8.

Interrogatory No. 10:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be

analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory No. 8.

Interrogatory No. 11:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, state the dates of such sampling and analysis.

Response:

See objections and answers to Interrogatory No. 8.

Interrogatory No. 12:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, state in detail the results and conclusions of all such analyses.

Response:

See objections and answers to Interrogatory No. 8.

Interrogatory No. 13:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, describe in detail the sampling technology and technique, sampling reference methods and QA/QC procedures employed.

Response:

See objections and answers to Interrogatory No. 8.

Interrogatory No. 14:

State whether any person other than WCI has ever taken, or caused to be taken, any sample of wastewater or any other substance from any impoundment to be analyzed for any property, including but not limited to pH, acidity or corrosiveness, and if the answer is in the affirmative, for each such instance, identify all documents which discuss, refer or relate to such sampling or analysis.

Response:

See objections and answers to Interrogatory No. 8. Without waiving any objection, WCI Steel further states that all relevant U.S. EPA documents are already known to Plaintiff.

Interrogatory No. 15:

State whether any hazardous waste or hazardous substance, as defined by federal or state RCRA regulations, was or may have been discharged into any impoundment at any time, and if the answer is in the affirmative, for each such instance, describe in detail the discharge(s), including the source, identity and amounts of the waste, and the time period of the discharge(s).

Response:

WCI Steel objects to Interrogatory No. 15 on the grounds that it is vague, ambiguous, overbroad and compound, would require an unduly expensive, burdensome and unreasonable search for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and seeks legal conclusions and information already in Plaintiff's possession. Without waiving any objection, WCI Steel states that, throughout the period of time covered by the Complaint, the following process waters

were conveyed to the No. 5 Pond: No. 5 Pickle Line rinse and scrubber water; No. 6 Pickle Line rinse and scrubber Water; terne line wastewater; galvanizing line wastewater; tandem mill oily wastewater and non-contact cooling water; hot strip finishing line (slitters) wastewater; silicon line wastewater; acid regeneration plant runoff; mobile equipment shop wastewater; 004 scale pit water; 52" temper mill oily wastewater; 54" temper mill oily wastewater; locomotive repair/machine shop wastewater; pickle line entry end water; and waste oil tank decant water. WCI Steel further states that discoverable responsive information may be derived or ascertained from documents produced in response to this Discovery Request.

Interrogatory No. 16:

State whether any hazardous waste or hazardous substance, as defined by federal or state RCRA regulations, was or may have been discharged into any impoundment at any time, and if the answer is in the affirmative, for each such instance, identify each person with knowledge of discharge(s), and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 15. Without waiving any objection, WCI Steel states that the following WCI Steel employees have knowledge regarding the matters described in response to Interrogatory No. 15: (1) Thomas O. Shepker; (2) Raymond Zeuner; (3) Richard Gradishar; (4) Joseph Stock; (5) Roger Carrier; (6) Jake Reis; (7) Robert McCoy and (8) Patrick Kenney.

Interrogatory No. 17:

State whether any hazardous waste or hazardous substance, as defined by federal or state RCRA regulations, was or may have been discharged into any

impoundment at any time, and if the answer is in the affirmative, for each such instance, identify all documents which discuss, refer or relate to such discharge(s).

Response:

See objections and answers to Interrogatory No. 15.

Interrogatory No. 18:

Identify each instance that WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, identify each person involved.

Response:

WCI Steel objects to Interrogatory No. 18 on the grounds that it is vague, overbroad, compound, and unduly burdensome, and seeks information already in Plaintiff's possession, and material that is privileged or otherwise non-discoverable. Without waiving any objection, WCI Steel states that, prior to installation of the automated lime slurry injection system, bags of lime were manually poured into the various cold mill wastewater streams which were conveyed to Pond 5 in order to control pH. Subsequently, an automated lime slurry injection system was installed and began routinely operating on December 20, 1993. WCI Steel employees continued to pour bags of lime into the various cold mill wastewater streams as needed during refinements and adjustments to the automated lime slurry injection system after its installation.

WCI Steel further states that double acid wringer rolls were installed in the No. 5 and No. 6 Picklers in March and April 1997 to further reduce the acidity of the wastewater generated by the Nos. 5 and 6 Picklers. Additionally, WCI Steel states that

a fume scrubber water spray header was installed in July 1998 to further control the pH level of wastewater generated by the picklers.

The following WCI Steel employees who may possess information related to this interrogatory include: (1) Raymond Zeuner; (2) Thomas O. Shepker; (3) Richard Gradishar; (4) Joe Magni; (5) Roger Carrier; (6) Ed Kiefer, Jr.; (7) Ron Kovach; (8) Bob Stasko; (9) Bill Boyd; (10) Robert McCoy; (11) Jake Reis; (12) Scott Rummel; (13) John Rinda; (14) Grady Holt; (15) Jack Gaffney and (16) A. W. Pinkerton.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents already in Plaintiff's possession or produced in response to this Discovery Request.

Interrogatory No. 19:

Identify each instance that WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, state the dates involved.

Response:

See objections and answers to Interrogatory No. 18.

Interrogatory No. 20:

Identify each instance that WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory No. 18. Without waiving any objection, WCI Steel states that Raymond Zeuner approved the installation of the automated lime slurry injection system; Joe Magni participated in the electrical work for that system; Ed Kiefer, Jr. participated in the design of the system's tank and components; Bill Boyd participated in the installation of the system; A.W. Pinkerton managed the construction of the system; and Bob Stasko participated in the choice of lime product used in the system. WCI Steel further states that Roger Carrier, Scott Rummel and Bill Boyd approved both the No. 5 and No. 6 Pickler double acid wringer roll installation project and the fume scrubber water spray header installation project; Roger Carrier approved the purchase orders for these projects; John Rinda and Grady Holt participated in the design, ordering of parts and installation scheduling for these projects; and Jack Gaffney and John Rinda were responsible for installation of the double acid wringer rolls and the fume scrubber water spray header.

Interrogatory No. 21:

Identify each instance that WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, state in detail the results and conclusions of all such work.

Response:

See objections and answers to Interrogatory No. 18. Without waiving any objections, WCI Steel further states that the installation of the automated lime injection system, Nos. 5 and 6 Picker double acid wringer rolls, and the fume scrubber water

spray header has allowed WCI Steel to better control the pH of water entering the pond system.

Interrogatory No. 22:

Identify each instance that WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, identify all documents which discuss, refer or relate to any such activities.

Response:

See objections and answers to Interrogatory No. 18.

Interrogatory No. 23:

Identify each instance that any party other than WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, identify each person involved.

Response:

WCI Steel objects to Interrogatory No. 23 on the grounds that it is vague, overbroad and unduly burdensome, and seeks information already in Plaintiff's possession, and material that is otherwise non-discoverable. Without waiving any objection, WCI Steel states that, upon information and belief at this stage of discovery, there are no such instances by any party other than WCI Steel, its agents, consultants, or contractors.

Interrogatory No. 24:

Identify each instance that any party other than WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, identify each person involved.

Response:

See objections and answers to Interrogatory No. 23.

Interrogatory No. 25:

Identify each instance that any party other than WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory No. 23.

Interrogatory No. 26:

Identify each instance that any party other than WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, state in detail the results and conclusions of all such work.

Response:

See objections and answers to Interrogatory No. 23.

Interrogatory No. 27:

Identify each instance that any party other than WCI studied, considered, evaluated, proposed or constructed any measure, system or project to increase the pH, or reduce the acidity or corrosiveness, of any wastewater or other substances sent to, entering, leaving, or in, the impoundments, or entering the central wastewater treatment plant, and for each such instance, identify all documents which discuss, refer or relate to any such activities.

Response:

See objections and answers to Interrogatory No. 23.

Interrogatory No. 28:

Identify each instance that WCI or any other party studied, consulted, designed, considered, evaluated, proposed, bid upon, constructed or installed an automated lime slurry system for the facility, and for each such instance, identify each person involved.

Response:

See objections and answers to Interrogatory Nos. 18 and 23.

Interrogatory No. 29:

Identify each instance that WCI or any other party studied, consulted, designed, considered, evaluated, proposed, bid upon, constructed or installed an automated lime slurry system for the facility, and for each such instance, state the dates involved.

Response:

See objections and answers to Interrogatory Nos. 18 and 23.

Interrogatory No. 30:

Identify each instance that WCI or any other party studied, consulted, designed, considered, evaluated, proposed, bid upon, constructed or installed an automated lime slurry system for the facility, and for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory Nos. 18 and 23.

Interrogatory No. 31:

Identify each instance that WCI or any other party studied, consulted, designed, considered, evaluated, proposed, bid upon, constructed or installed an automated lime slurry system for the facility, and for each such instance, state in detail the results and conclusions of all such work.

Response:

See objections and answers to Interrogatory Nos. 18, 21 and 23.

Interrogatory No. 32:

Identify each instance that WCI or any other party studied, consulted, designed, considered, evaluated, proposed, bid upon, constructed or installed an automated lime slurry system for the facility, and for each such instance, identify all documents which discuss, refer or relate to any such activities.

Response:

See objections and answers to Interrogatory Nos. 18 and 23.

Interrogatory No. 33:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, and for each such instance, identify each person involved.

Response:

WCI Steel objects to Interrogatory No. 33 on the grounds that it is vague, overbroad and unduly burdensome, and seeks information already in Plaintiff's

possession. Without waiving any objection, WCI Steel states that, during the time period covered by the Complaint, the calibration procedure that was intended to be followed with regard to the pH probe located at the Central Waste Water Treatment Plant (CWWTP) is as follows. The pH probe located at the bosh box at the CWWTP was intended to be calibrated weekly (i.e. every Monday) by WCI Steel's Combustion Department. The probe was to be cleaned with acid and then placed in either a 2 or 7 pH buffer solution, where it was to be allowed to reach temperature equilibrium. Once equilibrium was obtained, the calibration control switch was to be turned until the display read either 2 or 7 plus/minus 0.05 pH. The probe was then to be cleaned with tap water and placed in either a 4 or 10 pH buffer solution, where it was again to be allowed to reach temperature equilibrium. Once equilibrium was obtained, the calibration control switch was to be turned until the display read either 4 or 10 plus/minus 0.05 pH. The probe was then to be removed, cleaned in tap water, and placed back in the 2 or 7 pH buffer solution. If the display read 2 or 7 plus/minus 0.05 pH, calibration was complete. If not, the above steps were to be repeated until both the 2 or 7 pH and the 4 or 10 pH readings were within 0.05 of those pH levels. At this stage in discovery, WCI Steel cannot verify that this calibration procedure was consistently or properly followed. Nor is WCI Steel aware of any "evaluation or testing" of this calibration procedure.

WCI Steel further states the following persons who may possess information related to this interrogatory include: (1) Kevin White; (2) Glenn Dunn; (3) Mike Maas; (4) Steve Sotlar; (5) Lenny Halt; (6) Melvin Goins; (7) Grant Deem; (8) Dave Mullane; (9) Rich Shenal; (10) Ken Craver; (11) Dave Medley; (12) Don Sommage; (13) Steve

Marshall; (14) Jim Osborne; (15) Lester Reeves; (16) Bill Hickman; (17) James Harvey, Jr.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents already in Plaintiff's possession or documents produced in response to this Discovery Request.

Interrogatory No. 34:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, and for each such instance, state the dates involved.

Response:

See objections and answers to Interrogatory No. 33.

Interrogatory No. 35:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, and for each such instance, describe in detail the work done by each such person.

Response:

See objections and answers to Interrogatory No. 33.

Interrogatory No. 36:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the

central wastewater treatment plant, and for each such instance, state in detail the results and conclusions of all such work.

Response:

See objections and answers to Interrogatory No. 33. Without waiving any objection, WCI Steel cannot verify that the pH probe located the CWWTP was consistently and properly calibrated in accordance with the intended procedure described in Interrogatory No. 33.

Interrogatory No. 37:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, and for such instance, describe in detail the sampling technology and technique, sampling reference methods and QA/QC procedures employed.

Response:

See objections and answers to Interrogatory No. 33.

Interrogatory No. 38:

Identify each instance that WCI or any other party has ever evaluated or tested the accuracy, margin of error, or calibration of the pH sensor(s) or probe(s) or related measuring equipment that monitors influent from the impoundments to the central wastewater treatment plant, and for each such instance, identify all documents which discuss, refer or relate to any such activities.

Response:

See objections and answers to Interrogatory No. 33.

Interrogatory No. 39:

State whether WCI contends that any or all of the results of pH monitoring by WCI of influent from the impoundments to the central wastewater treatment plan was not accurate, and if so, identify all results which WCI contends are inaccurate.

Response:

WCI Steel objects to Interrogatory No. 39 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks information already in Plaintiff's possession, expert opinions, and other non-discoverable material. Without waiving any objection, WCI Steel states that at this point in its investigation, it appears that some or all of the pH monitoring of the influent to the Central Waste Water Treatment Plant (CWWTP) was improper, unreliable or inaccurate. The pH probe at the CWWTP was not designed to accurately and precisely measure pH levels. Rather, WCI Steel monitors pH of the CWWTP influent only to obtain a qualitative indication of pH trends. The influent wastewater contains residual amounts of oil and grease which quickly coat the pH probe and render the readings quantitatively inaccurate. Further, the computerized operating log data for minimum pH levels are unreliable because the system continues to read pH data input while the probe is being cleaned with a strong acid solution. Since the average pH data of the computerized operating log are calculated using the minimum pH data as part of the input, these data are also unreliable. Further, upon information and belief, WCI Steel believes the pH probe may not have been consistently and properly calibrated and/or acid cleaned, resulting in improper, unreliable or inaccurate pH measurements. Additionally, the pH measurements are inaccurate because the bosh box in which the probe is located receives influent from sources other than and in addition to the influent

from Pond 6, rendering the pH readings unrepresentative and indeterminative of the pH levels of the Pond 6 influent.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents already in Plaintiff's possession or produced in response to this Discovery Request.

Interrogatory No. 40:

State whether WCI contends that any or all of the results of pH monitoring by WCI of influent from the impoundments to the central wastewater treatment plant was not accurate, and if so, state in detail all facts, results, tests, theories and contentions upon which WCI relies to support such claim of inaccuracy.

Response:

See objections and answers to Interrogatory No. 39.

Interrogatory No. 41:

State whether WCI contends that any or all of the results of pH monitoring by WCI of influent from the impoundments to the central wastewater treatment plant was not accurate, and if so, identify each person with knowledge of any such facts, results, tests, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 39. Without waiving any objection, WCI Steel further states that the following persons who may possess information related to this interrogatory include: (1) Raymond Zeuner; (2) Thomas O. Shepker; (3) Herman Showalter; (4) Mike Ballas; (5) Randy Rodgers; (4) Michael Gaydosh; (5) Ronald Risko; (6) Kevin White; (7) Glenn Dunn; (8) Mike Maas; (9) Steve Sotlar; (10) Lenny Halt; (11) Melvin Goins; (12) Grant Deem; (13) Dave Mullane; (14)

Rich Shenal; (15) Ken Craver; (16) Dave Medley; (17) Don Sommage; (18) Steve Marshall; (19) Jim Osborne; (20) Lester Reeves; (21) Bill Hickman; (22) James Harvey, Jr.; (23) WCI Steel expert witnesses yet to be identified; (24) representatives of the manufacturer of WCI Steel's pH probe, Great Lakes Instruments, who are yet to be identified.

Interrogatory No. 42:

State whether WCI contends that any or all of the results of pH monitoring by WCI of influent from the impoundments to the central wastewater treatment plant was not accurate, and if so, identify all documents which discuss, refer or relate to any such facts, results, tests, theories and contentions.

Response:

See answers and objections to Interrogatory No. 39.

Interrogatory No. 43:

State whether WCI contends that any or all of the results of pH testing by U.S. EPA or by any third party of wastewaters or other substances from the impoundments, or of influent to the central wastewater treatment plant from the impoundments, was not accurate, and if so, identify all results which WCI contends are inaccurate.

Response:

WCI Steel objects to Interrogatory No. 43 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, seeks information already in Plaintiff's possession, and seeks expert opinions and other non-discoverable materials. Without waiving any objection, WCI Steel states that, at this point in its investigation, it appears the results of the pH sampling from the 6a basin during U.S. EPA's multimedia inspection of the Warren Facility in May-June 1993 are improper,

unreliable or inaccurate due to the failure of U.S. EPA's inspector to adhere to the sampling methodology established by the Agency in U.S. EPA's "Test Methods for Evaluating Sold Waste; Physical/ Chemical Methods," SW-846.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents which are already in Plaintiff's possession and/or are public records.

Interrogatory No. 44:

State whether WCI contends that any or all of the results of pH testing by U.S. EPA or by any third party of wastewaters or other substances from the impoundments, or of influent to the central wastewater treatment plant from the impoundments, was not accurate, and if so, state in detail all facts, results, tests, theories and contentions upon which WCI relies to support such claim of inaccuracy.

Response:

See objections and answers to Interrogatory No. 43.

Interrogatory No. 45:

State whether WCI contends that any or all of the results of pH testing by U.S. EPA or by any third party of wastewaters or other substances from the impoundments, or of influent to the central wastewater treatment plant from the impoundments, was not accurate, and if so, identify each person with knowledge of any such facts, results, tests, theories and contentious, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 43. Without waiving any objection, WCI Steel states that additional knowledge may be possessed by WCI Steel's expert witnesses, who are yet to be identified.

Interrogatory No. 46:

State whether WCI contends that any or all of the results of pH testing by U.S. EPA or by any third party of wastewaters or other substances from the impoundments, or of influent to the central wastewater treatment plant from the impoundments, was not accurate, and if so, identify all documents which discuss, refer or relate to any such facts, results, tests, theories and contentions.

Response:

See objections and answers to Interrogatory No. 43.

Interrogatory No. 47:

With respect to WCI's denial of the allegations in Paragraph 51 of the Complaint, state whether WCI contends that it or any other party included Ponds 5, 6 and 6A in any RCRA Part A Application or amended Application, and if so, identify such Application, specifically including the date, page and paragraphs where such ponds were included.

Response:

WCI Steel objects to Interrogatory No. 47 on the grounds that it is argumentative, vague, seeks information already in Plaintiff's possession, and is based on incorrect factual assumptions or legal conclusions. Without waiving any objection, WCI Steel states that it was not required under federal or state RCRA regulations to include Ponds 5 and 6 or the 6a basin in any RCRA Part A Application because they are not, and have never been, hazardous waste management units.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents already in Plaintiff's possession or documents produced in response to this Discovery Request.

Interrogatory No. 48:

With respect to WCI's denial of the allegations in Paragraph 57 of the Complaint, state whether WCI contends that it or any other party included Ponds 5, 6 and 6A in any RCRA Part B Application or amended Application, and if so, identify such Application, specifically including the date, page and paragraphs where such ponds were included.

Response:

See objections and answers to Interrogatory No. 47.

Interrogatory No. 49:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify the communication.

Response:

WCI Steel objects to Interrogatory No. 49 on the grounds that it is argumentative, vague, and based on incorrect factual assumptions and conclusions of law and seeks information in Plaintiff's possession. Without waiving any objection, WCI Steel states that it was under no obligation to make such notification. In addition, on information and belief, U.S. EPA and Ohio EPA have been aware of the pond system and the general nature of water therein since at least September 1989.

Interrogatory No. 50:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify each person with knowledge of any such notification or communication, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 49. Without waiving any objection, WCI Steel further states that the following individuals may have knowledge of U.S. EPA and Ohio EPA inspections of the facility during the time period referred to in the Complaint: (1) Thomas O. Shepker; (2) Richard Gradishar; (3) U.S. EPA employees Mark Conti and Ron Kovach.

Interrogatory No. 51:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify all documents which discuss, refer or relate to such notification or communication.

Response:

See objections and answers to Interrogatory No. 49.

Interrogatory No. 52:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had not treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify the communication.

Response:

See objections and answers to Interrogatory No. 49.

Interrogatory No. 53:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had not treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify each person with knowledge of any such notification or communication, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 49 & 50.

Interrogatory No. 54:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had not treated any hazardous substance or hazardous waste in the impoundments, and if in the affirmative, identify all documents which discuss, refer or relate to such notification or communication.

Response:

See objections and answers to Interrogatory No. 49.

Interrogatory No. 55:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify the notification or communication.

Response:

See objections and answers to Interrogatory No. 49.

Interrogatory No. 56:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify each person with knowledge of any such notification or communication, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory Nos. 49 & 50.

Interrogatory No. 57:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was treating or had treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify all documents which discuss, refer or relate to any such notification or communication.

Response:

See objections and answers to Interrogatory Nos. 49 & 50.

Interrogatory No. 58:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had not treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify the communication.

Response:

See objections and answers to Interrogatory Nos. 49 & 50.

Interrogatory No. 59:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify each person with knowledge of any such notification or communication, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory Nos. 49 & 50.

Interrogatory No. 60:

State whether WCI ever notified or otherwise communicated to U.S. EPA or Ohio EPA that WCI was not treating or had not treated liquid wastes with a pH of less than or equal to 2 in the impoundments, and if in the affirmative, identify all documents which discuss, refer or relate to any such notification or communication.

Response:

See objections and answers to Interrogatory Nos. 49 & 50.

Interrogatory No. 61:

With respect to WCI's denial of the allegations in Paragraph 63 of the Complaint, state whether WCI contends that Ponds 5, 6 or 6A met any of the specified RCRA minimum technological requirements, and if in the affirmative, identify each such requirement, and provide all facts, theories and contentions upon which WCI relies to support the conclusion that such Pond meets such requirement.

Response:

WCI Steel objects to Interrogatory No. 61 on the grounds that it is argumentative, vague, ambiguous, overbroad and compound, and seeks expert opinions, legal conclusions, non-discoverable materials and information already in Plaintiff's possession. Without waiving any objection, WCI Steel states that Ponds 5 and 6 and the 6a basin were not required to meet RCRA minimum technological requirements because they are not, and have never been, hazardous waste management units subject to RCRA regulation.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents produced in response to this Discovery Request.

Interrogatory No. 62:

With respect to WCI's denial of the allegations in Paragraph 63 of the Complaint, state whether WCI contends that Ponds 5, 6 or 6A met any of the specified RCRA minimum technological requirements, and if in the affirmative, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 61.

Interrogatory No. 63:

With respect to WCI's denial of the allegations in Paragraph 63 of the Complaint, state whether WCI contends that Ponds 5, 6 or 6A met any of the specified RCRA minimum technological requirements, and if in the affirmative, identify all documents which discuss, refer or relate to compliance with any such requirement.

Response:

See objections and answers to Interrogatory No. 61.

Interrogatory No. 64:

With respect to WCI's denial of the allegations in Paragraph 70 of the Complaint, state whether WCI contends that it had a written closure plan for Ponds 5, 6 or 6A in accordance with RCRA, and if in the affirmative, identify such document(s).

Response:

WCI Steel objects to Interrogatory No. 64 on the grounds that it is argumentative, vague, ambiguous, overbroad and compound, and seeks expert opinions, legal conclusions, non-discoverable materials and information already in Plaintiff's possession, custody and control. Without waiving any objection, WCI Steel states that it was not required to have or implement a written closure plan under RCRA for Ponds 5 and 6 and the 6a basin because they are not, and have never been, hazardous waste management units subject to RCRA regulation. WCI Steel further states that it did submit a Closure Plan for Ponds 5 and 6 to Ohio EPA on April 18, 1991. However, this Closure Plan and the construction plans contained therein were

submitted on a purely voluntary, precautionary basis and not pursuant to any applicable RCRA regulation.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents produced in response to this Discovery Request.

Interrogatory No. 65:

With respect to WCI's denial of the allegations in Paragraph 77 of the Complaint, state whether WCI contends that it had a detailed written estimate, in current dollars of the cost of closing Ponds 5, 6 or 6A in accordance with RCRA, and if in the affirmative, identify such document(s) and any person(s) with knowledge of such written estimate.

Response:

WCI Steel objects to Interrogatory No. 65 on the grounds that it is argumentative, vague, ambiguous, overbroad and compound, and seeks expert opinions, legal conclusions, non-discoverable materials and information already in Plaintiff's possession. Without waiving any objection, WCI Steel states it was not required to close Ponds 5 and 6 or the 6a basin pursuant to RCRA because they are not, and have never been, hazardous waste management units subject to RCRA regulation. WCI Steel further states that, to the extent cost estimates exist regarding the closure and replacement of the pond system with an alternative system, those cost estimates do not accurately reflect the cost of risk-based closure of the pond system pursuant to U.S. EPA and Ohio EPA guidance.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents produced in response to this Discovery Request.

The following WCI Steel employees may possess information related to this interrogatory: (1) Raymond A. Zeuner; (2) Thomas O. Shepker; (3) Richard Gradishar.

Interrogatory No. 66:

With respect to WCI's denial of the allegations in Paragraph 83 of the Complaint, state whether WCI contends that it had installed, operated and maintained a ground-water monitoring system for Ponds 5, 6 or 6A in accordance with RCRA, and if in the affirmative, provide all facts, theories and contentions upon which WCI relies to support such conclusions.

Response:

WCI Steel objects to Interrogatory No. 66 on the grounds that it is argumentative, vague, ambiguous, overbroad and compound, and seeks expert opinions, legal conclusions, non-discoverable materials and information already in Plaintiff's possession. Without waiving any objection, WCI Steel states that it was not required to install, operate or maintain a ground-water monitoring system for Ponds 5 and 6 and the 6a basin because they are not, and have never been, hazardous waste management units subject to RCRA regulation. WCI Steel further states it is conducting ground water monitoring in the vicinity of the pond system as part of the corrective action process under its RCRA Part B permit.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents which are produced in response to this Discovery Request or already in Plaintiff's possession.

Interrogatory No. 67:

With respect to WCI's denial of the allegations in Paragraph 83 of the Complaint, state whether WCI contends that it had installed, operated and maintained a ground-water monitoring system for Ponds 5, 6 or 6A in accordance with RCRA, and if in the affirmative, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 66.

Interrogatory No. 68:

With respect to WCI's denial of the allegations in Paragraph 83 of the Complaint, state whether WCI contends that it had installed, operated and maintained a ground-water monitoring system for Ponds 5, 6 or 6A in accordance with RCRA, and if in the affirmative, identify all documents which discuss, refer or relate to the existence or description of such ground-water monitoring system, or to compliance with such RCRA ground-water monitoring requirements.

Response:

See objections and answers to Interrogatory No. 66.

Interrogatory No. 69:

With respect to WCI's second affirmative defense to the complaint, identify each claim that WCI contends is barred by any applicable statute of limitation.

Response:

WCI Steel objects to Interrogatory No. 69 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession and non-discoverable material. Without waiving any objection, WCI Steel states that all of the claims in the Complaint

are barred by the applicable statute of limitations to the extent they relate to any time prior to May 11, 1993.

Interrogatory No. 70:

With respect to WCI's second affirmative defense to the complaint, fully describe all facts, theories and contentions upon which WCI relies to support such defense to each such claim, including specifically any action(s) that WCI contends commenced the running of the Statute.

Response:

See objections and answers to Interrogatory No. 69. Without waiving any objection, WCI Steel further states that on information and belief, U.S. EPA knew of the ponds' existence and the nature of the water contained therein prior to May 11, 1993.

Interrogatory No. 71:

With respect to WCI's second affirmative defense to the complaint, fully describe all facts, theories and contentions upon which WCI relies to support such defense, including specifically any action(s) that WCI contends commenced the running of the Statute, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 69 & 70. Without waiving any objection, the following WCI Steel employees and U.S. EPA employees may have information related to this interrogatory: (1) Thomas O. Shepker; (2) Raymond Zeuner; (3) U.S. EPA employees Mark Conti and Ron Kovach.

Interrogatory No. 72:

With respect to WCI's second affirmative defense to the complaint, fully describe all facts, theories and contentions upon which WCI relies to support such defense, including specifically any action(s) that WCI contends commenced the running of the Statute, identify all documents which discuss, refer or relate to any such facts, theories and contentions, or upon which WCI relies, regarding such defense.

Response:

See objections and answers to Interrogatory No. 69.

Interrogatory No. 73:

With respect to WCI's third affirmative defense to the complaint of accord and satisfaction, identify each claim that WCI contends is barred by any alleged agreement.

Response:

WCI Steel objects to Interrogatory No. 73 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession and non-discoverable material. Without waiving any objection, WCI Steel states that all of the claims or allegations in the Complaint are subject to this defense because the U.S. previously agreed to address the pond system through the settlement in principle reached in United States v. WCI Steel, Inc., Case No. 4:95CV1442 (the "Water Case").

Interrogatory No. 74:

With respect to WCI's third affirmative defense to the complaint of accord and satisfaction, fully describe such alleged agreement(s), whether oral or written, including the terms, parties to the agreement, the date and place where made.

Response:

See objections and answers to Interrogatory No. 73. Without waiving any objection, WCI Steel states that the settlement agreement in principle reached between

the parties in the Water Case was reached at the final pretrial conference and memorialized in writing.

Interrogatory No. 75:

With respect to WCI's third affirmative defense to the complaint of accord and satisfaction, fully describe all other facts, theories and contentions upon which WCI relies to support such defense.

Response:

See objections and answers to Interrogatory No. 74.

Interrogatory No. 76:

With respect to WCI's third affirmative defense to the complaint of accord and satisfaction, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 74. Without waiving any objections, WCI Steel states that the following individuals may possess information related to this interrogatory: (1) Raymond A. Zeuner; (2) Thomas O. Shepker; (3) Judge James Gwin; and (4) unidentified U.S. EPA personnel who approved the Water Case settlement agreement in principle.

Interrogatory No. 77:

With respect to WCI's third affirmative defense to the complaint of accord and satisfaction, identify all documents which discuss, refer or relate to any such facts, theories and contentions, or upon which WCI relies, regarding such defense.

Response:

See objections and answers to Interrogatory No. 74. On information and belief, the United States already possesses a copy of the document memorializing the parties' agreement in principle.

Interrogatory No. 78:

With respect to WCI's fourth affirmative defense to the complaint, identify each claim that WCI contends is barred by any such defense.

Response:

WCI Steel objects to Interrogatory No. 78 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession and non-discoverable material. Without waiving any objection, WCI Steel states that all of the claims or allegations in the Complaint are subject to this defense to the extent that they are based upon conditions resulting from startup, shutdown, malfunction and/or upset of the facility's process or pollution control equipment or lawful bypass of the facility's pollution control equipment.

Interrogatory No. 79:

With respect to WCI's fourth affirmative defense to the complaint, fully describe every such alleged startup, shutdown, malfunction and/or upset of the facility's process or pollution control equipment, or lawful bypass of the facility's pollution control equipment upon which WCI relies for such defense for each claim.

Response:

WCI Steel objects to Interrogatory No. 79 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession and non-discoverable material.

Interrogatory No. 80:

With respect to WCI's fourth affirmative defense to the complaint, fully describe all other facts, theories and contentions upon which WCI relies to support such defense.

Response:

See objections and answers to Interrogatory No. 79.

Interrogatory No. 81:

With respect to WCI's fourth affirmative defense to the complaint, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 79. Without waiving any objection, WCI Steel states that the following WCI Steel employees who may possess information related to this interrogatory include: (1) Thomas O. Shepker; (2) Richard Gradishar; (3) Roger Carrier; (4) Robert McCoy; (5) Jake Reis; (6) Herman Showalter.

Interrogatory No. 82:

With respect to WCI's fourth affirmative defense to the complaint, identify all documents that discuss, refer or relate to, or support, or upon which WCI relies, regarding such alleged startup, shutdown, malfunction and/or upset of the facility's process or pollution control equipment, or lawful bypass of the facility's pollution control equipment.

Response:

See objections and answers to Interrogatory No. 79. Without waiving any objection, WCI Steel further states that discoverable responsive information available to WCI Steel may be derived or ascertained from documents produced in response to this Discovery Request.

Interrogatory No. 83:

With respect to WCI's fifth affirmative defense to the complaint of laches, acquiescence, waiver and/or estoppel, identify each claim that WCI contends is barred by such defense, and the specific defense alleged to bar that claim.

Response:

WCI Steel objects to Interrogatory No. 83 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession and non-discoverable material. Without waiving any objection, WCI Steel states that all of the claims or allegations in the Complaint are subject to this defense.

Interrogatory No. 84:

With respect to WCI's fifth affirmative defense to the complaint of laches, acquiescence, waiver and/or estoppel, fully describe all facts, theories and contentions upon which WCI relies to support each such defense.

Response:

WCI Steel objects to Interrogatory No. 84 on the grounds that it is vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks legal conclusions, information already in Plaintiff's possession, and non-discoverable

material. Without waiving any objection, see objections and answers to Interrogatory Nos. 69 & 73.

Interrogatory No. 85:

With respect to WCI's fifth affirmative defense to the complaint of laches, acquiescence, waiver and/or estoppel, identify each person with knowledge of any such facts, theories and contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 84. Without waiving any objection, WCI Steel states that the following individuals may possess information related to this interrogatory: (1) Raymond A. Zeuner; (2) Thomas O. Shepker; (3) Mark Conti; and (4) unidentified U.S. EPA personnel who reviewed information regarding WCI Steel's Warren Facility.

Interrogatory No. 86:

With respect to WCI's fifth affirmative defense to the complaint of laches, acquiescence, waiver and/or estoppel, identify all documents which discuss, refer or relate to any such facts, theories and contentions, or upon which WCI relies, regarding such defense.

Response:

See objections and answers to Interrogatory No. 84.

Interrogatory No. 87:

State whether, assuming that WCI is found liable for any or all of the violations alleged in the complaint that WCI contends that there is any maximum dollar penalty that it can afford to pay, or above such an amount that would substantially threaten or impact WCI's financial condition, or substantially and adversely affect WCI's ability to be an effective competitor in the steel industry, and if in the affirmative, state the dollar amount.

Response:

WCI Steel objects to Interrogatory No. 87 on the grounds that it is argumentative, vague, ambiguous, overbroad, unreasonably burdensome and compound, and seeks expert opinions, speculation, information already in Plaintiff's possession and material outside the scope of permissible discovery. Without waiving any objection, WCI Steel states it is not liable for any or all of the violations alleged in the Complaint and, therefore, the maximum dollar penalty it can afford to pay is irrelevant.

WCI Steel further states that discoverable responsive information may be derived or ascertained from documents already in Plaintiff's possession or produced in response to this Discovery Request.

Interrogatory No. 88:

State whether, assuming that WCI is found liable for any or all of the violations alleged in the complaint that WCI contends that there is any maximum dollar penalty that it can afford to pay, or above such an amount that would substantially threaten or impact WCI's financial condition, or substantially and adversely affect WCI's ability to be an effective competitor in the steel industry, and if in the affirmative, identify all facts and contentions upon which WCI relies to support such amount.

Response:

See objections and answers to Interrogatory No. 87.

Interrogatory No. 89:

State whether, assuming that WCI is found liable for any or all of the violations alleged in the complaint that WCI contends that there is any maximum dollar penalty that it can afford to pay, or above such an amount that would substantially threaten or impact WCI's financial condition, or substantially and adversely affect WCI's

ability to be an effective competitor in the steel industry, and if in the affirmative, identify each person with knowledge of any such facts or contentions, and describe such person's knowledge.

Response:

See objections and answers to Interrogatory No. 87.

Interrogatory No. 90:

State whether, assuming that WCI is found liable for any or all of the violations alleged in the complaint that WCI contends that there is any maximum dollar penalty that it can afford to pay, or above such an amount that would substantially threaten or impact WCI's financial condition, or substantially and adversely affect WCI's ability to be an effective competitor in the steel industry, and if in the affirmative, identify all documents sent, prepared, or received since January 1, 1994 which discuss, refer or relate to WCI's ability to pay a penalty, or the impact of such a penalty on WCI in this or any case brought under the environmental laws of the United States.

Response:

See objections and answers to Interrogatory No. 87. Without waiving any objection, WCI Steel further states that responsive information may be derived or ascertained from the expert reports of Lester Lave, Ph.D., which were produced in U.S. v. WCI Steel, Inc., Case No. 4:95CV1442 ("Water Case") and U.S. v. WCI Steel, Inc., Case No. 4:96CV659 ("Air Case"). These documents are already in the United States' possession.

Interrogatory No. 91:

Identify each of the following documents prepared sent, or received since January 1, 1994: a) annual and quarterly financial reports, and reports filed with the Securities and Exchange Commission, for WCI; b) all financial reports of any kind, or other documents which discuss, refer or relate to WCI's financial condition, furnished to any parent or controlling company, or stockholder of any parent or controlling company, of WCI; c) all financial reports of any kind, or documents which discuss, refer or relate to

WCI's financial condition, furnished to any person providing any type of equity or debt financing to WCI or to any parent or controlling company of WCI.

Response:

WCI Steel objects to Interrogatory No. 91 on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, and seeks publicly available information, confidential business information, and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, WCI Steel states that discoverable responsive information may be derived or ascertained from documents produced in response to this Discovery Request.

AS TO OBJECTIONS:

Ellen Siebenschuh

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Attorneys for Defendant WCI Steel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Defendant WCI Steel, Inc.'s Response to Plaintiff's First Set of Interrogatories and First Request for the Production of Documents to Defendant WCI Steel, Inc. were served this 28th day of September, 1998 upon the following:

Frank Bentkover
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington D.C. 20044

Deirdre Tanaka
Assistant Regional Counsel
United States Environmental Protection Agency- Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Attorneys for Plaintiff United States of America

Ellen Rebenschied

One of the Attorneys for Defendant
WCI Steel, Inc.

VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF TRUMBULL)

I, Thomas O. Shepker, Manager, Environmental Control, of WCI Steel, Inc., being first duly sworn, depose and state:

That I am Manager of Environmental Control for WCI Steel, Inc. ("WCI Steel"); that the information provided in the foregoing Defendant WCI Steel, Inc.'s Response to Plaintiff's First Set of Interrogatories and First Request for the Production of Documents to Defendant WCI Steel, Inc. ("Response") are not all within my personal knowledge and that to the best of my knowledge and belief there is no single employee of WCI Steel who has personal knowledge of all such matters; that the information provided in the Response has been assembled by authorized employees for WCI Steel; and that I am informed and believe that such information is true, correct and accurate.

Thomas O. Shepker
THOMAS O. SHEPKER

SWORN TO BEFORE ME and subscribed in my presence this 28th day of September, 1998.

Judith A. Reichert
Notary Public

JUDITH A. REICHERT, NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES 5/29/2003

FILED
98 MAY 11 PM 12:07
NORTHERN DISTRICT OF OHIO
CLEVELAND

ISSUED
MAY 11 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	4:98CV 1082
Plaintiff,	)	JUDGE ECONOMUS
v.	)	CIVIL ACTION NO.
WCI STEEL, INC.,	)	MAG. JUDGE THOMAS
Defendant.	)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act

("RCRA"), 42 U.S.C. § 6928(a) and (g), for injunctive relief and civil penalties against Defendant WCI Steel, Inc. ("WCI"), for violations of RCRA, 42 U.S.C. § 6901 et seq., the Ohio Administrative Code ("O.A.C."), and WCI's hazardous waste management permit issued pursuant to RCRA and the O.A.C. The violations alleged herein occurred in the course of WCI's management of a hazardous waste in surface impoundments at its integrated steel manufacturing facility in Warren, Ohio.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), because it is the judicial district in which WCI's Warren, Ohio, facility is located and in which the alleged violations occurred.

NOTICE

4. Notice of commencement of this action has been given to the Ohio Environmental Protection Agency ("OEPA") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6828(a)(2).

STATUTORY AND REGULATORY SCHEME

5. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6921-6939. EPA has promulgated regulations pursuant to Subtitle C of RCRA that set forth standards and requirements that are applicable to generators and transporters of hazardous waste and owners and operators of facilities that treat store or dispose of hazardous waste.

6. Section 3005 of RCRA prohibits the operation of any facility that treats, stores, or disposes of hazardous wastes, except in accordance with a permit. 42 U.S.C. § 6925(a). Because EPA could not issue permits to all regulated entities by November 19, 1980, RCRA's effective date, RCRA provided that facilities meeting certain operational and permit application requirements could obtain a regulatory approval, known as "interim status," which allowed facilities to operate pending final administrative action on a permit application. 42 U.S.C. § 6925(e). In order to qualify for such interim status, a facility had to demonstrate that: 1) it was in existence on November 19, 1980; 2) had complied with Section 3010(a) of RCRA concerning notification of

hazardous waste activity; and 3) had made an application for a permit, Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

7. Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, provide that a state may obtain federal authorization to administer the RCRA hazardous waste management program in that state, provided the state requirements are consistent with and equivalent to the federal requirements in areas including identification and listing of hazardous wastes, requirements for generators and transporters of hazardous wastes, hazardous waste management facilities, requirements with respect to permits and permit applications, permitting, compliance programs, and enforcement authority and public participation in the permitting process.

8. During the period of July 15, 1983, through January 31, 1986, the State of Ohio administered Ohio's hazardous waste management program pursuant to interim authorization by EPA, except that EPA reserved authority to issue final RCRA permits. Ohio's interim status expired by operation of law, 43 U.S.C. 6926(c), as of January 31, 1986. From February 1, 1986, through June 30, 1989, EPA operated the federal hazardous waste program in Ohio. Ohio continued to perform inspections and other agreed upon tasks under a Cooperative Agreement between the State and

EPA. EPA granted final authorization to the State of Ohio on June 30, 1989, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), to administer and enforce the State's hazardous waste program in the State of Ohio. The regulations comprising the applicable State hazardous waste management program, except corrective action activities, for the State of Ohio were incorporated by reference into federal law at 40 C.F.R. § 272.1801(a)(1). 54 Federal Register 27173, June 28, 1989; 57 Federal Register 4162, February 4, 1992. The statutes comprising the authorized State program are listed at 40 C.F.R. § 272.1801 (a)(2)(i) and (ii). On December 23, 1996, the State of Ohio was delegated responsibility to implement the RCRA corrective action requirements. For all corrective action activities undertaken prior to that date, the requirements of 40 C.F.R. Part 264 were administered by EPA for facilities operating in the Sate of Ohio.

9. Pursuant to 40 C.F.R. Part 261, and O.A.C. § 3745-51, a waste is determined to be hazardous if it exhibits one of the characteristics of ignitability, corrosivity, reactivity, or toxicity. These wastes are commonly referred to as "characteristic hazardous wastes".

10. Pursuant to 40 C.F.R. § 261.22 and O.A.C. § 3745-51-22, corrosivity is defined, in relevant part, as a solid waste which is aqueous and has a pH of 2 or less.

11. Under Section 3005(j) of RCRA, 42 U.S.C. § 6925(j), all "interim status" surface impoundments in existence on November 8, 1984, were required to meet the minimum technological requirements of Section 3004(o), 42 U.S.C. § 6924(o), by November 8, 1988, unless granted an exemption by EPA or the State. The owner or operator of a non-exempt surface impoundment that failed to implement the minimum technology requirements of Section 3005(j) by November 8, 1988, was required to cease accepting hazardous waste for disposal in the unit, and to expeditiously close the unit in accordance with the applicable closure regulation found at 40 C.F.R. Part 264, Subpart G.

12. The owner or operator of a facility with interim status must also comply with 40 C.F.R. Part 265 or equivalent state regulations. These regulations establish standards governing the treatment, storage, or disposal of hazardous waste. 40 C.F.R. § 265.1(b) provides that hazardous waste management facilities that fail to take steps necessary to obtain interim status are nonetheless subject to the regulations of 40 C.F.R. Part 265.

13. Section 3010(a) of RCRA, 42 U.S.C. § 6926(a), requires any person who generates or transports hazardous waste, or owns or operates a facility for the treatment, storage, or disposal of hazardous waste, to notify EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA. Section 3010 of RCRA also provides that no hazardous waste subject to regulations may be transported, treated, stored, or disposed of unless the required notification is given.

14. RCRA, as amended by HSWA, also prohibits the land disposal of RCRA hazardous wastes unless treatment standards are met. RCRA Section 3004(d) through (k) and (m), 42 U.S.C. § 6924(d) through (k) and (m).

15. Section 3004(d) and (m) of RCRA, 42 U.S.C. § 6924(d) and (m), prohibit the land disposal of hazardous wastes specified in a published schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, or except for hazardous waste treated to a level that minimizes threats to human health and the environment.

16. "Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility,

salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes. 40 C.F.R. § 268.2(c) and O.A.C. § 3745-59-02.

17. Under Section 3004(g)(5) and (m) of RCRA, 42 U.S.C. § 6924(g((5), the Administrator promulgated regulations implementing the land disposal restrictions of hazardous waste, codified at 40 C.F.R. Part 268. 40 C.F.R. § 268.32 and O.A.C. § 3745-59-32. The federal regulations effective July 8, 1987, provide that liquid wastes having a pH less than or equal to 2, are prohibited from land disposal. O.A.C. §§ 3745-59-32 and 3745-59-35(A), provides that all wastes specified as corrosive hazardous waste in O.A.C. § 3745-51-22, 40 C.F.R. §261.22(a), are prohibited from land disposal, unless the waste meets the applicable standards in Section 3745-59-40 through 43 of the O.A.C. (40 C.F.R. Part 268, Subpart D).

18. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that whenever, on the basis of any information, the EPA determines that any person has violated or is violating any requirement of RCRA, including violations in an authorized state, the United States may file a civil action in federal district court to obtain appropriate relief, including a temporary or permanent injunction. Section 3008(g) of RCRA, 42 U.S.C.

§ 6928(g), provides that any person who violates any requirement of RCRA shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 per day of noncompliance for each violation.

DEFENDANT AND ITS OPERATIONS

19. Defendant WCI is an Ohio corporation with its principal place of business in Warren, Ohio.

20. WCI owns and operates an integrated steel plant located at 1040 Pine Avenue, S.E., Warren, Ohio (the "Steel Plant"). This case concerns the operation of surface impoundments, designated Ponds "5", "6" and "6A", by WCI at the Facility.

21. WCI purchased the steel plant in September, 1988, from LTV Steel. The owner prior to LTV Steel was Republic Steel.

22. WCI is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and O.A.C. § 3745-50-10(A)(86) and 40 C.F.R. § 260.10.

23. WCI's steel plant, including all buildings, structures and surfaces impoundments located there, is a "facility" within the meaning of 40 C.F.R. § 260.10 and the O.A.C. § 4745-50-10(A)(35).

24. One or more of the surface impoundments at the Facility, including Ponds 5, 6 and 6A, have contained wastewaters

which exhibited a pH of 2 or less during the time period relevant to this Complaint.

25. Wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A have exhibited the characteristic of corrosivity and are a hazardous waste within the meaning of 40 C.F.R. § 261.20 and 261.22.

26. Ponds 5, 6 and 6A at the Facility are hazardous waste management units as defined by 40 C.F.R. § 260.10, and O.A.C. § 3747-50-10(A)(49) and are subject to regulation as hazardous waste management units subject to the provisions of RCRA and the O.A.C.

27. Ponds 5, 6 and 6A are unlined earthen impoundments which are not built to the specifications of Section 3004(o)(1) of RCRA, 42 U.S.C.§ 6924(o)(1), 40 C.F.R. §§ 264.221, 265.221 or O.A.C. §§ 3745-56-21.

28. Ponds 5 and 6 have been in use at the Facility for a period prior to 1950, have remained in continuous use to the current date, and have not been closed. Pond 6A was added on or about 1986 and has been in continuous use to the current date and has not been closed.

29. At various times, wastewater from Pond 5, 6 or 6A was released from the impoundments into the surrounding environment.

Some of these releases occurred on or about: October 17, 1989, December 30, 1990, December 31, 1990, January 1, 1991, February 4, 1992, July 31, 1992, December 31, 1992, January 14, 1993, and April, 1994.

30. Ponds 5, 6 and 6A do not meet the technological standards established at 40 C.F.R. §§ 264.221 and 265.221, and O.A.C. §§ 3745-56-20 through 33.

31. Ponds 5, 6 and 6A, have continued to receive process wastewaters from November 8, 1988, up to and continuing to the date of filing.

32. WCI was required to obtain a permit, issued pursuant to the provisions of 42 U.S.C. § 6925, and the O.A.C. §§ 3745-40-40 through 3745-40-45, covering all units at the Facility that manage, treat or store hazardous waste or to expeditiously close those units in accordance with the applicable closure requirements.

33. WCI does not have a permit issued pursuant of Section 3005 or 3006 of RCRA, 42 U.S.C. §§ 6925, 6926, to manage treat or store hazardous wastes in Ponds 5, 6, and 6A.

34. On or about August 25, 1980, Republic Steel submitted a notification of hazardous waste activity for the Facility to EPA in accordance with Section 3010(a) of RCRA, 42 U.S.C. § 6930(a),

indicating that the Facility generates, transports, treats, stores or disposes of hazardous waste identified as K062, K087 and F016. On or about March 23, 1987, a revised notification was submitted to EPA indicating that the Facility generates, treats, stores or disposes of hazardous waste identified as K062, K087, and F001 and conducts used oil activities. WCI has never notified EPA regarding the management of hazardous waste identified as characteristic due to corrosivity in ponds 5, 6 and 6A.

35. WCI submitted a RCRA Part B Permit Application ("Part B application") for the Facility on November 7, 1988 which was subsequently revised eight times through October, 1992. The Part A and Part B of Permit Applications submitted for the Facility, including revisions and amendments by WCI, have not indicated to EPA or the State that the Facility is managing hazardous waste in Ponds 5, 6, and 6A.

36. On August 12, 1993, OEPA issued to WCI an Ohio Hazardous Waste Installation and Operation Permit. On November 11, 1993, EPA issued to WCI the Federal portion of a RCRA hazardous waste permit. At the time that both the Federal and State hazardous waste permits become effective, Defendant WCI had

an effective RCRA permit which authorizes it to conduct hazardous waste management activities only as specified in the RCRA permit.

37. Under its permits, whenever WCI becomes aware that it failed to submit any relevant fact, or submitted incorrect information in the permit application, it is required to promptly submit such facts or information.

38. WCI is prohibited by its Part B permit from storing hazardous waste that is not identified in that permit.

39. WCI has managed a hazardous waste not authorized by its permit in one or more of its Ponds 5, 6 and 6A.

40. WCI does not have interim status, under the provisions of Section 3005, 42 U.S.C. § 6925, to manage, treat or store corrosive wastes in Ponds 5, 6 and 6A at the Facility.

FIRST CLAIM FOR RELIEF
(Failure to Obtain Waste Management Permit for Ponds)

41. Paragraphs 1 through 40 are hereby incorporated by reference.

42. Pursuant to 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code ("ORC") §§ 3734.02(F) and 3734.04 ; and O.A.C. § 3745-50-45, the owner and operator of a hazardous waste management unit is prohibited from operating a hazardous waste management unit except in accordance with a

permit issued pursuant to RCRA, unless the facility had interim status.

43. Pursuant to the State of Ohio Hazardous Waste Management Permit, dated August 12, 1993, WCI was prohibited from operating any hazardous waste management unit except in accordance with that permit.

44. From September, 1988, to the present the Defendant has operated hazardous waste management units at the Facility, including Ponds 5, 6 and 6A, without attaining interim status or obtaining a permit issued pursuant to RCRA authorizing such operation.

45. Ponds 5, 6 and 6A do not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), because no timely notice was ever filed stating that the facility was treating, storing, or disposing of a hazardous waste in Ponds 5, 6 and 6A, and because no timely Part A application was filed pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, stating that the facility was treating, storing, or disposing of a hazardous waste in Ponds 5, 6 and 6A.

46. Defendant WCI's operation of Ponds 5, 6 and 6A without a permit and without interim status constitutes violations of

RCRA and the federally approved hazardous waste management program for the State of Ohio.

47. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997. Each day of such violation constitutes a separate violation.

48. Unless enjoined, defendant WCI's violations of RCRA will continue.

SECOND CLAIM FOR RELIEF
(Failure to Include Ponds in Part A Application)

49. Paragraphs 1 through 40 are hereby incorporated by reference.

50. Pursuant to 40 C.F.R. § 270.13 and O.A.C. § 3745-50-43, an owner or operator of a hazardous waste management unit is required to include in a Part A application all past, present and

future hazardous waste treatment, storage, and disposal areas. O.A.C. § 3745-50-45 and 40 C.F.R. § 270.72, required the owner or operator of a hazardous waste facility with interim status to amend its Part A application prior to making certain specified changes in its treatment, storage, or disposal of hazardous wastes.

51. From September 1988, to the present, the Defendant has operated hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part A application and without amending any Part A application.

52. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and of the federally approved hazardous waste management program for the State of Ohio.

53. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation of RCRA prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13514, civil

penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

54. Unless enjoined, defendant WCI's violations of RCRA will continue.

THIRD CLAIM FOR RELIEF
(Failure to Include Ponds in Part B Application)

55. Paragraphs 1 through 40 are hereby incorporated by reference.

56. Pursuant to 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44, the owner or operator of a hazardous waste management unit is required to include in a Part B application, among other things, chemical and physical analysis of the hazardous waste and hazardous debris to be handled at the facility, including all information which must be known to treat, store or dispose of the wastes properly.

57. From September 1988, to the present, WCI has operated hazardous waste management units at the Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part B application, and without amending any Part B application to include information pertaining to Ponds 5, 6 and 6A.

58. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and the federally approved hazardous waste management program for the State of Ohio.

59. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13524, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

60. Unless enjoined, defendant WCI's violations of RCRA will continue.

FOURTH CLAIM FOR RELIEF
(Failure to Meet the Minimum Technological Requirements)

61. Paragraphs 1 through 40 are hereby incorporated by reference.

62. Under Section 3005(j)(1) of RCRA, 42 U.S.C. § 6925(j)(1), the owner or operator of a surface impoundment in the State

of Ohio that treated, stored, or managed a hazardous waste was required to stop accepting any hazardous wastes in the impoundments by November 8, 1988, unless the impoundment met the minimum technological requirements of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), by November 8, 1988, and was required to close the nonconforming impoundments expeditiously after November 8, 1988, in accordance with the applicable closure regulation found at 40 C.F.R. § 264.228 and O.A.C. § 3745-56-28.

63. Ponds 5, 6 and 6A did not meet the minimum technological standards referred to in the preceding paragraph and were not exempt from closure.

64. During the period from November 8, 1988, until at least 1995, WCI continued to accept hazardous wastes at Ponds 5, 6 and 6A, and failed to close the impoundments as required by Section 3005(j) of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228, and O.A.C. § 3745-56-28.

65. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and the federally approved hazardous waste management program for the State of Ohio.

66. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil

penalties for each violation of RCRA, and the Federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997, and pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13524, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

67. Unless enjoined, defendant WCI's violations of RCRA will continue.

FIFTH CLAIM FOR RELIEF
(Failure to have Closure Plan)

68. Paragraphs 1 through 40 are hereby incorporated by reference.

69. Under 40 C.F.R. § 264.112, and O.A.C. § 3745-55-12 the owner and operator of a hazardous waste management unit is required to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

70. During the period from November 8, 1988, to the present, WCI did not have a written closure plan developed in

compliance with federal and state RCRA closure provisions that included closure of Ponds 5, 6 and 6A.

71. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and of the federally approved hazardous waste management program for the State of Ohio.

72. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13514, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

73. Unless enjoined, defendant WCI's violations of RCRA will continue.

SIXTH CLAIM FOR RELIEF

(Failure to Comply with Financial Assurance Provisions)

74. Paragraphs 1 through 40 are hereby incorporated by reference.

75. Under 40 C.F.R. §§ 264.140 through 264.151, and O.A.C. § 3745-55-42, the owner or operator of a hazardous waste management facility is required to have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units in accordance with the applicable provisions of 40 C.F.R. Part 264 and O.A.C. §§ 3745-55-40 through 3745-55-51.

76. The owner or operator of a hazardous waste management unit is required to comply with the financial assurance provisions of 40 C.F. R. § 264.143 and O.A.C. § 3745-55-43.

77. During the period from November 8, 1988, to the present, the Defendant has failed to comply with the closure costs and financial assurance requirements of 40 C.F.R. Part 264 and O.A.C. § 3745-55-40 through 3745-55-51.

78. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and the federally approved hazardous waste management program for the State of Ohio.

79. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the Federally approved hazardous waste management program for the State of Ohio. The

civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13514, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

80. Unless enjoined, defendant WCI's violations of RCRA will continue.

SEVENTH CLAIM FOR RELIEF
(Failure to Implement a Ground-water Monitoring Program)

81. Paragraphs 1 through 40 are hereby incorporated by reference.

82. The owner or operator of a surface impoundment is required to install, operate, and maintain a ground-water monitoring system which satisfies the criteria contained at 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-54-99 and 3745-55-01 through 3745-55-02.

83. During the period from November 8, 1988, to the present, WCI has failed to install, operate, and maintain a ground-water monitoring system which meets the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-55-02.

84. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and the federally approved hazardous waste management program for the State of Ohio.

85. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13514, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

86. Unless enjoined, defendant WCI's violations of RCRA will continue.

EIGHTH CLAIM FOR RELIEF
(Land Disposal of Hazardous Waste)

87. Paragraphs 1 through 40 are hereby incorporated by reference.

88. At various times from July 8, 1987, until at least 1995, Defendant has land disposed of hazardous waste with a pH of

less than or equal to 2.0, and exhibiting the characteristic of corrosivity, in or from Ponds 5, 6 or 6A, which did not meet the treatment standards specified at O.A.C. § 3745-59-40 through 3745-59-43, in violation of 40 C.F.R. §§ 268.32 and 268.35(a), and O.A.C. §§ 3745-59-32 and 3745-59-35(A).

89. The acts or omissions referred to in the preceding paragraph constitute violations of RCRA and the federally approved hazardous waste management program for the State of Ohio.

90. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA, and the Federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Fed. Reg. 13524, the civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 31, 1997. Each day of such violation constitutes a separate violation.

91. Unless enjoined, defendant WCI's violations of RCRA will continue.

RELIEF REQUESTED

WHEREFORE, plaintiff, United States of America, respectfully requests that this Court:

1. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), enjoin WCI from any and all ongoing violations of RCRA, by ordering the necessary injunctive relief, including but not limited to the closure under RCRA of Ponds 5, 6 and 6A, to obtain compliance with the Act, the Ohio Revised Code, the Ohio Administrative Code, and WCI's State of Ohio Hazardous Waste Management Permit, dated August 12, 1993, with respect to Ponds 5, 6 and 6A;

2. Assess civil penalties against the defendant not to exceed $25,000 per day prior to January 30, 1997, and not to exceed $27,500 per day on or after January 30, 1997, for each violation of RCRA, the Ohio Administrative Code and WCI's State hazardous waste management permit alleged above;

3. Award other such relief as this Court deems just and proper.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	Civil Action No. 4:98CV1082
Plaintiff,	)	
	)	Judge Economus
v.	)	
	)	**WCI STEEL, INC.'S**
WCI STEEL, INC.,	)	**ANSWER TO COMPLAINT**
	)	
Defendant.	)	

Defendant WCI Steel, Inc. ("WCI Steel"), by and through its attorneys, states for its Answer to the Complaint of United States of America ("Plaintiff") as follows:

NATURE OF ACTION

1. In response to Paragraph 1, WCI Steel denies that it has committed any violation entitling Plaintiff to relief. The remainder of Paragraph 1 does not contain allegations of fact, but rather describes the action herein, and, therefore, requires no response.

JURISDICTION AND VENUE

2. WCI Steel denies any statutory violation which could give rise to the jurisdiction alleged under the statutory provisions in Paragraph 2. WCI Steel admits that the statutes cited exist and that they speak for themselves.

3. WCI Steel denies any violation which could give rise to the venue alleged under the statutory provisions in Paragraph 3. WCI Steel admits that its facility is located in the Northern District of Ohio. WCI Steel admits that the statutes cited in Paragraph 3 exist and that they speak for themselves.

NOTICE

4. WCI Steel is without knowledge or information sufficient to admit or deny the allegation contained in Paragraph 4 and, therefore, denies such allegation.

STATUTORY AND REGULATORY SCHEME

5. The statements in Paragraphs 5 through 18 are not allegations of fact but rather purport to be statements of law and, therefore, require no response, except that the statutory and regulatory provisions cited therein speak for themselves.

DEFENDANT AND ITS OPERATIONS

6. In response to Paragraph 19, WCI Steel admits that it is an Ohio corporation with its principal place of business located partially in the City of Warren, Warren Township, and Howland Township, all of which are in Ohio.

7. In response to Paragraph 20, WCI Steel admits that it owns and operates an integrated steel facility located at 1040 Pine Avenue, S.E., which is

located partially in the City of Warren, Warren Township, and Howland Township, Ohio ("the Facility"). The remainder of this Paragraph does not contain allegations of fact, but rather describes the action herein and, therefore, requires no response except that WCI Steel denies that the "6a" basin constitutes a "surface impoundment" within the meaning of the statutory and regulatory provisions cited in the Complaint.

8. In response to Paragraph 21, WCI Steel admits that on August 31, 1988, Warren Consolidated Industries, Inc. acquired the Facility from LTV Steel Company ("LTV"). On information and belief, WCI Steel states that Republic Steel Corporation operated the Facility prior to LTV.

9. In response to Paragraph 22, WCI Steel admits that it is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and O.A.C. § 3745-50-10(A)(86) and 40 C.F.R. § 260.10.

10. WCI Steel denies the allegations contained in Paragraph 23.

11. In response to Paragraph 24, WCI Steel denies that the 6a basin constitutes a surface impoundment. WCI Steel denies the remaining allegations contained in Paragraph 24.

12. WCI Steel denies the allegations contained in Paragraphs 25 - 27.

13. In response to Paragraph 28, WCI Steel is without knowledge or information sufficient to admit or deny precisely when Ponds 5 and 6 and the 6a basin were installed or how they were used by prior owners of the Facility and, therefore, denies such allegations. WCI Steel admits that Ponds 5 and 6 and the 6a

basin exist and that Ponds 5 and 6 are part of the Facility's authorized and permitted wastewater treatment system. The remainder of this Paragraph does not contain allegations of fact but rather purport to be statements of law and, therefore, require no response.

14. WCI Steel denies the allegations contained in Paragraphs 29-30.

15. In response to Paragraph 31, WCI Steel admits that Pond 5 and 6 have been part of the Facility's authorized and permitted wastewater treatment system from November 8, 1988 to present. WCI Steel denies all other allegations contained in this paragraph.

16. The statements in Paragraph 32 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the statutory and regulatory provisions speak for themselves.

17. In response to Paragraph 33, WCI Steel admits that it does not have a permit issued pursuant to Sections 3005 or 3006 of RCRA, 42 U.S.C. §§ 6925, 6926, to manage, treat or store hazardous wastes in Ponds 5 and 6 and the 6a basin, but denies that any such permit is required or that its lack of such a permit is a violation under these statutory provisions.

18. WCI Steel is without knowledge or information sufficient to admit or deny the allegations with respect to Republic Steel and prior facility owners contained in Paragraph 34 and, therefore, denies such allegations. WCI Steel denies all other allegations contained in this paragraph.

19. In response to Paragraph 35, WCI Steel admits that it submitted a RCRA Part B Permit Application in November, 1988 which was subsequently revised eight times through October, 1992. No response to the remaining allegations in Paragraph 35 is necessary since the referenced documents speak for themselves with respect to their contents.

20. In response to Paragraph 36, WCI Steel admits that on August 12, 1993 Ohio EPA issued the Facility an Ohio Hazardous Waste Installation and Operation Permit. WCI Steel admits that on November 11, 1993, U.S. EPA issued the Facility the federal portion of a RCRA hazardous waste permit. The remaining statements in Paragraph 36 are not allegations of fact but purport to be statements of law and, therefore, require no response except that the permits speak for themselves.

21. The statements in Paragraph 37 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the permits speak for themselves.

22. The statements in Paragraph 38 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the permit speaks for itself.

23. WCI Steel denies the allegations contained in Paragraph 39.

24. In response to Paragraph 40, WCI Steel admits that it does not have interim status under Section 3005 of RCRA, 42 U.S.C. § 6925, to manage, treat or

store hazardous wastes in Ponds 5 and 6 or the 6a basin. WCI Steel denies any violation under this statutory provision.

PLAINTIFF'S FIRST CLAIM FOR RELIEF
(Failure to Obtain Waste Management Permit for Ponds)

25. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

26. The statements in Paragraph 42 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the statutory and regulatory provisions speak for themselves.

27. The statements in Paragraph 43 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the permit speaks for itself.

28. WCI Steel denies the allegations contained in Paragraphs 44 - 48.

PLAINTIFF'S SECOND CLAIM FOR RELIEF
(Failure to Include Ponds in Part A Application)

29. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

30. The statements in Paragraph 50 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

31. WCI Steel denies the allegations contained in Paragraphs 51 - 54.

PLAINTIFF'S THIRD CLAIM FOR RELIEF
(Failure to Include Ponds in Part B Application)

32. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

33. The statements in Paragraph 56 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

34. WCI Steel denies the allegations contained in Paragraphs 57 – 60.

PLAINTIFF'S FOURTH CLAIM FOR RELIEF
(Failure to Meet the Minimum Technological Requirements)

35. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

36. The statements in Paragraph 62 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the statutory and regulatory provisions speak for themselves.

37. WCI Steel denies the allegations contained in Paragraphs 63 - 67.

PLAINTIFF'S FIFTH CLAIM FOR RELIEF
(Failure to Have Closure Plan)

38. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

39. The statements in Paragraph 69 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

40. WCI Steel denies the allegations contained in Paragraphs 70 - 73.

PLAINTIFF'S SIXTH CLAIM FOR RELIEF
(Failure to Comply with Financial Assurance Provisions)

41. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

42. The statements in Paragraph 75 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

43. The statements in Paragraph 76 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

44. WCI Steel denies the allegations contained in Paragraphs 77 - 80.

PLAINTIFF'S SEVENTH CLAIM FOR RELIEF
(Failure to Implement a Ground-water Monitoring Program)

45. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

46. The statements in Paragraph 82 are not allegations of fact but rather purport to be statements of law and, therefore, require no response except that the regulatory provisions speak for themselves.

47. WCI Steel denies the allegations contained in Paragraphs 83 - 86.

PLAINTIFF'S EIGHTH CLAIM FOR RELIEF
(Land Disposal of Hazardous Waste)

48. WCI Steel incorporates by reference its responses to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

49. WCI Steel denies the allegations contained in Paragraphs 88 – 91.

PLAINTIFF'S RELIEF REQUESTED

50. In response to Plaintiff's Relief Requested, WCI Steel denies that Plaintiff is entitled to any relief whatsoever.

51. WCI Steel denies any and all allegations, averments or claims in the Complaint not specifically admitted herein.

WCI Steel affirmatively alleges that:

FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims for relief fail to state a claim upon which relief may be granted and should therefore be dismissed.

SECOND AFFIRMATIVE DEFENSE

Some of Plaintiff's claims are barred by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

Some of Plaintiff's claims are barred pursuant to accord and satisfaction based upon agreements reached between Plaintiff and/or its agents and WCI Steel in satisfaction of certain claims for relief herein.

FOURTH AFFIRMATIVE DEFENSE

Some or all of the alleged violations were the result of startup, shutdown, malfunction and/or upset of the facility's process or pollution control equipment or are the result of lawful bypasses of the facility's pollution control equipment.

FIFTH AFFIRMATIVE DEFENSE

Some or all of the claims alleged in the Complaint are barred by the equitable doctrines of laches, acquiescence, waiver and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE

WCI Steel reserves the right to make and does not waive additional defenses, including those which may become apparent from further investigation and discovery.

WHERETOFORE, Defendant WCI Steel, Inc. requests that Plaintiff take nothing by its lawsuit, that injunctive relief be denied, that Defendant be awarded the costs of this lawsuit herein, and that the Court make such further orders as the Court deems proper.

Respectfully submitted,

Van Carson, Esq. (#0001324)
Lisa D. Sutton, Esq. (#0063792)
SQUIRE, SANDERS & DEMPSEY, L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1304
(216) 479-8500

Vincent Atriano, Esq. (#0041084)
SQUIRE, SANDERS & DEMPSEY, L.L.P.
1300 Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 365-2700

Attorneys for Defendant WCI Steel, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing WCI Steel, Inc.'s Answer to Complaint was served via regular U.S. mail this 6th day of July, 1998 upon the following:

Frank Bentkover, Esq.
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Arthur I. Harris, Esq.
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2600

Deirdre Tanaka, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Lisa D. Sutton

One of the Attorneys for Defendant
WCI Steel, Inc.

Squire, Sanders & Dempsey

U.S. Offices:
Columbus, Ohio
Jacksonville, Florida
Miami, Florida
New York, New York
Phoenix, Arizona
Washington, D.C.

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Counsellors at Law
4900 Society Center
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Telephone (216) 479-8500
Telecopier (216) 479-8780

April 11, 1995

Direct Dial Number
216/479-8663

RECEIVED
APR 12 1995
OFFICE OF RCRA
WASTE MANAGEMENT DIVISION
EPA, REGION V

BY OVERNIGHT DELIVERY

Thad Slaughter, HRE-8J
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: WCI Steel, Inc., Warren, Ohio OHD 060 409 521

Dear Mr. Slaughter:

As counsel for WCI Steel, Inc., I am writing to respond to Joseph M. Boyle's letter to James Stack dated March 1, 1995, which was received by WCI Steel on March 3, 1995. Please note that Mr. Stack retired on October 31, 1994 and John Scheessele became President and CEO on November 1, 1994.

Some of the information requests, especially those which reiterate requests contained in the prior information request dated April 1, 1994, which WCI Steel responded to on May 4, 1994, were confusing and extremely and unfairly broad. As such, WCI Steel objects to the requests as overly broad, arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law. Nevertheless, WCI Steel is voluntarily providing the information and documents supplied with this letter and made available for agency review and copying, without any admission of liability or waiver of objection. Furthermore, provision of documents for agency review and copying in response to these requests is not a waiver by WCI Steel of any potential objection to admissibility of such documents and is not an admission by WCI Steel of the authenticity or accuracy of any document.

WCI Steel objects to the information request to the extent it requests information beyond U.S. EPA's statutory authority to request information. WCI Steel further objects to U.S. EPA's inclusion of the company's attorneys by reference in the

agency's information request, to the extent that it seeks to obtain information which may be protected by the attorney-client privilege or the work product doctrine, or prepared for trial or in anticipation of litigation. In the event that, due to the large volume of materials examined within the time-frame imposed by U.S. EPA, any privileged documents are inadvertently provided to U.S. EPA as part of this response, WCI Steel does not waive its right to assert a privilege in the future.

WCI Steel particularly objects to U.S. EPA's information request to the extent that it purports, by reference, to require WCI Steel to respond on the basis not only of all information and documents in its control, but also on the basis of all information and documents in the possession, custody or control of the company's former employees, agents, servants, and contractors. As a general rule of law, a company is required to research and provide only information and documents in <u>its own</u> control, possession or custody. Despite claims that the agency may assert regarding CERCLA or RCRA, that limitation has not been abandoned. WCI Steel, solely in voluntary cooperation with the agency's attempt to obtain relevant information, has interviewed and is providing information obtained from certain former employees and contractors, without waiver of objection.

WCI Steel also specifically objects to U.S. EPA's request to the extent that it could be construed to require that the original or duplicate copies of all documents responsive to the information request be turned over to U.S. EPA. RCRA Sec. 3007(a) requires only that WCI Steel permit U.S. EPA representatives "to have access to, and to copy" such documents. CERCLA Sec. 104(e)(2) provides that WCI Steel may choose to give U.S. EPA representatives access "at reasonable times" to "inspect and copy" such documents. WCI Steel has segregated at its offices the approximately 24 cubic feet of documents which are responsive to U.S. EPA's April 1, 1994 information request and the additional documents responsive to new questions contained in the present information request, and the agency's representatives may arrange a reasonable time to inspect and arrange for copying of these documents (at the agency's cost) by contacting the undersigned.

Pursuant to 40 C.F.R. Part 2, WCI Steel hereby asserts a business confidentiality claim for all those documents enclosed with this response which are stamped "Confidential." WCI Steel also requests that these documents be treated as confidential pursuant to 18 U.S.C. Sec. 1905, 42 U.S.C. Sec. 9604 and any other statute or regulation entitling such documents to protection from disclosure.

This response is based upon a diligent review of WCI Steel's files kept in the ordinary course of business, of the partial and incomplete files of previous Facility owners Republic Steel Corporation and LTV Steel Corporation in the control of WCI Steel and interviews with current employees and certain contractors and former employees who are knowledgeable about the areas addressed in the information requests.

I object to U.S. EPA's vague and inaccurate reference to 18 U.S.C. Sec. 1001, which clearly is intended to have a coercive effect on non-lawyers. As U.S. EPA knows, 18 U.S.C. Sec. 1001 applies only to knowing and willful falsification or concealment, and is not applicable to all circumstances where U.S. EPA claims that information is false or inaccurate.

WCI Steel would like to remind U.S. EPA that WCI Steel is currently represented in this matter by Squire, Sanders & Dempsey, and in particular Philip C. Schillawski and Van Carson. All contact with WCI Steel and its employees should be initiated through counsel, unless otherwise approved by counsel. Counsel can be reached at the following address:

Squire, Sanders & Dempsey
4900 Society Center
127 Public Square
Cleveland, Ohio 44114-1304
Van Carson -- (216) 479-8559
Philip C. Schillawski -- (216) 479-8663

Subject to, and without waiver of, the above objections and any request-specific objections noted below, WCI Steel submits the attached in response to the specific questions expressed in the letter dated March 1, 1995. If you have any questions concerning this response or other matters involving the WCI Steel facility, please contact me directly.

Sincerely,

Philip C Schillawski

Philip C. Schillawski

Attachment
Enclosures

cc: Van Carson

WCI Steel, Inc.
Attachment
April 11, 1995

RESPONSE TO INFORMATION REQUESTS

1. The word "chemistry" in WCI Steel's May 4, 1995 response to question VI.1 was used in the ordinary sense of the word, specifically with reference to physical-chemical effects. The pond system provides accumulation time which allows variances in the influent concentrations of dissolved metals and other ions to even out, thereby providing a more constant effluent concentration to the wastewater treatment plant, simplifying the control of the treatment processes at the treatment plant. In addition, the pond system accumulation time allows the lower pH influent waters, for example the rinse water from the pickle areas at a pH of approximately 4.0, to break down the soluble oil emulsion in the influent waters from the cold mill, to free the oil for recovery at the pond system.

2. The subparts of this question have been assigned the letters a through d for this response. WCI Steel objects to the use of the phrase "discharged . . . indirectly" in various subparts of this question, because characteristic wastes which are mixed with other solid wastes such that the characteristic no longer appears are not hazardous wastes, and the mixing is not prohibited when it occurs, e.g., in wastewater treatment units or other exempt units. Without waiving this objection, WCI Steel responds as follows:

2.a. No hazardous or solid wastes exhibiting the characteristic of reactivity have been discharged either directly or indirectly and/or disposed of in the pond system.

Pinhole leaks of process acid (not spent pickle liquor) and acid fume scrubber water, whose pH may be initially less than or equal to 2.0 have entered the sewer system at the No. 5 and No. 6 pickle lines in the past. The pinhole leaks of process acid have occurred infrequently. Fume scrubber water from No. 5 pickle line is sent to the acid regeneration plant normally, and enters the sewer system only when the acid regeneration plant is not operating. Fume scrubber water from No. 6 pickle line is normally used for makeup to the pickling operation, and enters the sewer system only when the pickle tubs are full, which occurs approximately one day per month. Prior to the installation of the slurry lime system, which raises the water traveling to the pond system to a pH of approximately 4.0, bulk dry lime was placed in the pickle line sumps to accomplish the same purpose whenever

process acid or other low pH streams were being discharged to the sewer system.

2.b. The last sentence in WCI Steel's response to question VI.2 was phrased in terms of "minor," "may" and "occasional" because WCI Steel was not absolutely certain that occasional drops or drips of the dilute chromic acid solution did not reach the galvanizing line sewer if the tank experienced a splash-over. The tank is and was surrounded by a containment trough to catch any splash-over, and the likelihood that any solution escaped to the sewer is very low.

2.c. WCI Steel has made its hazardous waste determinations for solid wastes which enter the pond system based upon its knowledge of the processes producing the wastes and the wastes produced by the processes, pursuant to 40 CFR 262.11(c)(2). WCI Steel has reviewed the MSDS sheets for all chemicals to be used in the relevant processes before the use to determine that the chemicals would not result in any characteristics other than TCLP-Chromium or corrosivity. The extremely small volume of any drops or drips of dilute chromic acid solution which may have escaped the secondary containment trough would be diluted by the normal water flow through the galvanizing line sewer such that the mixed water would not display TCLP for chromium. Similarly, the dilution of the small volume of any pinhole process acid leaks would reduce the chromium content so that the mixed water would not display TCLP for chromium. The use of bulk lime and now slurry lime to reduce the pH of pinhole process acid leaks or acid scrubber discharges to approximately 4.0 results in the galvanizing line sewer water not displaying the characteristic of corrosivity when it reaches the pond system.

2.d. See answer to 2.c.

3. The numbers in parentheses below correspond to the numbers on the enclosed blueprint showing the approximate points of entry of the streams into the process sewer system. Wastewaters entering at various points throughout the plant are:

a. Storm water from various sources, including catch basins and building downcomers. Content and concentrations variable and unmeasured.

b. Steam condensate from various process and comfort heat sources, all water.

(1) Terne Line Wastewater

a. Rinse water with hydrochloric acid content (pH of greater than or equal to approximately 3) also including iron at unmeasured and variable concentrations, lead at approximately zero to 990 ug/l, and zinc at approximately zero to 990 ug/l.

b. Acid fume scrubber water with hydrochloric acid content (pH of between 2.1 and 2.5).

(2) Mobile Equipment Repair Shop Wastewater

Water containing various amounts of automotive lubricant oils and greases (concentration variable and unmeasured).

(3) Galvanizing Line Wastewater

a. Alkaline cleaner (sodium hydroxide based) wastewater (pH between 9 and 10)

b. Rinse water with hydrochloric acid content (pH of greater than or equal to approximately 3) also dissolved iron at variable and unmeasured concentrations, dissolved zinc at approximately zero to 990 ug/l.

c. Acid fume scrubber water with hydrochloric acid content (pH between 2.1 and 2.5)

d. Basement drains or pump-out wastewaters containing hydraulic oils and roll greases (concentration variable and unmeasured).

e. Dilute chromic acid drips (unlikely but possible -- see answer to 2.b.).

(4) Pipe Shop Wastewater

Wastewater containing cutting oils (concentration variable and unmeasured).

(5) Silicon Line Wastewater

Wastewater from hosing down painting area (intermittently generated) containing paint constituents at variable and unmeasured concentrations. Paint constituents are water-based

and do not contain TCLP components, per MSDS sheets.

(6) 52 Temper Mill Wastewater

Basement collection of wastewater containing rolling oils and roll greases in variable and unmeasured concentrations.

(7) No. 5 Pickle Line Wastewaters

a. Rinsewater with hydrochloric acid content (pH 2.5 to 3) with iron at variable and unmeasured concentrations, slight citric acid content (final rinse bath contains 0.3% citric acid), lead below 1 mg/l and zinc below 1 mg/l.

b. Acid fume scrubber water (only when acid regeneration plant is down) with hydrochloric acid content (pH approximately 1).

c. Process acid pinhole leaks (occasional, less than 0.5 gpm) containing 0.5% to 8% hydrochloric acid, iron between 0 and 25%, zinc below 5 mg/l, chromium below 210 mg/l, manganese below 1500 mg/l, nickel below 100 mg/l, silver below 0.40 mg/l, sulfide below 70 mg/l, oil & grease at approximately 160 mg/l, and lead below 0.4 mg/l.

d. Looping pit washwater containing oils and Fe_xO_y scale at variable and unmeasured concentrations.

e. Leaked hydraulic fluids.

(8) No. 6 Pickle Line Wastewaters

As above for No. 5 Pickle Line, except that No. 6 acid fume scrubber water is usually used for No. 6 pickle tub makeup, and looping pit washwater is covered in stream (9) below.

(9) No. 6 Pickle Line Looping Pit Washwater

Water with oils and scale at variable and unmeasured concentrations.

(10) No. 6 Pickle Line Coiler Basement Sump Water

Water with oils at variable and unmeasured concentrations.

(11) Mill Tractor Shop Wastewaters

Water containing automotive lubricant oils and greases at variable and unmeasured concentrations.

(12) Cold Mill Wastewaters

Water containing cold mill rolling solutions, soluble oil, free oil, greases and scale at variable and unmeasured concentrations.

(13) Acid Regeneration Plant Regen Tanks Washwater

Maintenance washwater from the regenerated acid tanks (no K062 tank water is discharged), with hydrochloric acid content to pH approximately 1, occurring about four times a year at a flow of about 5 gpm.

(14) Locomotive Shop Wastewater

Water containing oils, lubricants and steam cleaner soaps in variable and unmeasured concentrations.

(15) Machine Shop Wastewater

Water containing machining oil in variable and unmeasured concentrations.

(15a) Oil Separation Tank Separated Water

Water containing free oils in variable (trace) and unmeasured concentrations.

4. The list provided in response 'I.4 identifies all the sources of wastes removed in the vacuum ks discharged into the pond system.

WCI Steel has determined t gh knowledge of the processes which produce the wastes rem in the vacuum trucks that the wastes would not be listed stes nor display any hazardous waste characteristic.

5. See answer to No. 3 above, and WCI Steel's previous response.

6. WCI Steel has no knowledge of any listed hazardous wastes discharged directly or indirectly, or disposed of in the pond system during the effective period of the hazardous waste regulations.

WCI Steel has no knowledge of any toxicity characteristic waste disposed of in the pond system during the effective period of the hazardous waste regulations. Pinhole leaks of process acid from the pickling lines, which might at times have chromium concentrations above 200 mg/l, are of such small volumes that the combined wastewaters reaching the pond system would not display a toxicity characteristic.

7. The lime slurry injection system was installed in December, 1993 and began routinely operating on December 20, 1993. The design criteria for the lime slurry injection system are to maintain a minimum pH of 3.0 in the water pumped to the pond system from No. 9 lift station.

8. For spent pickle liquor, see answer to No. 6 above.

For "pickle liquor rinse water," WCI Steel again objects to this question to the extent it may be intended to imply that rinse water from pickling operations is "pickle liquor" or listed waste K062. Without waiving any objection, see answer to No. 3 above.

9. WCI Steel has no knowledge of spent pickle liquor being discharged through any outfall without prior treatment.

10. All sources included in the answer to No. 3 above, plus:

(16) Caster Water Treatment Blowdown

Water with water treatment chemicals, calcium and iron at variable and unmeasured concentrations (blows down to BOF flight conveyors)

(17) LMF Vacuum Degasser Seal Water

Water with traces (less than 1 mg/l) of sulfur, iron lead and zinc (blows down to caster water treatment system)

(18) BOF Vessel Flight Conveyors (2) Water

Water with calcium and iron in variable and unmeasured concentrations, and traces (less than 1 mg/l) of zinc and lead

(19) Boiler House Water Treatment Blowdown

Water with boiler treatment chemicals and calcium in variable and unmeasured concentrations.

11. Documents providing process description are enclosed. Influents to the process are spent pickle liquor from Nos. 5 and 6 pickle lines, containing hydrochloric acid from approximately 0.5% to 5%, iron chloride at approximately 20% to 25%, and traces (less than 1 mg/l) of lead and zinc. Effluents from the process are regenerated acid, containing hydrochloric acid at approximately 20% and iron chloride at approximately 0.25%, ferric oxide product containing 98.5% to 99.4% ferric oxide, and intermittent discharges of regenerated acid tank washwater described in the answer to No. 3 above.

12. WCI Steel partially suction-dredged No. 5 Pond in September of 1992. The dredged material was dewatered in a clay and vinyl-lined "dry lagoon" and presently remains in the dry lagoon.

All oils removed from the pond system are placed in a 500,000 gallon separation tank where further oil/water separation is induced by heating. Water separated from the oil in the separation tank is drained to No. 5 pond via the sewer system (see answer to No. 3 above). Oil separated from the water in the separation tank is sold and sent out by tanker truck.

13. VI.8. Documents containing this information are enclosed.

VI.9. The replacement system for the pond system is currently being bid. WCI Steel expects quotes in approximately 6 weeks.

VI.14. Documents containing this information are enclosed.

VI.15. See answers to No. 3 and No. 10 above.

VI.16. See answer to No. 11 above.

WCI Steel, Inc.
Attachment
April 11, 1995

State of Ohio }
} SS.
County of Trumbull }

AFFIDAVIT OF JOHN SCHEESSELE

Affiant being duly sworn and cautioned, states as follows:

1. My name is John Scheessele.

2. I hold the position of President and Chief Executive Officer of WCI Steel, Inc.

3. The foregoing responses to U.S. EPA's RCRA §3007 Information Request dated March 1, 1995, are true and accurate to the best of my knowledge and belief. All documents enclosed with these responses are true and authentic to the best of my knowledge and belief.

Further affiant sayeth naught.

John R Scheessele
John Scheessele

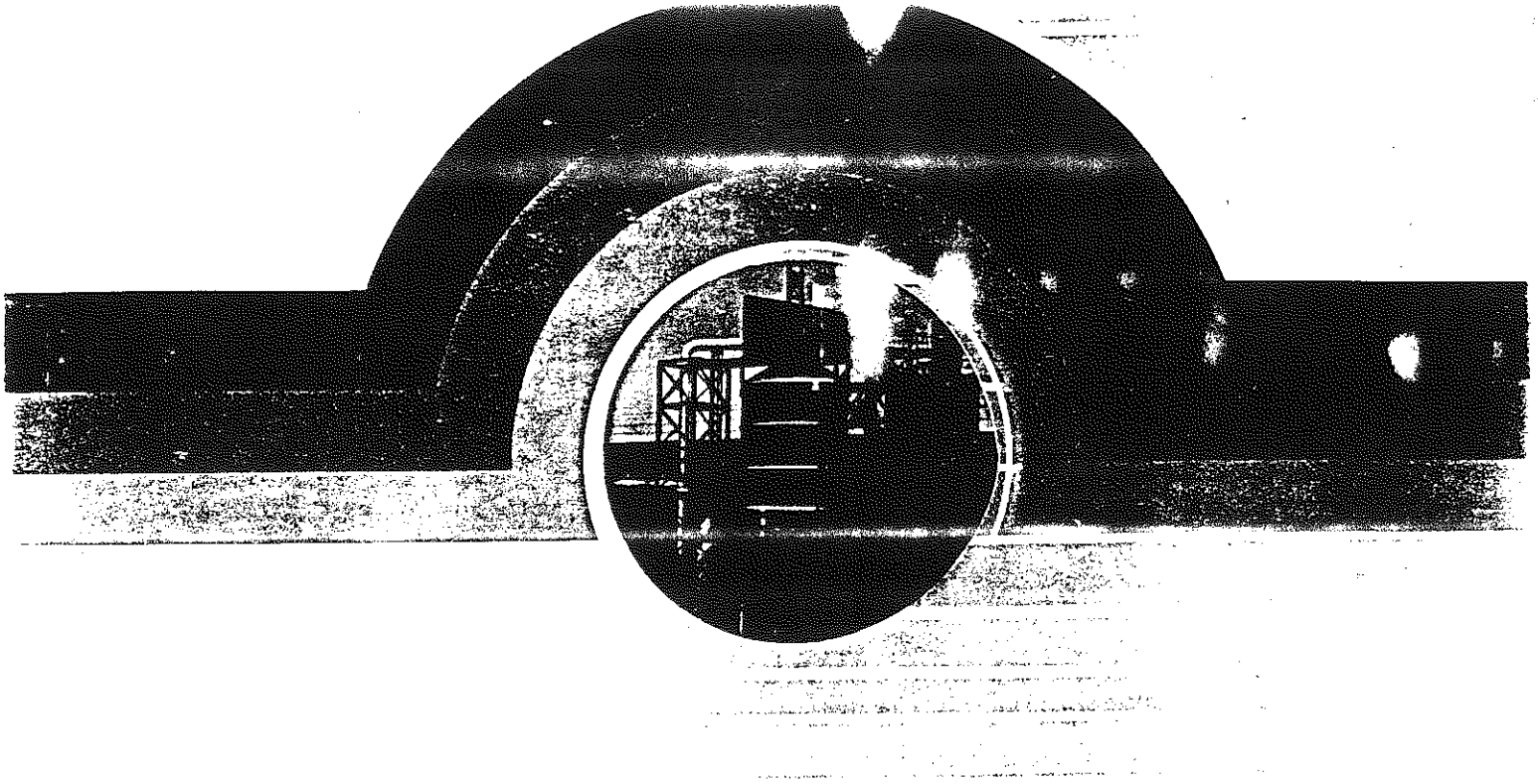
Sworn to and subscribed before me this 11th day of April, 1995.

Philip C Schillawski
Notary Public

NOTARIAL SEAL
STATE OF OHIO

PHILIP C. SCHILLAWSKI, Attorney at Law
Notary Public - State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

RESPONSIVE TO QUESTION 11.

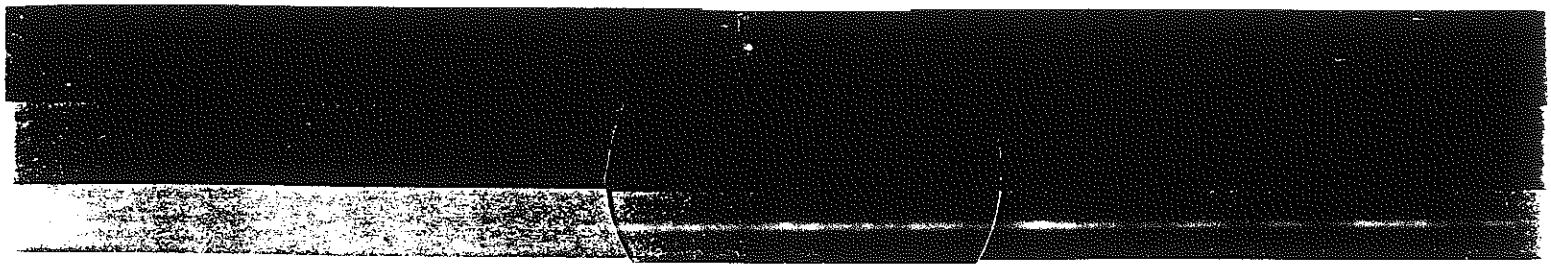


HYDROCHLORIC ACID REGENERATION AND IRON OXIDE PRODUCTION

PEROX

A Subsidiary of PENNSYLVANIA ENGINEERING CORPORATION

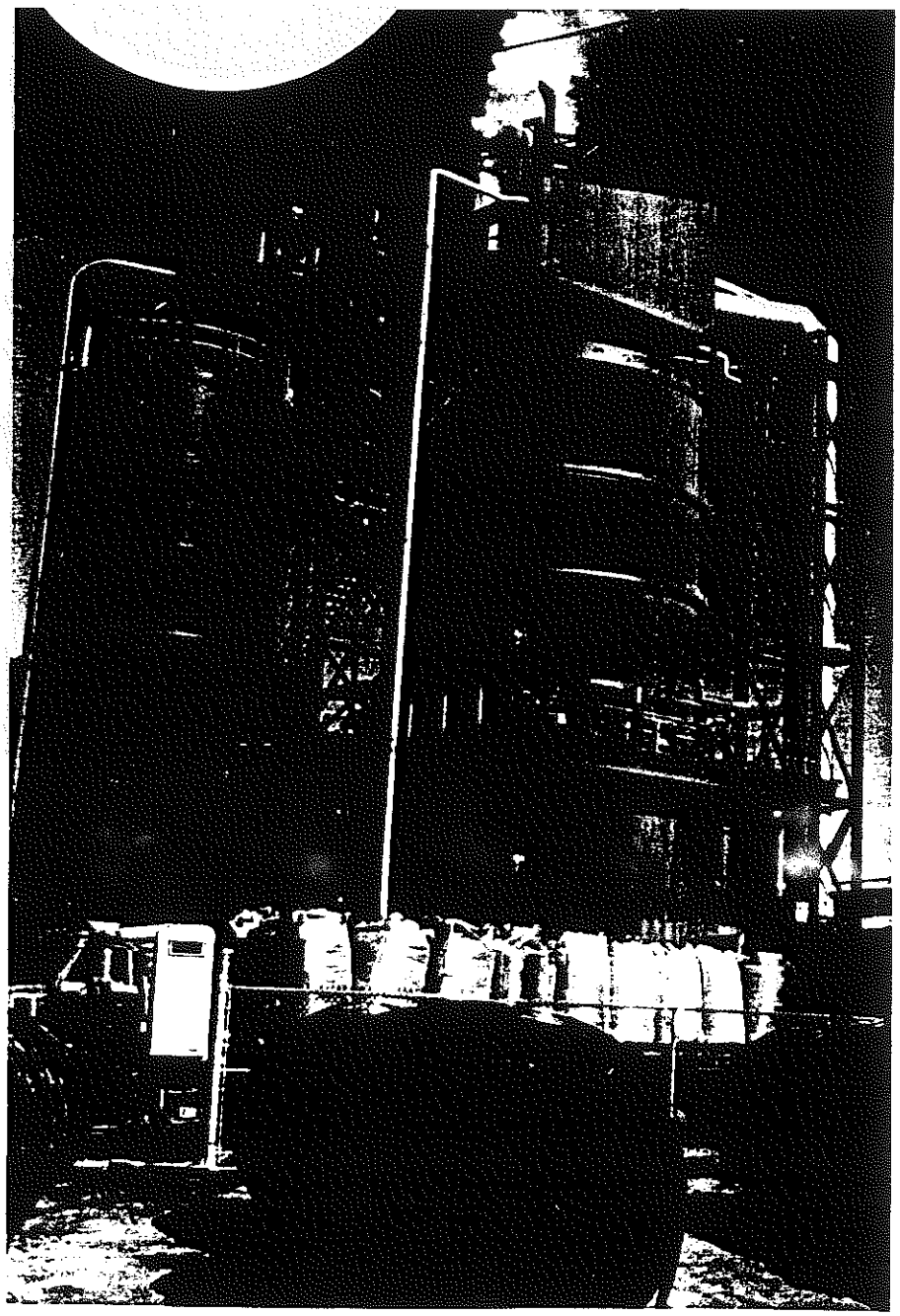
HYDROCHLORIC ACID REGENERATION AND IRON OXIDE PRODUCTION FROM WASTE PICKLE LIQUOR

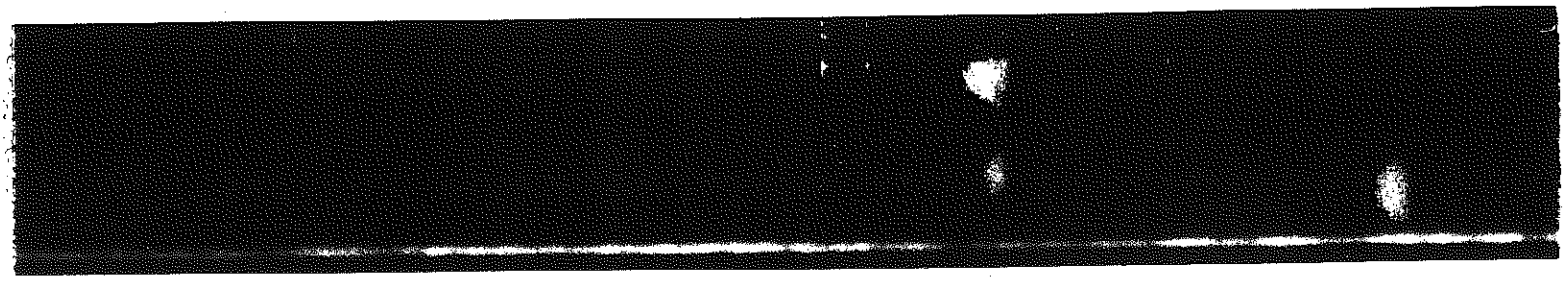


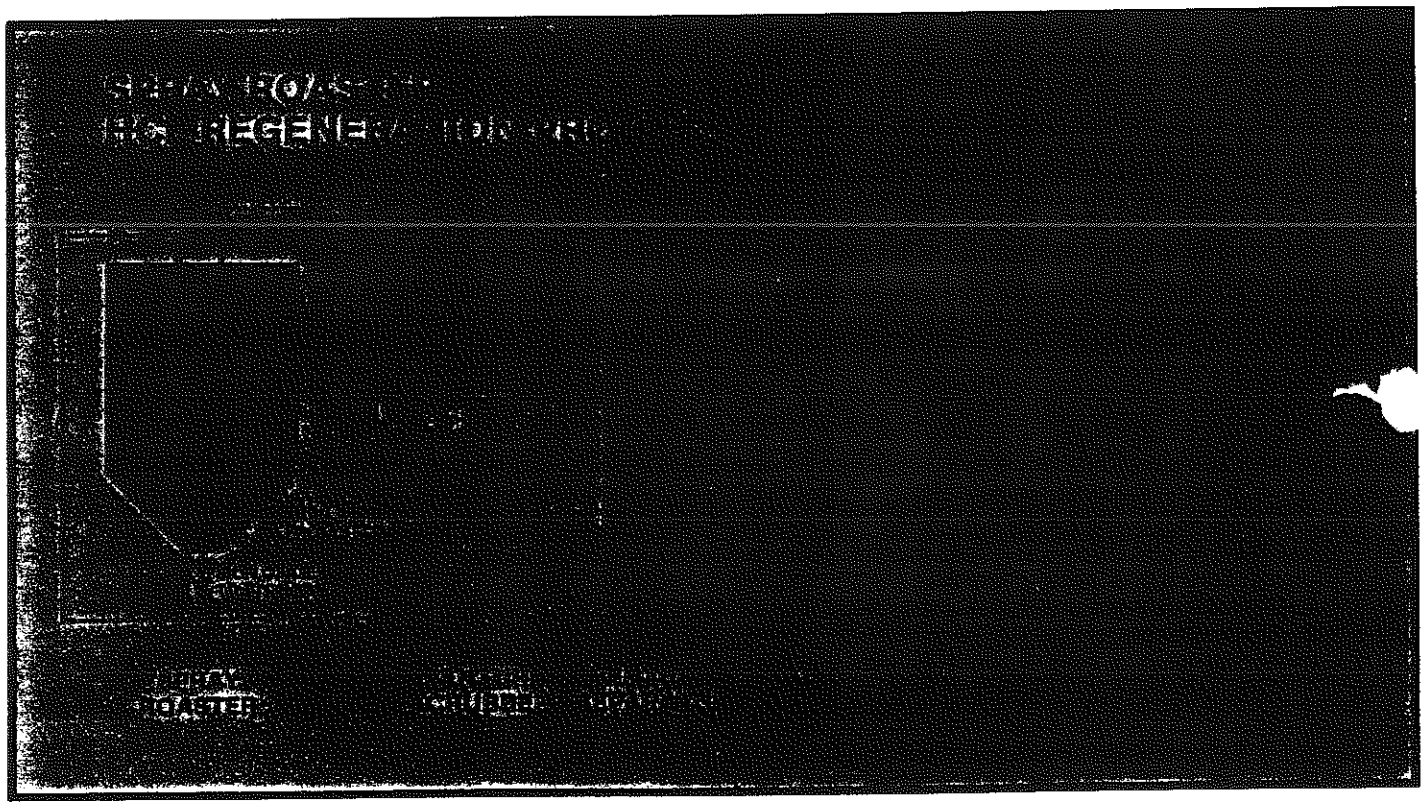
PEROX — A BETTER WAY

PEROX, a subsidiary of Pennsylvania Engineering Corporation, has a better way for Hydrochloric Acid Regeneration and Iron Oxide Production. Perox, specialist in designing, building and operating acid regeneration plants for over 15 years (see list of operating systems on back cover), uses the well known Spray Roaster Process. Perox incorporates a closed loop system and the only effluents are clean exhaust gases, therefore an environmentally preferred process.

In addition to saving money on the disposal of waste acid and regenerating acid, the Perox system produces a useful salable product — Iron Oxide. About 335,000 tons of iron oxide is produced annually using the spray roaster process. This regenerated iron oxide is used in magnetic, electronic, ceramic and pigment applications around the world. The Perox system is also sufficiently flexible to produce various qualities of iron oxide depending on the planned operation.







...CTION

Regeneration of Waste Hydrochloric Acid from Pickling of Carbon Steels and Processing of Minerals.

BENEFITS

- Reduced acid costs
- Elimination of waste acid disposal costs
- Environmentally preferred process
- Simple, stable and reliable process
- High value by-product

PROCESS

Waste acid is fed to the venturi scrubber where it is preheated and concentrated by contact with the hot roaster gases. This quenches the gases and also removes entrained iron oxide carry-over. The gases and liquor are separated, and gases pass downstream to the HCL recovery stage.

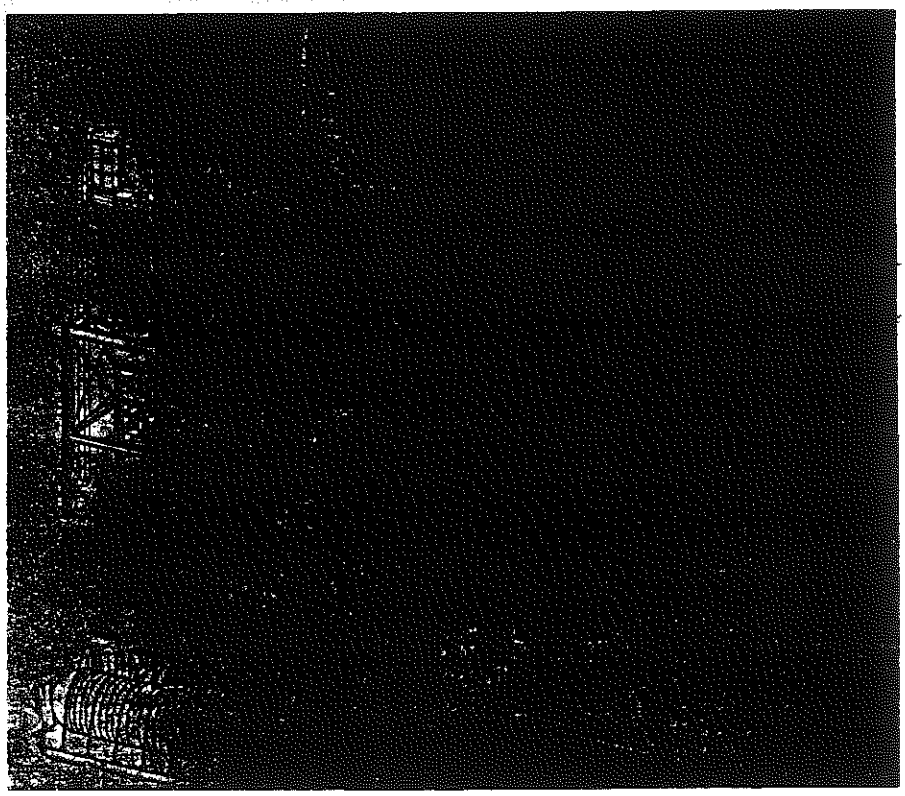
Concentrated pickle liquor is pumped to the roaster, where it is regenerated by counter-current contact with hot combustion gases. These are injected tangentially near the base of the roaster.

Iron oxide is discharged from the base of the roaster while the hot gases leave the top.

After passing through the recuperator stage, the gases are fed to the absorber. Here the HCL is absorbed in process water to produce regenerated acid, which is recycled to the pickle line.

Exhaust gases are finally scrubbed with water and discharged to the stack by the exhaust fan.

TECHNICAL DATA



LIQUOR COMPOSITION PROCESSED

Any normal pickle acid

Typical range	HCL	0.5-5.0%
Typical range	$FeCl_2$	20-25%

PLANT CAPACITIES

Single units are available with capacities in the range of 6 to 75 USGPM of spent pickle acid.

REGENERATED ACID ANALYSIS

Nominally	HCL	20%
Nominally	Fe	0.25%

REGENERATION EFFICIENCY

Better than 99% of total HCL equivalent of the waste acid.

FUEL REQUIREMENTS

12,000 BTU per gallon of waste acid. Any normal liquid or gaseous fuel can be used.

ELECTRICAL POWER

0.10 kwh per gallon of waste acid.

PROCESS WATER

1 gallon per gallon of waste acid. This water can be acid rinse water containing up to 1% total chloride.

OPERATING LABOR

One full-time operator plus one part-time operator per shift.

EFFLUENTS

In normal operation, the only effluents are clean exhaust gases and small quantities of clean filter washings. Both are suitable for discharge.

APPLICATION NOTES:

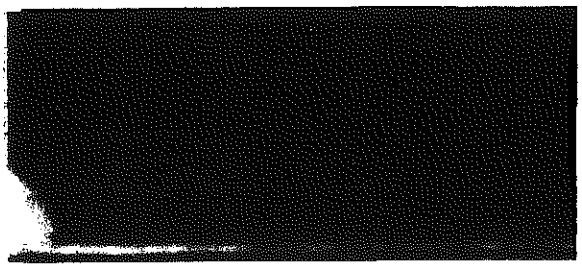
The best use of HCL regeneration can be achieved by integrating it with other operations in the pickle line.

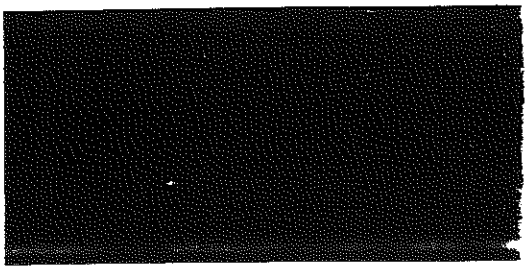
1. INDIRECT HEATING

Indirect heating avoids diluting the acid with steam condensate. This can reduce the volume of waste acid by around 30%, which reduces the size of the regeneration plant and also direct regeneration costs. Either in-tank heaters or external circulation heaters can be used.

2. CASCADE RINSING

Because the regeneration process can consume waste water in addition to waste acid, it is advantageous to match the volume of rinse water. The volume of rinse water can be reduced to the correct rates by cascade rinsing. Typically, 7-10 gallons of waste acid are produced per ton of steel. Good rinsing can normally be achieved with 7-10 gallons of rinse water by using 4 or 5 stages of cascade rinsing. This avoids the need for expensive waste water treatment and also recovers most of the acid previously lost in the rinse water.





IRON OXIDE TECHNICAL DATA

Typically 1½ pounds of iron oxide are produced for each gallon of spent acid processed. This iron oxide has high purity: Fe_2O_3, 99%+; chlorides, less than 0.2%. Iron oxide quality is suitable for use in magnetic and electronic applications as well as in ceramics and pigments.

Undensified spray-roasted iron oxide takes the form of hollow spherical granules ranging from 20-400 μm in diameter. When the hollow granules are crushed, the crystals (agglomerates and aggregates) which result, have diameters in the sub-micron range.

PHYSICAL PROPERTIES

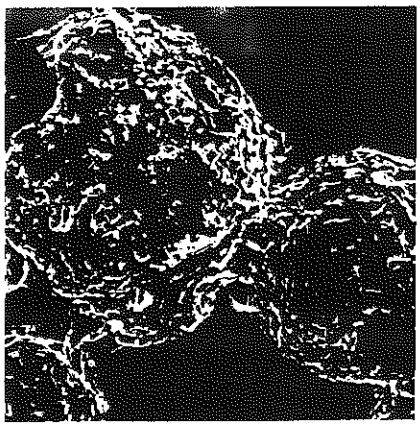
Surface area	4.0-9.0m²/gm
Particle size	0.05-0.30 μm
Particle shape	cube
Tapped density	0.5-1.5gm/cc

CHEMICAL ANALYSIS (%)

Fe_2O_3	98.5 - 99.4
Al_2O_3	0.05 - 0.12
MnO	0.35 - 0.45
Cr_2O_3	0.02 - 0.06
SiO_2	0.01 - 0.06
CaO	0.01 - 0.06
MgO	0.01 - 0.04
Na_2O	0.01 - 0.06
K_2O	0.01 - 0.03
NiO	0.01 - 0.05
CuO	0.01 - 0.05
Cl	0.05 - 0.20
SO_3	0.02 - 0.04
Water Solubles	0.10 - 0.70
Loss on ignition	0.25 - 1.00

A WORD ABOUT PEROX PLANTS

In the last decade Perox has made many significant developments in the regeneration process. Some of the development has been due to Perox's experience in the plant operation. This has resulted in more efficient and economical plant operation and improved regenerated acid and iron oxide quality. Iron oxide produced could be used for ferrite magnets, pigments, molding sands, glass industry etc. Perox is in the unique position of offering you several ways of working together, from complete turnkey installation to servicing plants which are owned and operated by Perox.



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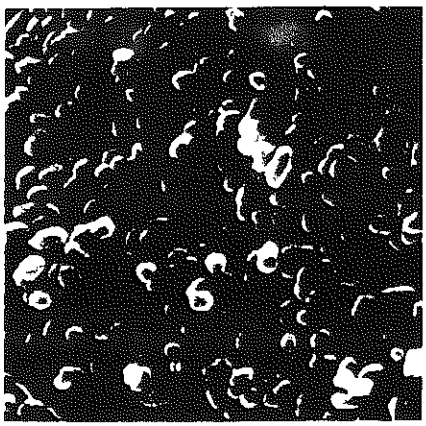


2.

1. HOLLOW SPHERE AGGLOMERATES
   MAGNIFICATION: x 228

2. PRIMARY CRYSTALS
   MAGNIFICATION: x 20,000

For further information, please contact:

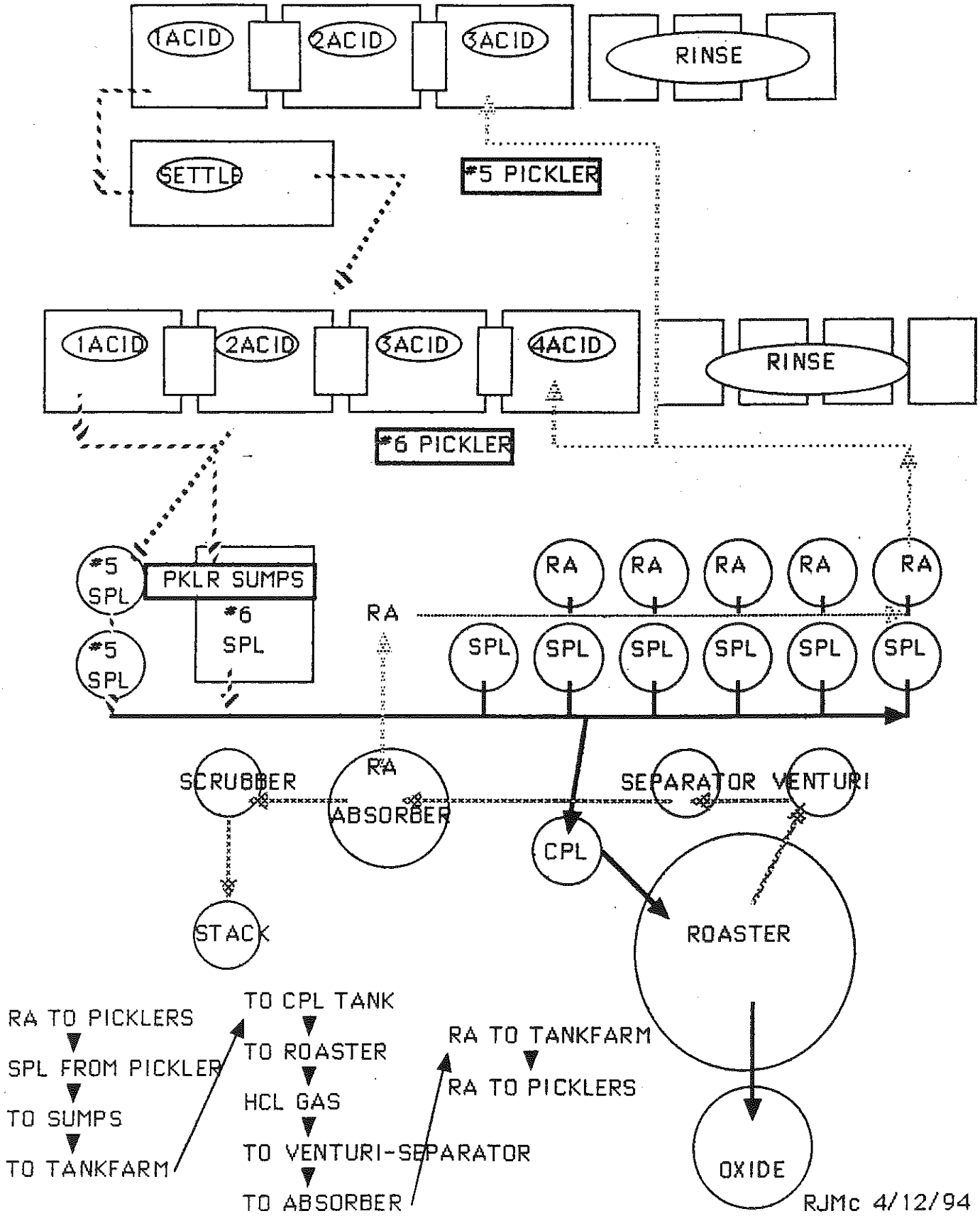
PEROX

A subsidiary of
PENNSLVANIA ENGINEERING CORPORATION
Ninety-Five 32nd Street
Pittsburgh, Pennsylvania 15201
Tel. (412) 288-6800 Telex 866618

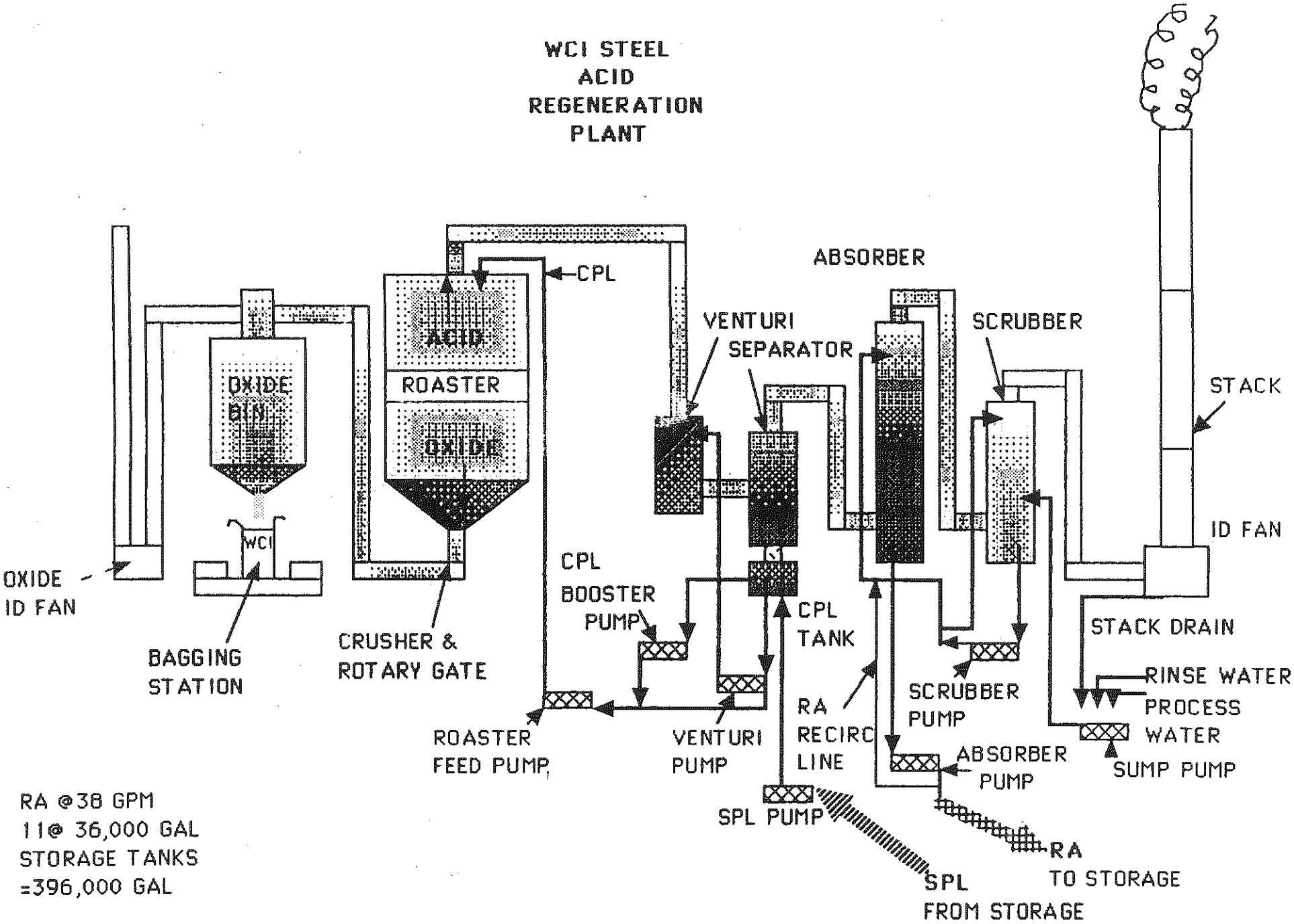
REFERENCE LIST

OWNER	OPERATOR	CAPACITY	START UP DATE
STELCO, Ontario, Canada	Stelco	36 USGPM	1970
Armco Steel, Kentucky, USA	Armco	38 USGPM	1971
Pohang Iron Steel, S. Korea	Pohang	6 USGPM	1979
Mitchel Steel, Tennessee, USA	Mitchel Steel	8 USGPM	1980
Perox, U.S. Steel, Alabama, USA	Perox	27 USGPM	1980
China Steel Corp., Taiwan	China Steel	27 USGPM	1980
Perox, Sharon Steel, PA, USA	Perox	21 USGPM	1981
Republic Steel Corp., Ohio, USA	Perox	38 USGPM	1983

HCl PICKLE-REGENERATION CYCLE



WCI STEEL ACID REGENERATION PLANT



RA @38 GPM
11@ 36,000 GAL
STORAGE TANKS
=396,000 GAL

100 TON OXIDE
STORAGE

RJMc 3/22/94

RESPONSIVE TO QUESTION VI. 8.

BF SLUDGE INJECTION COST ESTIMATE VI.4 25-Aug-93

EXP CODE	JOB NUMBER	ITEM	ESTIMATED COST
010	0001	Engineering	$45,000
040	0001	Field Engineering and Indirects	$26,000
100		Site Prepartation	
	0001	Utilities	$35,000
	0002	Concrete Curbs and Ramps	$50,000
200		Equipment Purchase and Installation	
	0001	Equipment	$39,000
	0002	Steam and Sludge Piping	$95,000
	0003	Electrical	$65,000
	0004	Instruments and Control Valves	$93,000
	0005	Storage tank	$85,000
900		Contingency	$85,000
			$618,000

File:sldginj

TABLE 3
REMCOR COST ESTIMATE
CLOSURE PLAN
POND NOS. 5 AND 6
WARREN, OHIO
PROJECT NO. 90059

ITEM	ESTIMATED COST (1991 $)
TASK 1 - MOBILIZATION	$20,566
TASK 2 - ACCESS ROAD DEVELOPMENT	$32,087
TASK 3 - DREDGE SLUDGE AND PUMP TO TANK TRAILER	$2,615,102
TASK 4 - WASTEWATER AND WASTE OIL REMOVAL	$12,628
TASK 5 - NONPUMPABLE SLUDGE REMOVAL	$40,143
TASK 6 - SEAL CONDUIT	$6,633
TASK 7 - DEBRIS AND STRUCTURE DECONTAMINATION	$21,029
TASK 8 - CONFIRMATORY SAMPLING AND ANALYSIS	$4,177
TASK 9 - BACKFILL (BY WARREN)	--
TOTAL	$2,752,365

4/17/91

RESPONSIVE TO QUESTION VI. 14.

WARREN
Consolidated Industries, Inc.
Environmental Control
(216) 841-8200

June 22, 1989

Mr. Mike Stevens
Ohio Environmental Protection Agency
Division of Water Pollution Control
2110 E. Aurora Road
Twinsburg, OH 44087

Dear Mr. Stevens:

Unauthorized Discharge No. 6-78-2189
NPDES PERMIT No. 3ID00004*CD

Attached, please find a copy of the Unauthorized Discharge No. 6-78-2189, which occurred on June 15, 1989. I trust that this answers any question you might have.

If I can be of further assistance, please call me at (216) 841-8200.

Sincerely,

R. J. Gradishar
Environmental Control

RJG:cdf

cc: B. Miller, OEPA Columbus

.559Q

Unauthorized Discharge No.: WCI 1989 #3
Date: June 15, 1989 By: R. J. Gradishar

1. DATE OF DISCHARGE: June 15, 1989 TIME 1: Started 5:00 AM on June 15, 1989

2. SPILL REPORTED BY: R. J. Gradishar TIME 2: Ended 11:00 AM on June 16, 1989

3. MATERIAL SPILLED: Process and contact water form finishing operations, containing Pickler Rinse Water (pH:2.9) and soluble rolling oil.

4. LOCATION OF SPILL: No. 6 Pond Overflow Weir, Outfall 4009.
WATERWAY AFFECTED: Mahoning River OUTFALL NO.: 3ID00004009

5. DISCHARGE QUANTITY: 259,000 Gallons.

6. AGENCY NOTIFICATIONS:

OEPA EMERGENCY RESPONSE (800-282-9378)	DATE: June 15, 1989 TIME: 10:45 AM OEPA CONTACT: Bruce Miller OEPA NUMBER : 6-78-2189
NATIONAL RESPONSE CENTER (800-424-8802)	DATE: June 15, 1989 TIME: 10:55 AM NRC CONTACT: Morris NRC NUMBER : 2543
TRUMBULL CO. EMERGENCY MGMT	DATE: June 15, 1989 TIME: 11.05 AM COUNTY CONTACT: P. DelGenio
AFFECTS ON HUMAN HEALTH or ENVIRONMENT:	NONE

7. CAUSE OF INCIDENT: The Mahoning River. Because of the near flood level condition, it was found to be backing up into our Process Water System via the emergency overflow sewer, located at the Process Water No. 9 Pump Station. This station, along with the normal incoming process water, was taking on an additional 205 GPM of river water. This station pumps all of the incoming water sources to the No. 5 and 6 Surge Ponds, which in turn pumps to the Central Treatment Plant.

Because of the additional influent from the river, the Central Treatment Plant, pumping at the maximum treatable flow rate of 1000 GPM, could not keep up with the overload. This causes the Surge Ponds to reach the maximum levels and overflow to the river at Outfall 4009, which is the permitted emergency Overflow Weir Gate, located at the No. 6 Pond.

8. CONTAINMENT AND CLEANUP INITIATED: Immediately after the discovery of the river water influent into the Process Water System, the point of entry, which is the emergency overflow sewer at the No.9 Pump Station, was sandbagged shut. This maneuver was successful in stopping the river influent and was accomplished by 3:00 PM on June 15, 1989.

   Also, soon after discovering the overflow to the river at the No. 6 Pond, 3 vacuum trucks were employed around the clock to draw as much of the overflow as possible ,and as fast as possible, and continuously deposit the drawn water into our 500,000 gallon Waste Oil Holding Tank. Unfortunately, the water contaminated some 150,000 gallons of Waste Oil, which was already processed into marketable oil, and will now have to be dewatered and reprocessed. A total of 110,000 gallons of water was deposited into the tank, therefore, reducing the total discharge by that amount. With this effort, a potential 396,000 gallons of total discharge was reduced to 259,000 gallons.

   The soluble oil concentration in the process water, during the period of the discharge (30 hours), was analyzed at 44 mg/L. This equates to some 114 gallons of soluble oil discharged to the river. No collectable free oil was discharged.

9. CORRECTIVE ACTION TAKEN: An engineering review of the No. 9 Pump Station emergency overflow sewer will be conducted, to determine what type of backflow prevention device should be installed.

10. Cost to abate discharge to river at Outfall 4009, on June 15, 1989:

    A. Loss of 150,000 gallons of marketable waste oil by water contamination: $18,000.00.

    B. Trucking 110,000 gallons of water from Outfall 4009 to Waste Oil Tank: $3,002.00.

    C. Total Cost: $21,002.00.

R. J. Gradishar
Environmental Control
Warren

RJG:cdf

cc: J. V. STACK
B. J. MITCHELL
P. T. KENNEY
R. B. VEST
R. A. ZEUNER
D. W. MUSOLF
T. O. SHEPKER
J. G. WALTER

0563Q

WARREN
Consolidated Industries, Inc.
Environmental Control
(216) 841-8200

October 19, 1989

Mr. Mike Stevens
Ohio Environmental Protection Agency
Division of Water Pollution Control
2110 E. Aurora Road
Twinsburg, OH 44087

Dear Mr. Stevens:

Unauthorized Discharge No. 10-78-4025
NPDES PERMIT No. 3IP00004*CD

Attached, please find a copy of the Unauthorized Discharge No. 10-78-4025, which occurred on October 17, 1989. I trust that this answers any question you might have.

If I can be of further assistance, or you have additional questions, please call me at (216) 841-8200.

Sincerely,

Thomas O. Shepker

T. O. Shepker
Mgr. Environmental Control

TOS:cdf

cc: B. Miller, OEPA Columbus

0621Q

UNAUTH DISCH NO.: 1989 #4 DATE: 10/18/89 BY: T .SHEPHER

********** **********

1. DATE OF DISCHARGE : 10/17/89 TIME1: 4:00PM STARTED 10/17/89

2. SPILL REPORTED BY : T.O.SHEPHERTIME2: 4:45PM FINISHED 10/17/89

3. MATERIAL SPILL : PROCESS AND CONTACT WATER FROM FINISHING OPERATIONS

4. LOCATION OF SPILL : #6 POND OVERFLOW WEIR

WATERWAY AFFECTED : MAHONING RIVER OUTFALL NO.: 3ID00004009

5. DISCHARGE QUANTITY : 18,000 GALLONS
. AGENCY NOTIFICATIONS

OEPA EMER RESPONSE DATE : 10/18/89
(800-282-9378) TIME : 3:30 PM
OEPA CONTACT : CRIS STOUT
OEPA NO. : 10-73-4022

NAT RESP CENTER DATE : 10/19/89
(800-424-8802) TIME: 3:25 PM
NRC CONTACT: A.MORRIS
NRC NO : 184377

OEPA REGIONAL OFFICE:
(216-425-9171) TIME: 3:25 PM
OEPA REGIONAL CONTACT: M.STEVENS
DATE: 10/18/89

TRUMBLL CO EMERGENCY MGMT AGENCY:
(392-6777) TIME : 9:30 AM
COUNTY CONTACT : W.CRAIG
DATE : 10/19/89

6. AFFECTS ON HUMAN HEALTH OR ENVIRONMENT: NONE

7. CAUSE OF INCIDENT: ELECTRICAL DEPARTMENT HAD TO REPLACE A UTILITY POLE. CURTAILMENT OF POWER TO WWTP PUMPS ALLOWING POND TO OVERFLOW.

8. CONTAINMENT AND CLEANUP INITIATED: IMMEDIATELY

COMPLETE: 4:30PM 10/17/89

. . CORRECTIVE ACTION TAKEN: ELECTRICAL DEPARTMENT INSTRUCTED TO NOTIFY ENVIRONMENTAL CONTROL DEPARTMENT PRIOR TO CURTAILING POWER TO CENTRAL WASTE WATER TREATMENT PLANT PUMPS. PRIOR NOTICE ALLOWS TREATMENT PLANT TO LOWER THE LEVEL OF THE POND PREVENTING OVERFLOW.

DATE LETTER REC'D FROM AGENCY:
INCIDENT CLOSED:
BY:

DATE LETTER SENT TO AGENCY: 10/19/89

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

REPLY TO THE ATTENTION OF:
5HS-26

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

MAR 07 1990

James Stack, President
Warren Consolidated Industries
1040 Pine Avenue
Warren, Ohio 44483

MAILED TO USEPA
4/3/90 [illegible]

Dear Mr. Stack:

The United States Environmental Protection Agency ("U.S. EPA") is seeking information concerning the below-identified release(s) of a hazardous substance(s) into the environment:

Date	NRC#	Accidental Release I.D.#	Substance	Amount
10/17/89	18433	25628	Hydrochloric Acid	18,000 gal.

Pursuant to the authority of Section 104(a) and (e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sections 9604(a) and (e), you are requested to respond to the questions in the enclosed questionnaire as they relate to the above-identified release of a hazardous substance. Failure to timely furnish the information requested relating to the matters identified in Section 104(e) of CERCLA may subject your company to an administrative compliance order or the imposition of civil penalites of up to $25,000 per day of violation.

The enclosed questionnaire is divided into three sections: (1) general questions about the facility from which the release occurred, (2) questions concerning the reported release, and (3) questions concerning your efforts to respond to the release. If more than one release is identified above, a separate response should be submitted for each release. You may reproduce the questionnaire, or you may submit a computer printout that provides the requested information in the same format as the questionnaire provided.

Your response shall include all information requested which is in your possession, custody or control, or which is in the possession, custody, or control of any of your employees, officers, or agents. You are entitled to assert a claim of business confidentiality covering part of the submitted information, in the matter described in 40 CFR Section 2.203(b).

RECEIVED
MAR 12 1990
Warren Consolidated Industries, Inc.
Environmental Control

Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 CFR Part 2, Subpart B. Unless a business confidentiality claim is asserted at the time the requested information is submitted, U.S. EPA may make this information available to the public without further notice to you.

Your response must be sent to U.S. EPA within 30 calendar days of your receipt of this letter. Please send your response to:

Mark Horwitz (5HS-26)
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

If you have any questions concerning this matter, please contact Mr. Horwitz at (312) 353-9045 or Tom Lueders at (312) 353-8217.

Sincerely,

Glenn Cekin for

Norm Niedergang
Acting Associate Division Director
Office of Superfund

Enclosure

U.S. ENVIRONMENTAL PROTECTION AGENCY
ACCIDENTAL RELEASE PREVENTION QUESTIONNAIRE

INITIAL REPORT

SECTION I. FACILITY PROFILE

1. FACILITY NAME: WARREN CONSOLIDATED INDUSTRIES,INC.

2. Dun & Bradstreet Number: | 1 | 8 | - | 8 | 2 | 7 | - | 6 | 9 | 3 | 5 |

3a. FACILITY MAILING ADDRESS:

1040 Pine Ave.S.E.
Street

Warren
City

Ohio
State

44483-6528
Zip Code

b. Facility physical address:

1040 Pine S.E.
Street

Warren
City

Ohio
State

44483-6528
Zip Code

4.

Latitude		Longitude	
DEG	MIN	DEG	MIN
41	12	80	48

5. NAME AND ADDRESS OF OWNER OR CHIEF EXECUTIVE OFFICER:

James V. Stack President & CEO
Name

1040 Pine Ave.S.E.
Street

Warren
City

Ohio
State

44483-6528
Zip Code

6a. RESPONDENT:

Thomas O. Shepker
Name

Manager of Environmental Control
Title

1040 Pine Ave.S.E.
Street

Warren
City

Ohio
State

44483-6528
Zip Code

(216) 841-8100
Telephone

b. DATE QUESTIONNAIRE COMPLETED: April [illegible] 90

7. Indicate the total number of employees typically at the facility (include all full-time and part-time employees, a.. employees on paid sick leave, paid holidays, paid vacations, managers and corporate officers at the facility). 2509

8. Identify the four-digit Standard Industrial Classification (SIC) that best describes your facility operations and the primary product or service of this facility.

a. SIC code: 3 3 1 2

b. Primary product or service: Semi Finished,Flat Rolled,Carbon and Low Alloy Steel Coils and Sheets

c. For facilities with multiple SIC codes, please identify the additional SIC codes.

— — — — — — — —

SECTION II. HAZARDOUS SUBSTANCE RELEASE PROFILE

The following section asks several questions concerning the accidental release of hazardous substances. If exact responses cannot be provided, please provide estimates using your best professional judgment.

9. Indicate the date release began.

1 0 - 1 7 - 8 9
(month) (day) (year)

Indicate date release ceased.

1 0 - 1 7 - 8 9
(month) (day) (year)

10. Indicate time of day release began.

0 4 : 0 0
__ A.M.
X P.M.

Indicate the time of day release ceased.

0 4 : 4 5
__ A.M.
X P.M.

11a. Check the item below that best describes the status of the process line where the event occurred at **the time of release.**

1. __ In operation
2. __ Temporarily inactive
3. __ Testing/Trial Run
4. __ Scheduled startup
5. __ Scheduled shutdown
6. __ New construction
7. X During Maintenance
8. __ Production Changeover

b. Check the item below that best describes the **current status** of the process line where the event occurred.

1. X In operation
2. __ Temporarily inactive
3. __ Permanently closed

If item 2 or 3 is marked, answer Question 11c; otherwise go to question 12.

c. Is the shut down of operations at the process line related to the accidental release of hazardous substances?

__ Yes
__ No

12a. Were federal authorities notified?

X Yes
__ No

b. If yes, please indicate which federal authorities were notified:

1. X National Response Center — telephone number called (800) 424-8802
2. __ Coast Guard — telephone number called (___) _____
3. __ EPA — telephone number called (___) _____
4. __ Other (specify) _____

c. Indicate the date and time of day federal authorities were notified.

1 0 - 1 8 - 8 9 (Date)
(month) (day) (year)

0 3 : 3 5 (Time)
__ A.M.
X P.M.

13a. Were state authorities notified?

X Yes
__ No

b. If yes, identify all state authorities notified concerning the release. (If more than one, please attach list on separate page)

Cris Stout, Duty Officer
(Name) (Title)
Ohio EPA Emergency Response Center
(Agency)
Columbus
(City)
Ohio
(State)

(800) 282-9378
(Telephone)

Michael W. Stevens
(Name)

Environmental Engineer
(Title)

Ohio EPA , Div. of Water Pollution Control, Enforcement Group
(Agency)

Twinsburg
(City)

Ohio
(State)

(216) 425-9171
(Telephone)

c. Indicate the date and time of day state authorities were notified.

1 0 - 1 8 - 8 9 (Date)
(month) (day) (year)

0 3 : 2 5 (Time)
__ A.M.
X P.M.

c. Indicate the date and time of day state authorities were notified.

1 0 - 1 8 - 8 9 (Date)
(month) (day) (year)

0 3 : 3 0 (Time)
__ A.M.
X P.M.

14a. Were local authorities notified?

X Yes
__ No

b. If yes, identify all local authorities notified concerning the release. (If more than one, please attach list on separate page)

William Craig · Coordinator , Trumbull County Emergency Planning Committee
(Name) (Title)
Trumbull County Emergency Planning Committee
(Agency)
Warren
(City)
Ohio
(State)

(216) 392-6777
(Telephone)

c. Indicate the date and time of day local authorities were notified.

1 0 - 1 9 - 8 9 (Date)
(month) (day) (year)

0 9 : 3 0 (Time)
X A.M.
__ P.M.

15a. Was the general public notified?

__ Yes
X No

b. If yes, indicate the person that notified the general public of the release. (If more than one, please attach list on separate page)

_____
(Name) (Title)

_____
(Agency)

_____
(City)

_____
(State)

( ) _____
(Telephone)

16. For this particular release, what type(s) of communication technologies were used by the facility to alert and notify the public to evacuate or take other safety measures?

a. __ Door-to-door notification
b. __ Loudspeakers/public address system
c. __ Tone alert radio/pagers
d. __ Siren/alarms
e. __ Modulated power lines
f. __ Aircraft
g. __ Radio
h. __ Television
i. __ Cable override
j. __ Telephone
k. X None
l. __ Other (please describe)

_____
_____
_____

17a. Were members of the general public evacuated?

__ Yes
X No

If yes, please indicate number evacuated.

__ __ __ __ __

b. Were members of the general public sheltered in place?

__ Yes
X No

If yes, please indicate number sheltered in place.

__ __ __ __ __

18. To the best of your ability, indicate the weather conditions at the time of release for each item below. Approximations are acceptable.

a. Wind Speed (miles per hour) __ __ 6

b. Wind Direction N W

c. Humidity (percent) __ 9 3

d. Temperature (Fahrenheit) __ 4 8

e. Precipitation? __ Yes X No

National Weather Service
Youngstown Airport

19. Briefly describe the circumstances that led up to the release (if helpful include a sketch).

The company electrical construction unit of the electrical department scheduled the removal of a utility pole which was defective. The replacement of the pole required that the power be shut off during removal and replacement operations. Unanticipat problems which occurred during removal necessitated the shutting off the power on two consecutive days to complete the job. The power that was shut off drives the pumps for the central waste water treatment plant and thus they were shut down on the consecutive days of October 16 & 17,1989. Environmental control,unaware that power would be shut off on Oct.16 & 17 had asked the central waste water treatment plant to increase the pond level to facilitate surface oil removal. The combination of the pole replacement requiring power outages on two days and environmental dept. raising the pond level for oil removal caused the pond to overflow for 45 minutes.

20. Please check the one item below that best describes the location of the release within your facility.

a. __ Process vessel
b. __ Storage vessel
c. __ Valves on process vessel
d. __ Valves on storage vessel
e. __ Piping on process vessel
f. __ Piping on storage vessel
g. __ Pumps
h. __ Joints
i. __ Unknown
j. X Other (please describe)

Surge pond for finishing mills waste water prior to treatment.

21. How was the release first discovered? (check as many as apply)

a. __ Indication by process control device (gauge or monitor)
b. __ Chemical specific detector
c. __ General operator observation
d. X Observation by foreman or supervisor
e. __ Injury/death
f. __ Explosion/fire
g. __ Major environmental damage
h. __ Third party notification (i.e., POTW, community, other facility)
i. __ Other (describe below)

22. Please check the one item below that best describes the **primary cause** of the release event. (please check one item only)

a. __ Equipment failure
b. __ Operator error
c. __ Bypass condition
d. __ Upset condition (explain below)
e. __ Fire
f. X Maintenance activity
g. __ Unknown
h. __ Other (Please describe)

23. Please check any items below that describe **additional causes** of the release event. (check as many items as apply)

a. __ Equipment failure
b. __ Operator error
c. __ Bypass condition
d. __ Upset condition (elaborate below)
e. __ Fire
f. __ Maintenance activity
g. __ Unknown
h. X Other (Please describe)
Communications

24. Check the items that describe the end effects of the release event. (check as many as apply)

a. __ Spill
b. __ Vapor release
c. __ Explosion
d. __ Fire
e. X Other (describe)
Surge Pond Overflow

25a. In the table below, please estimate the quantity of each substance released to each media. Be sure to specify the measurement unit.

Chemical	Media	Quantity	Unit
1a. Name Finishing Mills Waste Water	Air		
b. CAS #	Surface Water	18,000	Gallon
c. Physical State Liquid	Land		
	Sewer to Treatment Facility		
d. Concentration			
2a. Name Hydrochloric Acid	Air		
b.CAS # 7647-01-0	Surface Water	90	Gallon
c. Physical State Liquid in rinse water	Land		
	Sewer to Treatment Facility		
d. Concentration Range .2 to .5%			
3a.Name	Air		
b.CAS #	Surface Water		
c. Physical State	Land		
	Sewer to Treatment Facility		
d. Concentration			
4a. Name	Air		
b.CAS #	Surface Water		
c. Physical State	Land		
	Sewer to Treatment Facility		
d. Concentration			

b. Please check the items below that describe your methods or source of information for your responses in Question 25a. (check as many as apply)

__ physical properties and ambient conditions
__ on-line instrument
X engineering estimate
__ tank/system inventory
X chemical analysis
X effluent measured
__ inventory check
__ computer simulation
__ process records
__ no release to media
__ other (please describe)

_____

_____

26a. Did any substances identified in Question 25, **migrate beyond the legal boundaries** of your facility (for example, a vapor release was carried by prevailing wind beyond the fence line of your facility)?

X Yes (If yes, please answer Question 26.b and c)
__ No (If no, skip Question 26.b and answer Question 26c)

b. In the table below specify the quantities of substances that **migrated beyond your facility boundaries.**

Chemical	Media	Quantity	Unit
1. Name: Waste Water Physical state: Liquid	Air Surface Water Land POTW	 18,000 	 Gal.
2. Name: Hydrochloric acid Physical state: Liquid	Air Surface Water Land POTW	 90 	 Gal.
3. Name: Physical state:	Air Surface Water Land POTW		
4. Name: Physical state:	Air Surface Water Land POTW		

c. Please check the items below that describe your methods or source of information for your responses in question 26b.

__ physical properties and ambient conditions
__ on-line instrument
X engineering estimate
__ tank system inventory
X chemical analysis
X effluent measured
__ computer simulation
__ inventory check
__ process records
__ assumed
__ other (please describe)

_____

_____

27. Did injuries occur among facility employees or contractors as a result of the event?

__ Yes
X No

a. If yes, please indicate number of injuries.

__ __ __ __ __ __

b. How many of these received hospital treatment?

__ __ __ __

__ Number treated unknown

c. Did deaths occur among facility employees or contractors as a result of the event?

__ Yes
X No

If yes, please indicate number of deaths.

__ __ __ __ __ __

28. Did injuries occur among the general public as a result of the event?

__ Yes
X No
__ Don't know

a. If yes, please indicate number of injuries.

— — — — — —

b. How many of these received hospital treatment?

— — — — — —

__Number treated unknown

c. Did deaths occur among the general public as a result of the event?

__ Yes
_X_ No
__ Don't know

If yes, please indicate number of deaths.

— — — — — —

29. Please indicate the environmental effects that occurred as a result of the release:

a. __ Fish kills
b. __ Vegetation damage
c. __ Soil contamination
d. __ Groundwater contamination
e. __ Wildlife kills
f. _X_ None
g. __ Other (please specify)

_____
_____

SECTION III. CLEANUP AND PREVENTION PROFILE

30. Please describe the immediate response activities taken to contain or minimize the release.

When it was discovered that the surge pond would overflow the job was completed as quickly as possible (approximately ½ hour). The pond continued to overflow for 10 to 15 minutes after power was restored.

31. Did your facility undertake cleanup of the release?

__ Yes (If yes, skip Question 32a.)
__ No
X Not Applicable The waste water mixed immediately in the Mahoning River

32a. Please supply the name and address of the party responsible for cleanup.

X Not Applicable

(Name) (Title)

(Agency)

(City)

(State)

( )
(Telephone)

b. Has cleanup of the release been completed?

__ Yes (If yes, please answer Questions 32c.)
__ No (If no, please answer Question 32d.)

c. Indicate the date cleanup activity ceased.

__ __ - __ __ - __ __
(month) (day) (year)

d. Please indicate the approximate date completion of cleanup activity is expected.

__ __ - __ __ - __ __
(month) (day) (year)

33. How did you dispose of the waste generated during the spill and cleanup?

On site NA

Off site NA

34a. Prior to this release event, which types of **formalized hazard assessments** were performed? (Check as many items as apply). For those items checked, please indicate the frequency performed (i.e., quarterly, annually, one time, or on occasion).

	Frequency
__ Cause–consequence analysis	_____
__ Dow and Mond Hazard Indices	_____
__ Event tree analysis	_____
__ Failure modes, effects, and criticality analysis	_____
__ Fault tree analysis	_____
__ HAZOP/hazard and operability studies	_____
__ Human error analysis	_____
__ Probabalistic risk assessment	_____
__ What if analyses	_____
_X_ None	_____
__ Other (please describe)	_____

b. What is your opinion of the effectiveness of each of the assessment techniques used?

NA

35. Prior to this release event, which of the following **pre–release controls** have been employed specifically to identify/prevent the type of release that occurred? (Check as many items as apply)

a. _X_ Preventative maintenance
b. _X_ Regular equipment inspections and testing
c. __ Hazard assessment
d. __ Comprehensive audit
e. __ Regular assessment of equipment designs
f. _X_ Process controls for operations monitoring and/or warning
g. __ Regular upgrading of equipment
h. __ Comprehensive investigation on similar equipment failure
i. _X_ Standard operating procedures
j. _X_ Release prevention equipment
k. __ Equipment installation checks
l. __ Other (please describe)

36. Prior to this release, what **management activities** related to safety and loss p ention have been employed? (Check as many as apply)

a. X Employee safety training (e.g., OSHA training programs)
b. X Emergency Response training
c. __ Employee testing
d. __ Certification of operators on equipment/system
e. __ Membership in CAER or other similar programs
f. __ Release control program
g. X Accident investigation reports
h. __ Research/conferences
i. __ Safety loss prevention office/officer
j. __ Corrective action process for deviation from rules
k. __ Program to improve system design
l. __ None
m. __ Other (please describe)

_____

_____

37. For this particular release, what method(s) of **pre-release protection equipment** (systems to capture, neutralize, or destroy a toxic chemical before it is released into the environment) is used by the facility? (Check as many items as apply)

a. X Containment (i.e., diking, dump tank - explain below)
b. __ Neutralization
c. __ Scrubber
d. __ Flares/incineration
e. __ Adsorbers
f. __ Spray curtain
g. X Emergency Equipment (i.e., fire fighting)
h. __ None
i. __ Other (please describe)

_____

_____

38. For this particular release, what **systems or procedures** were employed by the facility to minimize accident potential? (Check all that apply)

a. __ Backup systems
b. __ Redundant systems
c. __ Minimize inventory
d. __ Valve lock out
e. __ Automatic shut off
f. __ Bypass and surge systems
g. __ Manual override
h. __ Limit capacity of equipment
i. __ Standard Operating Procedures (logs, checklists)
j. __ Alarms
k. __ Interlocks
l. X None
m. __ Other (please describe)

_____

_____

39. In response to this release, which of the following pre-release controls have been implemented or modified to identify/prevent future potential releases? (Check as many as apply)

a. __ Preventative maintenance
b. __ Regular equipment inspections and testing
c. __ Hazard assessment
d. __ Comprehensive audit
e. __ Regular evaluation of equipment designs
f. __ Increased process controls for operations monitoring and/or warning
g. __ Upgrading equipment
h. __ Revised standard operating procedures
i. __ Follow accident report investigation recommendations
j. __ Develop or refine emergency response planning
k. X Other (please describe)

Improved communication between environmental and maintenance departments.

40. Describe the changes in the content of your training programs as a result of this release.

Discussions were held between environmental and maintenance supervision to insure that sufficient notification is given prior to doing work which has an impact on pollution control equipment.

41. Describe the immediate equipment repairs and/or replacements, management practices, operational changes, etc. made as a result of the release.

NA

42. What additional long term preventative measure(s) will be taken to minimize the possibility of recurrence?

This release will be discussed and reviewed with other maintenance and engineering supervisors to prvent similar types of occurances.

WARREN
Consolidated Industries, Inc.

Security Department

Plant: WC1 #1

Date: 12-31-92

Time: 6:30 P

To: LT. MALVASIA

From: ROBERT D. RODEN

Subject: RIVER LOG // NATIONAL WEATHER SERVICE PHONE NUMBER 545-5

RIVER TO CREST AFTER 1 A.M. JAN. 1, 1993.

6:30 P 91.4
8:00 P 92.0
9:00 P 92.0
9:55 P 92.4
1:00 A 93.0 1-1-93
2:00 A 93.6
3:00 A 93.6
4:00 A 93.6
5:00 A 93.6
6:00 A 93.6
9:00 A 93.0
10:55 A 92.7
15:00 92.0
4:20 P 91.0 END OF LOG!

Disposition _____ Date _____ By _____

(19)

LTV Steel Company

November 25, 1986

Mr. Kelvin F. Rogers
Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087

LTV Steel Company, Inc.
Warren Plant
Unauthorized Discharge
NPDES Permit 3ID00004*CD/OH 0011274
Incident No: 10-50-3806

Dear Mr. Rogers:

This letter confirms my verbal reports to you and Mr. Z.Clayton at the OEPA Emergency Response Center on October 31, 1986 concerning subject incident.

On Thursday, October 30, 1986 at approximately 3:00 p.m. a leak was discovered in No. 6 pond dike about one hundred feet south of emergency overflow outfall 009 (No. 6 pond overflow). Estimated flow is 20 gpm. Water is discharging into the Mahoning River in Trumbull County, south of Warren, Ohio. When the leak was discovered the pH was checked using litmus paper and the pH was determined to be 6.

No. 6 pond previously had an intermittent trickle discharge which was collected in a small seepage containment pond. The new leak was discovered while investigating the No. 6 pond dike seepage containment pond for installation of pumps.

Considerable effort was extended in grouting No. 6 pond dike in the spring and again this fall, without, however, positive results in sealing the dike.

Contractor was hired and installed a clay dam and drain pipe to collect all the seepage water to the seepage containment pond. Dam was completed November 14, 1986.

We will install pumps in the seepage containment pond to return the seepage to No. 6 pond. Pumps were received on November 20, 1986. We are in the process of installing power and pump support structure. We expect to be operating the emergency pumping system by December 5, 1986.

Engineering study will be implemented to determine modifications required to permanently seal No. 6 pond.

I trust the above information satisfies the permit notification requirements of Part III, 11.B.3 and Part III, 12. If you have any questions, or require additional information regarding this notification please call me at (216) 841-8200.

Sincerely,

R. J. Lannon, P.E.
Manager, Environmental Control
Warren Works

RJL/bjc
0160Q

bcc:	JVS	Environmental Control, GO	LDW
	JEE		WLW
	JDG		RMZ
	GLM	(Law)	J. D. Donohoe
	PTK		
	RAZ		
	R. Gradishar		

VI-14

Republic steel

Republic Steel Corporation
Mahoning Valley District
1040 Pine Avenue SE
Warren OH 44481

July 1, 1984

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

L T V Steel Corporation
Mahoning Valley District
Warren Plant
Unauthorized Discharge (Part III Paragraph 11 B3)
NPDES Permit 3ID 00004 *CD
Spill Incident No. 6-78-1973

On June 28, 1984, at approximately 1:30 p.m., oil was observed on the Mahoning River at outfall location 3ID 00004009. An investigation revealed the oil was coming from an underground water leak and as the water was flowing it was bringing droplets of oil with it. The leak was located between No. 6 Pond and the river. An estimate of approximately 50 gallons of oil reached the Mahoning River of which approximately 45 gallons were recovered.

Corrective action was taken by employing a boom on the river at the site to contain the oil and a second boom downstream at the Park Avenue Bridge in Niles.

The water leak was partially plugged about 5:30 p.m. on June 28, 1984 to the extent that a very small trickle of water was flowing and the oil stopped. As an added measure an earthen dike was constructed around the area to contain any oil should another incident occur.

We have contacted United Survey, Inc. of Cleveland to come in to determine the actual source of the leak for the purpose of permanently sealing it and prevent recurrence of the spill.

The Ohio E P A was notified of the spill at 2:30 p.m. on June 28, 1984. The report was received by Mr. Kim Harsh. The National Response Center was notified at 2:45 p.m. the same day, Ensign Honewitch receiving the report.

If there are any questions or additional information is required, contact me at (216) 841-8200.

Thomas J. Kachur

Thomas J. Kachur, Manager
Environmental Control
Mahoning Valley District

CC: Kenneth A. Schultz, OEPA Emergency Response, Columbus

J. A. Bronson
W. L. West
J. D. Donohoe
L. D. Wisniewski
R. A. Zeuner
R. J. Gradishar

UNAUTH DISCH NO.: 1988-17 DATE: 88/10/01 BY: T.O.SHEPKER

****

1. DATE OF DISCHARGE : 88/10/01 TIME1: 2:10 PM

2. SPILL REPORTED BY : T.O.S. TIME2: 2:20 PM

3. MATERIAL SPILLED : STRIP MILL RINSE WATER .2% HCL

4. LOCATION OF SPILL : CENTRAL TREATMENT PLANT

WATERWAY AFFECTED : MAHONING RIVER OUTFALL NO.: 4602

5. DISCHARGE QUANTITY : 3000 GAL.

6. AGENCY NOTIFICATIONS

OEPA EMER RESPONSE DATE : 88/10/01
(800-282-9378) TIME : 2:50 PM
OEPA CONTACT : MIKE DALTON
OEPA NO. : 10-78-3393

NAT RESP CENTER DATE :
(800-424-8802) TIME :
NRC CONTACT :
NRC NO. :

OEPA REGIONAL OFFICE :
(216-425-9171) TIME :
OEPA REGIONAL CONTACT :

TRUMBLL CO EMERGENCY MNGT AGENCY:
(392-6777) TIME :
COUNTY CONTACT :

6. AFFECTS ON HUMAN HEALTH OR ENVIRONMENT: NONE

7. CAUSE OF INCIDENT: RUPTURED DRESSER COUPLING ON PIPE LINE FROM #5 POND PUMP STATION TO TREATMENT PLANT.

8. CONTAINMENT AND CLEANUP INITIATED: 88/10/01

COMPLETE: 88/10/01

9. CORRECTIVE ACTION TAKEN: REPAIRED DRESSER COUPLING.

DATE LETTER REC'D FROM AGENCY: 12/20/88
INCIDENT CLOSED:
BY:

DATE LETTER SENT TO AGENCY: 12/28/88

****

1. DATE OF DISCHARGE : 7/31/92 TIME1: 9:00 AM RIVER LEVEL 90'

2. SPILL REPORTED BY : R.GRADISHARTIME2: 2:00 PM RIVER LEVEL 91'

3. MATERIAL SPILLED : NONE(UPSET) MIDNIGHT RIVER LEVEL 92.7'

4. LOCATION OF SPILL : NONE (ALL OUTFALLS INUNDATED)

WATERWAY AFFECTED : MAHONING RIVER OUTFALL NO.: ALL

5. DISCHARGE QUANTITY :
6. AGENCY NOTIFICATIONS

OEPA EMER RESPONSE DATE : 7/31/92
(800-282-9378) TIME : 2:43 PM
OEPA CONTACT : JULIE SMITH
OEPA NO. : 9207-78-3359

NAT RESP CENTER DATE : NOT REQUIRED
(800-424-8802) TIME:
NRC CONTACT:
NRC NO :

OEPA REGIONAL OFFICE:
(216-425-9171) TIME: 2:30 PM
OEPA REGIONAL CONTACT: ERM GIMES
DATE: 7/31/92

TRUMBLL CO EMERGENCY MGMT AGENCY: NOT REQUIRED
(392-6777) TIME :
COUNTY CONTACT :
DATE :

6. AFFECTS ON HUMAN HEALTH OR ENVIRONMENT: NONE

7. CAUSE OF INCIDENT: RECORD RAINFALL DURING THE MONTH OF JULY WITH 2.27" FALLING ON 7/30/92 CAUSED THE RIVER TO RISE TO A LEVEL OF 92.3' FROM THE NORMAL LEVEL OF 83'INUNDATING ALL WCI RIVER OUTFALLS.

8. CONTAINMENT AND CLEANUP INITIATED:

COMPLETE:

9. CORRECTIVE ACTION TAKEN:

DATE LETTER REC'D FROM AGENCY:
INCIDENT CLOSED:
BY:

DATE LETTER SENT TO AGENCY:

H W F B

State of Ohio Hazardous Waste Facility Board

1700 WaterMark Drive, Post Office Box 163669
Columbus, Ohio 43216-3669
PHONE: (614) 644-2742
FAX: (614) 644-3439
WATS: (800) 686-1591 (Ohio only)

George V. Voinovich
Governor

Judith French-Berry
Chair

15

MEMORANDUM

TO: DISTRIBUTION

FROM: JULIANNA F. BULL, EXECUTIVE DIRECTOR

SUBJECT: TRANSMITTAL OF *OPINION AND FINAL ORDERS*
WCI STEEL, INC., CASE NO. 94-M-0184

DATE: MARCH 2, 1995

Transmitted herewith is a true and accurate copy of the *Opinion and Final Orders* issued in the above-captioned case, as such document was entered in the Journal of the Board on March 3rd, 1995.

Included in the document is the manner in which an appeal of the Board's Order may be effectuated.

encls.

DISTRIBUTION:	Karen A. Winters	(certified)
	Joan R. Kooistra	(certified)
	Thomas P. Gysegem	(certified)
	Howland Township Trustees	(certified)
cc:	Thomas O. Shepker, Manager, WCI Steel, Inc.	(certified)
	Thomas Crepeau, DHWM, Ohio EPA	
	Edwin Lim, DHWM, Ohio EPA	
	Ohio EPA, NEDO, DHWM	
	Director, Waste Management Division, U.S. EPA, Region V	

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OFFICE OF RCRA
WASTE MANAGEMENT DIVISION
EPA, REGION V

HAZARDOUS WASTE FACILITY BOARD
March 3, 1995
ENTERED BOARD'S JOURNAL

15

BEFORE THE

STATE OF OHIO

HAZARDOUS WASTE FACILITY BOARD

IN THE MATTER OF

WCI STEEL, INC.

WARREN, OHIO

CASE NO. 94-M-0184

OPINION AND FINAL ORDERS

ISSUE DATE:	**JANUARY 27, 1995**
JOURNALIZATION DATE:	**MARCH 3, 1995**
EFFECTIVE DATE:	**MARCH 3, 1995**

HAZARDOUS WASTE FACILITY BOARD
March 3, 1995
ENTERED BOARD'S JOURNAL

15

BEFORE THE

HAZARDOUS WASTE FACILITY BOARD

STATE OF OHIO

In the Matter of:	:	
WCI Steel, Inc. Warren, Ohio	:	Case No. 94-M-0184
Applicant	:	

OPINION AND FINAL ORDERS

OPINION

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the State of Ohio, Hazardous Waste Facility Board (Board), at its January 27, 1995 regular meeting, on application of WCI Steel, Inc. (WCI or Applicant), for a hazardous waste facility installation and operation permit modification (Ohio ID No. 02-78-0184) for Applicant's Warren, Ohio, facility.

The application was transmitted to the Board by Ohio EPA on July 15, 1994. No comments in opposition to the application have been received; there are no disputed issues between the parties. The Report and Recommendation of the examiner, which recommended the issuance of the permit modification, was filed on October 24, 1994. No objections to the Report were filed by any party to this proceeding

The transmittal of the application did not included a draft permit; no party filed proposed terms and conditions. No terms and conditions were recommended by the examiner.

The modification request consists of:

a. Change in ownership from Republic Steel Corporation, PO Box 6778, Cleveland, Ohio 44101 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483;

b. Change in name of facility from Republic Steel Mahoning Valley Warren, 1040 Pine Avenue, Warren, Ohio 44483 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483;

c. Change in operator information from Republic Steel Corporation, PO Box 6778, Cleveland, Ohio 44101 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483; and

HAZARDOUS WASTE FACILITY BOARD
March 3, 1995
ENTERED BOARD'S JOURNAL

d. Change in facility contact from Thomas Kachur, Manager, Environmental Control to Thomas Shepker, Manager, Environmental Control.

The facility, which WCI took over management of on December 1, 1989, is an acid regeneration plant, which recycles spent hydrochloric acid pickle solution. The hazardous waste managed at the facility is listed as K062, spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry, and characterized as D006, cadmium. The plant has a design capacity of 18,000,000 gallons per year; a total process capacity of 424,000 gallons for storage. Waste is managed in eleven, 36,000 gallons, above ground storage tanks and a 28,300 gallon sump for the pickling lines.

At its January 27, 1995 meeting, the Board having considered its statutory duty under R.C. Chapters 119 and 3734, as well as reviewing and considering the official record of the proceedings and being fully advised of the premises, voted 5:0 that:

- The Report and Recommendation be approved and adopted in order that a hazardous waste permit modification may be issued to Applicant, and
- The Board staff, under the direction of its Executive Director, shall prepare the necessary documents for the Board Member signature and journalization.

II. FINAL ORDERS

IT IS HEREBY ORDERED by this Board that the Report and Recommendation of the Hearing Examiner be and is hereby approved and adopted and incorporated by reference, so as to be made part of this *Opinion and Final Orders*, in final form, as if fully written herein, and is attached hereto.

IT IS FURTHER ORDERED that the application of WCI Steel, Inc., for a hazardous waste facility installation and operation permit modification for Applicant's Warren, Ohio, facility, Case No. 94-M-0184, be and is hereby approved in conformity with this *Opinion and Final Orders*.

IT IS FURTHER ORDERED that all objections and motions not specifically ruled upon are hereby denied.

HAZARDOUS WASTE FACILITY BOARD

March 3, 1995

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IT IS FURTHER ORDERED that the effective date of this *Opinion and Final Orders* shall be and is hereby designated as the date upon which said document was entered into the Journal of the Board.

IT IS FURTHER ORDERED that copies of this *Opinion and Final Orders* shall be served on the parties in accordance with applicable law and that a notice regarding the method of appeal be attached hereto.

IT IS FURTHER ORDERED that a copy of this *Opinion and Final Orders* shall be made available, upon request, to all interested persons.

Issued at
Columbus, Ohio
this 27h day of
January, 1995

STATE OF OHIO
HAZARDOUS WASTE FACILITY BOARD

Judith L. French

Judith French, Chair,
Deputy Director,
Ohio Environmental Protection Agency,
Designee of Director of Environmental Protection

Entered in the
Journal of the
Board this 3rd
day of March, 1995

Julianna F. Bull

Julianna F. Bull
Executive Director

Donald L. Mason, Esq.

Donald L. Mason, Board Member,
Deputy Director,
Ohio Department of Natural Resources,
Designee of Director of Natural Resources

HAZARDOUS WASTE FACILITY BOARD

March 3, 1995

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Warren W. Tyler, Board Member,
Member, Ohio Water Development Authority,
Designee of Chairman of Ohio Water
Development Authority

Dr. Neville G. Pinto, Board Member,
Chemical Engineer,
Associate Professor of Chemical Engineering,
University of Cincinnati

Dr. E. Scott Bair, Board Member,
Geologist,
Associate Professor,
Department of Geological Sciences,
The Ohio State University

HAZARDOUS WASTE FACILITY BOARD

March 3, 1995

ENTERED BOARD'S JOURNAL

METHOD OF APPEAL

YOU ARE HEREBY ADVISED THAT: Any party adversely affected by an order of the Hazardous Waste Facility Board may appeal the order and decision of the Board to the Court of Appeals of Franklin County. An appellant shall file with the Board the notice of appeal, which shall designate the order appealed from. A copy of the notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to each party to the adjudication hearing before the Board. Such notices shall be filed and mailed within thirty days after the date upon which the appellant received notice from the Board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal effective.

For additional information, see R.C. 3734.05 (D)(7).

HAZARDOUS WASTE FACILITY BOARD

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CERTIFICATION

I hereby certify that the foregoing is a true and accurate copy of the *Opinion and Final Orders* as issued *In the Matter of WCI Steel, Inc.*, Case No. 94-M-0184, as entered in the Journal of the Board on the 3rd day of March, 1995.

Julianna F. Bull

Julianna F. Bull, Executive Director
Custodian of the Journal
Hazardous Waste Facility Board

Dated this 3rd day of
March, 1995, at
Columbus, Ohio

BEFORE THE

HAZARDOUS WASTE FACILITY BOARD

STATE OF OHIO

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STATE OF OHIO
HAZARDOUS WASTE
FACILITY BOARD

In the Matter of:	:	
WCI Steel, Inc. Warren, Ohio	:	Case No. 94-M-0184
Applicant	:	

REPORT AND RECOMMENDATION
OF THE
HEARING EXAMINER

REPORT

I. FINDINGS OF FACT

The hearing examiner (examiner) having considered his statutory duty under R.C. Chapters 119 and 3734, the procedural rules of the Board, as well as the record of this proceeding, recommends for Board approval and adoption the findings of fact set forth below:

A. Jurisdiction and Procedure

1. This matter came before the Board on application of WCI Steel, Inc., (WCI or Applicant) for a hazardous waste facility installation and operation permit modification (Ohio ID No. 02-78-0184) for Applicant's Warren, Ohio, facility. CD .00.[1]

2. The following documents (application) were transmitted to the Board by the Director of Environmental Protection (Director) on July 15, 1994:

   a. Classification letter dated August 20, 1992;

   b. Part A permit application, dated December 4, 1981, as modified by letter dated November 23, 1982;

   c. Unredacted copy of the Ohio Attorney General's Investigative Report, dated November 16, 1992;

[1]Documents filed with the Board are numbered by a decimal system beginning with .00. Citation to Board case documents filed and made part of the record are referenced by use of the abbreviation CD, followed by the assigned case document number, then the page number, if necessary. A copy of the case file index identifying documents filed in this proceeding is kept at the Board's offices and is available upon request.

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d. Redacted (public) copy of the Ohio Attorney General's Investigative Report, dated November 16, 1992;

e. Disclosure statement, dated November 7, 1991; and

f. A final draft submitted by the Attorney General's Office to EBR - Joint Stipulation and Settlement Agreement dated June 2, 1994.

Id.

3. The August 20, 1992 classification letter, in the form of a journalized, final action, appealable to the Ohio Environmental Board of Review, is a determined by the Director that portions of the requested changes to Applicant's permit constitute a modification. *Id.* at 04.

4. The Director determined that the aspects of the permitted facility or its operations that are to be modified, and thus subject to review by the Board under R.C. 3734.05(D), are:

a. Change in ownership from Republic Steel Corporation, PO Box 6778, Cleveland, Ohio 44101 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483;

b. Change in name of facility from Republic Steel Mahoning Valley Warren, 1040 Pine Avenue, Warren, Ohio 44483 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483;

c. Change in operator information from Republic Steel Corporation, PO Box 6778, Cleveland, Ohio 44101 to WCI Steel, Inc., 1040 Pine Avenue S.E., Warren, Ohio 44483; and

d. Change in facility contact from Thomas Kachur, Manager, Environmental Control to Thomas Shepker, Manager, Environmental Control.

Id. at 04-05.

5. In accordance with R.C. 119.09, Michael A. Shapiro, a licensed attorney admitted to the practice of law in the State of Ohio, was assigned as the examiner to this proceeding. CD .01.

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6. The statutory parties who actively participated in this proceeding, identified by counsel, are:

   a. Applicant: Karen Winters, Esq.

   b. Ohio EPA: Joan R. Kooistra, Esq.

   CD .04; CD .05.

7. The Trumbull County Commissioners, through their counsel Thomas P. Gysegem, Esq., Assistant Prosecuting Attorney, and Howland Township Trustees are statutory parties to this proceeding, but did not actively participate. CD .01; CD .02.

B. Applicant and Facility Description

8. The RENCO Group, Inc. (RENCO), a holding company with decentralized management, is the ultimate parent of WCI through RENCO Ventures, Inc., an intermediate corporation. RENCO owns seventeen operating companies employing approximately 5,000 people. The organization's growth has been substantial in the last ten years. The conglomerate's volume increased from $40,000,000 to almost $1 billion, and total assets from $20,000,000 to $500,000,000. CD .00 at 39.

9. In April, 1988, RENCO created ASCAN Ohio Corporation specifically for the purchase of the Republic Steel Corporation, Mahoning Valley Warren Works, 1040 Pine Avenue, Warren, Ohio, Trumbull County, from LTV Steel, which purchased the facility in 1984. When the sale was completed in September of 1988, ASCAN's name was changed to Warren Consolidated Industries, Inc., and then to WCI Steel, Inc., in November, 1991. WCI took over the management of the acid regeneration plant on December 1, 1989. *Id.* 39-40.

10. Republic Steel Corporation made the original decision, based on economics, to build an acid regeneration facility for recycling of spent hydrochloric acid pickle solution (K062) generated at its Warren and Cleveland, Ohio steel mills. The plant was designed to handle 18,000,000 gallons of K062 per year. Pennsylvania Engineering Corporation and its subsidiary PEROX designed, built and operated the acid regeneration plants for LTV Steel from 1981 until November 30, 1989. The facility has regenerated approximately 11,771,416 gallons of hydrochloric acid between December 1, 1989 and October 12, 1990, of which approximately 947,401 gallons, or 8%, were from third party sources. During the period between December 1, 1989 to September 30, 1990, WCI had total sales of $492,190,000 for regenerated acid, of which less than $100,000 were sales from third party regenerated acid and acid generated iron oxide. *Id.* at 40.

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11. WCI, a wholly owned subsidiary of the RENCO Group, Inc., has established the following wholly owned subsidiaries:

    a. Beaver Coke Company;

    b. METFAB;

    c. Niles Property, Inc.;

    d. Youngstown Sinter Company;

    e. WCI Captive Landfill.

    Id. at 40-42[2].

---

[2]The Attorney General provided the following descriptions of the WCI subsidiaries:

> Beaver Coke Company was set up to present a purchase proposal to the Judge presiding over the LTV bankruptcy, the USEPA Region III and the Pennsylvania Department of Environmental Resources (DER) for the Aliquippa Coke Batteries owned by LTV Steel. The proposal never materialized, and Beaver Coke Company never owned or operated the coke battery. It has been inactive since 1989.
>
> Warren Culvert, Inc. was created to manage the former LTV Steel Drainage Products Division as a subsidiary of WCI. It was then decided to make it a division of WCI and it became Warren Consolidated Industries, Inc., METFAB. Warren Culvert, Inc. never became an active company. This division of WCI, METFAB, makes galvanized culvert products for the construction industry, some of which are coated with asphalt. It also makes the steel support plates which bolt together to support tunnel construction.
>
> Niles Property Inc. was formerly a cold rolling and tin plating operation of Republic Steel/LTV Steel. The last of the production equipment was the Cold Rolling Mill, which was sold by LTV prior to the WCI purchase. WCI purchased the Niles property to use several buildings for its finished product storage. ... (P)ortions of this subsidiary are leased to other companies for storage or industrial activity.
>
> Youngstown Sinter Company was the former United States Steel Corporation (hereinafter USS) Brier Hill Works sintering operation. When USS shut down this plant in the late 1970's, Republic Steel Corporation/LTV Steel purchased and ran it to consume revert materials, which were too fine for direct use in the blast furnace. WCI purchased this wholly owned subsidiary from LTV in 1989 and spent nearly $10 million (over $7 million for environmental projects) to bring it on-line in June of 1991. The sinter plant, renamed the Youngstown Sinter Company, was reactivated on June 13, 1991.
>
> WCI Captive Landfill is a solid waste facility located ... [on site]. It receives in excess of 100,000 tons of air and water pollution control dust and sludges and steelmaking slag annually.
>
> CD .00 at 40 - 42.

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C. Filing of Necessary Documents

12. A preliminary conference was held on August 4, 1994. Attendees were:

NAME	REPRESENTING
Vin Puri	Ohio EPA
Stephen R. Feldmann, Esq.	Ohio EPA
Joan R. Kooistra, Esq.	Ohio EPA
Karen Winters, Esq.	Applicant

CD .07.

13. Pursuant to instructions from the examiner, the following necessary documents were filed:

    a. The application signed by Applicant. CD .08.

    b. The 1993 renewal permit to which the modification is to attach. CD .09.

    c. Applicant's short statement of anticipated environmental impact and map. *Id.*

    d. Update to the compliance history. *Id.*

14. The renewal permit authorizes the management of eleven tanks of 36,000 gallons each, and a 28,300 gallon pickling lines sump, for a total capacity of 424,000 gallons. The 11 above ground storage tanks are contained within a diked area which measures 38 feet by 104 feet with 4.5 to 5 feet concrete walls serving as containment. The total capacity of the containment dike is approximately 45,000 gallons. The pickling lines sump is contained within a sump which provides approximately 80,000 gallons containment capacity. CD .09.

15. The hazardous waste managed at the facility is listed as K062, spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry, and characterized as D006, cadmium. *Id.*; O.A.C. 3745-51-24, 3745-51-32.

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D. Public Hearing / Adjudication Hearing / Disputed Issues

16 A public hearing on the application, pursuant to R.C. 3734.05, was held on Tuesday, October 11, 1994, at Turner Junior High School auditorium, 1443 Mahoning Avenue, Warren, OH 44483. In accordance with R. C. 3734.05(D)(3)(a), a representative of the applicant having knowledge of the location, construction, operation, and closure of the facility attended the public hearing. CD .10.

17. No comments in opposition to the application, either in oral or written form, have been received into the record of this proceeding. *Id.*

18. An adjudication hearing on this matter was conducted by telephone conference call on Friday, October 14, 1994, at 1:00 p.m., with the following counsel entering appearances upon the record:

NAME	REPRESENTING
Thomas Grever, Esq.	Ohio EPA
Karen Winters, Esq.	Applicant

CD .11.

19. The hearing was thereupon adjourned. *Id.*

20. There are no disputed issues between the parties to this proceeding.

E. Disclosure Statement / Investigative Report

21. Applicant's disclosure statement is dated November 7, 1991; personal history disclosure statements for key employees were received by the Attorney General on October 1, 1991. CD.00 at 83, 66.

22. The Attorney General, within one hundred eighty days after receipt of the disclosure statement from an applicant for a permit, shall prepare and transmit to the Director an investigative report on the applicant, based in part upon the disclosure statement, except that this deadline may be extended for a reasonable period of time, for good cause, by the Director or the Attorney General. R.C. 3734.42 (A)(3).

23. The investigative report of the Attorney General was received by the Director on October 29, 1992. CD .00 at 36.

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24. The investigative report was prepared by the Attorney General, Environmental Background Investigations Unit of the Bureau of Criminal Identification and Investigation (EBIU), which verified all information presented in the disclosure statement submitted by Applicant and its key employees. Where necessary, EBIU independently investigated all relevant aspects of the disclosure statements which could affect the statutory criteria for disqualification. *Id.* at 36.

25. The Attorney General focused the background investigation on WCI and RENCO and its subsidiaries. *Id.* at 39.

26. The four people whom Applicant described as key employees[3] have, collectively, more than ninety years experience in the steel industry. The manager of the Environmental Control group and the supervisor of the acid regeneration facility in particular have had experience in pollution control activities within the context of steel manufacturing. Mr. Shepker, the Environmental Control Group Manager, has worked in his current position, which is devoted entirely to environmental compliance and pollution prevention, since 1988. Mr. Calderwood worked exclusively in the environmental departments of WCI, Inc. until 1989, thereafter as supervisor of the acid regeneration facility.

    Attorney General Statutory Criteria Discussion at 1. (See Recommended Conclusion of Law No. 12.)

27. Three of the key employees investigated by the Attorney General hold science degrees. The fourth man (Mr. Holzheimer) has an education degree and has completed in-house management training. *Id.*

28. Through the Attorney General's investigation, no exceptions were revealed to the key employees's management experience, employment history, educational background, or credit history. The disclosure information was confirmed through the various personnel departments, educational institutions and independent investigative sources. None of the key employees has ever been convicted of a crime. CD .00 at 42.

29. When the Attorney General reviewed the information Applicant disclosed about the individuals and the business concerns, it was largely accurate. Attorney General Statutory Criteria Discussion at 1.

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[3]Tom Shepker, Manager, Environmental Control; David J. Calderwood, Supervisor, Acid Regeneration Facility; George Holzheimer, Purchasing Manager; and Patrick T. Kenney, General Superintendent, Finishing Operations. CD .00 at 42-44.

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30. The Attorney General reviewed Applicant's compliance record with respect to air, water and hazardous waste laws and regulations. Applicant was cited nine times in the late 1980's and 1990's for air pollution violations. The violations were: excess visible emissions, excess particulate emissions, and excess sulfur dioxide emissions. The Director did not take enforcement action.

Id at 2.

31. Applicant holds an NPDES permit. During the time Applicant has owned and controlled the facility, it was cited for the presence of oil at certain outfalls, failure to install flowmeters in compliance with its permit, failure to prevent discharge from an outfall not permitted to discharge and inappropriate location of an outfall pipe. The facility reported effluent violations on several occasions. Ohio EPA did not initiate enforcement action in response to any of the wastewater violations.

Id.

32. WCI, Inc. holds an NPDES permit for its METFAB division, which has not been cited for violations, nor enforcement actions initiated. METFAB has maintained compliance with its air permit.

Id. at 3.

33. The Attorney General reviewed Applicant's environmental compliance history with respect to the hazardous waste rules. The violations for which Applicant has been cited include: financial assurance and insurance coverage; failure to keep inspection logs and emergency lists updated; failure to complete personnel training; failure to provide appropriate containment for the contents of storage tanks; and failure to mark containers properly. In each case, the violation has been corrected, with no escalated enforcement action undertaken by the Ohio EPA. *Id.* at 2; Attorney General Investigative Report, Investigative Summary (Investigative Summary).

34. The Attorney General reports that:

> The failure to provide adequate containment and the improper marking probably created the most immediate environmental risks. While the failure to provide adequate liability coverage and failure to provide for closure cost assurance are troubling, there is no evidence that any harm resulted from the facility's late compliance with the requirements of the rules. The personnel training violations and the failure to reflect new information and requirements in inspection logs are relatively minor violations which probably did not greatly endanger the environment during the time they occurred.

Attorney General Statutory Criteria Discussion at 2-3.

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35. WCI subsidiary compliance, as reported by the Attorney General in his Investigative Summary, is set forth below:

a. Beaver Coke Company - No environmental permits applied for or received.

b. METFAB:

i. Permit No. OH 006891 authorizes the discharge of non-contact cooling water, storm water and ground water. No violations or enforcement actions have been initiated.

ii. Air Permit No. 1576000865, issued by the Air Pollution Control Agency, Canton, Ohio, authorizes (on registration status) an asphalt coating dip tank and a fugitive source (F001) for the roadways and parking lots. No violations reported.

c. Niles Property, Inc - NPDES Permit No. OH0011266 for storm water and ground water. No violations were reported.

d. Youngstown Sinter Company:

i. Particulate emission testing conducted on August 22, 1991 and October 18, 1991 revealed violations of OAC Rule 3745-17-11, the Ohio fugitive dust regulation. Extensive repair of the dust collector has been ongoing since the first violation. Additional inspection and repair of the dust collector were ordered after the second test failure. A third test was completed in 1991; the source was in compliance.

ii. Additional violations at the Youngstown Sinter Company relate to the capture and/or control of fugitive dust from material handling, aggregate storage, and sinter load-out stations.

iii. No enforcement action has been initiated on the basis of Youngstown Sinter's violations.

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e. WCI Captive Landfill - Although Applicant took over the operations of the captive landfill in 1988 when it purchased the facility from LTV, Ohio EPA did not begin inspections until January, 1991. The Trumbull County Health Department does not conduct inspections at the facility. The following information was provided:

i. January 31, 1991: The facility was approximately 25 feet over the height shown in the operating report filed in July 1978; inadequate daily and intermediate cover; and although the facility had applied for a license, it had not received such license.

ii. May 13, 1991: The facility was approximately 25 feet over the height shown in the operating report filed in July of 1978; the facility was not utilizing an acceptable daily and intermediate cover; and abandoned drums were noted on the southeast corner at the base of the landfill. The OEPA found the barrels to be empty and they were removed.

iii. June 3, 1991: The OEPA found [that] the ... facility had not operated in compliance with approved detailed plans ..., [in that] the facility was approximately 25 feet over the height shown in the operating report filed July 5, 1978 ... and ... was not utilizing an acceptable daily or intermediate cover.

iv. April 2, 1992: The OEPA inspection noted a violation of daily and intermediate cover.

v. June 10, 1992: The OEPA noted a violation of daily and intermediate cover.

vi. August 6, 1992: The OEPA noted the following violations: lack of daily and intermediate cover and erosion.

No escalated enforcement activity was indicated.

Investigative Summary at 2-4, 11.

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36. Beginning in April, 1984, LTV Steel began recycling coal tar decanter sludge back to the coke ovens by mixing the sludge with coal on the active portion of the coal pile, and charging the mixture into the coke ovens. On February 28, 1986, Ohio EPA advised LTV Steel that this activity constituted "storage" in a vicinity for which LTV had no hazardous waste permit. Findings and Orders, issued on September 2, 1988, ordered the submittal of a closure plan for the waste pile storage area to both the Ohio EPA and USEPA. LTV appealed the Findings and Orders on October 8, 1986 and the matter is still pending. LTV Steel stopped the recycling activity and began to send all tar decanter sludge to LTV Steel's Pittsburgh site. When Applicant took over the operation in 1988, three piles of coal tar decanter sludge still existed at the site. Together, Applicant and LTV have removed the piles and are sampling the area.

Investigative Summary at 7.

F. Update of Compliance History

37. Applicant on September 2, 1994 filed an update of its compliance history indicating that:

a. All described violations from inspections have been returned to compliance.

b. The inspections of December 3, 1992 and November and December, 1993 (financial record review) evidenced substantial compliance and compliance, respectively.

CD .09

38. The above filing contained a December 22, 1993 letter to Applicant from Ohio EPA stating that:

> To demonstrate compliance with the financial assurance requirements for closure, WCI Steel, Inc. uses Letter of Credit No. 513027P issued on November 12, 1993 by CoreStates Philadelphia National Bank currently in the amount of $550,000. A standby Trust Agreement entered into as of December 10, 1993 between WCI Steel, Inc. and Society National Bank accompanies the Letter of Credit. This Letter of Credit replaced Letter of Credit No. 512053P issued on January 29, 1993 in the amount of $325,000. The previously referenced Letter of Credit No. 512053P replaced Letter of Credit No. 510307P issued on August 31, 1991 in the amount of $300,000. Both Letters of Credit remain outstanding.

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> To demonstrate liability coverage for sudden accidental occurrences WCI Steel, Inc. uses a financial test as specified in OAC rule 3745-66-47(F). The most recent financial test documentation for WCI Steel, Inc. dated January 22, 1993 for the fiscal year ending October 31, 1992, was received October 13, 1993 by letter from Margaret Stollar.
>
> Upon review of the financial assurance and liability coverage documentation, no violations were found. Therefore, the WCI Steel, Inc. facility is in compliance with OAC rules 3745-66-42, 3745-66-43 and 3745-66-47 at this time.
>
> *Id.*

39. The review of the compliance history does not show any pattern to the violations or any repeated violations that would indicate an underlying problem.

G. Permits Terms and Conditions

40. The application transmittal did not included draft permit terms and conditions and no party to this proceeding has filed proposed terms and conditions. CD .00.

II. CONCLUSIONS OF LAW

The examiner, having considered his statutory duty under R.C. Chapters 119 and 3734, the procedural rules of the Board, as well as the record of this proceeding, recommends the Board approve and adopt the conclusions of law, with discussions, set forth below:

A. Jurisdiction

1. The Board shall approve or disapprove an application for a modification of a hazardous waste facility installation and operation permit in accordance with R.C. 3734.05(D). R.C. 3734.05(I)(4)(a).

2. R.C. 3734.05(I)(4)(a) clearly specifies that any aspect of a facility being operated under an existing permit which is not being modified is not subject to review by the Hazardous Waste Facility Board. *CECOS v. Shank* (1991) 74 Ohio App. 3d 43; 598 N.E.2d 40.

3. For the Board to act on an application to modify a permit, the Board must first find that Applicant possesses a valid permit and that the aspects of the permitted facility or its operations that are subject to Board review have been appropriately identified. *In the Matter of Aristech Chemical Corporation*, Report and Recommendation of the Hearing Examiner, Case No. 93-M-0251, CD .51, (*Aristech*), at 8.

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Discussion: See In the Matter of Battelle Memorial Institute, Case No. 92-M-0572 (*Battelle*), Panel Discussion of Preliminary Issues, CD .27 at 10:

> ... (B)efore the Board can act on an application or part of an application, it must have jurisdiction .... The Board cannot imply jurisdiction from a contextual interpretation of an application or draft permit. *The Board has jurisdiction only over that which is expressly classified by the Director as requiring Board action.* (Emphasis added.)

See also Battelle, Ruling on Suspension of Proceedings, Entry Scheduling Status Conferences, Continuances, CD .67 at 1:

> Panel still views *the existence of a permit* as a logical component of a permit modification proceeding .... (Emphasis added.)

4. The determination of modification by the Director and the manner in which it was perfected, provided the definitive aspect of the permitted facility or its operations that is to be modified and subject to review by the Board pursuant to R.C. 3734.05(D).

5. As Applicant is in possession of a valid permit, together with Conclusion of Law No.4, the application of WCI Steel, Inc., Ohio Hazardous Waste Facility Installation and Operation Permit No. 02-78-0184, for its Warren, Ohio facility, is properly before the Board and within Board jurisdiction.

B. Public Hearing

6. The R.C. 3734.05(D)(1)(3)(a) public hearing is an explicit, administrative function of the Hazardous Waste Facility Board, with no direct or legal relationship to the adjudication hearing and the hearing examiner simply has no jurisdiction to interpret, limit or modify the scope of the public hearing except as to issues raised by the parties in the adjudication of a particular case. *In the Matter Waste Technologies Industries (WTI)*, Ruling on Motion to Strike, Case No. 93-[]-0589, CD .63.

C. Issues in Dispute / Adjudication Hearing

7. The Board shall hear and decide all disputed issues between the parties respecting the approval or disapproval of the application. R.C. 3734.05(D)(3)(c).

8. The Board shall conduct any adjudication hearing upon disputed issues in accordance with Chapter 119 of the Revised Code and the rules of the Board governing the procedure of such hearing. R.C. 3734.05(D)(5).

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9. In any adjudication hearing required by R.C. 119.01 to 119.13, an agency may appoint an examiner to conduct the hearing, who shall submit to the agency a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the agency. R. C. 119.09.

10. When there are no disputed issues between the parties, there is no longer any case or controversy to be adjudicated or decided. In such a situation an examiner shall fulfill his/her statutory and regulatory duties by filing a report declaring that there are no issues in dispute and by making a recommendation for further action based thereon. *In the Matter of Ashland Chemical Company, Division of Ashland Oil, Inc.*, Report and Recommendation of the Hearing Examiner, Case No. 93-NF-0631, CD. 71 at 8; *Aristech* at 9.

D. Disclosure Statement / Investigative Report

11. A review of an application by the Board of an off-site facility shall include a review of the disclosure statement and investigative report. R.C. 3734.41; R.C. 3734.42 (A)(4).

12. Documents contained in the record of proceeding to which confidential status has not been provided by the Board, such as the Unredacted Copy of the Investigative Report of the Attorney General, are public record and appropriate to be the foundation for findings of fact. *See WTI*, CD .46, attached letter:

> The ... [Unredacted Copy of the Investigative Report of the Attorney General] is in the possession of the Board, as it was included in the Director's transmittal of the WTI permit application. For the reasons discussed below, I view the document as a public record ....
>
> The document is included in the term "public record," as it is a "document...received by or coming under the jurisdiction of any public office of the state ... which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." R.C. 149.011. Further, it is my opinion that the release of said document is *NOT* precluded by the provision of R.C. 149.43[4] nor R.C. 3734.43[5].

[4]Said document should not be considered as a trial preparation nor confidential law enforcement record, as any such record would have lost statutory protection when the document was transmitted.

[5]The prohibition against release would appear to attach only to the Attorney General and representatives of that office.

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See also WTI, CD .49, Response from the Ohio EPA, through its counsel the Attorney General: "... the Staff will not object to the anticipated release ... [of the Unredacted Copy of the Investigative Report of the Attorney General]."

E. Relevant Criteria

13. Where a permit modification consists only of a change of ownership, the applicable R.C. 3734.05(D)(6) criteria are R.C. 3734.05(D)(6)(b), which portions relate to change of ownership and financial requirements; R.C. 3734.05(D)(6)(e), which portions relate to change of ownership; and R.C. 3734.05(D)(6)(f)[6]. *In the Matter of Occidental Chemical Corporation*, Report and Recommendation of the Adjudication Panel, Case No. 91-M-0078 *(Occidental)*, CD .36 at 39, adopted and approved by the Board's *Opinion and Final Orders*, journalized on June 29, 1993.

E.1 Director's Performance Standards

14. The Board in the past has and will continue to give deference to the Ohio EPA in the interpretation of, and determination of compliance with, the hazardous waste rules; rules which are proposed, adopted, supervised and enforced by the agency. Absent a dispute

---

[6]The board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines as follows ...

(b) That the facility complies with the director's hazardous waste standards adopted pursuant to section 3734.12 of the Revised Code.

* * *

(e) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters.

* * *

(f) That if the owner of the facility, the operator of the facility, or any other person in a position with the facility from which he may influence the installation and operation of the facility has been involved in any prior activity involving transportation, treatment, storage, or disposal of hazardous waste, that person has a history of compliance with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters, the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, and all regulations adopted under it, and similar laws and rules of other states if any such prior operation was located in another state that demonstrates sufficient reliability, expertise, and competency to operate a hazardous waste facility under the applicable provisions of Chapters 3704., 3734., and 6111. of the Revised Code, the applicable rules and standards adopted under those chapters, and terms and conditions of a hazardous waste facility installation and operation permit, given the potential for harm to the public health and safety and the environment that could result from the irresponsible operation of the facility.

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among the parties or issue raised by the Board, an agency determination of an applicant's compliance or ability to comply with a rule will suffice and be the foundation for the necessary finding of fact and conclusion of law that the facility "complies with the director's hazardous waste standards ...." R.C. 3734.05(D)(6)(b). (*See also Occidental* at 22-23); *In the Matter of Monsanto Company*, Opinion and Final Orders, Case No. 91-M-0604 (*Monsanto*), CD .85 at 10.

15. The facility will comply with the applicable Director's performance standards. R.C.3734.05(D)(6)(b).

E.2 Compliance with Ohio Environmental Chapters and Rules

16. Enforcement jurisdiction of R.C. Chapters 3704., 3734., and 6111. and all rules and standards adopted under those chapters is within the Ohio EPA. R.C. 3704.03; 3704.06; 3734.05; 3734.10; 3734.13; 6111.03.

17. Applicant's environmental permits were issued following public comment and an opportunity for public participation and were appealable. In such sense, an examination of the permit issuing agency's actions by the Board would be an impermissible collateral attack on said permitting actions. *In the Matter of Waste Technologies*, Written Order and Final Opinion, Case No. 82-NF-0589, at 57.

18. The fact that environmental permits have been issued for a facility, though, does not relieve the Board of its obligation to examine the environmental impacts of emissions or releases in connection with the findings and determinations it must make under R.C. 3734.05(D)(6), including the determination that the facility complies with R.C. Chapters 3704., 3734., and 6111. and all rules and standards adopted under those chapters. *Id.*

19. The Board in the past has and may continue to give deference to the various primary permit issuance and enforcement agencies with respect to compliance with the Chapters and rules upon which such agencies have permitting and enforcement (compliance determination) authority. Absent a dispute among the parties or issue raised by the Board, an agency determination of an applicant's compliance or ability to comply with such chapters and rules may suffice and be the foundation for the necessary finding of fact and conclusion of law that the facility "will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters."

Discussion: See Discussion after Conclusion of Law No. 23.

20. The facility will comply with the applicable provisions of R.C. Chapters 3704, 3734, and 6111 and all applicable rules and standards adopted under these Chapters. R.C. 3734.05(D)(6)(e).

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E.3 History of Compliance

21. It is established precedent that the compliance history statute must not be interpreted as requiring violation free facility operation or intending to automatically disqualify every applicant who has paid a penalty or been subject to an enforcement order. (*See In the Matter of Erieway, Inc.*, Case No. 87-MR-0387, Report and Recommendation of the Adjudication Panel, filed October 31, 1988, at 3.) Rather, what the statute contemplates is evidence of acts of compliance (a history of dealing responsibly with environmental problems) which, when compared against acts of noncompliance, demonstrates that the applicant is sufficiently reliable, expert, and competent to operate the facility under applicable provisions of R.C. Chapters 3704., 3734., and 6111., and terms and conditions of the modification permit, given the potential for harm to the public health and safety and the environment that could result from the irresponsible operation of the facility. R.C. 3734.05(D)(6)(f). In other words, the required demonstration is evidence sufficient to justify a prediction of future facility management consistent and in compliance with the permitting standards and criteria.

    Monsanto at 14.

22. The decision to take an [enforcement] action, the time frame within which to commence such an enforcement action and the authority to determine what events and which developments will precipitate such an enforcement action are decisions within the discretion of the Director. *Miller v. Schregardus* (1991), Case No. EBR 132470, 1991 Ohio ENV LEXIS 9.

23. The Board in the past has and may continue to give deference to the various primary permit issuance and enforcement agencies with respect to the establishment of a record of compliance, and deference to the EBIU as a primary investigatory body.

    Discussion: A decision to undertake enforcement of environmental violations is within the discretion of the Director. As regards an investigation into an applicant's disclosure statement and other relevant compliance history information, jurisdiction and statutory authority has been granted primarily to the EBIU. While the stated positions of the Attorney General and the Director regarding areas of their particular expertise and primary jurisdiction are not binding upon the Board, appropriate weight may be accorded.

    The examiner recommends Conclusions of Law Nos. 19 and 23 as extension of that espoused by the Board in *Monsanto*.

24. As all of the violations cited have been remediated and there has been no escalated enforcement action on the part of the Ohio EPA, Applicant has demonstrated the requisite history of dealing responsibly with environmental matters.

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25. Applicant, as owner and operator of the facility, and all persons in a position with the facility from which they may influence the installation and operation of the facility, have a record of compliance with R.C. Chapters 3704, 3734, and 6111 and all rules and standards adopted thereunder, the Resource Conservation and Recovery Act and all regulations promulgated thereunder, and similar laws and rules of other states, that demonstrates sufficient reliability, expertise, and competency to operate a hazardous waste facility under the applicable provisions of R.C. Chapters 3704, 3734, and 6111 and the applicable rules and standards adopted under those chapters, given the potential for harm to the public health and safety and the environment that could result from the irresponsible operation of the facility. R.C. 3734.05(D)(6)(f).

F. Permit Terms and Conditions

26. If the Board approves an application for a hazardous waste facility installation and operation permit [or modification thereof], as a part of its written order it shall issue the permit upon such terms and conditions as the Board finds are necessary to ensure the construction and operation of the hazardous waste facility in accordance with the standards of R.C. 3734.05. R.C. 3734.05(D)(6)

27. After a review and consideration of the record, it is not necessary to issue permit terms and conditions in addition to those set forth in the renewal permit to ensure the construction and operation of the facility in accordance with the standards of R.C. 3734.05.

G. Entitlement to Permit

28. Applicant meets and complies with all applicable prerequisites and requirements for the issuance of a hazardous waste facility installation and operation permit modification and has met its burden of proof with respect to adjudication of each and every one of the applicable siting criteria set forth at R.C. 3734.05(D)(6).

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29. Applicant has demonstrated entitlement to the issuance of such permit modification pursuant to R.C. Chapter 3734 and the rules and standards adopted thereunder.

RECOMMENDATION

There being no disputed issues between the parties, no necessary permit terms and conditions to be imposed, and no further participation by staff required, unless so directed by the Board, the examiner respectfully recommends that the Board meet to approve and adopt the recommended herein Findings of Fact and Conclusions of Law, and issue a written opinion and final order granting the permit modification.

Respectfully submitted,

Michael A. Shapiro
Hearing Examiner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	JUDGE JAMES S. GWIN
	)	
Defendant.	)	
	)	
	)	

PLAINTIFF UNITED STATES' DEPOSITION DESIGNATIONS

The United States intends to offer the testimony of the following witnesses through deposition designations. These witnesses are either current employees of Defendant WCI Steel, Inc., or are unavailable pursuant to Rule 32 of the Federal Rules of Civil Procedure.

Witness	Status	Attachment
Michael Ballas	Employee	1
William Boyd	Employee	2
Glenn Dunn	Employee	3
Michael Gaydosh	Employee	4
Richard Gradishar	Unavailable	5
Grady Holt	Employee	6
Joseph Logan	Unavailable	7
Robert McCoy	Employee	8
Keith McLaughlin	Employee	9
Ronald Risko	Employee	10
Dennis Ritter	Unavailable	11
Randal Rodgers	Employee	12
Thomas Shepker	Employee	13

Herman Showalter	Employee	14
James Skubak	Unavailable	15
James Stack	Unavailable	16
Joseph Stock	Unavailable	17
Kevin White	Employee	18
Raymond Zeuner	Employee	19

Ballas Deposition Designations

Michael G. Ballas began working the Warren facility in March of 1989 as a laborer in the cold strip finish and the blast furnace. He became a central wastewater treatment plant (CTP) operator approximately three months later. His responsibilities as a CTP operator include monitoring the central treatment plant, including the pH of Pond 6 wastewater flowing into the CTP, making hourly turn audits, documenting the activities during his shift, and reporting any problems to supervision.

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Page 19, line 10 through Page 21, line 12

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Page 101, line 11 through Page 103, line 10
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Page 126, line 17 through Page 129, line 16

Page 131, line 20 through Page 132, line 1

Page 132, line 21 through Page 134, line 7

Page 175, line 17 through Page 177, line 9

William Boyd Deposition Designations

William W. Boyd, Jr. has been General Supervisor of Maintenance, Rolling & Finishing, at WCI Steel since April 1, 1988. He has worked at various jobs at the Warren facility for approximately 29 years. Mr. Boyd is generally responsible for maintenance of equipment inside the nine building at the rolling and finishing department. The department has two picklers, two temper mills, two slitters, one tandem mill, annealing section and numerous cranes. There are approximately 400 employees in the department.

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Page 181, lines 4-16

Page 182, lines 4-12

Page 183, line 13 through Page 184, line 24

Page 188, line 12 through page 189, line 3

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Page 283, line 19 through Page 284, line 10

Glenn Dunn Deposition Designations

Glenn Dunn is a Combustion Repairman at WCI Steel, Inc. He has been employed as a Combustion Repairman from September 1988 to the present. Mr. Dunn's duties as a Combustion Repairman have included cleaning and calibrating the pH probe and meter that measure the pH of the wastewater as it enters the Central Treatment Plant from Pond 6.

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Page 20, line 22 through Page 21, line 4

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Page 87, line 12 through Page 88, line 11

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Gaydosh Deposition Designations

Paul Michael Gaydosh began working that WCI's Warren facility in May of 1989 as a crane operator. In 1990 Mr. Gaydosh began working as a central wastewater treatment plant (CTP) operator. During the relevant time period, Mr. Gaydosh's responsibilities generally include monitoring and recording the pH wastewater flowing into the CTP.

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Page 30, line 11 through Page 37, line 3

Page 44, line 11 through Page 45, line 4

Page 46, line 17 through Page 51, line 12

Page 52, line 8 through Page 55, line 17

Page 76, lines 3-22

Page 83, line 22 through Page 86, line 1

Richard Gradishar Deposition Designations

Richard Gradishar was an Environmental Engineer in the Environmental Department at WCI Steel, Inc. from September 1988 until May, 1997. Mr. Gradishar was the individual in the environmental group responsible generally for water issues, including overseeing compliance with the Clean Water Act. Mr. Gradishar began working at the Warren facility in 1959 as a laborer. He became an Environmental Engineer in the 1971-1972 period.

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Page 30, line 14 through Page 32, line 25

Page 37, line 5 through Page 41, line 4

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Page 64, lines 2-17

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Page 72, lines 1-20

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Page 87, lines 1-3 and 10-14

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Page 98, line 18 through Page 99, line 12

Page 100, lines 5-13

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Page 132, line 19 through Page 134, line 1

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Page 158, line 17 through Page 161 line 10

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Page 190, line 24 through Page 191, line 13

Page 191, line 20 through Page 192, line 20

Page 193, line 23 through Page 194, line 4

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Page 207, line 9 through Page 209, line 2

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Page 211, line 17 through Page 214, line 16

Page 215, line 24 through Page 217, line 16

<u>Designations from September 17, 1996 Deposition</u>

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Page 294, line 24 through Page 295, line 19

Page 296, lines 1-6

Page 296, lines 18-20

Holt Deposition Designations

Grady Holt began working at the Warren facility in 1979 as a management trainee in the hot strip finishing department (which is currently known as the Rolling and Finishing Department). He later became the turn supervisor and finally became the general supervisor of the Rolling and Finishing Department. From 1973 through 1979, Mr. Holt attended Youngstown State University where he studied industrial management.

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Page 10, line 16 through Page 24, line 11

Page 33, line 7 through Page 34, line 12

Page 36, line 5 through Page 44, line 11

Page 48, line 1 through Page 64, line 13

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Page 88, line 18 through Page 99, line 14

Page 100, line 2 through Page 109, line 7

Page 112, line 1 through Page 115, line 4

Page 138, line 12 through Page 142, line

Page 148, line 1 through Page 149, line 8

Joseph Logan Deposition Designations

Joseph Logan, Jr. worked for Killam Associates from 1989 to 1998. Mr. Logan was a senior project engineer from 1991-1998. While at Killam, Mr. Logan worked on several projects for WCI Steel. Mr. Logan received a Master Degree in environmental engineering from the New Jersey Institute of Technology in 1988. He is licensed as Professional Engineer in New Jersey and Pennsylvania.

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Page 16, lines 6-10

Page 17, lines 8-16

Page 27, line 19 through Page 28, line 3

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Page 75, line 16 through Page 76, line 17

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Page 98, line 19 through Page 99, line 10

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Page 149, line 8 through Page 150, line 21

Robert McCoy Deposition Designations

Robert McCoy is the Supervisor of Operations at the Acid Regeneration Plant at WCI. He has held his current position since 1993. Previously, Mr. McCoy was a foreman in the Rolling and Finishing Department at WCI. Mr. McCoy has worked at the Warren facility for 20 years.

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Page 36, line 22 through Page 38, line 10

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Page 196, line 8 through Page 197, line 10

Page 204, line 20 through Page 205, line 6

Page 210, lines 11-17

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Keith McLaughlin Deposition Designations

Keith A. McLaughlin began working at the Warren facility in August of 1987 as a chemist in the basic oxygen furnace (BOF) lab. In January of 1991 he became an environmental engineer in the Environmental Department at WCI. His responsibilities generally include oversight and compliance with of the Clean Air Act regulations and issues related to solid and hazardous waste.

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Page 19, line 14 through Page 22, line 14

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Page 55, line 13 through Page 56, line 22

Page 61, line 22 through Page 62, line 19

Page 63, lines 21-25

Page 65, line 5 through Page 68, line 9

Page 74, line 24 through Page 75, line 22

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Page 99, line 16 through Page 100, line 7

Page 103, line 11 through Page 105, line 22

Page 134, line 21 through Page 137, line 25

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Ronald Risko Deposition Designations

Ronald Risko is a Central Treatment Plant Operator at WCI Steel. He has held that position on a full-time basis since 1994. From 1991-1994, Mr. Risko worked part-time as a Central Treatment Plant operator.

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Pages 67, line 25 through Page 68, line 9

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Page 69, lines 22-25

Page 70, line 18 through Page 71, line 18

Page 79, line 5 through Page 80, line 23

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Dennis Ritter Deposition Designations

Dennis Ritter is a Project Manager at Killam Associates in the industrial wastewater group. Mr. Ritter has worked at Killam Associates (and its predecessor corporation Duncan, Lagnese & Associates) since 1988. He has worked on several projects for WCI Steel. Mr. Ritter received a Bachelor of Science Degree in Chemical Engineering from the University of Pittsburgh in 1986.

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Page 112, line 25 through Page 113, line 18

Page 125, line 3 through Page 126, line 2

Page 139, line 19 through Page 140, line 7

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Randal Rodgers Deposition Designations

Randal Rodgers is a Central Treatment Plant Operator at WCI Steel. He has held that position since September 1988.

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Page 36, line 10 through Page 37, line 6

Page 37, line 14 through Page 39, line 1

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Page 55, line 20 through Page 56, line 14

Page 65, lines 9 through Page 68, line 5

Page 73, line 8 through Page 75, line 8

Page 76, line 14 through Page 78, line 15

Page 79, lines 8-12

Page 79, line 13 through Page 80, line 12

Page 83, line 1 through page 87, line 8

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Page 95, line 20 through Page 96, line 15

Page 98, line 21 through Page 100, line 23

Page 101, lines 2-19

Page 104, lines 11-20

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Shepker Deposition Designations

Thomas O. Shepker began working at the Warren facility in October of 1975 as Assistant Chief Chemist. In March of 1976, Mr. Shepker became the Chief Chemist. Finally, in May of 1988, he became the Environmental Control Manager. His responsibilities generally include overseeing the environmental control program, including compliance with the Resource Conservation and Recovery Act.

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Page 84, line 16 through Page 86, line 2

Page 88, line 5 through Page 89, line 23

Page 90, line 2 through Page 93, line 8

Page 96, line 23 through Page 102, line 12

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Page 117, line 12 through Page 122, line 25

Page 126, line 20 through Page 127, line 20

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Page 134, line 15 through Page 135, line 12

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Page 162, line 23 through Page 164, line 22

Page 171, line 3 through Page 172, line 9

Page 179, line 16 through Page 180, line 10

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Showalter Deposition Designations

Since 1988, Herman Showalter has worked at WCI Steel's Warren facility as the area supervisor of the central wastewater treatment plant (CTP). As area supervisor of the CTP, Mr. Showalter supervises the CTP operators, who are responsible for, among other things, monitoring and recording the pH of the wastewater flowing into the CTP from Pond 6.

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Page 74, line 21 through Page 75, line 17

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James Skubak Deposition Designations

James Skubak worked for Killam Associates from January 1989 until April, 1998. Mr. Skubak's title was Manager of Industrial Waste Services. Mr. Skubak managed a group of people who performed industrial wastewater projects. He also managed his own projects. Mr. Skubak was involved in several projects for WCI Steel. Mr. Skubak received a Masters Degree in Civil Engineering from the University of Pittsburgh in 1981. He is a registered Professional Engineer in Pennsylvania, Ohio, Indiana, Illinois and Georgia.

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Page 103, line 20 through Page 104, line 5

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Page 114, line 7 through Page 116, line 19

Page 117, line 9 through Page 118, line 11

Page 119, line 8 through Page 120, line 14

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Page 128, line 19 through Page 129, line 11

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Page 235, line 21 through Page 237, line 9

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Page 265, line 7 through Page 266, line 7

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Stack Deposition Designations

James V. Stack began working at the Warren facility in July of 1988 as President and chief executive officer for LTV Steel (later purchased by Renco Steel in September of 1988 and became WCI Steel). In November of 1994, Mr. Stack retired, but returned as President for WCI from September of 1995 through April of 1996, when he retired again. Currently, Mr. Stack serves as a consultant to WCI.

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Joseph Stock Deposition Designations

Joseph Stock worked for WCI Steel, Inc. from January 1996 until February 1999. After completing a year of training, Mr. Stock became an Environmental Engineer responsible generally for water issues including overseeing compliance with the Clean Water Act. Mr. Stock took over for Richard Gradishar in 1997.

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Page 51, line 20 through Page 54, line 19

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Kevin White Deposition Designations

Kevin White is a Combustion Engineer at WCI Steel, Inc. He has held that position since January 1998. Mr. White supervises the combustion repairmen that calibrate the pH probes and meters located at the Central Treatment Plant. Prior to holding his current position, Mr. White was a management trainee at WCI from August 1996 to January 1998.

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Raymond Zeuner Deposition Designations

Raymond Zeuner is WCI Steel's Chief Engineer. Mr. Zeuner has been the Chief Engineer at the Warren facility since February, 1981, when Republic Steel owned the steel plant. Since September, 1988, when WCI took over the facility, Mr. Zeuner's duties have included overseeing WCI's Environmental Department. In addition, Mr. Zeuner oversees the Engineering Department which is involved in the development and implementation of capital projects at the steel plant.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. WCI STEEL, INC., Defendant.	)))))))))))	CIVIL ACTION NO. 4:98 CV 1082 JUDGE JAMES S. GWIN

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST

Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
1	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Year and Total 1988-1998					
1a	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1988					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
1b	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1989					
1c	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1990					
1d	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1991					
1e	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1992					
1f	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1993					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
1g	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1994					
1h	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1995					
1i	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1996					
1j	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1997					
1k	Summary: Number and Distribution of pH Measurements WCI Central Treatment Plant Influent From Pond No. 6 By Month and Total Year, 1998					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
2	Summary: Number of Days with pH Measurement of 2 or Below WCI Central Treatment Plant Influent From Pond No. 6 By Month and Year 1988-1998					
3	Summary: Number of Days with pH Measurement of 1.7 or Below WCI Central Treatment Plant Influent From Pond No. 6 By Month and Year 1988-1998					
4	Summary: Differences Between pH Measurements: Probe Readings vs. Grab Samples WCI Central Treatment Plant Influent From Pond No. 6 1995-1998					
5	Photograph Nos. 19 and 20 from U.S. EPA Inspection Report (Inspection May 27, 1993). Pond No. 5					
6	Photograph Nos. 23 and 24 from U.S. EPA Inspection Report (Inspection May 27, 1993). Pond No. 6					
7	Photograph No. 21 from U.S. EPA Inspection Report (Inspection May 12, 1993). Pond 6A					
8	Photograph No. 22 from U.S. EPA Inspection Report (Inspection May 12, 1993). Area between Mahoning River and Pond No. 6A					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
9	Demonstrative: Percentage of pH Measurements of 2 or Below WCI Central Treatment Plant Influent from Pond No. 6, by Month					
10	Demonstrative: Number of Days in Year with pH Measurements of 2 or Below WCI Central Treatment Plant Influent from Pond No. 6 By Year 1988 - 1998					
11	Demonstrative: Percentage of Days in Year with pH Measurements of 2 or Below WCI Central Treatment Plant Influent from Pond No. 6 By Year 1988 - 1998					
12	Demonstrative: Percentage of pH Measurements of 2 or Below WCI Central Treatment Plant Influent from Pond No. 6 By Year					
13	Demonstrative: Distribution of pH Measurements 1988 - 1998 WCI Central Treatment Plant Influent from Pond No. 6					
14	Demonstrative: Distribution of pH Measurements 1988 - 1998 WCI Central Treatment Plant Influent from Pond No. 6					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
15	Diagram: Hot & Cold Rolled Sheet Mill Products (Steel Processing Flowlines Booklet, published by the American Iron and Steel Institute, 1992)					
16	Diagram: WCI Steel Facility in Warren, Ohio (WCI-R 014959)					
17	Schematic Flow Diagram, WCI Central Treatment Plant, dated September 14, 1989 (WCI-R 009073)					
18	Schematic Flow Diagram, WCI Cold Mills and BOF Production Sources of Wastewater (KIL 001503)					
19	Diagram: Republic Steel Corporation HCL Acid Regeneration Plant Plot Plan, October 28, 1982					
20	Diagram: R & F pH Patrol (WCI-R 004183)					
21	Influent pH Pie Chart dated April 12, 1995 (WCI-R 005088)					
22	Influent pH Pie Chart dated April 12, 1995 (WCI-R 005089)					
23	Part B Application, WCI Steel, dated November 4, 1988					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
24	WCI Application for Permit to Install or Plan Approval for Modification of Existing Wastewater Treatment Works to Ohio EPA, dated June 20, 1990 (WCI-R 008864-008870)					
25	U.S. EPA, Region V, Hazardous Waste Management Permit issued to WCI Steel, effective date November 11, 1993					
26	U.S. EPA RCRA 3007 and CERCLA 104(e) Information Request dated April 1, 1994					
27	WCI's Response to April 1, 1994 RCRA 3007 Information Request dated May 4, 1994					
28	U.S. EPA RCRA 3007 Information Request dated February 23, 1995					
29	WCI's Response to March 1, 1995 RCRA 3007 Information Request dated Arpil 11, 1995					
30	U.S. EPA RCRA 3007 Information Request dated November 12, 1996					
31	WCI's Response to November 12, 1996 RCRA 3007 Information Request dated December 27, 1996					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
32	WCI's Supplemental Response to November 12, 1996 RCRA 3007 Information Request dated January 10, 1997					
33	WCI's Supplemental Response to November 12, 1996 RCRA 3007 Information Request dated February 27, 1997					
34	WCI's Request for extension of time for responding to November 12, 1996 RCRA 3007 Information Request dated December 16, 1996					
35	U.S. EPA Letter granting WCI extention of time to respond to November 12, 1996 RCRA 3007 Information Request dated December 24, 1996					
36	WCI Letter responding to U.S. EPA Ltr. dated December 24, 1996 regarding extention of time dated January 3, 1997					
37	WCI Turn Audits, 1988					
38	WCI Turn Audits, 1989					
39	WCI Turn Audits, 1990					
40	WCI Turn Audits, 1991					
41	WCI Turn Audits, 1992					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
42	WCI Turn Audits, 1993					
43	WCI Turn Audits, 1994					
44	WCI Turn Audits, 1995					
45	WCI Turn Audits, 1996					
46	WCI Turn Audits, 1997					
47	WCI Turn Audits, 1998					
48	WCI Water Treatment Plant Daily Log dated May 12, 1993 (WCI-HW 004938)					
49	WCI Water Treatment Plant Daily Log dated May 13, 1993 (WCI-HW 004939)					
50	WCI Water Treatment Plant Daily Log dated May 31, 1993 through June 2, 1993 (WCI-HW 004959-004961)					
51	WCI Water Treatment Plant Daily Log dated June 16, 1993 (WCI-HW 004975)					
52	WCI Water Treatment Plant Daily Log dated November 1, 1993 (WCI-HW 005131)					
53	WCI Water Treatment Plant Daily Log dated April 14, 1995 (WCI-W 15144)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
54	WCI Water Treatment Plant Daily Log dated June 29, 1996 (WCI-R 060827)					
55	WCI Water Treatment Plant Operator's Log, May 8, 1990 through June 7, 1990 (WCI-R 061163-061210)					
56	WCI Water Treatment Plant Operator's Log, June 7, 1990 through July 18, 1990 (WCI-R 061211-061260)					
57	WCI Water Treatment Plant Operator's Log, September 5, 1990 through November 5, 1990 (WCI-R 061310-061362)					
58	WCI Water Treatment Plant Operator's Log, April 24, 1991 through June 25, 1991 (WCI-R 061510-061558)					
59	WCI Water Treatment Plant Operator's Log, December 21, 1992 through February 12, 1993 (WCI-R 062001-062049)					
60	WCI Water Treatment Plant Operator's Log, July 8, 1992 (WCI-R 061863)					
61	WCI Water Treatment Plant Operator's Log, January 24, 1993 (WCI-R 062033)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
62	WCI Water Treatment Plant Operator's Log, January 25, 1993 (WCI-R 062034)					
63	WCI Water Treatment Plant Operator's Log, January 27, 1993 (WCI-R 062036)					
64	WCI Water Treatment Plant Operator's Log, February 1, 1993 (WCI-R 062040)					
65	WCI Water Treatment Plant Operator's Log, February 6, 1993 (WCI-R 062044)					
66	WCI Water Treatment Plant Operator's Log, March 11, 1993 (WCI-R 062070)					
67	WCI Water Treatment Plant Operator's Log, March 13, 1993 (WCI-R 062071)					
68	WCI Water Treatment Plant Operator's Log, March 17, 1993 (WCI-R 062075)					
69	WCI Water Treatment Plant Operator's Log, March 18, 1993 (WCI-R 062076)					
70	WCI Water Treatment Plant Operator's Log, March 19, 1993 (WCI-R 062077)					
71	WCI Water Treatment Plant Operator's Log, March 25, 1993 (WCI-R 062083)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
72	WCI Water Treatment Plant Operator's Log, April 15, 1993 (WCI-R 062103)					
73	WCI Water Treatment Plant Operator's Log, April 25, 1993 (WCI-R 062112)					
74	WCI Water Treatment Plant Operator's Log, September 6, 1993 (WCI-R 062237)					
75	WCI Water Treatment Plant Operator's Log, September 7, 1993 (WCI-R 062238)					
76	WCI Water Treatment Plant Operator's Log, March 16, 1994 (WCI-R 062407)					
77	WCI Water Treatment Plant Operator's Log, April 12, 1995 (WCI-R 062711)					
78	WCI Water Treatment Plant Operator's Log, April 14, 1995 (WCI-R 062712)					
79	WCI Water Treatment Plant Operator's Log, April 16, 1995 (WCI-R 062714)					
80	WCI Water Treatment Plant Operator's Log, January 25, 1997 (WCI-R 062445)					
81	WCI Water Treatment Plant Operator's Log, February 2, 1997 (WCI-R 060449)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
82	WCI Water Treatment Plant Operator's Log, February 3, 1997 (WCI-R 060450)					
83	WCI Water Treatment Plant Operator's Log, February 4, 1997 (WCI-R 060451)					
84	WCI Water Treatment Plant Operator's Log, January 25, 1997 (WCI-R 060445)					
85	WCI Central Treatment Plant log sheets: January 1 to July 31, 1993 (WCI-HW 004308 - 004519); August 1 to December 31, 1993 (WCI-HW 00463 - 004215)					
86	WCI Central Treatment Log, #6 Pond pH levels and #6 Pond/BOF Water combined pH levels, May 3, 1994 through May 5, 1994 (WCI-R 009879-009881)					
87	Central Treatment pH Calibration Sheets, 1988 through 1990, 1993) (WCI-R 004349 - 004562)					
88	Central Treatment pH Calibration Sheets, January 1994 through August 1998) (WCI-R 004563 - 004804)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
88a	Central Treatment pH Calibration Sheets, April 4, 1994, May 16, 1994, August 29, 1994, May 27, 1996, June 20, 1994, May 17, 1993, May 10, 1993 (WCI-R 004577,004583, 004599, 004687, 004588, 004530, 004529)					
89	A Form containing several different readings recorded on January 5, 1993 (WCI-HW 004802)					
90	A Form containing pH level readings recorded on December 5, 1994 (WCI-R 000044)					
91	Hot Strip Finishing Form (WCI-R 045948)					
92	Table: Potential Hazardous Constituents Associated with WCI Steel (DM 00591-00599)					
93	WCI Dept. Corr., from T. Shepker to W. Sherwood, dated January 12, 1989, regarding NPDES Monthly Average Zinc Exceedance (WCI-R 008873)					
94	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated February 6, 1989, Environmental Control Monthly Report January 1989, (WCI-R 012046-012048)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
95	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated April 6, 1989, Environmental Control Monthly Report March 1989, (WCI-R 012052-012055)					
96	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated May 2, 1989, Environmental Control Monthly Report April 1989, (WCI-R 012056-012058)					
97	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated July 7, 1989, Environmental Control Monthly Report June 1989, (WCI-R 012065-012069)					
98	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 7, 1989, Environmental Control Monthly Report July 1989, (WCI-R 012070-012074)					
99	WCI Dept. Corr. from G. Holt to J. Russ, dated August 7, 1989, regarding waste water for use at the Acid Regeneration Plant (WCI-R 004166)					
100	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated October 9, 1989, Environmental Control Monthly Report September 1989, (WCI-R 012079-012084)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
101	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated November 7, 1989, Environmental Control Monthly Report October 1989, (WCI-R 012085-012090)					
102	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated December 6, 1989, Environmental Control Monthly Report November 1989, (WCI-R 012091-012094)					
103	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated March 12, 1990, Environmental Control Monthly Report February 1990, (WCI-R 012106-012111)					
104	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated July 2, 1990, Environmental Control Monthly Report June 1990, (WCI-R 012129-012134)					
105	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 1, 1990, Closure of #5, #6, and #6A Ponds, (WCI-R 008915-008917)					
106	WCI Dept. Corr. from T. Shepker to R. Zeuner, dated August 1, 1990, regarding Closure of #5, #6, and #6A Ponds (WCI-R 008911-008912)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
107	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated October 9, 1990, Environmental Control Monthly Report September 1990, (WCI-R 012148-012155)					
108	WCI Dept. Corr., Environmental Control Monthly Report October 1990, from T. Shepker to R. Zeuner dated November 14, 1990 (WCI-R 012156-012162)					
109	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated March 5, 1991, Environmental Control Monthly Report February 1991, (WCI-R 012182-012189)					
110	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated May 8, 1991, Environmental Control Monthly Report April 1991, (WCI-R 012197-012204)					
111	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 8, 1991, Environmental Control Monthly Report July 1991, (WCI-R 012219-012224)					
112	WCI Dept. Corr., from E. Jerdonek to S. Stack, dated August 13, 1991, regarding solid waste disposal (WCI-R 015955-015985)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
113	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated November 11, 1991, Environmental Control Monthly Report October 1991, (WCI-R 012244-012252)					
114	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated March 10, 1992, Environmental Control Monthly Report February 1992, (WCI-R 012276-012284)					
115	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated July 10, 1992, Environmental Control Monthly Report June 1992, (WCI-R 012307-012313)					
116	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 10, 1992, Environmental Control Monthly Report July 1992, (WCI-R 012314-012321)					
117	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated September 4, 1992, Environmental Control Monthly Report August 1992, (WCI-R 012322-012329)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
118	WCI Dept. Corr. from D. Calderwood to T. Shepker, dated December 1, 1992, regarding 90 Day Hazardous Waste Storage Inspection of No. 5 Acid Tub (WCI-R 004216)					
119	WCI Dept. Corr. from D. Calderwood to T. Shepker, dated December 1, 1992, regarding 90 Day Hazardous Waste Storage Inspection of No. 5 Acid Tub (WCI-R 004219)					
120	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated December 4, 1992, Environmental Control Monthly Report November 1992, (WCI-R 012345-012352)					
121	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated February 3, 1993, Environmental Control Monthly Report January 1993, (WCI-R 012363-012370)					
122	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated March 8, 1993, Environmental Control Monthly Report February 1993, (WCI-R 012371-012379)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
123	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated June 7, 1993, Environmental Control Monthly Report May 1993, (WCI-R 012396-012403)					
124	WCI Dept. Corr., from R. McCoy to P. Kenney, dated June 21, 1993 ,Acid Regeneration Plant Action Plan for #5 Pond,(WCI-R 003918-003919)					
125	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated July 8, 1993, Environmental Control Monthly Report June 1993, (WCI-R 012404-012412)					
126	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 6, 1993, Environmental Control Monthly Report July 1993, (WCI-R 012413-012423)					
127	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated October 6, 1993, Environmental Control Monthly Report September 1993, (WCI-R 012431-012437)					
128	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated November 3, 1993, Environmental Control Monthly Report October 1993, (WCI-R 012438-012445)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
129	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated December 3, 1993, Environmental Control Monthly Report November 1993, (WCI-R 012446-012454)					
130	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated January 6, 1994, Environmental Control Monthly Report December 1993, (WCI-R 012455-012464)					
131	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated February 7, 1994, Environmental Control Monthly Report January 1994, (WCI-R 012465-012473)					
132	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated May 9, 1994 ,Environmental Control Monthly Report April 1994,(WCI-R 012493-012501)					
133	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated June 4, 1994, Environmental Control Monthly Report May 1994, (WCI-R 012502-012508)					
134	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated November 8, 1994, Environmental Control Monthly Report October 1994, (WCI-R 012541-012547)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
135	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated December 7, 1994, Environmental Control Monthly Report November 1994, (WCI-R 012548-012554)					
136	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated May 15, 1995, Environmental Control Monthly Report April 1995, (WCI-R 012582-012589)					
137	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated August 9, 1995, Environmental Control Monthly Report July 1995,(WCI-R 012606-012613)					
138	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated February 5, 1997, Environmental Control Monthly Report January 1997, (WCI-R 012697-012701)					
139	WCI Dept. Corr., from T. Shepker to R. Zeuner, dated February 3, 1998, Environmental Control Monthly Report January 1998, (WCI-R 012752-012755)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
140	WCI Dept. Corr., from R. McCoy to T. Shepker, dated March 6, 1998, Hazardous Waste Storage Inspection of #5 SPL Sump Tanks, (WCI-R 004185-004276)					
141	WCI Memo, from E. Keifer to R. Zeuner, dated February 4, 1994, Rolling & Finishing Lime Slurry Injection Critical Slurry Ordering Information and Phone Numbers, (WCI-R 009902)					
142	WCI Memo, from R. McCoy to R. Carrier, dated January 10, 1995, Impact of Scrubber Water on Regeneration Services (WCI-R 003903-003904)					
143	U.S. EPA Memo, from M. Conti to M. Mikulka, dated September 30, 1993, Toxics Sampling Inspection conducted on May 12, 1993, WCI Steel (U.S. EPA007249-007391)					
143a	May 12, 1993 Multimedia Inspection Planning Materials (USEPA 007392-007448)					
143b	May 12, 1993 Multimedia Inspection Planning Materials, Conti's Field Notes (USEPA 007449-007478)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
143c	U.S. EPA Memo, from L. Linns to M. O'Mara, dated May 26, 1993, SPCC Inspection- WCI (USEPA 007481-007550)					
144	Dames & Moore Email Memo from P. Hurst to N. Baker, dated May 23, 1995, regarding issues concerning Region V's DQL guidance (DM 00103)					
145	Dames & Moore Field Memo, from N. Baker, dated June 5, 1995, regarding WCI Steel (DM 00106-00119)					
146	Dames & Moore Field Memo, from N. Baker, dated June 5, 1995, regarding WCI /-U.S. EPA Site Visit/Meeting (DM 00123-00125)					
147	Dames & Moore Email Memos, form N. Baker, dated June 2, 1995, June 4, 1995, June 5, 1995, regarding WCI Steel (DM 00072-00073)					
148	Dames & Moore Email Memo, from N. Baker to S. Edwards, dated March 14, 1997, WCI Steel - Update (DM 00128)					
149	Email Memo, from P. Ruesch, dated August 29, 1997, regarding WCI QAPP Issues w/ Recommendations (DM 00131-00132)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
150	Republic Steel Ltr. from Reed to Williams, dated June 29, 1983 (WCI-HW 008657); Ltr. from Crist (Aquatic Services, Inc.) to Reed (Republic Steel) (WCI-HW 008656); Table (WCI-HW 008658)					
151	Ltr. from W. Gilbert (DLA) to R. Zeuner (WCI Steel), dated May 3, 1989, regarding Central Treatment Plant Audit: Phase I Survey, DLA Project No. 2W097 (KIL 000907-000912)					
151a	Ltr. from M. Bollinger (Orbital Engineering) to R. Zeuner (LTV Steel), dated March 11, 1985, regarding Investigation of Exfiltration at No. 6 Pond Warren Works (WCI-HW 009573-009575)					
152	Ltr. from R. Phelps (Ohio EPA) to WCI Steel, dated July 25, 1990, regarding Trumbull County, Howland Township, Application for 4 Million Gallon Storm Water Surge Tank for WCI Treatment Plant (WCI-R 009735-009738)					
153	Ltr. from T. Shepker (WCI) to L. Pierard (U.S. EPA), dated July 30, 1991, regarding "Certification Regarding Potential Releases from Solid Waste Management Units" Questionaire (DM 00885-00894)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
154	Ltr. from T. Shepker (WCI) to E. Gomes (Ohio EPA), M. Horwitz (Trumbull County), dated November 16, 1992, regarding Incident NRC No. 144319 (007754-007755)					
155	Ltr. from T. Shepker (WCI) to E. Gomes (Ohio EPA), dated December 16, 1992, regarding Closure Plan for Ponds #5 and #6 (WCI-R 009770-009773)					
156	Ltr. from D. Ritter, J. Skubak (Killam Associates) to R. Zeuner (WCI), dated January 5, 1993, regarding White Water Re-emulsification under Acidic Conditions (KIL 000083-000086)					
156a	Ltr. from P. Santuzzi (WCI) to J. Mayhugh (Ohio EPA), dated January 26, 1993, response to November 9, 1992 letter (USEPA 001366-001403)					
157	Ltr. from T. Shepker (WCI) to E. Gomes (Ohio EPA), dated February 9, 1993, regarding Outfall 017 Flow (WCI-R 023511)					
158	Ltr. from T. Shepker (WCI Steel) to M. Kalmeyer (ASAP Technical), dated February 23, 1993, regarding the nineteen assorted waste stream samples collected from WCI Steel on 10/16/92 (WCI-HW 008875-008877)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
159	Ltr. from P. Schillawski (Squire, Sanders & Dempsey) to F. Norling (U.S. EPA), dated June 11, 1993, regarding comments on Draft Hazardous Waste Permit for WCI (DM 00538-00543)					
160	Ltr. from J. Logan & J. Skubak (Killiam Associates) to R. Zeuner (WCI Steel), dated July 2, 1993, regarding proposal for water depth measurements in pond no. 5 (KIL 000436-000441)					
161	Ltr. from J. Logan, J. Skubak (Killam Associates) to R. Zeuner (WCI), dated July 6, 1993, regarding proposal for evaluation of collection/segregation of Cold Mills process wastewater ponds (KIL 000248-000263)					
162	Ltr. from T. Crapeau (Ohio EPA) to T. Shepker (WCI Steel) enclosing Ohio Hazardous Waste Facility Installation and Operation Permit Renewal issued August 12, 1993					
162a	Ohio Hazardous Waste Facility Installation and Operation Permit Renewal issued to WCI Steel, dated August 12, 1993					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
163	Ltr. from D. Dixon (Dames & Moore) to D. Mishne (Ohio EPA), dated August 16, 1993, regarding Dames & Moore environmental project in the vicinity of Warren, Ohio (DM 00544-00553)					
164	Ltr. from J. Skubak (Killiam Associates) to R. Zeuner (WCI Steel), dated August 24, 1993, regarding Cold Mill Study (KIL 000368)					
165	Ltr. from J. Logan, J. Skubak (Killam Asociates) to R. Zeuner (WCI), dated September 28, 1993, regarding Cold Mills Wastewater Segregation Study (KIL 002923-002924)					
166	Ltr. from J. Skubak (Killiam Associates) to R. Zeuner (WCI Steel), dated October 6, 1993, regarding Cold Mills Wastewater Segregation Study (KIL 000351-000363)					
167	Ltr. from J. Skubak (Killiam Associates) to R. Zeuner (WCI Steel), dated October 20, 1993, regarding #6 Pond Geotechnical Investigation (KIL 000501-000504)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
168	Ltr. from J. Skubak (Killam Associates) to R. Zeuner (WCI Steel), dated October 27, 1993, regarding WCI Steel's Acid Study, Killam Project No. 2W154 (KIL 000148-000153)					
168a	Ltr. from J. Skubak (Killam Associates) to R. Zeuner (WCI Steel), dated October 27, 1993, regarding WCI Steel's Acid Study, Killam Project No. 2W154 (WCI-R 009366-009371)					
168b	Ltr. from J. Skubak (Killam Associates) to R. Zeuner (WCI Steel), dated October 27, 1993, regarding WCI Steel's Acid Study, Killam Project No. 2W154(WCI-R 009372-009376)					
169	Ltr. from W. Muno (U.S. EPA) to J. Stack (WCI), dated April 1, 1994, regarding RCRA Section 3007 and CERCLA Section 104(e) Information Request, WCI Steel (WCI-R 023554-023571)					
170	Ltr. from T. Shepker (WCI) to E. Gomes (Ohio EPA), dated April 30 1992, regarding Trumbull County, WCI Steel, Inc., Closure Plan for Ponds 5 & 6 (WCI-R 009820-009822)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
171	Ltr. from M. Pennell (Burgess & Niple Engineers) to R. Pelle (Dames & Moore), dated March 4, 1994, regarding Review of WCI Hydrogeologic Report (DM 00509) ---comment by Burgess & Niple attached (DM 00510)					
172	Ltr. from M. Pennell (Burgess & Niple Engineers) to N. Baker (Dames & Moore), dated June 27, 1995, enclosing Hydrogeological Investigation Report for the Residual Waste Disposal Facility and the Post-Closure Plan (DM 00076)					
173	Ltr. from T. Shepker (WCI) to U.S. EPA, dated September 7, 1995, regarding WCI'S Quarterly Report for May 12, 1995 through August 11, 1995 (DM 00074)					
174	Ltr. from T. Shepker (WCI) to U.S. EPA, dated November 30, 1995, regarding WCI'S Quarterly Report for August 12, 1995 through November 11, 1995 (DM 00075)					
175	Ltr. from K. Bremer (U.S. EPA) to D. Shotis (Ohio EPA), dated April 23, 1998, regarding Corrective Action at WCI Steel (DM 00078-00079)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
175a	Ltr. from B. Fisherow (USDOJ) to D. Schregardus (Ohio EPA), dated May 11, 1998, notice to file civil lawsuit against WCI Steel					
176	WCI, Closure Plan, Pond Nos. 5 and 6, dated April 17, 1991, prepared by Remcor, Inc. (USEPA 006710-006746)					
176a	WCI, Draft Closure Plan, Pond Nos. 5 and 6, dated March 26, 1991, prepared by Remcor, Inc. (WCI-R 008918-008952)					
177	WCI Proposal Closure Plan, Pond Nos. 5 and 6, dated March 1990					
178	Dames & Moore's File, WCI Steel, Subcontractor Bids					
179	Dames & Moore's File, WCI Steel, Draft Evaluation Report (DM 02284-02290)					
180	Dames & Moore's File, WCI Steel, Containment Assessment Report (DM 02239-02283)					
181	Dames & Moore's File, WCI Steel, Photographs (DM 00186-00216)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
182	Photographs: Ponds 5, 6, and 6-A, produced by Dames & Moore (DM 00473-00481)					
183	Dames & Moore Job Setup Form, Job name: Phase I RFI Workplan Implementation, dated July 8, 1997 (DM 00035-00067)					
184	Dames & Moore, Site Safety Briefings, WCI-GW Sampling (DM 00290)					
185	Replies to U.S. EPA, Attachment 1, 2 and 3, Closure Plan (DM 00104-00105)					
186	Region V comments RCRA Facility Investigation Workplan 4/95, Attachment 2 (DM 02212-02225)					
187	Fax from T. Shepker (WCI) to J. Black, dated April 22, 1992, attaching 1/18/94 letter regarding Replacement of #5 and #6 Ponds (WCI-R 009760-009766)					
188	WCI Fax from S. Rummel to Shepker, Gradishar, dated June 18, 1993 (WCI-R 009931-009932)					
189	Fax, J. Skubak (Killam Associates) Memorandum to File, dated July 8, 1993, re: Pond #5 (KIL 001489-001493)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
190	Fax, from J. Shubak, W. Jacobs (Killam Associates) to R.Zeuner, T. Shepker, D. Musola, dated July 19, 1993, attaching a Memorandum to File re: #6 Pond embankment (KIL 000616-000618)					
191	WCI Fax from T. Shepker to R. Tobin, dated August 3, 1993, regarding visit to Wierton Facility on August 13, 1993 (WCI-R 008977, 008976)					
192	Fax from J. Alvi (GeoMechanics) to W. Jacobs (Killiam Associates), dated August 30, 1993, attaching Text of Report for Exfiltration of Pond #6 (KIL 000573-000591)					
193	Fax from J. Skubak (Killiam Associates) to Dr. Alvi (GeoMechanics), attaching two letters dated September 28, 1993 and 9/27/93 (KIL 000537-000541)					
194	Fax from Zeuner (WCI) to Skubak dated October 1, 1993 (KIL 000525)					
195	Fax from J. Skubak (Killam Associates) to R. Zeuner (WCI), dated October 1, 1993, referencing telephone conversations on September 30 and October 1 re: #6 Pond (KIL 000527-000528)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
196	Fax from R. Pelle (Dames & Moore) to M. Hanchak, dated August 30, 1993, attaching WCI Waste Characteristics, Draft RFI (DM 00615-00630)					
197	Record of Telephone Conversations between R. Pelle (Dames & Moore) and P. Baker, T Shepker, T. Livick on May 12, 1993 (DM 00503-00505)					
198	Record of Telephone Conversation between N. Baker (Dames & Moore) and T Shepker (WCI), on April 25, 1995 (DM 00536)					
199	Record of Telephone Conversation between N. Baker (Dames & Moore) and T Shepker (WCI), on April 28, 1995 (DM 00537)					
200	Record of Telephone Conversation between N. Baker (Dames & Moore) and S. Edwards (Dames & Moore), on June 6, 1995 (DM 00171)					
201	Record of Telephone Conversation between N. Baker (Dames & Moore) and U.S. EPA, on June 6, 1995 (DM 00172-00175)					
202	Record of Telephone Conversation between N. Baker (Dames & Moore) and P. Reusch (U.S. EPA), on June 19, 1995 (DM 00170)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
203	Record of Telephone Conversation between N. Baker (Dames & Moore) and D. Payne (U.S. EPA), on June 21, 1996 (DM 00121)					
204	Record of Telephone Conversation between N. Baker (Dames & Moore) and B. Babcock (Dames & Moore), on July 17, 1997 (DM 00162)					
205	Record of Telephone Conversation between N. Baker (Dames & Moore) and T. Shepker (WCI), on September 2, 1997 (DM 00168)					
206	WCI Steel, Minutes of Meeting held on January 7, 1994 regarding Wastewater Collection System-REW Job No. F64493 (WCI-R 003832-003836)					
207	WCI Steel, Minutes of Meeting held on February 2, 1994 regarding Wastewater Collection System-REW Job No. F64493 (WCI-R 003837-003840)					
208	WCI Steel, Minutes of Meeting held on March 2, 1994 regarding Wastewater Segregation-REW Job No. F64493 (WCI-R 003851-003854)					
209	WCI Steel, Minutes of Meeting held on April 6, 1994 regarding Wastewater Segregation-REW Job No. F64493 (WCI-R 003857-003861)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
210	Minutes from Control WTP Meeting held on April 14, 1989 (KIL 000942-000946)					
211	Minutes from a meeting between WCI Steel and DLA (KIL 000947-001006)					
212	A series of documents related to the lime problems at #9 pump station (WCI-R 003920-003931)					
213	#9 Lift Station pH, readings for the lime injection system dated May 26, 1996 through June 10, 1996 (WCI-R 006373)					
214	#9 Lift Station pH, readings for the lime injection system dated January 14, 1996 through January 25, 1996 (WCI-R 006363)					
215	Draft #9 Lift Station Lime Injection System Operating Instructions (WCI-R 009865-003829)					
216	WCI Acid Regeneration Plant Yearly Production (WCI-R 003954)					
217	WCI Acid Regeneration Monthly Totals 1993, WCI Oxide Acid Regeneration Monthly Totals 1993					
218	WCI Acid Regeneration Production Statistics 1993 (WCI-R 003959)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
219	WCI Acid Regeneration Plant Production 1996 (WCI-R 003956)					
220	WCI Acid Regeneration Plant Production 1997 (WCI-R 003955)					
221	WCI Acid Regeneration Plant, Ground Water Test Well Log, 1993/1994 (WCI-R 011822)					
222	Excerpt from Owner's Manual, "1.0 Process Description, 1.1 Regeneration Process Description" (WCI-HW 010074-010077)					
223	Republic Steel Corporation, Authorization for Expenditure, Project Title: HCL Acid Regeneration and Process Changes for Waste Water Control (WCI-HW 010093-010105)					
224	Acid Tanks 1989-1997 (WCI-R 003543-003555)					
225	Excerpts from Grady Holt's Acid Sump's Record (WCI-R 003530-003542)					
226	"VI. Hazardous Waste Generation, A. Spent Pickle Liquor - K062, SPL and regenerated acid in gallons"					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
227	WCI, Acid Use in Aeration Tank Influent pH, Standard Operating Procedure (WCI-R 003910-003912)					
228	WCI Acidity Data (October 13- October 15, 1993) (KIL 001537-001540)					
229	WCI: Acid Load Increase to No. 5 Pond Investigation (KIL 001494-001497)					
230	WCI, Galvanize Line Conditions Forms dated June 6, 1996, June19, 1996, December 7, 1996, May 5, 1997, May 8, 1997, May 9, 1997, June 12, 1997, August 18, 1997 (WCI-R 007055, 007057, 007149, 007238, 007239, 007240, 007269, 007300)					
231	WCI, Galvanize & Terne Quality/Delay Reports dated February 22, 1996, March 7, 1996, March 15, 1996, April 30, 1996, May 2, 1996, May 3, 1996, May 4, 1996, May 8, 19/96, May 9, 1996, June 5, 1996, June 6, 1996, June 12, 1996, June 13, 1996, June 14, 1996, June 15, 1996, June 20, 1996, July 3, 1996, August 8, 1996, December 7, 1996 (WCI-R 007496, 007506, 007515, 007542, 007543, 007545, 007546, 007547, 007552, 007555, 007618, 007621, 007637, 007641, 007643, 007646, 007647, 007660, 007696, 007790, 007998)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
232	Chart (DM 00613-00614)					
233	WCI, Delay Reports for #5 and #6 Picklers, August 1997 through August 1998 (WCI-R 001706-002306)					
234	1997 Waste Pickle Liquor Summary (WCI-R 003953)					
235	Safety Procedure # CTP-02 for acid cleaning pH probes, July 29, 1987 (WCI-R 062982)					
236	Safety Procedure #CTP-03, Water Collecting Grab Samples 6 Pond Water (WCI-R 062983)					
237	Safety Procedure # CTP-03 for collecting water samples, July 29, 1987 (WCI-R 062981)					
238	Safety Procedure #CTP-05, Lime Check Level (WCI-R 062979)					
239	Safety Procedure #CTP-08, Pumps Lime Slurry Operate (WCI-R 062980)					
240	Safety Procedure #CTP-13, Run Acid to CTP or Recycle System (WCI-R 062985)					
241	Safety Procedure # FWTP-07 for run acid to the central treatment plant or recycle system, March 10, 1994 (WCI-R 062984)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
242	WCI Standard Operating Procedures, Solid Waste Disposal for Chromate (WCI-R 017706)					
243	WCI, Central Treatment Plant #6 Pond, Standard Operating Procedure (WCI-R 062962-062966)					
244	WCI, Aeration Tank Effluent pH, Standard Operating Procedure (WCI-R 062967-062969)					
245	WCI, Clarifier Effluent pH, Standard Operating Procedure (WCI-R 062973-062975)					
246	WCI, Lime Slurry System, Standard Operating Procedure (WCI-R 062970-062972)					
247	WCI, Aeration Tank Influent pH, Standard Operating Procedure (WCI-R 003907-003909)					
248	WCI, Hot Process Sump, Standard Operating Procedure (WCI-R 062976-062978)					
249	WCI Daily Environmental Report, dated March 17, 1996 (WCI-R 012820)					
250	WCI Daily Environmental Report, dated March 21, 1996 (WCI-R 012824)					
251	WCI Daily Environmental Report, dated May 10, 1996 (WCI-R 012866)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
252	WCI Daily Environmental Report, dated May 11, 1996 (WCI-R 012867)					
253	WCI Daily Environmental Report, dated July 23, 1996 (WCI-R 012916)					
254	WCI Daily Environmental Report, dated August 27, 1996 (WCI-R 012942)					
255	WCI Daily Environmental Report, dated September 7, 1996 - September 9, 1996 (WCI-R 012950)					
256	WCI Daily Environmental Report, dated September 10, 1996 (WCI-R 012951)					
257	WCI Daily Environmental Report, dated September 27, 1996 (WCI-R 012964)					
258	WCI Daily Environmental Report, dated November 26, 1996 (WCI-R 013006)					
259	WCI Environmental Annual Operating Plans for the years 1991 through 1996 (WCI-R 063203-063213)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	**Description of Exhibit**	**I.D.**	**Offered**	**Obj.**	**Admitted**	**Not Admitted**
260	Quality Assurance Project Plan for the U.S. Environmental Protection Agency, Region V, Environmental Services Division located at Westlake, Ohio, dated August 31, 1987 (U.S. EPA 008157-009006)					
261	U.S. EPA, *Estimating Costs for the Economic Benefits of RCRA Noncompliance* (March 1997)					
262	U.S. EPA, *Estimating Costs for the Economic Benefits of RCRA Noncompliance* (September 1997)					
263	Part C, Hydrogeological Investigation, WCI Steel Residual Solid Waste Disposal Facility, Environmental Improvement/Permit to Install Application, dated December 1991 (DM 00570-00583)					
264	*Potential Corrective Measure Technologies for the RCRA Facility Investigation at WCI Steel*, dated July 1995, prepared by Dames & Moore (DM 00644-00672)					
265	*Test Report WCI Steel, Inc. Warren, Ohio*, Dates of Test October 26 - 29, 1992, prepared by Roy F. Weston, Inc. for U.S. EPA					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
266	*Trip and Analytical Results Report Wastewater and Sediment Sampling, WCI, Warren Ohio, EPA ID No. OHD060409521*, dated August 21, 1997, prepared by A.T. Kearney, Inc. to Brian Freeman, U.S. EPA,					
267	U.S. EPA, *RCRA Compliance Evaluation Inspection Field Report, WCI Steel, Inc., Warren, Ohio (OHD060409521)*, 1993					
268	Killam Associates, *WCI, Evaluation of Wastewater Sources and Central Treatment Plant Operations* (September 1989) (WCI-R 009008-009071)					
269	Killam Associates Prospect Checklist, June 29, 1993, WCI Project: repair Pond #6 embankment (KIL 000511)					
270	Killam Associates Prospect Checklist, June 30, 1993, WCI Project: to sound the sludge layer in #5 Pond (KIL 000442)					
271	Meeting Agenda, Killam Offices, July 28, 1993, Subject: WCI Steel Ponds 5 & 6 Alternatives (KIL 000601)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
272	Killam Associates, Memorandum to File dated July 21, 1993, regarding preparation for meeting with WCI on 7/28/93 (KIL 000609)					
273	Report: Site Specific Health and Safety Plan for Pond No. 5 Sounding Operations at WCI Steel, dated July 9, 1993, prepared by Killam Associates (KIL 001474-001488)					
274	BioRemedial Technologies, Inc., *In Situ Remediation Conceptual Proposal Existing/ Old Pond #5, Utilizing Bio Sparge Technology* (September 2, 1994) (WCI-R 010730-010737)					
275	*Environmental Audit of the LTV Steel Warren Works and Niles Facilities for the Renco Group, Inc.* (May 1988) (WCI-R 063098-063149)					
276	Great Lakes Instruments Inc., *Model 90P pH Analyzer Operating Instruction Manual* (WCI-R 004314 - 004348)					
277	Great Lakes Instruments Inc., *Liquid Crystal Polymer - Encapsulated pH Sensors Operating Instruction Manual* (WCI-R 004296 - 004313)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
278	Galster, H.; "pH Measurement, Fundamental, Methods, Applications, Instrumentation"; VCH Publishers, Inc.; New York; 1991; page 282					
279	Booklet entitled " pH, Theory and Practice"; Radiometer Copenhagen; Lyon France; pages 8, 31-36					
280	Bates, R.G.; "Determination of pH"; Wiley, New York; 1965; pages 29, 87, 429					
281	Booklet entitled "The Handbook of Applied Electrochemistry", Beckman Instruments, Inc., 1993					
282	Booklet entitled "Beckman TM10 pH Meter, TM11 Meter, TM12 pH/mV Meter", Beckman Instruments Inc., June 1992 (USEPA 008120-008140)					
283	GLI International, *Technology for Solutions, LCP-encapsulated pH and ORP Sensors* (Data Sheet LCP/298, WCI-R 062955-062958)					
284	Lab Report from Duncan, Lagnese & Associates, July 28, 1989 (KIL 001039-001040)					
285	DLA Standard Treatability Test, Oily Waste Emulsion Breaking (KIL 002511-002522)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
286	Environmental Control Labs, Lab Report: HCL Titration Study, dated August 7, 1997 (WCI-R 004173-004175)					
287	Forms entitled "US Environmental Protection Agency Region V Eastern District Office Field Record" with notations for samples collected at WCI on May 12, 1993; with notations for samples collected at WCI on June 15, 1993					
288	LTV Steel, Special Repair Authorization, dated March 30, 1988, regarding the dismantle of a future RFA to replace Wastewater Ponds #5 and #6 (WCI-R 009645)					
289	LTV Steel, Mahoning Valley Works (Warren) Cold Mills Wastewater Treatment Study, dated December 1994 (WCI-HW 009732-009841)					
289a	LTV Steel Company, Warren Works, Central Treatment Plant Organics Study, July 1986 (WCI-HW 009842-010004)					
290	Draft WCI Cold Mills Study, Approaches to Process Wastewater Collection and Segregation (KIL 001547-1550)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
291	H/S Finishing Unit 4485 Delays for September 1, 1997 to September 30, 1997 (WCI-R 002216-002262)					
292	Items Concerning U.S. EPA SOP's (WCI-R 003822-003825)					
293	WCI Pollution Prevention and Waste Minimization Program					
294	Draft Report: Wastewater Investigation 1993 (KIL 002598-002652)					
295	U.S. Securities and Exchange Commission, Form10-K, WCI Steel, for the fiscal year ended October 31, 1994 (WCI-R 014247-014267)					
296	U.S. Securities and Exchange Commission, Form10-K, WCI Steel, for the fiscal year ended October 31, 1995 (WCI-R 014296-014315)					
297	U.S. Securities and Exchange Commission, Form10-K, WCI Steel, for the fiscal year ended October 31, 1998					
297a	U.S. Securities and Exchange Commission, Form10-K, WCI Steel, for the fiscal year ended April 30, 1999					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
298	WCI Steel, 1994 Annual Report (WCI-R 014268-014295)					
299	WCI Steel, 1995 Annual Report (WCI-R 014316 - 014347)					
300	Expert Report of Gary A. Amendola, P.E., dated March 13, 1999 and all underlying documents					
301	Expert of James W. Fagan, entitled "Analysis of Economic Benefit, Derived from Delayed and Avoided Investment in Pollution Control Facilities, Violations of RCRA", dated March 15, 1999 and all underlying documents					
302	Expert Report of Robert L. Harris, C.P.A., entitled "Financial Ability to Pay", dated March 11, 1999 and all underlying documents					
303	Expert of Joe H. Lowry, Ph.D, entitled " Analysis of pH Measurements at WCI Steel, Inc., Reliability for Determining the Hazardous Waste Characteristic of Corrosivity", dated March 15, 1999 and all underlying documents					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
304	Handwritten document, note from K. McLaughlin (WCI) to N. Baker (Dames & Moore), regarding current of monitoring wells 91-2, 91-6, 91-11 (DM 00169)					
305	Handwritten document (DM 00512-00514)					
306	Handwritten document (DM 00506-00508					
307	Handwritten document, from G. Holt to Carrier, dated October 3, 1993, regarding lime additions to #5 WW Sump (WCI-R 017566-017589)					
308	Handwritten document dated August 4- August 5 regarding waste water treatment called due to acid problems (WCI-R 004177)					
309	Handwritten document, WCI Rolling and Finishing Departmental Log (Pickle Line), June 18, 1993 through October 13, 1993 (KIL 002605-002616)					
310	Handwritten document fromGrady Holt, notes from environmental log entitled "Acid Sump's Record, June 7, 1993-June 9, 1993 (WCI-R 004176)					
311	Handwritten document, Acid & Rinse Tank Section 1992 (WCI-R 003556-003565)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
312	Handwritten document from R. Pregibon, High Chloride #6 CP (WCI-R 003938)					
313	Handwritten document, from G. Holt to Carrier, attaching up-to-date record of lime additions to the #5 waste water sump (WCI-R 017566-017589)					
314	Handwritten document, Acid Plant, Fred Smith and Sydney Baugh, June 19, 1989 - June 21, 1989 (WCI-R 052789)					
315	Handwritten document, from Dennis to Bob, dated December 16, 1993 (KIL 000024)					
316	Handwritten document from J. Skubak, dated September 14 (KIL 000557)					
317	Handwritten document from J. Skubak to W. Jacobs, dated August 31 (KIL 000567)					
318	Handwritten document from J. Skubak to W. Jacobs, dated June 29 (KIL 000648)					
319	J. Shubak handwritten notes, Scope of Overall Job/ WCI Needs (KIL 000666-000668)					
320	Handwritten document from Joe Logan to Harry Cox, dated July 15, 1993 (KIL 000679)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
321	Handwritten document from Joe Logan to Dave Bartels (Killam Associates), regarding Cold Mill Flow Study (KIL 001581-001583)					
322	Handwritten document from Joe Logan regarding Cold Mill Flow Study (KIL 001643)					
323	Handwritten document from Joe Logan regarding low pH in ponds, less than 1.8 to 1.9 (KIL 001642)					
324	Handwritten document from Joe Logan regarding Site Visit on July 8, 1993 (KIL 000703) (KIL 000702-704)					
325	Handwritten document from Joe Logan (KIL 000704)					
326	Handwritten document from J. Skubak, notes from meeting held on July 28, 1993 with Dr. Alvi, Ray Zeuner, Wayne Jacobs and Joe Logan regarding Ponds #5 and #6 (KIL 000602-000604)					
327	Handwritten document from Dennis Ritter, regarding the #5 Pond Sounding (KIL 000432-000434)					

PLAINTIFF UNITED STATES' TRIAL EXHIBIT LIST						
Exhibit I.D.	Description of Exhibit	I.D.	Offered	Obj.	Admitted	Not Admitted
328	Handwritten document from J. Skubak to J. Logan, regarding the Tandem Mill wastewater (KIL 000369-000376)					
329	Handwritten document, author unknown, dated January 6, 1991, regarding No. 5 Acid Tub (WCI-R 004231)					
330	Handwritten document, author unknown, dated June 7, 1990, regarding No. 5 Tub (WCI-R 004232)					
331	Handwritten document (KIL 002547 - 002597)					
332	Handwritten document (KIL 000949 - 000951)					
333	Handwritten document (KIL 000025)					
334	Handwritten document (KIL 000657 - 000951)					
335	Handwritten document (KIL 000674 - 000678)					
336	Handwritten document (KIL 000622 - 000625)					
337	Handwritten document (KIL 000696 - 000699)					
338	Handwritten document (KIL 001509)					
339	Handwritten document (KIL 001745)					
340	Handwritten document (KIL 001644)					

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
Defendant.	)	

UNITED STATES' FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

GENERALLY APPLICABLE FACTS

1. Defendant, WCI Steel, Inc. ("WCI") is a corporation organized under the laws of the State of Ohio, doing business in Ohio and having its principal place of business partially located in the City of Warren, Warren Township, and Howland Township, all of which are located in Ohio. (Pleading: Complaint ["Cmp"] ¶ 19; WCI Steel, Inc.'s Answer to Complaint ["Ans"] ¶ 6).

2. WCI owns and operates an integrated steel facility located at 1040 Pine Avenue, S.E. Warren, Ohio. (WCI Admission No.

1; Pleading: Cmp ¶ 20; Ans ¶ 7).

3. WCI began its operation of the Warren facility on September 1, 1988. (WCI Admission No. 1).

4. WCI's facility produces hot rolled strip steel, pickled and oiled hot rolled steel strip, cold rolled steel, and coated flat steel products. (WCI Admission No. 3; Witness: Amendola).

5. WCI's steel production operations include one iron-making blast furnace; a two vessel basic oxygen furnace steelmaking shop; a 56" hot strip mill; the Nos. 5 and 6 hydrochloric acid pickling lines; a hydrochloric acid regeneration plant; a 4-stand tandem cold rolling mill; batch annealing facilities; temper cold rolling mills; two sheet slitters; a hot dip galvanizing line; a hot dip terne coating line; a silicon steel anneal and coating line; and ancillary utility and pollution control equipment. On or about January 1992, a twin-strand continuous slab caster and ladle metallurgy, including a vacuum degasser, became operational as part of WCI's steel production operations. (WCI Admission No 2; Witness: Amendola).

6. Prior to April 1992, WCI's steel production operations included several soaking pits and a blooming mill. (WCI Admission No 2).

7. WCI's facility operates by taking water from the Mahoning River, and other sources, running the water through the facility and then discharging wastewater carrying pollutants from the

steelmaking process back to the Mahoning River. (Witness: Amendola).

8. Prior to its discharge, wastewater flows through a series of surface impoundments, including surface impoundments designated as Ponds 5, 6 and 6A, at the facility. (WCI Admissions Nos. 6, 7, 11, 12; Witness: Amendola).

9. WCI, formerly known as Warren Consolidated Industries, Inc., purchased the facility on August 31, 1988 from LTV Steel Company ("LTV"). The owner of the facility prior to LTV was Republic Steel Company ("Republic"). (Pleading: Cmp ¶ 21; Ans ¶ 8).

10. WCI has not included or identified Ponds 5, 6 or 6A as hazardous waste management units in any RCRA Part A Permit Application or amended Permit Application, nor has any other entity. (WCI Admission No. 40; Cmp ¶ 35; Witness).

11. WCI submitted a RCRA Part B Permit Application for the facility on November 7, 1988 which was subsequently revised eight times through October 1992. (Pleading: Cmp ¶ 35; Ans ¶ 19).

12. The Part B Permit Application submitted by WCI for the facility did not indicate to U.S. EPA or the State of Ohio that the facility is managing hazardous wastes in Ponds 5, 6 and 6A. (WCI Admission No. 41; Pleading: Cmp ¶ 35; Exhibit: No. 23).

13. On August 12, 1993, Ohio EPA issued to WCI an Ohio Hazardous Waste Installation and Operation Permit ("Ohio EPA Permit"). (Pleading: Cmp ¶ 36; Ans ¶ 20; Witness: Allen; Exhibit: No. 162a).

14. The Ohio EPA Permit expired August 12, 1998. The Ohio EPA

Permit required WCI to manage hazardous waste only in compliance with its provisions. The Ohio EPA Permit included reporting requirements for WCI's management of hazardous waste. (Pleading: Cmp ¶ 36; Ans ¶ 20; Witness: Allen; Exhibit: No. 162a).

15. The Ohio EPA Permit authorized WCI:

> to store hazardous waste in tanks in accordance with the terms and conditions of [the] permit, ORC Chapter 3734, all applicable Ohio hazardous waste rules, all applicable regulations promulgated under the Resource Conservation and Recovery Act (RCRA), as amended, and the approved hazardous waste facility installation and operation permit renewal application, as such application has been revised and supplemented and as such application may be revised or modified pursuant to hazardous waste rules. The approved Part B permit application as submitted to Ohio EPA in November 1988, and last updated in October 1992, is hereby incorporated into this permit. In the instance of inconsistent language or discrepancies between the above, the language of the more stringent provision shall govern.

(Witness: Allen; Exhibit: 162a).

16. The Ohio EPA Permit further states:

> Any management of hazardous waste not authorized by this permit is prohibited, unless otherwise expressly or specifically exempted by law. . . . Compliance with the terms and conditions of this permit does not obviate Permittee's obligation to comply with other applicable provisions of law governing protection of public health or the environment . . .

(Witness: Allen; Exhibit: 162a).

17. On November 11, 1993, U.S. EPA issued WCI the federal portion of a RCRA hazardous waste permit ("U.S. EPA Permit"). (Pleading: Cmp ¶ 36; Ans ¶ 20; Witness: Boyle; Exhibit: No. 25).

18. The U.S. EPA Permit provides that:

The Permittee is allowed to manage hazardous waste in accordance with the conditions of the RCRA permit. Any management of hazardous waste not authorized in the RCRA permit is prohibited.

19. The U.S. EPA Permit provides that:

The Permittee shall comply with all the applicable self-implementing requirements of 40 CFR 268 and all applicable land disposal requirements which become effective by statute (Section 3004 of RCRA).
***

The Permittee must test, in accordance with 40 CFR 268.7(a), any waste generated at the facility, or use knowledge of the waste, to determine if the waste is restricted from land disposal.

20. The U.S. EPA Permit provides that:

The Permittee may store [spent pickle liquor] in tanks at the facility subject to the terms of the RCRA permit. . .

21. The U.S. EPA Permit provides that:

A mixture of any restricted waste with nonrestricted waste(s) is a restricted waste under 40 CFR Part 268.

The Permittee shall not in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 40 CFR Part 268, Subpart D, to circumvent the effective date of a prohibition in 40 CFR Part 268, Subpart C, to otherwise avoid a prohibition in 40 CFR Part 268, Subpart C, or to circumvent a land disposal prohibition imposed by Section 3004 of RCRA.

(Witness: Boyle: Exhibit: No. 25).

WCI'S SURFACE IMPOUNDMENTS

22. WCI's facility has a system for collecting wastewater from the No. 5 and 6 pickle lines; terne line; galvanize line; tandem mill; hot strip finishing line; silicon line, acid regeneration plant

runoff; mobile equipment shop; 004 scale pit; 52" and 54" temper mills; locomotive/repair machine shop; and waste oil tank decant water. (WCI Admission No. 5; Witness: Amendola).

23. WCI's wastewater collection system consists of series of underground sewers leading from the steel processing areas to an underground pump station known as the No. 9 pump station, a force-main from the No. 9 pump station leading to a sump located on the bank of the Mahoning River, south of the acid regeneration plant, known as a "bosh box," and a gravity sewer from the bosh box to Pond 5. (WCI Admissions Nos. 6, 16; Witness: Amendola).

24. The majority of the wastewater generated by WCI's steel finishing operations, in addition to the surface water runoff from the steel finishing area, typically has been routed to the No. 9 pump station. (WCI Admission No. 13; Witness: Amendola).

25. After settling and oil separation processes take place in Pond 5, the wastewater is conveyed to Pond 6. (WCI Admission No. 7; Witness: Amendola).

26. From Pond 6, the wastewater is pumped across the Mahoning River to a Central Wastewater Treatment Plant ("CTP"). (WCI Admission No 8; Witness: Amendola).

27. Pond 6A was installed between Pond 6 and the Mahoning River in the flood plain of the River during 1986 by LTV Steel, a prior owner of the facility. (Witnesses: Amendola; Zeuner; Exhibit: Nos. 7, 8).

28. Pond 6A was installed to intercept and collect seepage from Pond 6 that was reaching the Mahoning River. (WCI Admission No. 11; Witnesses: Amendola, Zeuner; Exhibit: Nos. 7,8).

29. From September 1, 1988 to the present, seepage collected in Pond 6A has been pumped back into Pond 6, from which it is pumped to the CTP for treatment prior to discharge. (WCI Admission No. 12; Witness: Amendola; Exhibit: Nos. 7, 8).

30. Ponds 5 and 6 were constructed within a channel of the Mahoning River. Embankments constructed across the former channel alignment were used to form the ends of the ponds. (Witness: Amendola).

31. The purpose of the surface impoundments is to provide oil removal, wastewater detention, and stormwater surge protection for the CTP. (Witnesses: Amendola, Zeuner, Shepker).

32. WCI uses skimmers to remove oil from Pond 5. WCI attempts to keep Pond 6 "oil-free." (Witnesses: Gradishar, Zeuner).

33. If oil is not removed from the wastewater prior to its discharge to the impoundment, the CTP could have difficulty treating the wastewater sufficiently to meet applicable wastewater effluent limits imposed under the Clean Water Act. (Witness: Gradishar).

34. Ponds 5 and 6 have been in use from at least November 8, 1988 to the present. (WCI Admission No. 9; Witnesses: Stack; Zeuner).

35. WCI's use of Ponds 5, 6 and 6A for effluent collection, equalization and partial treatment for wastewater from steel finishing

operations is substandard by current steel industry and environmental control standards and is poor wastewater management. (Witness: Amendola).

36. Ponds 5 and 6 were installed prior to the 1970s to collect untreated process wastewater from acid pickling, cold rolling, terne coating and hot dip galvanizing operations prior to direct discharge to the Mahoning River without subsequent treatment. (Witness: Amendola).

37. When the CTP was installed in 1984, the effluent from Pond 6 became influent to the CTP. (Witness: Amendola).

38. The surface impoundments are not equipped with impermeable, synthetic liners. (Witnesses: Shepker, Zeuner).

39. There is the potential for ground water contamination and seepage of high or low pH water, spent rolling and lubricating oils, solvents used for cleaning operations and metal bearing wastewaters from coating operations. (Witness: Amendola).

40. Since July 8, 1987, wastewater from one or more of the impoundments, including Ponds 5, 6 and 6A, was released into the environment including the Mahoning River. (WCI Admission No. 57; Witnesses: Gradishar, Stack, Shepker).

41. On several occasions, the Mahoning River has flowed into and through Pond 6A, completely submerging it. (Witness: Gradishar).

42. Pond 6A, on occasion, has simply disappeared, becoming part of the river itself. (Witness: Gradishar).

43. Ponds 5, 6 and 6A have received, and continue to receive, wastewaters from WCI's operations from November 8, 1988 up to the present. (WCI Admission No. 55; Witness: Zeuner).

44. WCI discharges the following process wastewaters to Ponds 5, 6 and 6A: No. 5 Pickle Line rinse and scrubber water; No. 6 Pickle Line rinse and scrubber water; terne line wastewater; galvanizing line wastewater; tandem mill oily wastewater and non-contact cooling water; hot strip finishing line (slitters) wastewater; silicon line wastewater; acid regeneration plant runoff; mobile equipment shop wastewater; 004 scale pit water; 52" temper mill oily wastewater; 54" temper mill oily wastewater; locomotive repair/machine shop wastewater; pickle line entry end water; and waste oil tank decant water. (Witnesses: Amendola, Shepker).

CENTRAL TREATMENT PLANT pH MEASUREMENTS

45. WCI's wastewaters are pumped from Pond 6 to an inlet box above the aeration tank located outside the CTP ("aeration influent box"). (Witness: Amendola).

46. The aeration influent box also receives wastewaters from WCI's Basic Oxygen Furnace operations through a separate influent stream separated from Pond 6 wastewater by a weir. (Witness: Amendola).

47. The alkaline basic oxygen furnace wastewater occasionally mixes with the Pond 6 wastewater in the aeration influent box because of overflows. (Witnesses: Amendola, Gaydosh).

48. From the aeration influent box, the wastewater flows to the aeration tank and then through the balance of the treatment process at the CTP. (Witnesses: Amendola, Ballas, Gaydosh).

49. To ensure proper treatment of its wastewater, WCI must know the pH of the wastewater as it flows through the CTP. (Witness: Zeuner).

50. For this reason, WCI maintains several pH probes that continuously monitor the pH of the wastewater as it flows through the CTP. (Witnesses: Ballas, Gaydosh, Zeuner).

51. Inflow pH probes at the CTP are located at the aeration influent box, the aeration tank, the rapid mix and the No. 3 clarifier. (WCI Admission No. 21; Witnesses: Ballas, Gaydosh, Zeuner).

52. The pH meter located at the aeration influent box ("influent meter" or "influent probe") is used by WCI to measure the pH of the wastewater as it flows from Pond 6 into the CTP. The influent probe is submerged in the flow of the wastewater as it enters the aeration influent box. (WCI Admission Nos. 31, 32).

53. The pH probe was placed on the Pond 6 influent side of the weir located in the inlet box with the intention of reading the Pond 6 influent wastewater before it commingles with other wastewater. (WCI Admission No. 32; Witnesses: Ballas, Gaydosh).

54. The pH meter used by WCI to measure the pH of Pond 6 influent wastewater is a glass membrane electrode selective for hydrogen ion in combination with a pH meter. (Witness: Lowry).

55. The pH meter used by WCI to measure Pond 6 influent pH is equipped with a microprocessor that handles the mathematics of the measurement. (Witnesses: Lowry).

56. The pH meter used by WCI to measure the pH of Pond 6 influent wastewater displays the numerical pH value. (Witnesses: Ballas, Gaydosh).

57. Once a week, or more often if necessary, WCI Combustion Department personnel calibrate the pH meter used to measure the pH of Pond 6 influent wastewater by removing the submerged influent probe from the wastewater flow and immersing it in two buffer solutions of specified pH. (WCI Admission Nos. 24 and 25; Witnesses: Ballas, Gaydosh, Dunn).

58. The WCI Combustion Department personnel calibrate the pH probe even if it reads only a 0.1 s.u. difference from the standard pH buffer solution against which it is calibrated. (Witnesses: Dunn; White).

59. The Combustion Department records each calibration of the pH probe in a Calibration Log to allow for proper maintenance of the probes and continued accuracy. (Witnesses: Dunn; White; Exhibit: Nos. 88, 88, 88a).

60. Once a problem with a probe is discovered, it is corrected as soon as possible, usually within an hour. (Witnesses: Dunn, White).

61. WCI personnel report that the pH meters and probes work well

and are reliable. (Witnesses: Dunn, White, Rodgers).

62. WCI's Environmental Manager, has never received any reports of malfunctions related to the influent pH probe. (Witness: Shepker).

63. CTP operators clean the influent pH probe by removing the submerged probe from the flow of the wastewater and dipping the probe in acid. (WCI Admission No. 27; Witnesses: Ballas, Gaydosh, Showalter).

64. CTP operators clean the influent pH probe once per shift, or three times per day, and more often, if necessary. (Witnesses: Ballas, Rodgers, Showalter).

65 To verify the accuracy of the influent pH probe, under certain circumstances, the CTP operators collect grab samples from the Pond 6 wastewater as it enters the aeration influent box at the CTP. The samples are extracted by placing a laboratory beaker in the flow of the wastewater. (WCI Admission Nos. 33 and 35; Witnesses: Ballas Gaydosh, Gradishar, Showalter).

66. The CTP operators collect the grab samples from the Pond 6 effluent as it enters the aeration influent box. (WCI Admission No. 33).

67. The CTP operators measure the pH of the grab samples using a bench meter located in the CTP office. (WCI Admission No. 36).

68. The bench pH meter is generally calibrated using a single buffer solution of specified pH value of either 2, 4, 7 or 10. (WCI Admission Nos. 37, 38).

69. The CTP operators recorded on forms referred to as "Turn Audits," the readings from the pH meters located at the aeration influent box, the aeration tank, the rapid mix tank, and the No. 3 clarifier, every two hours from September 1, 1988 to February 22, 1995, and every hour from February 23, 1995 to July 31, 1998. (WCI Admission Nos. 18, 30; Witnesses: Beedle, Gaydosh, Ballas; Exhibit: Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47).

70. Beginning in 1995, the CTP operators also recorded the grab sample pH measurements for Pond 6 influent wastewater on the Turn Audits. (Witness: Beedle; Exhibit: Nos. 44, 45, 46, 47).

71. During the period September 1, 1988 to July 31, 1998, WCI's CTP operators recorded over 11,000 pH values of 2.0 s.u. or less for Pond 6 wastewater entering the CTP. (Witness: Beedle; Exhibit: No. 1).

72. During the periods April - November 1992, April - May 1994, and April - July 1995, the CTP operators recorded 31 pH measurements of 12.5 s.u. or above for Pond 6 wastewater entering the CTP. (Witness: Beedle; Exhibit: No. 1).

73. On or about July 25, 1990, WCI applied to Ohio EPA for a Clean Water Act permit to install a four million gallon storm surge tank to replace the impoundments. WCI did not install the surge tank after approval of the permit by Ohio EPA. (Witnesses: Stack, Shepker, Zeuner; Exhibit: No. 24).

74. WCI solicited and received proposals for a wastewater

segregation system that would have prevented process wastewaters from entering the surface impoundments, but it did not install the system. (Witness: Zeuner; Exhibit: Nos. 161, 165).

WCI'S WASTESTREAMS

75. Mr. Gary A. Amendola testified on behalf of the United States as an expert on the industrial processes of the steel industry in the United States. Mr. Amendola has 30 years experience in water pollution control, much of it involving the steel industry. Mr. Amendola has a Bachelor of Environmental Engineering and is a registered Professional Engineer in Ohio and a member of the Association of Iron and Steel Engineers. Mr. Amendola is qualified to testify in this case as an expert on these issues. (Witness: Amendola; Exhibit: No. 300).

76. Mr. Amendola testified that the flow rates and acidity/alkalinity of the various wastewaters from WCI's operations discharged to Pond 5 are as follows:

Wastewater Sources	Typical Flow Rates [1] (gpm)	Wastewater Acidity/Alkalinity
Acid Pickling Operations		
No. 5 pickle rinse waters & fume scrubber discharges	110	highly acidic
No. 6 pickle line		
rinse water & fume scrubber water	60	highly acidic
looping pit water	65	neutral range
Acid losses from pickle lines	variable	strong acid, highly acidic
Acid regeneration plant	5	acidic
Cold Rolling and Annealing		
Cold rolling		
Tandem mill	40	neutral range
52" Temper mill	90	neutral range
54" Temper mill	45	neutral range
Portable annealing	10	neutral range
Coating Products Department		
Galvanizing line	216	
Alkaline cleaning section		highly alkaline
Acid cleaning section		highly acidic
Terne line	95	
Alkaline cleaning section		highly alkaline
Acid cleaning section		highly acidic
Silicon line		
Alkaline cleaning section	10	highly alkaline
Miscellaneous Sources		
52", 53" Slitters	40	neutral range
Mobile equipment [2]	35	unknown
Total flow, gpm	821	highly acidic

Notes: (1) Flow rates in gallons per minute (gpm)
(2) Mobile equipment flow of 35 gpm listed as intermittent.

77. Mr. Amendola made an assessment of whether each process wastewater stream and the combined wastewater stream discharged to Ponds 5 and 6 by WCI would have a pH of 2.0 or less, or 12.5 or greater. (Witness: Amendola; Exhibit: No. 300).

78. Mr. Amendola concluded that prior to the installation of a lime neutralization system in December 1993, the combined wastewater flow from all of WCI's steel finishing wastewaters discharged into Pond 5 frequently had pH values of 2.0 s.u. and less. (Witness: Amendola; Exhibit: 300).

79. Mr. Amendola also prepared a cost estimate for the above-ground tank system to replace Ponds 5 and 6 at the WCI facility. (Witness: Amendola; Exhibit: No. 300).

80. In the opinion of Mr. Amendola, had WCI replaced Ponds 5, 6 and 6A with an engineered, above ground wastewater collection and equalization system when it purchased the steel plant in 1988, it would have cost WCI $30,000 as a one time cost for engineering the project, a capital investment of $1,500,000 to build and install the tank, and annual operations and maintenance costs of $20,000. These expenditures should have been made by November 1988, but never have been made. (Witnesses: Amendola; Fagan; Exhibit: Nos. 300, 301).

81. WCI generates several process wastewater streams in its steel finishing operations that are highly acidic. Wastewaters from these operations have been discharged to the surface impoundments. (WCI Admission Nos. 13 and 17; Witnesses: Amendola,

Holt; Exhibit: Nos. 1, 37, 38, 39, 40, 41, 42, 43, 44, 143).

82. Corrosiveness is the property that enables a substance to dissolve material with which it comes in contact. Improperly managed corrosive wastes pose a substantial present or potential danger to human health and the environment. (Witness: Lowry).

83. To determine whether a substance exhibits the hazardous waste characteristic of corrosivity, one can measure the corrosive chemical agents: acids and bases. This measurement is known as pH. (Witness: Lowry).

84. The measure of pH provides an estimate of the acidic agent (hydrogen ion) and the basic agent (hydroxide ion). (Witness: Lowry).

85. Pursuant to U.S. EPA Sampling Methods 5.2 and 9040, the pH of a sample is determined electrochemically using potentiometry, i.e., a glass membrane electrode selective for hydrogen ion in combination with a pH meter. (Witness: Lowry).

SOURCES OF ACID IN THE SURFACE IMPOUNDMENTS

86. By their very nature, steel industry pickling operations involve the use and generation of highly corrosive materials (new, reconstituted and spent hydrochloric pickling acids, acidic rinse waters, acidic fume scrubber wastewaters and corrosive atmospheres). (Witnesses: Amendola; Holt).

87. WCI maintains an Acid Regeneration Plant at the facility to re-process some of the wastestreams generated from its steel making

processes. (Witnesses: Amendola; McCoy).

88. WCI's wastewater contains acid rinse waters and acid fume scrubber water. (Witnesses: Amendola, Gradishar).

89. The pH of acid fume scrubber water generated by WCI is as low as 1.3 s.u. (Witnesses: Gradishar, Amendola).

90. The acid fume scrubber water is so acidic that, on occasion, a portion of it is conveyed to WCI's Acid Regeneration Plant for use in the Plant's regeneration process, while the balance of it discharges to the surface impoundments. On other occasions, the entire wastestream is discharged to the impoundments. (Witnesses: Gradishar, McLaughlin, Holt).

91. The pH of the rinse waters is highly acidic. WCI has considered conveying its acid rinse waters to the Acid Regeneration Plant, but continues to convey it to the unlined surface impoundments. (Witnesses: McCoy, Holt).

92. The wastewater conveyed to the impoundments oftentimes contains spent pickle liquor ("SPL"). Spent pickle liquor is listed by U.S. EPA as a corrosive and toxic hazardous waste under RCRA regulations at 40 C.F.R. Part 261. (Witnesses: Holt, Boyle, Amendola).

93. At times relevant to the Complaint, WCI collected SPL in a silicon settling tank at the No. 5 Pickler, prior to conveying it to the Acid Regeneration Plant for re-processing. (Witness: Holt).

94. The silicon settling tank contained numerous pinhole

leaks noted by WCI in 1991-1992. SPL leaked from the silicon settling tank to the sewer system feeding the impoundments. WCI eventually replaced the silicon settling tank because of the persistent leaks. (Witnesses: Holt, Zeuner, Shepker, McCoy; Exhibit: No. 111).

95. The wastewater conveyed to the impoundments oftentimes contains acid from spills and/or leaks in piping. (Witnesses: Zeuner; Holt; Stock; Gradishar).

96. Prior to June 21, 1993, the inside sump at the Acid Regeneration Plant was physically connected to the pond system. The pH of the wastewater collected in the inside sump is as low as 1.2 s.u. (Witness: McCoy; Exhibit: No. 124).

97. The No. 5 pickler contains three acid tubs. The No. 6 pickler contains four acid tubs. The secondary containment for the acid tubs is designed to channel leaks or spills of acid to the sewer system leading to No. 5 Pond. WCI experiences leaks from the acid tubs on an occasional basis. (Witnesses: Holt; Stock; Gradishar; Zeuner; Amendola).

98. Although WCI personnel, on occasion, manually added lime to the acid which had spilled or leaked from the acid tubs at the No. 5 and 6 picklers, WCI did not conduct any testing to determine whether the acid had been neutralized prior to its discharge to the sewer system leading to No. 5 Pond. (Witness: Holt).

99. On occasion, leaks develop between the dam that separates the acid section and the rinse section of the picklers,

causing acid to flow to the sewer leading to No. 5 Pond. (Witness: Holt).

100. WCI personnel, on occasion, "dumped" the rinse tanks at the picklers to allow for maintenance of the rinse tanks. This was done when the picklers shut down on weekends. (Witness: McCoy).

101. WCI personnel, on occasion, "dumped" the acid tanks at the picklers. When pickler tanks were dumped, the pH of the wastewater in the impoundments would trend downward. (Witness: Rodgers; Exhibit: No. 80).

102. It is a standard practice for WCI personnel in the Environmental Department to place a call to the Rolling and Finishing Department, which oversees the pickling area, whenever the pH of the wastewater in the impoundments trended downward, as measured by the influent probe at the CTP, because the picklers were the largest source of acid. (Witnesses: Stock, Ballas, Gaydosh, Gradishar, Showalter).

103. WCI personnel, on occasion, would clean up leaked acid with vacuum trucks, which would then deposit the acid in Pond 6. (Witness: Holt).

WCI'S pH CONTROL PROCEDURES

104. In 1993, WCI initiated a procedure whereby bags of lime were manually added to the wastewaters at the Rolling and Finishing Department whenever the pH of the wastewater registered between 3 and 4 s.u. as measured by the influent probe at the CTP. (Witness:

Gradishar).

105. Richard Gradishar, the Environmental Engineer with responsibilities for wastewater issues at WCI, would order that a certain number of 50-pound bags of lime be added to the wastewater. (Witness: Gradishar).

106. The actual number of bags added depended solely upon Mr. Gradishar's judgment, which, in turn, depended upon the pH of the wastewater in the impoundments as measured by the influent probe at the CTP. (Witness: Gradishar).

107. Since December 1993, the wastewater pH has been adjusted upward by an automated lime injection system at the No. 9 Lift Station, upstream of No. 5 Pond, to ensure that the pH of the wastewater flowing into Pond 5 remains at 3.5 s.u. or above and to lessen swings in pH levels. (WCI Admission No. 34).

108. Prior to December 1993, the wastewaters flowed directly into Pond 5 without automated pH adjustment. (Witness: Amendola, Gradishar).

109. Prior to December 1993, WCI manually added bags of lime to the wastestreams only when there was an emergency, such as an abnormal discharge of acid. (Witness: Gradishar, Holt).

110. The pH of the wastewater at the No. 9 Lift Station has been as low as 0.6 s.u. (Witness: Boyd).

111. WCI personnel determine whether the lime injection system at the No. 9 Lift Station is effectively raising the pH of the wastewater

in the impoundments based on the influent probe pH readings at the CTP. (Witness: Boyd).

112. Every morning at 7:00 a.m., the CTP Area Supervisor faxed to the Rolling and Finishing Department, which operates the lime injection system, a report stating what the pH of the wastewater in the impoundments is, as measured by the influent probe readings. (Witness: Boyd, Showalter).

113. Even after WCI installed the lime injection system at the No. 9 Lift Station, Mr. Gradishar directed that lime be added manually to the wastestreams to compensate for problems that would frequently occur with the lime injection system. (Witness: Gradishar).

114. Even after WCI installed the lime injection system at the No. 9 Lift Station, WCI continued to convey wastewater of 2.0 s.u. or less to the impoundments. (Witness: Beedle).

115. After WCI installed the lime injection system at the No. 9 Lift Station, the pH of the wastewater in the impoundments would, on occasion, rise to 12.5 s.u. or greater. (Witness: Stock; Exhibit: No. 1).

116. Prior to installation of a lime neutralization system in December 1993, the combined wastewater flow from all of the steel finishing wastewaters discharged into Pond 5 by WCI frequently had pH values of 2.0 s.u. and less. For 1991 and 1993, WCI data demonstrate these wastewaters had pH values of 2.0 s.u. and less more than 50 per cent of the time. (Witness: Beedle; Exhibit: Nos. 1, 2, 3, 37, 38,

39, 40, 41, 42).

U.S. EPA'S SAMPLING AND pH MEASUREMENTS

117. In 1993, U.S. EPA conducted a multimedia inspection at WCI and collected samples of wastewater from various locations at the facility. (Witnesses: Beedle, Conti, Lins; Exhibit No. 143).

118. On May 12, 1993, during the inspection, U.S. EPA collected a grab sample of wastewater being pumped from a surface impoundment known as Pond 6A to a surface impoundment known as Pond 6. U.S. EPA extracted the sample as a single increment by holding a bottle in the flow of the wastewater as it entered Pond 6. U.S. EPA field measurements of this sample revealed a pH of 1.81 s.u., below the regulatory limit of 2.0 s.u. (Witnesses: Beedle, Conti; Exhibit No. 143).

119. On May 12, 1993, U.S. EPA field personnel calibrated their pH meter and pH probe at 8:40 a.m. with pH 4 and pH 10 standards at a temperature of 20.2 C. On May 12, 1993, U.S. EPA field personnel calibrated their pH meter and probe with a pH 7 standard at 8:45 a.m., 2:30 p.m. and 3:00 p.m. and obtained pH readings of 7.00 s.u., 6.86 s.u. and 6.86 s.u. at a temperatures of 20.2 C, 31.1 C and 30.9 C, respectively. (Witness: Conti; Exhibit: No. 143).

120. On June 15, 1993, during the inspection, U.S. EPA collected a grab sample of wastewater from a process that uses acid pickle liquor to treat steel (the acid pickling process). (Witness: Lins; Exhibit: No. 143).

121. U.S. EPA collected the sample as a single increment by placing a bottle in the flow of the wastewater as it entered a tank. The wastewater was conveyed by pipe from the process area at the facility to the tank. The tank had an outlet pipe that conveyed the wastewater to a surface impoundment. Three other pipes also conveyed wastewater from other processes to this tank. The wastewater from the other processes were also conveyed through the outlet pipe to the surface impoundment. U.S. EPA field measurements of this sample collected from the acid pickling process wastewater revealed a pH of 1.65 s.u. (Witness: Lins; Exhibit: No. 143).

122. On June 15, 1993, during the inspection, U.S. EPA also collected a grab sample from wastewater flowing from Pond 6. The sample was collected at a point before the Pond 6 wastewater commingles with wastewater from the Basic Oxygen Furnace, which is separated from Pond 6 wastewater by a weir at the aeration tank. U.S. EPA extracted the sample as a single increment by placing a bottle in the flow of the Pond 6 wastewater as it entered the aeration tank. U.S. EPA field measurements of the sample of Pond 6 wastewater revealed a pH of 1.67 s.u. (Witness: Lins; Exhibit: No. 143).

123. On June 15, 1993, U.S. EPA field personnel calibrated their pH meter and probe at 10:55 a.m. with pH 4 and pH 10 standards at temperatures of 26.7 C and 26.6 C, respectively. On June 15, 1993, U.S. EPA field personnel calibrated their pH meter and probe with a pH 7 standard at 10:57 a.m. and 11:52 a.m., and obtained pH readings of

6.98 s.u. and 6.92 s.u. at a temperatures of 27.2 C and 32.1 C, respectively. (Witness: Lins; Exhibit: No. 143).

RELIABILITY OF SAMPLING AND ANALYSIS

124. Dr. Joseph Lowry testified on behalf of the United States as an expert on wastewater sampling and monitoring using U.S. EPA designated methods and other methods employed by industry. Dr. Lowry has 27 years of professional experience conducting, directing, supervising, evaluating, and interpreting environmental measurements. He has a Bachelor of Science in Chemistry, a Master of Science in Water Resources Science, and a Doctor of Philosophy in Environmental Health Sciences. Water Resources Science is an interdisciplinary study of wastewater engineering and environmental chemistry. Environmental Health Sciences is an interdisciplinary study of the health sciences and environmental chemistry. He has 21 years of employment as National Technical Expert and Chief Scientist at the National Enforcement Investigations Center (NEIC), Office of Enforcement and Compliance Assurance, U.S. EPA in Lakewood, Colorado. Dr. Lowry has been qualified as an expert in numerous federal jurisdictions on these issues and is qualified to testify in this case as an expert on these issues. (Witness: Lowry; Exhibit: No. 303).

125. Dr. Lowry conducted a review of certain information documenting wastewater sampling and monitoring conducted at WCI by U.S. EPA and its contractors, and by WCI personnel to assess the extent to which such sampling data may be relied upon to establish

that the wastewater generated and managed at the WCI facility was hazardous waste within the meaning of RCRA. (Witness: Lowry; Exhibit: No. 303).

126. The measurements of WCI wastewater made by U.S. EPA are reliable for determining that the pH values of samples collected by U.S. EPA were less than 2. (Witness: Lowry).

127. The samples were collected with sample extraction techniques appropriate for the form and consistency of the wastes. (Witnesses: Lowry, Conti, Lins; Exhibit: No. 303).

128. U.S. EPA appropriately collected the samples of wastewater as it enters and exits the surface impoundments. (Witnesses: Lowry, Conti, Lins; Exhibit: No. 303).

129. U.S. EPA properly applied a routine analytical method widely used in the environmental testing community and capable of being reliable to within 0.1 pH units. (Witnesses: Lowry, Conti, Lins; Exhibit: No. 303).

130. U.S. EPA used instrumentation appropriate for the method, calibrated its instruments with two standards of known pH value daily, compensated for temperature effects, and verified the calibration by the replicate analysis of a standard of known pH value. (Witnesses: Lowry, Conti, Lins; Exhibit: Nos. 143, 303).

131. An influent probe pH measurement of 1.6 s.u. recorded by a CTP operator on June 15, 1993 at 12:00 p.m. corroborates U.S. EPA's influent measurement of 1.67 s.u. taken on June 15, 1993 at 11:51 a.m.

(Witnesses: Lowry, Lins; Exhibit: Nos. 42, 143, 303).

132. The pH measurements are consistent with historical pH measurements and with expected measurements of wastewater from certain industrial processes used at WCI and entering the surface impoundments. (Witnesses: Beedle, Amendola; Exhibit: Nos. 1, 37, 38, 39, 40, 41, 42, 300).

133. U.S. EPA's data are of sufficient quality for the intended purposes. (Witness: Lowry; Exhibit: No. 303).

134. The influent probe measurements with values less than or equal to a pH of 3, recorded by WCI's CTP operators of Pond 6 wastewater, are reliable for determining that pH values reported by WCI as less than or equal 2 were accurate. (Witness: Lowry; Exhibit: No. 303).

135. WCI appropriately made the inflow pH measurements as the wastewater exits the surface impoundment known as Pond 6 and enters the wastewater treatment unit. (WCI Admissions Nos. 31, 32; Witnesses: Lowry, Ballas; Exhibit: No. 303).

136. WCI properly applied a routine analytical method widely used by the industrial and wastewater treatment communities and capable of being reliable to within 0.1 or 0.2 pH units. (Witnesses: Lowry, Ballas; Exhibit: No. 303)

137. WCI used instrumentation appropriate for the method, conducted offline calibration of their pH probes and meters weekly with two standards of known pH value, and cleaned the pH electrode

assembly daily. (Witnesses: Lowry, Dunn, White, Ballas, Rodgers; Exhibit: Nos. 87, 88, 303).

138. The inflow pH measurements for 1995 were frequently corroborated by grab sample pH measurements made by WCI. (WCI Admission No. 33; Witnesses: Lowry, Ballas; Exhibit: Nos. 44, 303).

139. A comparison of weekly analyses of standard solutions for 1995 to those for 1993 and 1989 indicates the same performance for the inflow pH measurements during these years. (Witness: Lowry; Exhibit: Nos. 87, 88, 303).

140. Corroborating grab sample pH measurements on October 14 and 15, 1993, by a WCI contractor, and again on June 15, 1993, by U.S. EPA provide further verification of the reliability of the inflow pH measurements. (Witness: Lowry; Exhibit: Nos. 143, 168a, 303).

141. Similarly, corroborating chloride analysis on June 21, 1989, provides verification of the reliability of the inflow measurements. The agreement between the measured and expected values of lime saturated wastewater provide *in situ* demonstration of the proficiency of the inflow pH measurements to reliably depict the pH. Many of the inflow pH measurements recorded at two-hour intervals for June 1989, May 1993, and October 1993 were of a pH of 2 or less. Therefore, the data are of sufficient quality for the intended purposes. (Witness: Lowry; Exhibit: Nos. 1b, 1f, 38, 42, 303).

142. Dr. Lowry compared seventy-five (75) pairs of grab sample pH measurements recorded by WCI CTP operators during the period

February 25, 1995 through December 31, 1995, with corresponding inflow pH measurements of Pond 6 wastewater with a pH value of 3.0 s.u. or below. All pairs of these pH values differ by 0.2 pH units or less. Sixty-two of these pairs of pH values differ by 0.1 pH units or less. (Witness: Lowry; Exhibits: Nos. 44, 303).

143. The close agreement of the inflow pH measurements and the grab sample measurements indicates that all of the pH measurements of 3.0 s.u. or less are reliable to within 0.2 pH units and most are reliable to within 0.1 pH units. (Witness: Lowry; Exhibits: Nos. 44, 303).

144. A comparison of all grab sample and corresponding influent probe measurements taken between 1995 and 1998 indicates that 98.4% of the pH measurements of 3.0 s.u. or less are reliable to within 0.2. s.u. (Witness: Lowry; Exhibit: Nos. 4, 44, 45, 46, 47).

145. The 1995 weekly calibration logs contain analyses of pH 2 standard and corresponding analyses of pH 4 standard. Because these standard analyses were conducted in 1995 along with inflow and grab sample pH measurements, the pH standard analyses are associated with an inflow measurement system that is reliable to within 0.2 pH units. (Witnesses: Dunn, Lowry; Exhibit: Nos. 88, 88a, 303)

146. A saturated aqueous solution of lime is a recognized secondary standard for calibrating and confirming the reliability of pH measurement systems. A WCI CTP record dated February 1, 1993, contains pH readings of 12.4 s.u. for a Pond 6 wastewater inflow

measurement. A WCI CTP record dated February 3, 1997, contains the following pH readings for Pond 6 wastewater inflow pH measurements: (1) four at 12.6 s.u., (2) three at of 12.5 s.u., and (3) two at 12.4 s.u. These high pH values observed on February 1, 1993, and February 3, 1997, are consistent with known uses of lime at the facility. (Witness: Lowry; Exhibit: Nos. 42, 46, 303).

WCI'S CONTRACTOR MEASUREMENTS

147. On June 20, 1989, Duncan, Lagnese & Associates ("DLA"), on behalf of WCI, conducted hourly sampling (one sample every hour for twenty-four hours) of the wastewater in Pond 6 as it entered the CTP. (Witnesses: Zeuner, Shepker, Skubak; Exhibit No. 268).

148. Of the twenty-four (24) grab samples collected by DLA on June 20, 1989, twenty-one (21) had a pH value of 2.0 or below. (Witnesses: Zeuner, Shepker, Skubak; Exhibit No. 268).

149. During the period October 13-15, 1993, Killam Associates, on behalf of WCI, conducted a study to determine, among other things, the source of the acid wastewater in the surface impoundments. (Witnesses: Zeuner, Shepker, Skubak; Exhibit No. 168).

150. In conducting this study, Killam collected three grab samples from the bosh box that channels wastewater to the surface impoundments. (Witnesses: Ritter, Shepker, Skubak; Exhibit No. 168).

151. The three samples collected by Killam had pH values of 1.3, 1.7 and 2.0 s.u., respectively. (Witnesses: Ritter, Skubak; Exhibit No. 168).

152. Based upon its sampling, Killam Associates concluded that the pH of the wastewater in the surface impoundments was between 1.9 and 2.0 s.u. even after the addition of 700 pounds of lime per day. (Witnesses: Skubak, Ritter; Exhibit: No. 168).

WCI'S KNOWLEDGE OF HAZARDOUS WASTES IN PONDS 5, 6 and 6A

153. WCI did not make a determination as to whether the wastewater it conveyed to the surface impoundments was hazardous as required under RCRA (Witnesses: Boyle, McLaughlin, Zeuner, Gradishar, Shepker).

154. Raymond Zeuner, WCI's Chief Engineer, was aware at least from the mid-1980s, that it was illegal to treat, store or dispose of wastewater that had a pH of 2.0 s.u. or less in surface impoundments (Witness: Zeuner).

155. James Skubak of Killam Associates, an environmental engineering firm, was told by Mr. Zeuner in 1993 that the pH of the wastewater in the impoundments had been "below 2.0 for the past year and half." (Witness: Skubak; Exhibit: No. 326).

156. Mr. Zeuner testified that he likes the pH of the wastewater in the impoundments "on the acidic side" so that the oil is not turned into a "soapy mayonnaisy type of material." (Witness: Zeuner).

157. Mr. Zeuner testified that he likes the pH of the wastewater in the impoundments "on the acidic side" because if the pH is too high, the ponds perform the role of the CTP by causing zinc to

settle out of the wastewater, forming sludge that reduces the depth of Pond 5. (Witness: Zeuner).

158. Mr. Zeuner relied on a study conducted by Killam Associates in 1993, in which Killam determined that the pH of the wastewater in the impoundments was between 1.9 and 2.0 s.u., in proposing, designing and installing an automated lime injection system to raise the pH of the wastewater prior to its discharge to the impoundments. (Witness: Zeuner; Exhibit: No. 168a).

159. Tom Shepker, WCI's Environmental Manager, understood that wastewater with a pH value of less than or equal to 2.0 s.u. is corrosive waste under RCRA. (Witness: Shepker).

160. Joe Logan of Killam Associates was told by Mr. Shepker that the pH of the wastewater in the impoundments ran between "1.8-1.9." (Witnesses: Logan; Exhibit: No. 323).

161. By memorandum dated August 1, 1990, Mr. Shepker advised Mr. Zeuner in pertinent part as follows:

> USEPA is vigorously pursuing the elimination of unlined surface impoundments used for waste water and hazardous waste systems. The #5, #6 and #6A ponds are unlined surface impoundments used in wastewater treatment. The new hazardous waste identification procedure, TCLP (Toxic Characteristic Leachate Procedure), effective in September 1990, places unlined waste water lagoons under RCRA hazardous waste regulations if any waste stream fails the TCLP test (ex. < 2pH on pickler rinse water waster and acid scrubbers). Waste waters which are in double lined lagoons or tanks remain under the NPDES regulations which makes compliance considerably more expensive.
>
> The permit to install (PTI) for the four million gallon tank to replace the ponds was received 7/27/90. This tank will

take us out from under RCRA for our water treatment system. (Witness: Shepker; Exhibit No. 105).

162. Mr. Shepker was aware that, on occasion during the relevant time period, the CTP operators recorded pH values of 2.0 s.u. and less for influent Pond 6 wastewater. (Witness: Shepker).

163. Mr. Shepker was aware that, on occasion, the pH of the Pond 6 wastewater flowing into the CTP dipped as low as 1.5 s.u. (Witness: Shepker).

164. Mr. Shepker testified that the wastewater in the ponds tends to be on the acidic side. (Witness: Shepker).

165. In 1993, Killam Associates was told by WCI that the pH of the wastewater in the impoundments was "between 1.0 and 4.0, averaging 2.0." (Witness: Skubak; Exhibit: 273).

166. Richard Gradishar, an Environmental Engineer with responsibilities for wastewater issues at WCI, was informed whenever the pH of the wastewater in the impoundments trended downward. (Witness: Gradishar).

167. Mr. Gradishar informed Tom Shepker of downward trends in the pH of the wastewater in the surface impoundments. (Witness: Gradishar).

168. On occasion, Mr. Gradishar informed Ray Zeuner that the pH of the wastewater in the impoundments was 2.0 s.u. or less. (Witness: Gradishar).

169. James Skubak of Killam Associates, one of WCI's

environmental consultants, expressed concern for the safety of a colleague he supervised who was assigned to conduct testing from an aluminum boat in Pond 5. Specifically, Mr. Skubak was concerned that the boat, which was constructed of aluminum, could dissolve away from contact with the highly acidic water in Pond 5 even though aluminum is used to pickle steel. (Witness: Skubak; Exhibit: No. 327).

170. At least one CTP operator could, on occasion, smell acid in the wastewater as it entered the CTP from Pond 6 (Witness: Rodgers; Exhibit: No. 61).

171. Tom Shepker, at the request of WCI President, James Stack, generated monthly and daily environmental control reports, which were circulated to WCI management, including James Stack and Ray Zeuner. In these reports, Mr. Shepker advised management of environmental issues such as the presence of low pH wastewater in the surface impoundments. (Witness: Shepker).

172. WCI is owned by The Renco Group, Inc. (Renco), a New York investment firm owned by Ira Rennert, who served as Chairman of WCI's Board of Directors. (Witness: Stack).

173. Mr. Stack discussed environmental problems with Mr. Rennert, including regulatory violations, if a major capital expenditure was required to address the problem. While Mr. Stack had ultimate decision-making authority with respect to capital expenditures, he reviewed such expenditures with Mr. Rennert. Mr. Rennert had the authority to decide that WCI would not make such expenditures.

(Witness: Stack).

174. Ray Zeuner reported to Mr. Stack regarding capital expenditures related to environmental issues. Mr. Zeuner discussed with Mr. Stack the possibility of replacing Ponds 5, 6 and 6A with an above-ground tank system. (Witness: Stack).

175. Mr. Zeuner discussed with Mr. Stack concerns regarding low pH wastewater going into the impoundments. Mr. Zeuner advised Mr. Stack that lime addition to the process was for the purpose of addressing "any lower pH, especially 2 or below." (Witness: Stack).

176. Mr. Stack received monthly and daily environmental reports from Tom Shepker, which, on occasion, indicated that the pH of Pond 6 influent wastewater was 2.0 s.u. or below. (Witnesses: Stack, Shepker).

177. Mr. Stack was aware of acid spills at the facility, low pH wastewater going into the Mahoning River and leaks of spent pickle liquor from tanks. (Witness: Stack).

178. Personnel in the Environmental Department at WCI discussed the possibility that spent pickle liquor had gotten into the impoundments. Personnel in the Environmental Department at WCI also discussed what type of closure would be required under RCRA for the surface impoundments if spent pickle liquor had gotten into the impoundments. (Witness: Stock).

179. Every morning, CTP Area Supervisor, Herman Showalter, faxed to the Environmental Department, Turn Audits on which the operators

recorded pH readings, including the readings from the influent probe. (Witness: Showalter).

ECONOMIC BENEFIT DERIVED FROM THE VIOLATIONS

180. Mr. James Fagan testified on behalf of the United States as an expert on the economic benefit Defendant gained by failing to manage hazardous waste in its surface impoundments. Mr. Fagan has over 20 years experience, exclusively in the area of environmental management. He has a broad range of experience as an attorney, a management consultant, financial advisor, and professional environmental engineer. He has a Bachelor of Civil Engineering, a Master of Environmental Engineering and a law degree. Mr. Fagan has been frequently called upon to analyze economic benefit derived from violations of environmental laws and of the ability of defendants to pay penalties. He has been qualified as an expert in numerous federal jurisdictions on these issues and is qualified to testify in this case as an expert on these issues. (Witness: Fagan; Exhibit: No. 301).

181. Mr. Fagan made an analysis to calculate the amount of economic benefit WCI received by failing to perform, or by delaying the performance of, tasks required to operate Ponds 5, 6 and 6A as hazardous waste management units as required by RCRA. (Witness: Fagan; Exhibit: No. 301).

182. To properly comply with the RCRA requirements for Ponds 5, 6 and 6A, WCI was required to make expenditures to close Ponds 5, 6 and 6A, including dredging, disposal of dredged materials, and

backfilling the ponds; to install tanks to store wastewater with low pH prior to discharge and/or treatment at the WCI wastewater treatment facilities, so that it did not become hazardous waste regulated under RCRA; to implement a groundwater monitoring program; and to provide a closure and post closure plan together with necessary financial assurance. (Witnesses: Boyle, Beedle, Fagan; Exhibit: Nos. 261, 301).

183. It would cost WCI Steel approximately $1,500,000 to install a tank system for collection and equalization of steel finishing process wastewaters to replace Ponds 5 and 6 used currently for that purpose. This cost estimate is exclusive of costs to close the ponds; costs to pretreat certain steel finishing wastewaters to remove oil; and, other costs that may be expended to secure required regulatory permits. (Witness: Amendola; Exhibit: No. 300).

184. By avoiding or delaying those expenditures, WCI accrued an economic benefit. This benefit is measured by calculating the current value of delaying the capital cost of the various expenditures needed to avoid RCRA violations; and the current value of avoiding annual operation and maintenance costs. (Witness: Fagan; Exhibit: No. 301).

185. To determine the economic benefit, these costs must be expressed in today's dollars. For example, if $100 should have been spent two years ago, it is worth more today because of the two year opportunity to invest the money and earn a return. The technique for converting past or future cash flows to present value is called

discounting. Certain variables affect the analysis: the discount rate, the inflation rate, the marginal tax rate, and the period of noncompliance. (Witness: Fagan; Exhibit: No. 301).

186. The discount rate represents the "opportunity value of money." For WCI the discount rate is the minimum rate of return that it must earn to attract investment. WCI is a corporation that generally obtains capital from two types of investors. It may borrow money from banks or bond holders or it may sell stock to shareholders. The lender expects to be paid for the use of the money lent at a rate that reflects the credit worthiness of WCI. The shareholder expects to earn a return on its investment, through dividends and stock appreciation, at a rate that reflects the capacity of WCI to earn a profit. Because the shareholders' risk is higher, the rate to shareholders, the return on equity, is generally higher than the borrowing rate. (Witness: Fagan; Exhibit: No. 301).

187. WCI would be likely to use a combination of debt and equity to finance the capital costs of needed improvements. The discount rates should therefore reflect a weighted average cost of capital (WACC) that WCI must earn on any investment to attract sufficient financing, either debt or equity. The WACC is a company-specific rate reflecting the company's capital structure, its cost of debt financing and the riskiness of its stock. During the years of noncompliance, WCI capitalization was restructured. The ratio of debt to equity ranged from 2:1 to nearly 5:1. The after-tax interest rate

on debt was about 6.3%. An average equity rate of 15% was selected. The result is a conservative WACC of 8.5%. (Witness: Fagan; Exhibit: No. 301).

188. Construction costs are based on actual costs or estimates provided by WCI as of the dates of construction. Annual operation and maintenance costs are based on estimates as of the date the reconstructed facility began operation. Actual costs will vary during the period of delay because of the effect of inflation. The inflation rate varied from year to year and ranged from 1-3% during the period of noncompliance by WCI. Estimated costs are adjusted by an average inflation rate of 2.0%. (Witness: Fagan; Exhibit: No. 301).

189. WCI receives tax benefits from installing and operating the required treatment facilities. The actual "out-of-pocket" expenditures are reduced by these tax benefits. For this analysis a 40% tax rate was used. (Witness: Fagan; Exhibit: No. 301).

190. WCI did not comply with the RCRA hazardous waste requirements on time. Economic benefit accrues from these initial dates of noncompliance until actual compliance is achieved. WCI was in violation of the RCRA requirements for various periods of time, depending on the nature of the violation and the time when activities were undertaken to come into compliance. (Witnesses: Boyle, Fagan; Exhibit: No. 301).

191. Compliance with the RCRA hazardous waste requirements for Pond 5 and 6 and the implementation of the compliance activities

was required by November 1984. To date, WCI has not implemented the compliance activities necessary. For Mr. Fagan's analysis economic benefit was calculated from the first date of noncompliance, i.e., November 1988 until March 1999. Economic benefit continues to accrue until the corrective action is complete and until the civil penalty is paid. In addition, Mr. Fagan used March 1999 as the penalty payment date. (Witnesses: Boyle, Fagan; Exhibit: No. 301).

192. The economic benefit of delayed compliance is calculated by computing the present value of delaying certain capital expenditures and avoiding annual operation and maintenance expenditures, from the date of noncompliance to the date of compliance. (Witnesses: Fagan, Boyle, Beedle; Exhibit: Nos. 261, 301).

193. To avoid violating the RCRA requirements for Ponds 5, 6 and 6A, WCI needed to make capital expenditures for several compliance actions. These include: closure of the impoundments; hazardous waste disposal costs; dredging and backfilling of the impoundments; storage tanks as an alternative to the impoundments; a groundwater monitoring program; and a closure and post closure plan. (Witness: Fagan; Exhibit: Nos. 261, 301).

194. Economic benefit was estimated by calculating the difference between the after-tax cash flows that accrued by delaying the capital expenditures from the date compliance should have been achieved until the money was actually spent, including one replacement cycle, for the storage tank expenditure. Inflation was considered in

the analysis to recognize that construction cost would have been lower when construction was first necessary than when actual construction occurred. This adjustment reduces the amount of economic benefit. (Witness: Fagan; Exhibit: No. 301).

195. By delaying certain compliance activities needed to stay in compliance, WCI was able to avoid some recurring annual costs. For example, the storage tanks and the groundwater monitoring program have on-going costs, such as annual costs for electricity, chemicals, labor and routine maintenance ("O&M"). Also, the financial assurance requirements are considered part of the avoided annual costs. (Witness: Fagan; Exhibit: No. 301).

196. The method used by Mr. Fagan to calculate economic benefit of avoided operation, maintenance and reporting costs is similar to that used for capital costs. However, rather than merely delaying these costs, WCI avoided these costs altogether. The economic benefit is therefore the current value of the actual after-tax cost of the O & M costs avoided during the period of noncompliance. The O & M costs avoided during each year of noncompliance must be brought forward by adding interest to accurately estimate economic benefit. (Witnesses: Fagan, Beedle; Exhibit: No. 301).

197. The economic benefit enjoyed by WCI from delayed capital expenditures was $6,427,000 as shown in the following table:

SUMMARY OF ECONOMIC BENEFIT
DELAYED CAPITAL EXPENDITURES

#	COMPLIANCE ACTIVITY	DELAYED CAPITAL COSTS	ECONOMIC BENEFIT
1	Impoundments Closure	$2,752,365*	$2,144,000
2	Hazardous Waste Disposal Costs to Landfill	3,696,690*	2,556,000
3	Impoundments Backfilling	190,000*	151,000
4	Storage Tanks	1,500,000	1,367,000
5	Groundwater Monitoring Program	201,835*	188,000
6	Closure and Post Closure Plan	28,980*	21,000
7	Financial Assurance for Closure and Post Closure Plan	--	--
8	Financial Assurance for Third Party Liability Coverage	--	--
Total Economic Benefit from Delayed Capital Investment			$6,427,000

* One-time nonrecurring costs

(Witnesses: Fagan, Beedle; Exhibit: Nos. 261, 301).

198. The economic benefit enjoyed by WCI as a result of

avoiding O & M costs was $2,631,000 as shown in the following table:

SUMMARY OF ECONOMIC BENEFIT
AVOIDED ANNUAL EXPENDITURES

#	COMPLIANCE ACTIVITY	AVOIDED ANNUAL COSTS	ECONOMIC BENEFIT
1	Impoundments Closure	--	
2	Hazardous Waste Disposal Costs to Landfill	--	
3	Impoundments Backfilling	--	
4	Storage Tanks	$20,000	$181,000
5	Groundwater Monitoring Program	60,910	552,000
6	Closure and Post Closure Plan	1,288	12,000
7	Financial Assurance for Closure and Post Closure Plan	133,000	1,206,000
8	Financial Assurance for Third Party Liability Coverage	75,000	680,000
Total Economic Benefit from Delayed Capital Investment			$2,631,000

(Witness: Fagan; Exhibit: Nos. 261, 301).

199. The total economic benefit to WCI of its delayed compliance, therefore, is almost $9.1 million. (Witness: Fagan; Exhibit: No. 301).

ABILITY TO PAY A SUBSTANTIAL CIVIL PENALTY

200. Mr. Robert L. Harris testified on behalf of the United States as an expert on the ability of WCI to pay a penalty. Mr. Harris has almost 20 years experience as a charge accountant and auditor for various corporations, banking institutions and accounting firms. He is a Certified Public Accountant and is a member of The American Institute of Certified Public Accountants and the Alabama State Society of Certified Public Accountants. Mr. Harris has been frequently called upon to testify regarding the financial condition of corporations and performs audits and accounting services for a broad range of companies. He has been qualified as an expert in several federal jurisdictions and is qualified to testify in this case as an expert on these issues. (Witness: Harris; Exhibit: No. 302).

201. Mr. Harris conducted an analysis of the financial condition of WCI to assess its ability to pay a civil penalty of up to $34 million in this case. (Witness: Harris; Exhibit: No. 302).

202. From WCI's balance sheet for the three years ended October 31, 1998, 1997 and 1996, Mr. Harris measured WCI's ability to meet its current financial obligations from the amount of its working capital. Working capital is equal to current assets minus current

liabilities. Current assets represent assets which should be turned into cash within the next year. Current liabilities represent liabilities of the company which should be paid within the next year. In the case of WCI, working capital is very strong. For the years ended October 31, 1996 through 1998, the working capital of the company was $181,634,000, $85,902,000 and $107,840,000 respectively. (Witness: Harris; Exhibit: Nos. 297, 299, 302).

203. Mr. Harris also considered the dividends and management fees paid by WCI to its parent company, The Renco Group, Inc. The following schedule summarizes payments from WCI to its parent company for the previous five fiscal years:

Year Ended	Mgmt Fees	Dividends
10/31/94	$ 1,200,000	$ 87,950,000
10/31/95	1,200,000	-0-
10/31/96	1,200,000	6,567,000
10/31/97	1,200,000	118,000,000
10/31/98	1,200,000	14,100,000
Total	$ 6,000,000	$ 226,617,000

(Witnesses: Harris, Stack; Exhibit: Nos. 297, 299, 302).

204. Another factor Mr. Harris considered in examining the financial condition of WCI is the cash flow generated by operations. Cash flow generated by operations was calculated by taking the net

income of the company and adding back certain non cash expenditures such as depreciation and amortization. For the previous five fiscal years from October 31, 1994 through 1998, WCI has generated cash from operations of $33,613,000, $38,818,000, $52,767,000, $48,072,000 and $46,654,000 respectively. The cash flow from operations for 1997 is calculated before an extraordinary loss from early retirement of debt of $19,606,000. (Witness: Harris; Exhibit: Nos. 297, 299, 302).

205. Based on the company's strong working capital position, the cash flow generated from operations over the previous five years, as well as the company's extremely low debt repayment schedule (approximately $324,000 per year over the next five years) and the funds currently being spent on fixed assets each year (averaging approximately $23,000,000 each of the previous five years), Mr. Harris testified that WCI has the ability to pay a $34,000,000 penalty. In addition, Mr. Harris testified that the impact of this penalty on the company would be far less had the parent company not drained WCI of $232,617,000 in management fees and dividends over the five previous fiscal years. (Witness: Harris; Exhibit: Nos. 297, 299, 302).

First Claim for Relief:

206. One or more of the surface impoundments at Defendant's facility, including Ponds 5, 6 and 6A, have contained wastewaters from WCI's steelmaking processes that exhibited a pH of 2 or less during the time period relevant to the United States' Complaint. (Witnesses: Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 37,

38, 39, 40, 41, 42, 43, 44, 143, 168, 268).

207. Wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A have exhibited the characteristic of corrosivity and are a hazardous waste within the meaning of 40 C.F.R. § 261.20 and 261.22. (Witnesses: Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 37, 38, 39, 40, 41, 42, 43, 44, 143, 168, 268).

208. Wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A have included hazardous wastes from specific sources listed at 40 C.F.R. Part 261, Subpart D, including Spent Pickle Liquor. (Witnesses: Holt, Zeuner, Stock; Exhibit Nos. 111, 225, 310).

209. Ponds 5 and 6 have been in use at the Defendant's facility for a period prior to 1950, have remained in continuous use to the current date, and have not been closed. (Witness: Amendola, Zeuner).

210. Pond 6A was added on or about 1986 and has been in continuous use to the current date and has not been closed. (WCI Admission No. 11; Witness: Zeuner).

211. Ponds 5, 6 and 6A, have continued to receive process wastewaters from November 8, 1988, up to and continuing to the date of filing of the United States' Complaint. (WCI Admission No. 9; Witnesses: Zeuner).

212. Defendant does not have a permit issued pursuant of Section 3005 or 3006 of RCRA, 42 U.S.C. §§ 6925 or 6926, to manage

treat or store hazardous wastes in Ponds 5, 6, and 6A. (WCI Admissions Nos. 40, 41, 42; Witnesses: Boyle, Allen; Exhibit: No. 162a).

213. On November 11, 1993, U.S. EPA issued to WCI the Federal portion of a RCRA hazardous waste permit. At the time that the Federal hazardous waste permit became effective, Defendant WCI had an effective RCRA permit which authorized it to conduct hazardous waste management activities only as specified in the RCRA permit. At all times relevant to this action, the federal permit did not authorize the management of hazardous waste in Ponds 5, 6 and 6A. (Witness: Boyle; Exhibit: No. 25).

214. Under its permits, whenever WCI becomes aware that it failed to submit any relevant fact, or submitted incorrect information in the permit application, it is required to promptly submit such facts or information. (Witnesses: Allen, Boyle; Exhibit: Nos. 25, 162a).

215. WCI is prohibited by its Part B permit from storing hazardous waste that is not identified in that permit. (Witnesses: Allen, Boyle; Exhibit No. 162a).

216. Defendant has managed a hazardous waste not authorized by its permit in one or more of its Ponds 5, 6 and 6A. (Witnesses: Boyle, Allen, Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 25, 37, 38, 39, 40, 41, 42, 43, 44, 143, 162a, 168, 268).

217. Pursuant to the State of Ohio Hazardous Waste Management Permit, dated August 12, 1993, at all times relevant to this action,

WCI was prohibited from operating any hazardous waste management unit except in accordance with that permit. (Witnesses: Allen; Exhibit No. 162a).

218. From September 1988, to the present, the Defendant has operated hazardous waste management units at the facility, including Ponds 5, 6 and 6A, without obtaining a permit issued pursuant to RCRA authorizing such operation. (WCI Admissions Nos. 40 and 41; Witnesses: Boyle, Allen, Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 25, 37, 38, 39, 40, 41, 42, 43, 44, 143, 162a, 168, 268).

219. Ponds 5, 6 and 6A do not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), because no timely notice was ever filed by WCI stating that the facility was treating, storing or disposing of a hazardous waste in Ponds 5, 6 and 6A, and because no timely Part A application was filed by WCI pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, stating that the facility was treating, storing, or disposing of a hazardous waste in Ponds 5, 6 and 6A. (WCI Admissions Nos. 42, 50; Witness: Allen, Boyle).

Second Claim for Relief

220. From September 1988, to the present, the Defendant has operated hazardous waste management units at its facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part A application and without amending any Part A application pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, 40

C.F.R. § 270.13 and O.A.C. § 3745-50-43. (WCI Admission No. 40; Witnesses: Boyle, Allen, Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 25, 37, 38, 39, 40, 41, 42, 43, 44, 143, 162a, 168, 268).

Third Claim for Relief

221. From September 1988, to the present, the Defendant has operated hazardous waste management units at its facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part B application and without amending any Part B application pursuant to 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44. (WCI Admission No. 41; Witnesses: Boyle, Allen, Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 25, 37, 38, 39, 40, 41, 42, 43, 44, 143, 162a, 168, 268).

Fourth Claim for Relief

222. Defendant's Ponds 5, 6 and 6A do not meet the minimum technological standards of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), or in 40 C.F.R. § 264.221 or O.A.C. § 3745-56-21 by November 8, 1988. (WCI Admission No. 43).

223. During the period from November 8, 1988, until at least 1995, Defendant continued to accept hazardous wastes at Ponds 5, 6 and 6A, and failed to close the impoundments as required by Section 3005(j) of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228, and O.A.C. § 3745-56-28. (Witnesses: Boyle, Allen, Lowry, Beedle, Conti, Lins, Skubak, Ritter; Exhibit Nos. 1, 2, 3, 25, 37, 38, 39, 40, 41, 42, 43,

44, 143, 162a, 168, 268).

Fifth Claim for Relief

224. During the period from November 8, 1988, to the present, Defendant did not have a written closure plan developed in compliance with federal and state RCRA closure provisions at 40 C.F.R. § 264.112, and O.A.C. § 3745-55-12 that included closure of Ponds 5, 6 and 6A. (Witnesses: Allen, Boyle).

Sixth Claim for Relief

225. During the period from November 8, 1988, to the present, the Defendant has failed to comply with the closure costs and financial assurance requirements of 40 C.F.R. Part 264 and O.A.C. § 3745-55-40 through 3745-55-51, for its hazardous waste management units, Ponds 5, 6 and 6A. (Witness: Allen).

Seventh Claim for Relief

226. During the period from November 8, 1988, to the present, WCI has failed to install, operate, and maintain a ground-water monitoring system for its hazardous waste management units, Ponds 5, 6 and 6A, which meets the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-55-02. (Witnesses: Reusch, Stock).

227. Ground-water monitoring wells installed by WCI to date do not meet the requirements of RCRA, 40 C.F.R. Part 264, Subpart F and O.A.C. §§ 3745-54-90 through 3745-55-02. (Witness: Reusch).

Eighth Claim for Relief

228. At various times from July 8, 1987, until at least 1995, Defendant has land disposed of hazardous waste with a pH of less than or equal to 2.0, and exhibiting the characteristic of corrosivity, and has land disposed spent pickle liquor, in or from Ponds 5, 6 or 6A, which did not meet the treatment standards specified at O.A.C. § 3745-59-40 through 3745-59-43, in violation of 40 C.F.R. §§ 268.32 and 268.35(a), and O.A.C. §§ 3745-59-32 and 3745-59-35(A). (Witness: Boyle).

II. CONCLUSIONS OF LAW

JURISDICTION

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C.§ 6928(a), and pursuant to 28 U.S.C. §§ 1331, 1345 and 1355.

2. WCI is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Ohio Administrative Code ("O.A.C.") § 3745-50-10(A)86, and 40 C.F.R. § 260.10.

3. WCI's integrated steel plant, and all buildings, structures and surface impoundments located there, is a "facility" within the meaning of 40 C.F.R. § 260.10 and O.A.C. § 3745-50-10(A)(35). (WCI Admission No. 59; Pleading: Cmp. ¶ 23; Witness: Boyle).

4. The United States has given notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. The Court has personal jurisdiction over the Defendant, WCI Steel, Inc., a corporation organized under the laws of the State of Ohio and doing business in the State of Ohio pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

VENUE

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), because it is the judicial district in which WCI's Warren, Ohio, facility is located and in which the alleged violations occurred.

LIABILITY

7. Congress enacted the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6901 et seq., to regulate the treatment, storage, transportation and disposal of solid and hazardous wastes and to ensure that such wastes "managed in a manner which protects human health and the environment." 42 U.S.C. § 6902(a)(4) and (b)

8. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the operation of any facility that treats, stores, or disposes of hazardous wastes, except in accordance with a permit. United States v. Heuer, 4 F.3d 723, 730 (9th Cir. 1993)("It is fundamental that an entity which performs a hazardous waste activity for which a permit is

required under RCRA may not legally perform that activity unless it has a permit for the relevant activity.").

9. Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6921-6939. U.S. EPA has promulgated regulations pursuant to Subtitle C of RCRA that set forth standards and requirements that are applicable to generators and transporters of hazardous waste and owners and operators of facilities that treat, store, or dispose of hazardous waste.

10. Because U.S. EPA could not issue permits to all regulated entities by November 19, 1980, RCRA's effective date, RCRA provided that facilities meeting certain operational and permit application requirements could obtain a regulatory approval, known as "interim status," which allowed facilities to operate pending final administrative action on a permit application. 42 U.S.C. § 6925(e).

11. In order to qualify for such interim status, a facility had to demonstrate that: 1) it was in existence on November 19, 1980; 2) it had complied with Section 3010(a) of RCRA concerning notification of hazardous waste activity; and 3) it had made an application for a permit, Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

12. Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, provide that a state may obtain federal authorization to administer the RCRA hazardous waste management program in that state, provided the state requirements are consistent with and equivalent to

the federal requirements in areas including identification and listing of hazardous wastes, requirements for generators and transporters of hazardous wastes, hazardous waste management facilities, requirements with respect to permits and permit applications, compliance programs, and enforcement authority and public participation in the permitting process.

13. Pursuant to RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), both the federal and state governments may enforce the state authorized programs.

14. In addition to the general oversight authority which U.S. EPA retains over authorized state programs, e.g., 42 U.S.C. § 6926(e) (governing withdrawal of authorization if state is not properly administering RCRA), RCRA expressly provides for EPA's concurrent judicial and administrative enforcement authority. 42 U.S.C. § 6928(a). See generally Ciba-Geigy v. U.S. EPA, 3 F.3d 40 (2d Cir. 1993); United States v. Allegan Metal Finishing Co., 696 F. Supp. 275, 282 (W.D. Mich. 1988)("Once a state receives authorization to implement its own statutory scheme with respect to hazardous waste 'in lieu of the federal program,' it is clear that Congress intended that EPA retain independent enforcement authority."); United States v. Environmental Waste Control, Inc., 698 F. Supp. 1422, 1435-37 (N.D. Ind. 1988)(EPA has concurrent enforcement authority under RCRA to enforce those parts of the RCRA hazardous waste program it has authorized a state to enforce); United States v. Power Engineering

Co., 10 F. Supp.2d 1145, 1147 (D. Colo. 1998)(EPA retains the right to bring enforcement actions compelling compliance with state hazardous waste regulations.); United States v. Bethlehem Steel Corp., 698 F. Supp. 1422, 1435 (N.D. Ind. 1988)(EPA has concurrent enforcement authority under RCRA to enforce those parts of the RCRA hazardous waste program it has authorized a state to enforce.).

15. Once a state is authorized to implement this program, the state regulations provide the substantive requirements that must be met at facilities located within the state. To the extent that the state is authorized, the state regulations -- and not the federal regulations -- are applicable in the state. AM International, Inc. v. Datacard Corp, DBS Inc., 106 F.3d 1342, 1349 (7th Cir. 1997)("If a state program receives EPA authorization, its standards supersede federal regulations."); United States v. T&S Brass and Bronze Works, Inc., 865 F.2d 1261 (4th Cir. 1988)(Circuit Court remanded injunctive relief granted by district court for imposition of state regulations in lieu of federal regulations.).

16. During the period of July 15, 1983, through January 31, 1986, the State of Ohio administered Ohio's hazardous waste management program pursuant to interim authorization by U.S. EPA, except that U.S. EPA reserved authority to issue final RCRA permits. Ohio's interim authorization expired by operation of law, 42 U.S.C. 6926(c), as of January 31, 1986. From February 1, 1986, through June 30, 1989, U.S. EPA operated the federal hazardous waste program in Ohio. Ohio

continued to perform inspections and other agreed upon tasks under a Cooperative Agreement between the State and U.S. EPA. U.S. EPA granted final authorization to the State of Ohio on June 30, 1989, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), to administer and enforce the State's hazardous waste program in the State of Ohio. The regulations comprising the applicable State hazardous waste management program, except corrective action activities, for the State of Ohio were incorporated by reference into federal law at 40 C.F.R. § 272.1801(a)(1). 54 Fed. Reg. 27173 (June 28, 1989); 57 Fed. Reg. 4162 (February 4, 1992). The statutes comprising the authorized State program are listed at 40 C.F.R. § 272.1801 (a)(2)(i) and (ii).

17. To determine whether a material is a "hazardous waste," it must first be determined to be a "solid waste." Pursuant to 40 C.F.R. § 261.2, "[a] solid waste is any discarded material that is not excluded by [any other provision]."

18. Pursuant to 40 C.F.R. § 261.2(a)(2), a discarded material is any material which is:

> (i) <u>abandoned</u>, as explained in paragraph (b) of this section; or
>
> (ii) <u>recycled</u>, as explained in paragraph (c) of this section; or
>
> (iii) considered <u>inherently waste like</u>, as explained in paragraph (d) of this section.

19. Pursuant to 40 C.F.R. § 261.3, a solid waste is

determined to be a hazardous waste if:

> (1) It is not excluded from regulation as a hazardous waste under [any other provision]; and
>
> (2) It meets any of the following criteria:
>
> (i) It exhibits any of the characteristics of [ignitability, corrosivity, reactivity, or toxicity]. . .
>
> (ii) It is listed in [40 C.F.R. Part 261] Subpart D . . .
>
> (iii) It is a mixture of a solid waste and a hazardous waste that is listed in Subpart D . . . solely because it exhibits one or more of the characteristics of hazardous wastes identified in [40 C.F.R. Part 261] Subtitle C . . . unless the resultant mixture no longer exhibits any characteristic . .
>
> (iv) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D [and has not otherwise been excluded].

20. Pursuant to 40 C.F.R. § 261.22 and O.A.C. § 3745-51-22,

> (a) A solid waste exhibits the characteristic of corrosivity if a <u>representative sample</u> of the waste has either of the following properties:
>
> > (1) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using method 9040 in "Test Methods for Evaluating Solid Waste, Physical /Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

21. "Representative Sample" means a sample of a universe or whole (e.g. waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole. 40 C.F.R. § 260.10.

22. Pursuant to 40 C.F.R. § 261.20,

> (a) a solid waste, as defined in § 261.2, which is not

excluded from regulation as a hazardous waste under § 261.4, is a hazardous waste if it exhibits any of the characteristics if [Subtitle C].

* * *

(c) for purposes of [Subtitle C], the Administrator will consider a sample obtained using the applicable methods specified in [§ 261], Appendix I to be a <u>representative sample</u> within the meaning of Part 260 of this Chapter.

23. Appendix I to Part 261 provides, in pertinent part, as follows:

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid - ATSM Standard D140-70

* * *

Liquid waste in pits, ponds, lagoons and similar reservoirs. - "Pond Sampler" described in "Test Methods for Evaluation of Solid Waste, Physical/Chemical Methods."

24. Pursuant to 40 C.F.R. §§ 261.20 and Appendix I, a sample of wastewater extracted using a beaker held in the flow of the wastewater as it enters or exits a surface impoundment is a "representative sample" within the meaning of 40 C.F.R. § 260.10.

25. Pursuant to 40 C.F.R. § 261.32 and O.A.C. § 3745-51-32, spent pickle liquor generated by steel finishing operations within the iron and steel industry, has been determined to be hazardous and has been assigned U.S. EPA hazardous waste no. K062.

26. In determining whether a waste is a hazardous waste under RCRA, courts are not limited to scientific evidence, such as sampling data, but may also rely on other non-scientific, circumstantial evidence. United States v. Self, 2 F.3d 1071, 1086 (10th Cir. 1992) citing United States v. Baytank, Inc., 934 F.2d 599, 614 (5th Cir. 1991) (holding that to establish criminal liability under RCRA, United States not required to prove wastes were hazardous through test data, but could prove they are hazardous through witness testimony and company records); accord Commercial Oil Service, Inc., 88 B.R. 126,127-128 (N.D. Ohio 1987) (evidence including inspectors' observations at site, statement from corporate principle that storage tank contained chlorinated solvents and hazardous waste facility permit application signed by authorized representative of corporation admitting corporation stored and disposed of large quantities of hazardous wastes at site, was sufficient to establish existence of hazardous waste at facility).

27. However, "the fact that circumstantial evidence may show the pH could not have been consistently low over a period of years . . . does not controvert the fact that on at least one occasion the pH was that low. United States v. Conservation Chemical Co., 733 F. Supp. 1215, 1225 (N.D. Ind. 1989) (rejecting defendant's argument that statement in its RCRA Part B permit application that pH of wastewater in defendant's surface impoundment was 1.8 must be inaccurate since a metal tank left in the impoundment for several years did not show

significant deterioration as it would have if immersed in liquid having a pH of 1.8.).

28. During the relevant time period, the wastewater treated, stored and disposed of by WCI in Ponds 5, 6 and 6A exhibited the hazardous waste characteristic of corrosivity, within the meaning of 40 C.F.R. § 261.22.

29. The wastewater treated, stored and disposed of by WCI in Ponds 5, 6 and 6A was hazardous waste, withing the meaning of 40 C.F.R. § 261.3.

30. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 270.1(b), the storage of hazardous waste in a surface impoundment is prohibited without a permit or interim status.

31. Pursuant to 40 C.F.R. § 260.10, a "surface impoundment" is defined as:

> a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes of wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

32. Ponds 5, 6 and 6A are "surface impoundments" within the meaning of 40 C.F.R. § 260.10.

33. Under Section 3005(j) of RCRA, 42 U.S.C. § 6925(j), all interim status surface impoundments in existence on November 8, 1984, were required to meet the minimum technological requirements of

Section 3004(o), 42 U.S.C. § 6924(o), by November 8, 1988, unless granted an exemption by U.S. EPA or the State. The owner or operator of a non-exempt surface impoundment that failed to implement the minimum technology requirements of Section 3005(j) by November 8, 1988, was required to cease accepting hazardous waste for disposal in the unit, and to expeditiously close the unit in accordance with the applicable closure regulation found at 40 C.F.R. Part 264, Subpart G.

34. The owner or operator of a facility with interim status must also comply with 40 C.F.R. Part 265 or equivalent state regulations. These regulations establish standards governing the treatment, storage, or disposal of hazardous waste.

35. Pursuant to 40 C.F.R. § 265.1(b), hazardous waste management facilities that fail to take steps necessary to obtain interim status are nonetheless subject to the regulations of 40 C.F.R. Part 265.

36. Pursuant to 40 C.F.R. Part 264, U.S. EPA established minimum national standards which define the acceptable management of hazardous wastes. These standards apply to owners and operators of all facilities that treat, store or dispose of hazardous waste unless specifically excluded.

37. Pursuant to 40 C.F.R. § 270.13 and O.A.C. § 3745-50-43, an owner or operator of a hazardous waste management unit is required to include in a Part A application all past, present and future hazardous waste treatment, storage, and disposal areas. O.A.C. §

3745-50-45 and 40 C.F.R. § 270.72, require the owner or operator of a hazardous waste facility with interim status to amend its Part A application prior to making certain specified changes in its treatment, storage, or disposal of hazardous wastes.

38. Pursuant to 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44, the owner or operator of a hazardous waste management unit is required to include in a Part B application, among other things, chemical and physical analysis of the hazardous waste and hazardous debris to be handled at the facility, including all information which must be known to treat, store or dispose of the wastes properly.

39. Pursuant to 40 C.F.R. § 264.112, and O.A.C. § 3745-55-2 the owner and operator of a hazardous waste management unit is required to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

40. Pursuant to 40 C.F.R. §§ 264.140 through 264.151, and O.A.C. § 3745-55-42, the owner or operator of a hazardous waste management facility is required to have and maintain a detailed written estimate, in current dollars, of the cost of closing hazardous waste management units in accordance with the applicable provisions of 40 C.F.R. Part 264 and O.A.C. §§ 3745-55-40 through 3745-55-51.

41. The owner or operator of a hazardous waste management unit is required to comply with the financial assurance provisions of 40 C.F. R. § 264.143 and O.A.C. § 3745-55-43.

42. The owner or operator of a surface impoundment is required to install, operate, and maintain a ground-water monitoring system which satisfies the criteria contained at 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-54-99 and 3745-55-01 through 3745-55-02.

43. Section 3010(a) of RCRA, 42 U.S.C. § 6926(a), requires any person who generates or transports hazardous waste, or owns or operates a facility for the treatment, storage, or disposal of hazardous waste, to notify U.S. EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA. Section 3010 of RCRA also provides that no hazardous waste subject to regulations may be transported, treated, stored, or disposed of unless the required notification is given.

44. RCRA, as amended by HSWA, also prohibits the land disposal of RCRA hazardous wastes unless treatment standards are met. RCRA Section 3004(d) through (k) and (m), 42 U.S.C. § 6924(d) through (k) and (m).

45. Section 3004(d) and (m) of RCRA, 42 U.S.C. § 6924(d) and (m), prohibit the land disposal of hazardous wastes specified in a published schedule except for methods of land disposal which the Administrator of the U.S. EPA determines will be protective of human health and the environment for as long as the waste remains hazardous, or except for hazardous waste treated to a level that minimizes threats to human health and the environment.

46. "Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes. 40 C.F.R. § 268.2(c) and O.A.C. § 3745-59-02.

47. Under Section 3004(g)(5) and (m) of RCRA, 42 U.S.C. § 6924(g((5), the U.S. EPA promulgated regulations implementing the land disposal restrictions for hazardous waste, codified at 40 C.F.R. Part 268. 40 C.F.R. § 268.32 and O.A.C. § 3745-59-32. The federal regulations provide that liquid wastes having a pH less than or equal to 2, are prohibited from land disposal. O.A.C. §§ 3745-59-32 and 3745-59-35(A), provide that all wastes specified as corrosive hazardous waste in O.A.C. § 3745-51-22, 40 C.F.R. §261.22(a), are prohibited from land disposal, unless the waste meets the applicable treatment standards in Section 3745-59-40 through 43 of the O.A.C. (40 C.F.R. Part 268, Subpart D).

48. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that whenever, on the basis of any information, the U.S. EPA determines that any person has violated or is violating any requirement of RCRA, including violations in an authorized state, the United States may file a civil action in federal district court to obtain appropriate relief, including a temporary or permanent injunction.

49. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates any requirement of RCRA shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 per day of noncompliance for each violation.

50. Pursuant to the U.S. EPA Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 3, 1996), as corrected by 62 Fed. Reg. 13514 (March 20, 1997), effective January 30, 1997, and mandated by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, civil penalties under RCRA are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

51. In a civil case seeking penalties, RCRA and its regulations operate on a strict liability basis. United States v. Liviola, 605 F. Supp. 96, 100 (N.D. Ohio 1985); United States v. Production Plated Plastics, Inc., 762 F. Supp. 722, 727 (W.D. Mich. 1991); United States v. Hayes International Corp., 786 F.2d 1499 (11th Cir. 1986). Consequently, the United States need only prove that the conditions defined to be violations in the regulations occurred and need not prove the Defendant acted negligently, willfully or with any other mental state. Sierra Club v. Abston Construction Co., Inc., 620 F.2d 41 (5th Cir. 1980); United States v. Earth Sciences, Inc., 599 F.2d 368 (10th Cir. 1979).

52. To establish the specific violations of RCRA alleged in its complaint, the United States must first prove four general elements: (1) that Defendant is a "person" within the meaning of RCRA;

(2) that Defendant's Warren, Ohio steel plant is a "facility" within the meaning of RCRA; (3) that Defendant did not have a permit or interim status for the treatment, storage or disposal of hazardous waste in the Ponds; and (4) that Defendant treated, stored or disposed of hazardous waste in the Ponds. United States v. T & S Brass & Bronze Works, Inc., 681 F. Supp. 314, 317 (D.S.C. 1988); United States v. Conservation Chemical Co., 733 F. Supp. 1215, 1220 (N.D. Ind. 1989).

CLAIMS FOR RELIEF

First Claim for Relief

53. Ponds 5, 6 and 6A at the facility are hazardous waste management units as defined by 40 C.F.R. § 260.10, and O.A.C. § 3747-50-10(A)(49) and are subject to regulation as hazardous waste management units subject to the provisions of RCRA and the O.A.C.

54. The wastewater treated, stored and disposed of in the impoundments at times relevant to the complaint was a "solid waste," pursuant to 40 C.F.R. § 261.2(a)(2). The wastewater treated, stored an disposed of by WCI in Ponds 5, 6 and 6A, at times relevant to this action contained spent pickle liquor, which is listed by U.S. EPA as a corrosive hazardous waste under RCRA regulations at 40 C.F.R. Part 261, and hazardous waste that exhibited the characteristic of corrosivity, defined as a solid waste which is aqueous and has a pH of

2 or less. 40 C.F.R. § 261.22 and O.A.C. § 3745-51-22.

55. Pursuant to 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code ("ORC") §§ 3734.02(F) and 3734.04 ; and O.A.C. § 3745-50-45, the owner and operator of a hazardous waste management unit is prohibited from operating a hazardous waste management unit except in accordance with a permit issued pursuant to RCRA, unless the facility had interim status.

56. Defendant was required to obtain a permit, issued pursuant to the provisions of 42 U.S.C. § 6925, and the O.A.C. §§ 3745-40-40 through 3745-40-45, covering all units at the facility that manage, treat or store hazardous waste, including Ponds 5, 6 and 6A, or to expeditiously close those units in accordance with the applicable closure requirements.

57. Defendant WCI's operation of Ponds 5, 6 and 6A without a permit and without interim status constitutes a violation of RCRA and the federally approved hazardous waste management program for the State of Ohio.

58. Each day that Defendant operated Ponds 5, 6 and 6A without a permit or without attaining interim status pursuant to 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code ("ORC") §§ 3734.02(F) and 3734.04 ; and O.A.C. § 3745-50-45, constitutes a separate violation of RCRA.

59. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil

penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

60. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Second Claim for Relief

61. Each day that Defendant operated Ponds 5, 6 and 6A without including these hazardous waste management units in any Part A application and without amending any Part A application, constitutes a separate violation of Section 3010 of RCRA, 42 U.S.C. § 6930, 40 C.F.R. § 270.13 and O.A.C. § 3745-50-43.

62. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA

after January 30, 1997.

63. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Third Claim for Relief

64. Each day that Defendant operated Ponds 5, 6 and 6A without including these hazardous waste management units in any Part B application and without amending any Part B application, constitutes a separate violation of 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44.

65. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

66. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Fourth Claim for Relief

67. Defendant was required to close the nonconforming surface impoundments, Ponds 5, 6 and 6A, expeditiously after November 8, 1988, in accordance with the applicable closure regulation found at 40 C.F.R. § 264.228 and O.A.C. § 3745-56-28.

68. Each day that Ponds 5, 6 and 6A failed to meet the minimum technological standards of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), and each day that Defendant failed to close Ponds 5, 6 and 6A, as required by Section 3005(j) of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228, and O.A.C. § 3745-56-28, constitute separate violation of these requirements.

69. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

70. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Fifth Claim for Relief

71. Each day that Defendant did not have a written closure plan in compliance with federal and state RCRA closure provisions at 40 C.F.R. § 264.112, and O.A.C. § 3745-55-12 for the closure of Ponds 5, 6 and 6A, constitutes a separate violation of these requirements.

72. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

73. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Sixth Claim for Relief

74. Each day that Defendant failed to comply with the closure costs and financial assurance requirements of 40 C.F.R. Part 264 and O.A.C. § 3745-55-40 through 3745-55-51, for its hazardous waste management units, Ponds 5, 6 and 6A, constitutes a separate violation of these requirements.

75. For times relevant to this action, pursuant to Section

3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

76. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Seventh Claim for Relief

77. Each day that Defendant failed to install, operate, and maintain a ground-water monitoring system for its hazardous waste management units, Ponds 5, 6 and 6A, which meets the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-55-02, constitutes a separate violation of these regulations.

78. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub.

L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

79. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

Eighth Claim for Relief

80. WCI's land disposal of hazardous waste with a pH of less than or equal to 2.0, and exhibiting the characteristic of corrosivity, and WCI's land disposal of spent pickle liquor, in or from Ponds 5, 6 or 6A, which did not meet the treatment standards specified at O.A.C. § 3745-59-40 through 3745-59-43, in violation of 40 C.F.R. §§ 268.32 and 268.35(a), and O.A.C. §§ 3745-59-32 and 3745-59-35(A), constitute continuing violations of these regulations.

81. For times relevant to this action, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each violation of RCRA and the federally approved hazardous waste management program for the State of Ohio. The civil penalties are not to exceed $25,000 per day for each day of violation prior to January 30, 1997. Pursuant to Pub. L. 104-134, 61 Fed. Reg. 69360 and 62 Federal Register 13514, civil penalties are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

82. Unless enjoined by this Court, Defendant will continue these violations of RCRA, 42 U.S.C. 6901 et seq., the Ohio Administrative Code ("O.A.C.), and Defendant's hazardous waste management permits issued pursuant to RCRA and the O.A.C.

INJUNCTIVE RELIEF

83. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that whenever, on the basis of any information, the U.S. EPA determines that any person has violated or is violating any requirement of RCRA, including violations in an authorized state, the United States may file a civil action in federal district court to obtain appropriate relief, including a temporary or permanent injunction. In light of the numerous violations detailed above, and the continuing nature of these violations, injunctive relief to ensure current and future compliance by WCI with RCRA is appropriate. The Court finds that the injunctive relief proposed by the United States is warranted by the circumstances of this case. Specifically, WCI shall cease the acceptance of hazardous wastes into Ponds 5, 6 and 6A forthwith, and close these hazardous waste management units, in full compliance with the requirements of Section 3005(j) of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228, and O.A.C. § 3745-56-28. WCI shall replace ponds 5, 6 and 6A with an alternative compliant system. WCI shall submit a closure plan for approval by U.S. EPA and the State of Ohio.

84. In addition, based on the violations established in this

action and Defendant's responses to those violations, WCI shall develop and implement an environmental management system, including new or upgraded employee environmental training, in order to ensure WCI's compliance with RCRA on a continuous basis. Lastly, WCI shall (i) undertake a comprehensive audit of its compliance with RCRA and its current hazardous waste management permit; (ii) report its findings to U.S. EPA and the State of Ohio along with a proposed plan and schedule to achieve compliance with RCRA and its current hazardous waste management permit; (iii) implement the plan and schedule as approved or modified by U.S. EPA and the State of Ohio; and (iv) undertake a second comprehensive audit to track WCI's implementation of the approved plan and to measure the overall effectiveness of WCI's environmental management system. See Weinberger v. Romero-Barcelo, 456 U.S. 305, 318-20 (1982); CSX Transp., Inc., v. Tennessee State Bd. of Equalization, 964 F.2d 548, 551 (6th Cir. 1992) (Where Congress has expressly authorized the granting of injunctive relief to halt or prevent a statutory violation, the court must determine only whether there is "reasonable cause" to believe that a violation has occurred or is about to occur in order to issue an injunction.); see also U.S. EPA v. Environmental Waste Control, Inc., 917 F. 2d 327, 331-332 (7th Cir. 1990); United States v. Bethlehem Steel Corp., 38 F.3d 862, 867 (7th Cir. 1995); United States v. Production Plated Plastics, Inc., 762 F. Supp. 722, 729 (W.D. Mich. 1991); United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. 314, 322 (D.S.C. 1988); United States

v. Vineland Chemical Co., 31 Env't Rep. Cas. (BNA) 1720, (D.N.J. April 30, 1990), aff'd, 931 F.2d 52 (3d Cir. 1991) 20 Envtl. L. Rep. 21,398, 1990 WL 157509 (D.N.J.); United States v. Maiorano, 20 Envtl. L. Rep. 20,444, 1990 WL 6641 (N.D. Ill.); United States v. Production Plated Plastics, Inc., 1992 WL 397725 (N.D. Mich.).

CIVIL PENALTIES

85. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that:

> any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of violation shall, for purposes of this subsection, constitute a separate violation.

86. Pursuant to the U.S. EPA Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 3, 1996), as corrected by 62 Fed. Reg. 13514 (March 20, 1997), effective January 30, 1997, and mandated by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, civil penalties under RCRA are not to exceed $27,500 per day for each violation of RCRA after January 30, 1997.

87. Under RCRA, the "assessment of civil penalties is committed to the informed discretion of the court...." United States v. Ekco Housewares, Inc., 62 F.3d 806, 814 (6th Cir. 1995); United States v. Bethlehem Steel Corp., 829 F. Supp. 1047, 1055 (N.D. Ind. 1993). "In exercising this discretion, the Court should give effect to the major purpose of a civil penalty: deterrence." United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. 314, 322 (D.S.C.

1988), rev'd in part on other grounds, 865 F.2d 1261 (4th Cir. 1988). See also United States v. Production Plated Plastics, Inc., 35 Env't Rep. Cas. (BNA) 1517, 1523 (W.D. Mich. Sept. 4, 1992), aff'd, 61 F.3d 904 (6th Cir. 1995), cert. denied, 116 S. Ct. 1416 (1996).

88. Although directed in part to the violators themselves, the deterrent value of a substantial civil penalty is focused squarely on others to whom the law also applies:

> We must be clear to the regulated community that violations of the law are not treated lightly, especially where the regulations protect public health and the environment.... Too small a penalty risks being considered by violators as "an acceptable cost of violation, rather than as a deterrence to violation."

United States v. Vineland Chemical Co., Inc., 31 Env't Rep. Cas. (BNA) 1720, 1728 (D.N.J. April 30, 1990), aff'd, 931 F.2d 52 (3d Cir. 1991)(citing United States v. ITT Continental Banking Co., 420 U.S. 223, 231 (1975)). See also Ekco Housewares, 62 F.3d at 816 ("The district court properly considered the deterrence effect not just on Ekco, but on the regulated community as a whole"). "A civil penalty must provide a meaningful deterrence without being overly punitive; it should be large enough to hurt; it should deter anyone in the future from showing a similar lack of concern with compliance." United States v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1244 (N.D. Ind. 1989), aff'd, 917 F.2d 327 (7th Cir. 1990), cert. denied 499 U.S. 975 (1991) (citing United States v. Phelps Dodge Industries, Inc., 589 F. Supp. 1340, 1367 (S.D.N.Y. 1984)). The probability that

a significant penalty will be imposed must be high enough that noncompliance represents a substantial monetary risk.

89. Although RCRA does not outline precise factors that should be taken into account when assessing a penalty, this Court adopts the approach used by a significant number of Courts in construing a similar civil penalty provision of the Clean Water Act, and finds that the maximum statutory penalty exposure is the appropriate departure point for the Court's analysis. See Chesapeake Bay Foundation v. Gwaltney of Smithfield 791 F.2d 304, 316 (4th Cir. 1986); Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc., 897 F.2d 1128, 1137 (11th Cir. 1990); Public Interest Group of New Jersey, Inc. v. Powell Duffryn Terminals Inc., 913 F.2d 64, 79 (3d Cir. 1990), cert. denied, 111 S.Ct. 1018 (1991); United States v. Roll Coater, Inc., 21 Envtl. L. Rep. 21073 (S.D. Ind. Mar. 22, 1991). Here, Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of civil penalties against "[a]ny person in an amount not to exceed $25,000 for each such violation. Each day of each violation shall, for purposes of this subsection, constitute a separate violation." When more than one requirement is violated, defendants are subject to a separate civil penalty per day for each requirement he violates. This approach helps give effect to Congress' intent, expressed in RCRA that a civil penalty of $25,000 per day is appropriate for any given violation. Beginning with a lesser amount would negate the deterrent value that Congress intended the $25,000

per day penalty to serve. The Report of the Senate Committee responsible for RCRA legislation noted that it "drew on the similar provisions of the Clean Water Act" for enforcement provisions in RCRA's penalties section, 42 U.S.C. § 6928. See S. Rep. No. 988, 94th Cong., 2d sess. 17 (1976), reprinted in Senate Committee on Environment and Public Works, Legislative History of the Solid Waste Disposal Act, as amended, vol. 1 at 317, 335 (1991).

90. For computation of the maximum civil penalty in this case, the period of violation commences on May 11, 1993 and continues until the date of trial on June 14, 1999. Thus, WCI's violations for each of the United States' eight claims extend for a total of 2,224 days. Of these, 1,359 days of violations correspond to a civil penalty of $33,975,000 computed on the basis of the statutory $25,000 per day amount. The remaining 865 days of violations correspond to a civil penalty of $23,787,500 computed on the basis of $27,500 per day amount authorized by the U.S. EPA Civil Monetary Penalty Inflation Adjustment Rule. WCI's total civil penalty for each violation, therefore, amounts to $57,762,500. For eight claims, WCI's maximum civil penalty under RCRA amounts to $462,100,000. This civil penalty is applicable to each of Ponds 5, 6 and 6A for WCI's identical violations at each of these hazardous waste management units. Thus, WCI's total maximum civil penalties under RCRA for the violations alleged in the United States' Complaint amount to $1,386,300,000.

91. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), does not

provide any specific criteria for determining the appropriate amount of a civil penalty to be assessed, however, the Sixth Circuit has looked to Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), which governs administrative penalties: "In imposing civil penalties, it is appropriate for the court to take into account the seriousness of the violation and any good faith efforts to comply" with applicable requirements. See United States v. Ekco Housewares, Inc., 62 F.3d 806, 814 (6th Cir. 1995). In addition to these factors, numerous other factors are relevant, including the harm caused by the violation, any economic benefit derived from noncompliance, the violator's ability to pay, the government's conduct, and the clarity of the obligation involved. Id.; See also Production Plated Plastics, 35 Env't Rep. Cas. (BNA) at 1523.

92. Applying these factors, courts have assessed substantial penalties for RCRA violations. See e.g., United States v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1242-1245 (N.D. Ind. 1989)(Court took such factors into account and assessed civil penalty of $2.8 million for WCI's violations of RCRA.), aff'd 917 F.2d 327 (7th Cir. 1990); United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. 314, 322-323 (D.S.C. 1988)(Court took into account seriousness of violations and absence of good faith and assessed a civil penalty of $1,000 for each day of defendant's RCRA violations.), aff'd 865 F.2d 1261 (4th Cir. 1988); United States v. Production Plated Plastics, Inc., 35 Env't. Rep. Cas. at 1517 (W.D. Mich.

1992)(Court took into account the scope and magnitude of defendant's violations and assessed a civil penalty of $1.5 million for defendant's RCRA violations.); United States v. Vineland Chemical Co., 20 Envtl L. Rep. 21398, 21403 (D.N.J. 1990)(Court took into account the potential harm from, and length of time for, defendant's RCRA violations and assessed a penalty of $1,223,000.); Accord United States v. Bethlehem Steel Corporation, 829 F. Supp. 1047 (N.D. Ind. 1993)(Court took into account length of violations, potential harm resulting from them and economic benefit and assessed civil penalty of $6 million for Defendant's violation of RCRA and Safe Drinking Water Act), aff'd in part, vacated in part, and remanded United States v. Bethlehem Steel Corp., 38 F.3d 862, 868-871 (7th Cir. 1994)(On appeal, the Seventh Circuit found that the District Court had erred in finding defendant liable for certain violations and vacated the civil penalties related to those violations. The Seventh Circuit did not discuss the District Court's penalty assessment methodology.); See also Public Interest Group, Inc. v. Powell Duffryn Terminals Inc., 913 F.2d 64, 79-83 (3d Cir. 1990), cert. denied, 111 S. Ct. 1018 (1991)(Clean Water Act case where the nature and scope of violations warranted a civil penalty of $4.2 million and thus district court ordered to recalculate award.).

93. There is no question that WCI's violations of RCRA are serious. The seriousness of WCI's RCRA violations in this case is amplified by the fact that those violations were the direct result of

WCI's own actions and inactions. From the time WCI assumed operation of the Warren, Ohio steel plant, WCI refused to acknowledge that it managed hazardous wastes in its surface impoundments, Ponds 5, 6 and 6A. Thus WCI failed to provide notice to U.S. EPA and Ohio that it managed hazardous wastes in Ponds 5, 6 and 6A and failed to obtain any permit and/or interim status under RCRA for management of hazardous waste it conducted in Ponds 5, 6 and 6A. A facility that has neither interim status nor a final permit may not operate. United States v. Ekco Housewares, Inc., 62 F.3d 806, 809 (6th Cir. 1998) Vineland Chemical Co. v. U.S. EPA, 810 F.2d 402 (3d Cir. 1987).

94. The primary component of RCRA's comprehensive system for the regulation of hazardous wastes is Section 3005(a) of RCRA, which prohibits the treatment, storage or disposal of hazardous waste except in accordance with an authorized permit. 42 U.S.C. § 6925(a); Ekco Housewares, Inc., 62 F.3d at 809. The requirement of Section 3005(a) of RCRA that facilities that treat, store or dispose of hazardous waste, must have a RCRA permit is the bedrock of the federal hazardous waste management system. See U.S. v. Heuer, 4 F.3d 723, 730 (9th Cir. 1993) ("It is fundamental that an entity which performs a hazardous waste activity for which a permit is required under RCRA may not legally perform that activity unless it has a permit for the relevant activity"). Failure to obtain a permit undermines RCRA's statutory objective which is to ensure that hazardous waste management practices be "conducted in a manner which

protects human health and the environment," and which minimizes the generation and land disposal of these wastes. 42 U.S.C. § 6902(a). Lack of a permit negates RCRA's "'cradle-to-grave' regulatory structure overseeing the safe treatment, storage and disposal of hazardous waste." United Technologies Corp. v. EPA, 821 F.2d 714, 716 (D.C. Cir. 1987).

95. Refusing to acknowledge that it was managing hazardous waste in Ponds 5, 6 and 6A, and obtaining permits under RCRA, WCI saw no reason to comply with the other requirements applicable to such hazardous waste management units under RCRA. Thus, WCI: failed to retrofit the impoundments with minimum technological requirements, or in the alternative close these hazardous waste management units as required by RCRA; failed to prepare a written closure plan identifying steps necessary to perform partial or final closure of Ponds 5, 6 and 6A, at any point during the Ponds' active life; failed to comply with financial assurance requirements applicable to such hazardous waste management units under RCRA; and failed to implement a groundwater monitoring program under RCRA approved by Ohio and the U.S. EPA. Finally, WCI violated land disposal restrictions under RCRA prohibiting placement of both list hazardous waste and hazardous wastes exhibiting the characteristic of corrosivity in its unlined Ponds 5, 6 and 6A.

96. In this case, as indicated supra, WCI has been in violation of certain RCRA requirements applicable to its surface

impoundments, Ponds 5, 6, and 6A, from September 1, 1988, the date it assumed operation of the Warren, Ohio steel plant. Other RCRA requirements, applicable to land disposal facilities, were violated from November 8, 1988, the effective date of applicable regulations. However, the Court will consider the assessment of civil penalties against WCI in this case pursuant to timelines set forth in 28 U.S.C. § 2462.

97. Having failed to comply with the RCRA requirements since November 8, 1988, due to both their length and scope, these violations must be characterized as chronic violations. They are a direct result of WCI's "dismal history of misperformance and noncompliance." U.S. EPA v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1247 (N.D. Ind. 1989), aff'd 917 F. 2d 327 (7th Cir. 1990).

98. There are no circumstances mitigating civil penalties in this case. Although good faith may be a factor in mitigating civil penalties for RCRA violations, 42 U.S.C. § 6928(a)(c), WCI has made no effort to comply with RCRA requirements for its hazardous waste management activity at Ponds 5, 6 and 6A. WCI has sought to avoid and delay its obligation to bring the surface impoundments into compliance with RCRA. See United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. at 314 (D.S.C. 1988); United States v. Vineland Chemical Co., 1990 WL 157509 (D.N.J.).

99. As just one component of an appropriate civil penalty, it is

necessary to ensure that WCI does not derive any economic benefit from its noncompliance with RCRA. See e.g., United States v. Production Plated Plastics, Inc., 35 Env't Rep. Cas. 1517, 1524 (W.D. Mich. 1992) ("A penalty of $1.5 million assures that defendants will not have benefitted economically by failing to comply with RCRA."). The recovery by the United States of the $9,100,000 in economic benefit WCI has accrued through its noncompliance with RCRA's closure requirements is essential in this case. This will serve to deter WCI and other members of the regulated community from operating their businesses in violation of federal and state environmental laws by demonstrating that there shall be no economic incentives for noncompliance with RCRA. See U.S. EPA v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1245 (N.D. Ind. 1989)(In determining whether to assess a "substantial" civil penalty, court noted that "EWC has been faced more than once with a choice between disobeying the law or continuing its operations; each time, EWC chose to make more money.").

100. Moreover, "[c]ourts use economic benefit analysis to level the economic playing field and prevent violators from gaining an unfair advantage." United States v. Municipal Authority of Union Township, 150 F.3d 259, 264 (3d Cor. 1998)(quoting United States v. Smithfield Foods, Inc., 972 F. Supp. 338, 348 (E.D. Va. 1997). Thus, the total economic benefit of $9,100,000 accrued by WCI in this case shall serve as the absolute floor below which the RCRA civil penalty should not be mitigated.

101. The most appropriate method for determining how much economic benefit that violators have earned on funds they did not spend for compliance is the method that calculates avoided and/or delayed costs of compliance, using a weighted average cost of capital ("WACC") as a discount/interest rate. See United States v. Smithfield Foods, Inc., 972 F. Supp. 338, 349 (E.D. Va. 1997) (finding that the avoided and/or delayed cost of Clean Water Act compliance, the WACC as a discount/interest is the best and the appropriate method for calculating economic benefit).

102. Case law assessing civil penalties under RCRA directs the Court to consider the economic impact of a penalty on the violator. Production Plated Plastics, Inc., 1992 WL 397725, 7 (W.D. Mich.); Ekco Housewares, Inc., 62 F.3d at 814-16 (6th Cir. 1995); Bethlehem Steel Corp., 829 F. Supp at 1047 (N.D. Ind. 1993). However, a penalty must recover more than just the economic benefit enjoyed by the violator, or else the violator would be no worse off than if it complied in a timely manner. Defendant's own financial statements show that for fiscal year 1998, WCI had total current assets of approximately $460 million (including over $207 million in cash and short-term investments) and approximately $99 million in current liabilities. For the year ending October 31, 1998, Defendant's working capital was $108 million.

103. In addition, the Court may consider the financial resources of WCI's parent, The Renco Group, Inc., if the Court determines that

the appropriate civil penalty to be assessed in this case is above WCI's ability to pay. Moreover, in this case, WCI's assets have been substantially depleted through payment of dividends and management fees to The Renco Group, Inc, its parent. As the courts have determined in Clean Water Act civil penalty cases, if the subsidiary does not retain its resources, then its parent's financial resources are highly relevant. United States v. Municipal Authority of Union Township, 150 F.3d 259, 267 (3d Cir. 1998). See also Atlantic States Legal Foundation, Inc. v. Universal Tool & Stamping Co., 786 F. Supp. 743, 753 (N.D. Ind 1992); Public Interest Research Group of New Jersey, Inc., v. Powell Duffryn Terminals, Inc., 720 F. Supp. 1158, 1166 (D.N.J. 1989), rev'd in part on other grounds, 913 F.2d 64 (2d Cir. 1990).

104. Defendant's conscious, deliberate and willful denial, delay and avoidance in making the expenditures necessary to ensure compliance with its environmental obligations under RCRA, while Defendant continued to operate, continued to expand its production, and continued to enjoy a substantial profit from its operations, require the assessment of a penalty substantial enough to impress upon Defendant that its environmental obligations are as important as its focus on improved and upgraded production operations.

105. The good or bad faith of defendants is an important factor in assessing a penalty. Assessment of civil penalties does not require a showing of willfulness or negligence, United States v.

Velsicol Chemical Corp., supra, 12 E.R.C. at 1421, although lack of intent to violate the law may be considered in mitigation of the penalty. United States v. Swingline, Inc., supra, 371 F. Supp. at 45. Where as here, WCI's violations are willful or deliberate, however, there is bad faith per se. United States v. Phelps Dodge Industries, Inc., supra, 589 F. Supp. at 1363. Moreover, willful or reckless disregard of the law warrants a penalty "at or near the maximum prescribed," United States v. J.B. Williams Co., 354 F. Supp. 521, 551 (S.D.N.Y. 1973), aff'd in part and rev'd in part on other grounds, 498 F.2d 414, 438 (2d Cir. 1974).

106. In assessing a civil penalty, this Court need not find that an actual injury to the public has occurred; rather the Court may assess the potential injury to the public. United States v. Ekco Housewares, Inc., 853 F. Supp 975, 990 (N.D. Ohio 1994) aff'd. in part and rev'd in part, 62 F.3d 806 (6th Cir. 1998). Civil penalties are not "tied to damages actually suffered." United States v. Velsicol Chemical Corp., supra, 12 E.R.C. at 1421. Most environmental statutes, including the one involved here, do not require proof of actual injury, because "numerous polluters contribute to an environmental harm....It is not possible to divide up the general harm and allocate shares to particular polluters." Student Public Interest Research Group of New Jersey, Inc., v. Bell Laboratories, 617 F. Supp. 1190, 1202 (D.N.J. 1985) (interpreting the Clean Water Act). In this case, RCRA does not require a showing of specific harm. Rather, by

its own terms, Section 3008 (g) of RCRA, 42 U.S.C. §6928 (g), provides that "(A)ny person who violates any requirement...shall be liable..."

107. However, the Sixth Circuit has properly focused on a violator's failure to secure financial assurances under RCRA as a factor in evaluating the risk of environmental harm in assessing civil penalties. United States v. Ekco Housewares, Inc., 62 F.3d 806, 814 (6th Cir. 1995). The purpose of the financial responsibility regulations is to require the owner/operator of a hazardous waste facility to document that it has secured the necessary resources to close the facility in an appropriate and safe manner and to pay any third-party claims that may arise from its operations. In rejecting a challenge to the excessiveness of an civil penalty, the Sixth Circuit has stated: "The timing of these obligations is critical. The regulations require that the owner/operator secure the necessary funds, and document that it has done so prior to closure." Id. at 815. In this case, WCI completely ignored this obligation and continued to operate Ponds 5, 6 and 6A since it began operations in late-1988.

108. With respect to the clarity of WCI's obligations for proper and safe management of hazardous wastes in its surface impoundments under RCRA, these obligations were patently obvious to its management. WCI chose to ignore them and delay its compliance. WCI knew from the date it began operations in Warren, Ohio that its surface impoundments managed hazardous wastes regulated under RCRA from the nature and quantity of wastewaters from its finishing operations that were

discharged to Ponds 5, 6 and 6A. WCI set out to close Ponds 5, 6 and 6A and install alternative wastewater handling tank systems as early as 1990, but has failed to complete these actions to date. Moreover, WCI had obtained its Ohio EPA Permit and U.S. EPA Permit authorizing certain hazardous waste management activities at its facility and no others, and was sufficiently aware of, and sophisticated with respect to RCRA's regulatory scheme applicable to its surface impoundments.

109. With regard to the conduct of the governmental agencies in this matter, U.S. EPA conducted a multi-media inspection of the facility in May 1993, and immediately afterwards initiated an investigation to determine the nature and extent of any RCRA violations with respect to WCI's operations of Ponds 5, 6 and 6A. U.S. EPA sent requests for information to WCI under RCRA section 3007, 42 U.S.C. § 6927, on or about April 4, 1994, February 23, 1995 and November 12, 1996 and diligently sought information from WCI to thoroughly and adequately establish the RCRA obligations with respect to Ponds 5, 6 and 6A. WCI's responses were delayed and culminated in U.S. EPA's review of WCI's documentation regarding its operations of Ponds 5, 6 and 6A in February 1997. Throughout this information gathering process, as well as U.S. EPA's enforcement and corrective action permitting process under RCRA, WCI denied that it was treating, storing and disposing of hazardous waste in Ponds 5, 6 and 6A.

110. The United States has requested that the total civil penalty amount that WCI is assessed by the Court for its violations of RCRA be

significant so as to ensure that: a) WCI will be required to disgorge the economic benefit it obtained through its noncompliance; b) WCI and other members of the regulated community will be deterred from violating RCRA; c) the governments' RCRA regulatory and enforcement programs are vindicated. The United States' financial ability to pay expert has determined that WCI has the ability to pay a civil penalty in the amount of $34,000,000. With working capital in 1998 in excess of $108 million, plus the ability to obtain funds from The Renco Group, Inc., WCI plainly has the ability to pay a significant civil penalty for its violations of RCRA. See United States v. Vineland Chemical Co., 20 Envtl L. Rep. 21398, 21402-21403 (defendant with net worth of $3.1 million deemed to have ability to pay substantial penalty and therefore was assessed penalty of $1,223,000); United States v. Production Plated Plastics, Inc., 35 Env't Rep. Cas. 1517, 1522 (W.D. Mich. 1992)(Court assessed penalty of $1.5 million against defendant who then had no assets but through other entities was deemed to have "money at hand.")

DEFENSES TO LIABILITY

111. WCI's affirmative defense that some or all of the United States' claims for relief fail to state a claim upon which relief may be granted is without merit. The United States has alleged claims, with all the requisite elements set forth by the Federal Rules of Civil Procedure, and under applicable RCRA statutory and regulatory provisions that provide for relief in the form of penalties and

injunctive relief. Conley v. Gibson, 355 U.S. 41, 47 (1957)(A claim for relief meets the FRCP requirement if the claim "give[s] the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests").

112. Next, because WCI's surface impoundments, Ponds 5, 6 and 6A, treat, store and dispose of characteristic and listed RCRA hazardous wastes, the United States has also met the other jurisdictional prerequisites in this action, including providing notice to the State of Ohio as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

113. No statutory exclusion applies to WCI pursuant to its other environmental permits, including its Clean Water Act permit. The RCRA regulation that defines "solid waste" states that the exclusion applicable to point source discharges under an NPDES permit applies only to the actual permit discharges. 40 C.F.R. § 261.4(2); Allegan Metal Finishing Co., 696 F. Supp. at 281; State v. PVS Chemicals, Inc., 1998 WL 1051788*4 (W.D.N.Y.); see also Chemical Waste Management, Inc. v. U.S. EPA, 976 F.2d 2, 26 (D.C. Cir. 1992) cert. denied sub nom. Chemical Mfrs. Ass'n. v. U.S. EPA, 507 U.S. 1057 (1993)(A holder of a Clean Water Act permit must still comply with RCRA). Accordingly, this defense of failure to state a claim must be rejected by the Court.

114. WCI's affirmative defense that some of the United States' claims are barred by the applicable statutes of limitation

does not apply to determinations of liability under RCRA. RCRA imposes continuing obligations on persons who generate and manage hazardous waste. State v. PVS Chemicals, Inc., 1998 WL 1051788*8 (W.D.N.Y.)(Unpermitted, unremediated waste activities occurring more than 14 years prior to filing of government's complaint serve as a basis for a claim for continuing violations of RCRA); City of Toledo v. Beazer Materials and Services, Inc., 833 F. Supp. 646, 655 (N.D. Ohio 1993)(Disposal of wastes in the past can constitute a continuing violation "as long as no proper disposal procedures are put into effect or as long as the waste has not been cleaned up. . . "); United States v. Power Engineering Co., 10 F. Supp.2d 1145, 1159 (D. Colo. 1998)(Courts have found continuing violations of RCRA even when the affirmative act that initiates the violation occurred on a single day); see also Harmon Industries, Inc. v. Browner, 19 F. Supp. 988, 998 (W.D. Mo. 1998).

115. The Supreme Court has recognized the continuing violation doctrine. Havens Realty Corp. v. Coleman, 455 U.S. 363, 365 (1982). See also Nixon-Egli Equipment Co. v. John A. Alexander Co., 949 F. Supp. 1435 (C.D. Cal. 1996). Moreover, even though 28 U.S.C. § 2462 provides a defense to any claims for civil penalties occurring prior to May 11, 1993, all of the United States alleged RCRA permit violations are relevant to both the scope of injunctive relief and the determination of civil penalties sought in this action. State v. PVS Chemicals, Inc., 1998 WL 1051788*4 (W.D.N.Y.).

116. WCI's affirmative defense that some of the United States' claims are barred pursuant to accord and satisfaction based upon prior agreements between the United States and WCI in related environmental actions is without merit. See United States v. Allegan Metal Finishing Co., 696 F. Supp. 275, 284 (W.D. Mich. 1988). Moreover, there are different statutory violations at issue in this matter. No exclusionary principles are applicable to the United States' claims in this case in relation to those considered in prior agreements with WCI. See United States v. Environmental Waste Control, Inc., 710 F.Supp. 1172, 1196-98 (N.D. Ind. 1989).

117. WCI's affirmative defense that some or all of the alleged violations were the result of startup, shutdown, malfunction and/or upset of WCI's process or pollution control equipment or are the result of lawful bypasses of WCI's pollution control equipment does not apply to the United States' RCRA claims in this matter. These defenses all fail because of RCRA's strict liability. United States v. Production Plated Plastics, Inc., 742 F. Supp. 956, 960 (W.D. Mich 19909)("RCRA is a remedial strict liability statute which is construed liberally"). Such defenses ignore WCI's obligation to comply continuously with RCRA and reflect a misapprehension of the compliance obligations of a RCRA regulated facility. Specifically, if WCI's defenses were recognized, the obligation to comply with the RCRA regulations at issue would become periodic. The statute, the case law, and U.S. EPA regulations, however, recognize no such defenses,

and all demonstrate that the obligation to comply with RCRA requirements is continuous, not periodic. United States v. Power Engineering Co., 10 F. Supp.2d 1145, 1158 (D. Colo. 1998)(The overwhelming majority of courts have found continuing violations for substantive violations of RCRA.).

118. WCI's affirmative defense that some of the United States' claims are barred by the equitable doctrines of laches, acquiescence, waiver and/or estoppel is also without merit. Common law equitable defenses are not available against the government when it is asserting public rights. Costello v. United States, 365 U.S. 265, 281 (1961); Pan American Petroleum & Transport Co. v. United States, 273 U.S. 456, 506 (1927); Chesapeake & Delaware Canal Co. v. United States, 250 U.S. 123, 125 (1919). The government cannot be estopped when exercising its sovereign powers, absent compelling misconduct. See Heckler v. Community Health Services, 467 U.S. 51, 60-61 (1984); United States v. Allegan Metal Finishing Co., 696 F. Supp. 275 (W.D. Mich. 1988); United States v. Vineland Chemical Co., Inc., 692 F. Supp. 415, 423 (D.N.J. 1988); United States v. Mobil Oil Corp., 1997 WL 1048911*11 (E.D.N.Y.)(Estoppel is rarely available against the government. At a minimum, a party must allege the traditional elements of estoppel in order to succeed (quoting Heckler, 467 U.S. at 61)).

119. Moreover, "[w]here the defenses of unclean hands or laches have been used against the government when it is asserting public

rights, courts have repeatedly held that equitable principles will not be applied to thwart public policy or the purpose of federal laws." Kelley v. Thomas Solvent Co., 714 F. Supp. 1439, 1451 (W.D. Mich. 1989); United States v. Weintraub, 613 F.2d 612, 618 (6th Cir. 1979) (Government not subject to laches defense), cert. denied, 447 U.S. 905 (1980); Reich v. Youghiogheny & Ohio Coal Co., 66 F.3d 111, 116 (6th Cir. 1995)(Affirmative misconduct of a government actor is required to support equitable estoppel of the government.); United States v. City of Menominee, 727 F. Supp. 1110 (W.D. Mich. 1989)(Waiver or acquiescence is not a defense to an action under the Clean Water Act because the Act's enforcement provisions do not mention waiver, and courts will not recognize waiver by implication.).

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
Defendant.	)	

REPLY MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e)

The issue presented by the United States' Motion to Alter or Amend Judgment is straightforward: whether a district court, upon finding that a defendant is in violation of the law, must fashion a remedy that results in compliance with the law. The Supreme Court has unequivocally answered that question in the affirmative, squarely holding that once a violation of a statute has been proven, a remedy resulting in compliance with the law must follow. Nothing in Defendant's Opposition Memorandum suggests otherwise; nor could it. Instead, Defendant argues that a district court is not required to issue an injunction based solely on the fact of a statutory

violation. While this position may or may not accurately reflect current law, it clearly fails to address the fundamental issue raised by the United States' Motion. The United States does not argue that the Court is required to issue an injunction to remedy all RCRA statutory violations. Rather, the United States suggests that a district court must fashion a remedy that results in compliance with the law, whether it be in the form of an injunction or some other type of relief. Indeed, issuance of an injunction is just one of several options available to a district court in fashioning appropriate relief for statutory violations. But if compliance can only be achieved through the issuance of an injunction, then an injunction must issue.

I. The Supreme Court's Decision In *Weinberger v. Romero-Barcelo* Makes Clear That A District Court Must Fashion A Remedy For A Statutory Violation That Ensures Compliance With The Law.

In the leading case of Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), plaintiffs alleged that the Navy was discharging pollutants into the navigable waters around Puerto Rico without a permit, in violation of the Clean Water Act. Plaintiffs asked the district court to enjoin the Navy's operations. The district court found that the Navy was illegally discharging pollutants without a permit. As a remedy, the court required the Navy to obtain a permit for the discharges, a course of action that would ultimately render the discharges legal. The district court required the Navy to obtain the permit despite finding that the Navy's "technical violations" did

not cause any "appreciable harm" to the environment. Id. at 310.[1] The district court, however, declined to go further and enjoin the Navy's operations because it "concluded that an injunction was not necessary to ensure suitably prompt compliance by the Navy." Id. at 310 (emphasis supplied).

The Supreme Court in Romero-Barcelo agreed and held, as Defendant notes, that the district court was not required to issue an injunction to cure the statutory violation. What Defendant fails to recognize in the Romero-Barcelo decision, as well as in the other leading Supreme Court cases cited in the United States' Memorandum, is that the reason the injunction was not required was because the district court was able to fashion a remedy ensuring compliance without issuing an injunction. Indeed, the Supreme Court expressly stated that "although the District Court declined to enjoin the discharges, it neither ignored the statutory violation nor undercut the purpose and function of the permit system. The court ordered the Navy to apply for a permit." Id. at 315. In this way, the district court vindicated the purpose of the Clean Water Act, which, the Supreme Court stated, "is to be achieved by compliance with the Act, including compliance with the permit requirements." Id. (emphasis supplied).[2]

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[1] In fact, the district court stated that "these waters are as aesthetically acceptable as any to be found anywhere, and Plaintiff's witnesses unanimously testified as to their being the best fishing grounds in Vieques." Romero-Barcelo, 456 U.S. at 310, n. 4. In addition, the Supreme Court noted that the Navy's discharges "had not polluted the waters." Id. at 315.

[2] In Amoco Production Co. v. Village of Gambell, Alaska, 480 U.S. 531, 543 (1987), the Supreme Court further explained that an injunction was not required in Romero-Barcelo because "An injunction against all

In sharp contrast to the facts presented in Romero-Barcelo, the Court in the instant case, in declining to issue an injunction, has not fashioned a substitute means of ensuring that this Defendant - hereafter complies with RCRA. The Court has ruled that Defendant was required to "commence closure," Opinion at 36, that it did not commence closure, and that its failure to do so constitutes a violation of law. Yet, the Court's decision appears to "ignore[] the statutory violation," and "undercut the purpose and function" of the regulatory system, 456 U.S. at 315, by declining to fashion a remedy that would ultimately result in Defendant coming into compliance with the law. Such an outcome cannot be squared with Romero-Barcelo and its progeny. Moreover, the Court's failure to require Defendant to comply with RCRA closure requirements is inconsistent with the Court's finding at page 43 of its Opinion that the surface impoundments are subject to closure and that Defendant, therefore, has derived an economic benefit from its delayed compliance with the closure requirements. If Defendant is not, in fact, required to close the surface impoundments, it presumably would not have derived an economic benefit from its failure to close them.

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discharges was not the only means of ensuring compliance with the Act." In Amoco itself, the Supreme Court reiterated that an injunction is not required as long as compliance with the law is achieved. The Court in Amoco vacated a preliminary injunction because "as in *Romero-Barcelo*, compliance could be obtained through the simple means of an order to the responsible federal official to comply." Id. at 543, n. 8 (emphasis supplied).

II. The Only Way To Ensure That Defendant Complies With The Law Is For The Court To Order Defendant To Comply With RCRA Closure Requirements.

Contrary to Defendant's assertion, Defendant remains out of compliance with RCRA. Defendant's failure to effect closure constitutes a continuing violation. The applicable RCRA regulations require closure of un-retrofitted surface impoundments that once received hazardous waste, even if hazardous waste is no longer placed in the surface impoundments. See 40 C.F.R. § 264.113 and O.A.C. § 3745-55-13; United States v. Ekco Housewares, Inc., 62 F.3d 806, 812 (6th Cir. 1995)("district court correctly found that Ekco [was obligated to comply with financial responsibility requirements of RCRA] throughout the closure process until final closure is certified").[3]

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[3]Because the RCRA violations are continuing, United States v. City of Painesville, 644 F.2d 1186 (6th Cir.), cert. denied, 454 U.S. 894 (1981) and Environmental Defense Fund, Inc. v. Lamphier, 714 F.2d 331 (4th Cir. 1983) are highly apposite. NRDC v. Texaco Refining and Marketing, Inc., 906 F.2d 934 (3rd Cir. 1990), cited by Defendant at Page 5 of its Opposition Memorandum, in contrast, is of limited relevance. In Texaco Refining, the district court enjoined speculative future permit violations, not ongoing violations. Indeed, the district court found that "no violation of the new permit has occurred." Id. at 941. Texaco Refining is further distinguishable in that it involved a suit brought by a citizen's group and not by the government. Consequently, the case centered on the district court's abuse of discretion in "presuming irreparable harm and not explicitly applying the traditional equitable standard in determining whether an injunction was appropriate." Id. at 937. As the Court in the present case observed, however, when the government is the plaintiff, and it is enforcing public health legislation, "injunctive relief is proper without undertaking a balancing of the equities." Opinion at 50. Ultimately, on appeal of the district court's decision on remand, the Third Circuit affirmed in large measure the injunction issued by the district court, holding that "injunctive relief is appropriate to 'secure prompt compliance with the [Clean Water] Act.'" NRDC, Inc. v. Texaco Refining and Marketing, Inc., 2 F.3d 493, 507 (3rd Cir. 1993), quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 320 (1982).

Far from elevating regulatory process over statutory purpose as Defendant suggests, ordering Defendant to comply with RCRA's closure requirements is, in fact, the only means of effectuating RCRA's protective purposes. Specifically, ordering Defendant to submit to the closure process is the only means of ensuring that the environmental agency expert in making the technical judgments associated with the management of hazardous waste, and charged by law with assessing the threat posed by such activities, is allowed to carry out its statutory mandate.

In the present case, that regulatory agency, the Ohio Environmental Protection Agency ("Ohio EPA"), has not yet had a chance to evaluate the surface impoundments as required by law. Pursuant to O.A.C. § 3745-55-12 et seq., Ohio EPA, with input from the public (as well as from U.S. EPA), must determine what is necessary to effect proper closure of the surface impoundments so as to protect human health and the environment. Defendant is then free to challenge that determination. In the case at bar, however, the Court appears to have short-circuited the legally required process by itself determining what constitutes a threat to human health and the environment.

It is a fundamental canon of administrative law that a court "is not empowered to substitute its judgment for that of the agency." Citizens To Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). But that is precisely what has occurred in this case, and in its starkest form, given that the agency charged with making the scientific determinations at issue appears to have been foreclosed by the Court's Opinion from making such determinations. By preventing

Ohio EPA from determining the threat, if any, posed by the surface impoundments, the Court has substituted its judgment for that of Ohio EPA. In this way, the United States respectfully suggests, the Court has acted as "the chemist, biologist or statistician that [it is] qualified neither by training nor experience to be." Michigan v. Thomas, 805 F.2d 176, 182 (6th Cir. 1986), quoting Ethyl Corp. v. EPA, 541 F.2d 1, 36 (D.C. Cir.), cert. denied, 426 U.S. 941 (1976).[4]

In fact, the United States did not endeavor to present evidence of environmental harm in its case-in-chief because the presence of environmental harm is not an element of any of the RCRA violations alleged in the United States' complaint. The documentation of environmental harm does not trigger RCRA's regulatory scheme; the management of hazardous waste does. That is because the RCRA regulatory framework is prophylactic in nature - it is designed to prevent environmental harm as well as adverse impacts on human health.

Neither did Defendant present sufficient evidence to allow for a definitive scientific determination of the risks posed by the surface impoundments. Nor could it, since Defendant's refusal to comply with RCRA illegally shielded it from generating the technical data

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[4]The danger inherent in the Court's rendering scientific judgments in the first instance is demonstrated by the Court's finding at page 41 of its Opinion that the monitoring wells installed near the surface impoundments "show no impact on the environment from the use of these ponds as wastewater treatment units." Yet, the Court's reliance on this finding is inconsistent with the Court's earlier conclusion of law that Defendant failed to install, operate and maintain a ground-water monitoring system that satisfies the requirements of the RCRA regulations. Opinion at 38. A definitive determination of the impacts on groundwater, if any, caused by the RCRA-regulated units simply cannot be made in the absence of a ground-water system expressly designed for RCRA purposes.

necessary for making such a definitive determination. Indeed, Defendant's expert, Charles Blumenschein, acknowledged on cross-examination that his assessment of the risk posed by the surface impoundments was based primarily on a single groundwater sampling event that was not subject to standard quality assurance/quality control protocols. It is self-evident that Congress' directive to protect human health and the environment from the hazards posed by unlined surface impoundments cannot be effectuated through such inadequate sampling. In any event, it is for Ohio EPA in the first instance, and not the court, to determine, based on sufficient data, the risks posed, if any, by the surface impoundments now that the Court has determined that they at one time received hazardous waste. To rule otherwise is to ignore that "a legislative choice is not subject to courtroom fact-finding." FCC v. Beach Communications, Inc., 508 U.S. 307, 315 (1993).

III. At A Minimum, Clarification Of The Court's Opinion Is Necessary Because Defendant Interprets The Court's Denial Of Injunctive Relief As Excusing Defendant From Ongoing Compliance With RCRA Closure Regulations, Regulations That Apply To All Other Hazardous Waste Facilities That Have Ceased Accepting Hazardous Wastes.

As noted above, RCRA mandates the closure of unlined surface impoundments even after they cease receiving hazardous waste. See 40 C.F.R. § 264.113 and O.A.C. § 3745-55-13. Therefore, Defendant's failure to close the surface impoundments in accordance with RCRA (which includes installation, operation and maintenance of a ground-water monitoring system and providing financial assurance) constitute continuing violations of RCRA. See United States v. Ekco Housewares,

Inc., 62 F.3d 806, 812 (6th Cir. 1995)(certain RCRA regulations, such as the requirement to maintain financial assurance, apply to hazardous waste facilities even after they cease accepting hazardous wastes).

In the present case, however, Defendant interprets the Court's denial of injunctive relief as a judicial determination that Defendant need not comply with any of the closure requirements of RCRA.[5] Defendant interprets the Court's finding of no environmental harm as replacing or eliminating the regulatory requirement of submitting a closure plan and having Ohio EPA determine what additional steps are necessary to protect human health and the environment. The United States respectfully submits that such a reading of the Court's Opinion cannot possibly reflect the requirements of the law, and requests that the Court clarify its ruling accordingly.

Conclusion

The law is clear: a district court must fashion a remedy for a statutory violation that ensures compliance with the law, be it in the form of an injunction or some other type of relief. In this case, having found that Defendant violated RCRA by improperly managing hazardous wastes in its unlined surface impoundments, the Court must require Defendant to comply with RCRA's closure requirements. Anything less will not ensure compliance with the law. Nor will anything less ensure the protection of human health and the environment. For only by requiring Defendant to engage in the closure process will the regulatory agency with the expertise to make the

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[5] See, e.g., Defendant's Opposition Memorandum at 8, n. 2 ("a hazardous waste facility is considered 'closed' under RCRA when it no longer poses a threat to human health or the environment").

technical determinations regarding closure have an opportunity to assess the risks posed, if any, by the unlined surface impoundments.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) has been served on the following counsel for Defendant, by U.S. mail, this 2nd day of December, 1999:

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Matthew Fogelson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
	)	
Defendant.	)	
	)	
	)	

UNITED STATES' CONTESTED ISSUES OF FACT AND LAW

I. Contested Issues of Fact

The United States' contested issues of fact remaining for decision are as follows:

General Background:

1. Does WCI's facility operate by taking water from the Mahoning River, and other sources, and running the water through the facility, then discharging wastewater carrying pollutants from the steelmaking process back to the Mahoning River?

2. Does the Ohio EPA Permit issued to WCI on August 12, 1993 authorize WCI:

to store hazardous waste in tanks in accordance with the terms and conditions of [the] permit, ORC Chapter 3734, all applicable Ohio hazardous waste rules, all applicable regulations promulgated under the Resource Conservation and Recovery Act (RCRA), as amended, and the approved hazardous waste facility installation and operation permit renewal application, as such application has been revised and supplemented and as such application may be revised or modified pursuant to hazardous waste rules. The approved Part B permit application as submitted to Ohio EPA in November 1988, and last updated in October 1992, is hereby incorporated into this permit. In the instance of inconsistent language or discrepancies between the above, the language of the more stringent provision shall govern.

3. Does the Ohio EPA Permit issued to WCI on August 12, 1993 further state:

> Any management of hazardous waste not authorized by this permit is prohibited, unless otherwise expressly or specifically exempted by law. . . . Compliance with the terms and conditions of this permit does not obviate Permittee's obligation to comply with other applicable provisions of law governing protection of public health or the environment . . .

4. Does the U.S. EPA Permit issued to WCI on November 11, 1993 provide that:

> The Permittee is allowed to manage hazardous waste in accordance with the conditions of the RCRA permit. Any management of hazardous waste not authorized in the RCRA permit is prohibited.

5. Does the U.S. EPA Permit issued to WCI on November 11, 1993 further provide:

> The Permittee shall comply with all the applicable self-implementing requirements of 40 CFR 268 and all applicable land disposal requirements which become effective by statute (Section 3004 of RCRA).

***

> The Permittee must test, in accordance with 40 CFR 268.7(a), any waste generated at the facility, or use knowledge of the waste, to determine if the waste is restricted from land disposal.

6. Does the U.S. EPA Permit issued to WCI on November 11, 1993 further provide:

> The Permittee may store [spent pickle liquor] in tanks at the facility subject to the terms of the RCRA permit. . .

7. Does the U.S. EPA Permit issued to WCI on November 11, 1993 further provide:

> A mixture of any restricted waste with nonrestricted waste(s) is a restricted waste under 40 CFR Part 268.
>
> The Permittee shall not in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 40 CFR Part 268, Subpart D, to circumvent the effective date of a prohibition in 40 CFR Part 268, Subpart C, to otherwise avoid a prohibition in 40 CFR Part 268, Subpart C, or to circumvent a land disposal prohibition imposed by Section 3004 of RCRA.

WCI'S SURFACE IMPOUNDMENTS

8. Has the majority of the wastewater generated by WCI's steel finishing operations, in addition to the surface water runoff from the steel finishing area, typically been routed to the No. 9 pump station?

9. Did LTV Steel, WCI's predecessor at the facility, install Pond 6A between Pond 6 and the Mahoning River, in the flood

plain of the River, during 1986?

10. Was Pond 6A installed to intercept and collect seepage from Pond 6 that was reaching the Mahoning River?

11. Were Ponds 5 and 6 constructed within a channel of the Mahoning River?

12. Are embankments constructed across the former channel alignment used to form the ends of the ponds?

13. Is the purpose of the pond system to provide oil removal, wastewater detention, and stormwater surge protection for the CTP?

14. Does WCI use skimmers to remove oil from Pond 5?

15. Does WCI attempt to keep Pond 6 "oil-free"?

16. If oil is not removed from the wastewater prior to its discharge to the impoundments, could the CTP have difficulty treating the wastewater sufficiently to meet applicable wastewater effluent limits imposed under the Clean Water Act?

17. Is WCI's use of Ponds 5, 6 and 6A for effluent collection, equalization and partial treatment of wastewaters from steel finishing operations substandard by current steel industry and environmental control standards and poor wastewater management?

18. Were Ponds 5 and 6 installed prior to the 1970s to collect untreated process wastewater from acid pickling, cold rolling, terne coating and hot dip galvanizing operations prior to direct discharge to the Mahoning River without subsequent treatment?

19. When the CTP was installed in 1984, did the effluent from

Pond 6 become influent to that treatment system?

20. Are the surface impoundments equipped with impermeable, synthetic liners?

21. Is there the potential for ground water contamination and seepage of high or low pH water, spent rolling and lubricating oils, solvents used for cleaning operations and metal bearing wastewaters from coating operations?

22. On several occasions, has the Mahoning River flowed into and through Pond 6A, completely submerging it? Has Pond 6A, on occasion, simply disappeared, becoming part of the river itself?

23. Does WCI discharge the following process wastewaters to Ponds 5, 6 and 6A: No. 5 Pickle Line rinse and scrubber water; No. 6 Pickle Line rinse and scrubber water; terne line wastewater; galvanizing line wastewater; tandem mill oily wastewater and non-contact cooling water; hot strip finishing line (slitters) wastewater; silicon line wastewater; acid regeneration plant runoff; mobile equipment shop wastewater; 004 scale pit water; 52" temper mill oily wastewater; 54" temper mill oily wastewater; locomotive repair/machine shop wastewater; pickle line entry end water; and waste oil tank decant water?

CENTRAL TREATMENT PLANT pH MEASUREMENTS

24. Are WCI's wastewaters pumped from Pond 6 to an inlet box above the aeration tank located outside the CTP ("aeration influent box")?

25. Does this aeration influent box also receive wastewaters from WCI's Basic Oxygen Furnace operations through a separate influent stream separated from Pond 6 wastewater by a weir?

26. Does the alkaline basic oxygen furnace wastewater occasionally mix with the Pond 6 wastewater in the aeration influent box because of overflows?

27. Does the wastewater flow from the aeration influent box to the aeration tank and then through the balance of the treatment process at the CTP?

28. To ensure proper treatment of its wastewater, must WCI know the pH of the wastewater as it flows through the CTP?

29. For this reason does WCI maintain several pH probes that continuously monitor the pH of the wastewater as it flows through the CTP.

30. Is the pH meter located at the aeration influent box used by WCI to measure the pH of the wastewater as it flows from Pond 6 into the CTP ("influent probe")?

31. Is the influent probe submerged in the flow of the wastewater as it enters the aeration influent box?

32. Is the pH meter used by WCI to measure the pH of Pond 6 influent wastewater a glass membrane electrode selective for hydrogen ion in combination with a pH meter?

33. Is the pH meter used by WCI to measure the pH of Pond 6 influent pH equipped with a microprocessor that handles the

mathematics of the measurement?

34. Does the pH meter used by WCI to measure the pH of Pond 6 influent wastewater display the numerical pH value?

35. Once a week, or more often if necessary, do WCI Combustion Department personnel calibrate the pH meter used to measure the pH of Pond 6 influent wastewater by removing the submerged influent probe from the wastewater flow and immersing it in two standards of known pH values?

36. Do the WCI Combustion Department personnel calibrate the pH probe even if it reads only a 0.1 s.u. difference from the standard pH buffer solution against which it is calibrated?

37. Do the Combustion Department personnel record each calibration of the pH probe in a Calibration Log to allow for proper maintenance of the probes and continued accuracy?

38. Once a problem with a probe is discovered, is it corrected as soon as possible, usually within an hour?

39. Do WCI personnel report that the pH meters and probes work well and are reliable?

40. Has WCI's Environmental manager ever received any reports of malfunctions related to the influent probe?

41. Do CTP operators clean the influent probe once per shift, or three times per day, and more often, if necessary?

42. Do the CTP operators collect grab samples from the Pond 6 wastewater as it enters the aeration influent box at the CTP to verify

the accuracy of the influent probe under certain circumstances?

43. Do the CTP operators record the results of the grab sample on forms colloquially referred to as "Turn Audits"?

44. Did the CTP operators record, on the Turn Audits, readings from the pH meters located at the aeration influent box, the aeration tank, the rapid mix tank, and the No. 3 clarifier every two hours from September 1, 1988 to February 22, 1995, and every hour from February 23, 1995 to July 31, 1998?

45. During the period September 1, 1988 to July 31, 1998, did WCI's CTP operators record over 11,000 pH values of 2.0 s.u. or less for Pond 6 wastewater entering the CTP?

46. During the periods April - November 1992, April - May 1994, and April - July 1995, did the CTP operators record 31 pH measurements of 12.5 s.u. or above for Pond 6 wastewater entering the CTP?

47. On or about July 25, 1990, did WCI apply to Ohio EPA for a Clean Water Act permit to install a four million gallon storm surge tank to replace the impoundments?

48. Did WCI install the surge tank after approval of the permit by Ohio EPA?

49. Did WCI solicit and receive proposals for a wastewater segregation system that would have prevented process wastewaters from entering the surface impoundments, but not install the system?

50. Did WCI obtain an economic benefit of $1.5 million in

capital costs for an above-ground tank system, and $20,000 in annual operation and maintenance costs to replace the impoundments when these costs should have been incurred beginning in November 1988?

WCI'S WASTESTREAMS

51. Did WCI discharge highly acidic No. 5 pickle line rinse waters and fume scrubber discharges at a rate of approximately 110 gallons per minute ("gpm") to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

52. Did WCI discharge highly acidic No. 6 pickle line rinse waters and fume scrubber discharges at a rate of approximately 60 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

53. Did WCI discharge acid losses from the acid pickling operations at variable rates to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

54. Did WCI discharge acidic wastewaters from its acid regeneration plant at a rate of approximately 5 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

55. Did WCI discharge wastewaters from its tandem mill at a rate of approximately 40 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

56. Did WCI discharge wastewaters from its 52" Temper mill at a rate of approximately 90 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

57. Did WCI discharge wastewaters from its 54" Temper mill at a rate of approximately 45 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

58. Did WCI discharge wastewaters from its portable annealing equipment at a rate of approximately 10 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

59. Did WCI discharge wastewaters of variable acidity and alkalinity from its galvanizing line at a total rate of approximately 216 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

60. Did WCI discharge highly alkaline wastewaters from the alkaline cleaning section of its galvanizing line to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

61. Did WCI discharge highly acidic wastewaters from the acid cleaning section of its galvanizing line to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

62. Did WCI discharge wastewaters of variable acidity and alkalinity from its terne line at a total rate of approximately 95 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

63. Did WCI discharge highly alkaline wastewaters from the alkaline cleaning section of its terne line to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

64. Did WCI discharge highly acidic wastewaters from the

acid cleaning section of its terne line to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

65. Did WCI discharge highly alkaline wastewaters from the alkaline cleaning section of its silicon line at a total rate of approximately 10 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

66. Did WCI discharge wastewaters from certain miscellaneous sources including its 52" and 53" slitters and mobile equipment at an intermittent rate of approximately 35 gpm to Ponds 5, 6 and 6A at the facility from September 1988 to the present?

67. Prior to the installation of a lime neutralization system in December 1993, did the combined wastewater flow from all of WCI's steel finishing wastewaters discharged into Pond 5 frequently have pH values of 2.0 s.u. and less?

68. Is corrosiveness the property that enables a substance to dissolve material with which it comes in contact?

69. Does improperly managed corrosive wastes pose a substantial present or potential danger to human health and the environment?

70. To determine whether a substance exhibits the hazardous waste characteristic of corrosivity, can one measure the corrosive chemical agents: acids and bases, and is this measurement known as pH?

71. Does the measure of pH provide an estimate of the acidic agent (hydrogen ion) and the basic agent (hydroxide ion)?

72. Pursuant to U.S. EPA Sampling Methods 5.2 and 9040, is the

pH of a sample determined electrochemically using potentiometry, i.e., a glass membrane electrode selective for hydrogen ion in combination with a pH meter?

SOURCES OF ACID IN THE SURFACE IMPOUNDMENTS

73. Do steel industry pickling operations, by their very nature, involve the use and generation of highly corrosive materials (new, reconstituted and spent hydrochloric pickling acids, acidic rinse waters, acidic fume scrubber wastewaters and corrosive atmospheres)?

74. Does WCI maintain an Acid Regeneration Plant at the facility to re-process some of the wastestreams generated from its steel making processes?

75. Is the pH of acid fume scrubber water generated by WCI as low as 1.3 s.u.?

76. Is the acid fume scrubber water so acidic that, on occasion, a portion of it is conveyed to WCI's Acid Regeneration Plant for use in the Plant's regeneration process?

77. On other occasions, is the entire acid fume scrubber water wastestream discharged to the impoundments?

78. Has WCI considered conveying its acid rinse waters to the Acid Regeneration Plant, but continued to convey it to the unlined surface impoundments?

79. Does the wastewater conveyed to the impoundments oftentimes contain spent pickle liquor ("SPL")?

80. Is spent pickle liquor listed by U.S. EPA as a corrosive

hazardous waste under RCRA at 40 C.F.R. Part 261?

81. At times relevant to the Complaint, did WCI collect SPL in a silicon settling tank at the No. 5 Pickler, prior to conveying it to the Acid Regeneration Plant for re-processing?

82. Did the silicon settling tank contain numerous pinhole leaks noted by WCI in 1991-1992?

83. Has SPL leaked from the silicon settling tank to the sewer system feeding the impoundments?

84. Did WCI eventually replace the silicon settling tank because of the persistent leaks?

85. Did the wastewater conveyed to the impoundments oftentimes contain acid from spills and/or leaks in piping?

86. Did WCI's Environmental Manager testify that the wastewater in the ponds tends to be on the acidic side?

87. Did WCI's Chief Engineer testify that he likes the pH of the wastewater in the impoundments "on the acidic side" so that the oil is not turned into a "soapy mayonnaisy type of material"?

88. Did WCI's Chief Engineer testify that he likes the pH of the wastewater in the impoundments "on the acidic side" because if the pH is too high, the ponds perform the role of the CTP by causing zinc to settle out of the wastewater, forming sludge that reduces the depth of Pond 5?

89. Did Killam Associates, one of WCI's environmental consultants, express concern for the safety of an employee assigned to

conduct testing from an aluminum boat in Pond 5? Specifically, was Killam concerned that the boat, which was constructed of aluminum, could dissolve away from contact with the highly acidic water in Pond 5 even though aluminum is used to pickle steel?

90. Has at least one CTP operator smelled acid in the wastewater as it entered the CTP from Pond 6?

91. Prior to June 21, 1993, was the inside sump at the Acid Regeneration Plant physically connected to the pond system?

92. Is the pH of the wastewater collected in the inside sump at the Acid Regeneration Plant as low as 1.2 s.u.?

93. Did the No. 5 pickler contain three acid tubs and the No. 6 pickler contain four acid tubs, with secondary containment that was designed to channel leaks or spills of acid to the sewer system leading to No. 5 Pond?

94. Did WCI experience leaks from the acid tubs on an occasional basis resulting in the transport of spilled and leaked contents being transported to Ponds 5, 6 and 6A?

95. Did WCI personnel, on occasion, manually add lime to the acid that had spilled or leaked from the acid tubs at the No. 5 and 6 picklers, but never conduct any testing to determine whether the acid had been neutralized prior to its discharge to the sewer system leading to Pond 5?

96. Did leaks develop on occasion, between the dam that separates the acid section and the rinse section of the pickler lines,

causing acid to flow to the sewer leading to No. 5 Pond?

97. Did WCI personnel, on occasion, clean up leaked acid spills with vacuum trucks, which would then deposit the acids in Pond 6?

98. Did WCI personnel, on occasion, "dump" the rinse tanks at the picklers to allow for maintenance of the rinse tanks?

99. Did WCI personnel, on occasion, "dump" the acid tanks at the picklers and did the pH of the wastewater in the impoundments trend downward as a result?

100. Is it a standard practice for WCI personnel in the Environmental Department to place calls to the Rolling and Finishing Department, which oversees the pickling area, whenever the pH of the wastewater in the impoundments trended downward, as measured by the influent probe at the CTP, because the picklers were the largest source of acid?

WCI'S pH CONTROL PROCEDURES

101. In 1993, did WCI initiate a procedure whereby bags of lime were manually added to the wastewaters at the Rolling and Finishing Department whenever the pH of the wastewater registered between 3 and 4 s.u. as measured by the influent probe at the CTP?

102. Would Richard Gradishar, the Environmental Engineer with responsibility for wastewater issues at WCI, order that a certain number of 50-pound bags of lime be added to the wastewater based upon his judgment?

103. Would Mr. Gradishar order that a certain number of 50-pound bags of lime be added to the wastewater based upon the pH of the wastewater in the impoundments as measured by the influent probe at the CTP?

104. Prior to December 1993, did the wastewater flow directly into Pond 5 without automated pH adjustment?

105. Prior to December 1993, did WCI manually add bags of lime to the wastestreams only when there was an emergency, such as an abnormal discharge of acid?

106. Has the pH of the wastewater at the No. 9 Lift Station been as low as 0.6 s.u.?

107. Do WCI personnel determine whether the lime injection system at the No. 9 Lift Station is effectively raising the pH of the wastewater in the impoundments based on the influent probe pH readings at the CTP?

108. Did the CTP Area Supervisor, every morning at 7:00 a.m., fax to the Rolling and Finishing Department, which operates the lime injection system, a report stating what the pH of the wastewater in the impoundments is, as measured by the influent probe readings at the CTP?

109. Did Mr. Gradishar, even after WCI installed the lime injection system at the No. 9 Lift Station, direct that lime be added manually to the wastestreams to compensate for problems that would frequently occur with the lime injection system?

110. Did WCI continue to convey wastewater of 2.0 s.u. or less to the impoundments even after WCI installed the lime injection system at the No. 9 Lift Station?

111. Would the pH of the wastewater in the impoundments, on occasion, rise to 12.5 s.u. or greater after WCI installed the lime injection system at the No. 9 Lift Station?

112. Prior to installation of a lime neutralization system in December 1993, did the combined wastewater flow from all of the steel finishing wastewaters discharged into Pond 5 by WCI frequently have pH values of 2.0 s.u. and less?

113. Do WCI data demonstrate that wastewaters in the impoundments had pH values 2.0 s.u. and less more than 50 per cent of the time in 1991 and 1993?

U.S. EPA'S SAMPLING AND pH MEASUREMENTS

114. On May 12, 1993, during a U.S. EPA inspection of the facility, did the inspector collect a grab sample of wastewater being pumped from a surface impoundment known as Pond 6A to a surface impoundment known as Pond 6?

115. Did the U.S. EPA inspector extract the sample as a single increment by holding a bottle in the flow of the wastewater as it entered Pond 6?

116. Did the U.S. EPA field measurements of this sample reveal a pH of 1.81 s.u., below the regulatory limit of 2.0 s.u.?

117. On May 12, 1993, did U.S. EPA field personnel calibrate

their pH meter and pH probe at 8:40 a.m. with pH 4 and pH 10 standards at a temperature of 20.2 C?

118. On May 12, 1993, did U.S. EPA field personnel calibrate their pH meter and probe with a pH 7 standard at 8:45 a.m., 2:30 p.m. and 3:00 p.m. and obtain pH readings of 7.00 s.u., 6.86 s.u. and 6.86 s.u. at a temperatures of 20.2 C, 31.1 C and 30.9 C, respectively?

119. On June 15, 1993, during a U.S. EPA inspection of the facility, did the U.S. EPA inspector collect a grab sample of wastewater from a process that uses acid pickle liquor to treat steel (the acid pickling process)?

120. On June 15, 1993, during a U.S. EPA inspection of the facility, did the U.S. EPA inspector collect the sample as a single increment by placing a bottle in the flow of the wastewater as it entered a tank?

121. Did U.S. EPA field measurements of this sample collected from the acid pickling process wastewater reveal a pH of 1.65 s.u.?

122. On June 15, 1993, during a U.S. EPA inspection of the facility, did the U.S. EPA inspector collect a grab sample from wastewater flowing into the CTP from Pond 6?

123. Was the sample collected at a point before the commingling of Pond 6 wastewater with wastewater from the Basic Oxygen Furnace, which is separated from Pond 6 wastewater by a weir at the aeration tank?

124. Did the U.S. EPA inspector extract the sample as a single

increment by placing a bottle in the flow of the Pond 6 wastewater as it entered the aeration tank?

125. Did U.S. EPA field measurements of the sample of Pond 6 wastewater reveal a pH of 1.67 s.u.?

126. On June 15, 1993, did U.S. EPA field personnel calibrate their pH meter and probe at 10:55 a.m. with pH 4 and pH 10 standards at temperatures of 26.7 C and 26.6 C, respectively?

127. On June 15, 1993, did U.S. EPA field personnel calibrate their pH meter and probe with a pH 7 standard at 10:57 a.m. and 11:52 a.m., and obtain pH readings of 6.98 s.u. and 6.92 s.u. at a temperatures of 27.2 C and 32.1 C, respectively?

RELIABILITY OF SAMPLING AND ANALYSIS

128. Are the measurements of WCI wastewater made by U.S. EPA during its May-June 1993 inspection reliable for determining that the pH values of samples collected by U.S. EPA were less than or equal to 2.0 s.u.?

129. Were the samples collected with sample extraction techniques appropriate for the form and consistency of the wastes?

130. Did U.S. EPA inspectors appropriately collect the samples of wastewater as they entered and exited the surface impoundments?

131. Did U.S. EPA inspectors properly apply a routine analytical method widely used in the environmental testing community and capable of being reliable to within 0.1 pH units?

132. Did U.S. EPA inspectors use instrumentation appropriate for

the method, calibrate their instruments with two standards of known pH value daily, compensate for temperature effects, and verify the calibration by the replicate analysis of a standard of known pH value?

133. Are the data obtained by U.S. EPA's inspectors of sufficient quality for the intended purposes?

134. Are the inflow pH measurements with values less than or equal to a pH of 3, made by WCI CTP operators of Pond 6 wastewater in 1989, 1993 and 1995, reliable for determining that pH values reported by WCI as less than or equal 2 were accurate?

135. Did WCI appropriately make the inflow pH measurements as the wastewater exited the surface impoundment known as Pond 6 and enter the wastewater treatment unit? Did WCI properly apply a routine analytical method widely used by the industrial and wastewater treatment communities and capable of being reliable to within 0.1 or 0.2 pH units?

136. Did WCI use instrumentation appropriate for the method, conduct offline calibration of pH probes and meters weekly with two standards of known pH value, and clean the pH electrode assembly daily?

137. Were the inflow pH measurements for 1995 frequently corroborated by grab sample pH measurements made by WCI?

138. Does a comparison of weekly analyses of standard solutions for 1995 to those for 1993 and 1989 indicate the same performance for the inflow pH measurements during these years?

139. Do corroborating grab sample pH measurements on October 14 and 15, 1993, by a WCI contractor and again on June 15, 1993, by U.S. EPA, provide further verification of the reliability of the inflow pH measurements?

140. Does a corroborating chloride analysis on June 21, 1989, provide verification of the reliability of the inflow measurements? Does the agreement between the measured and expected values of lime saturated wastewater provide *in situ* demonstration of the proficiency of the inflow pH measurements to reliably depict the pH?

141. Do many of the inflow pH measurements recorded at two-hour intervals for June 1989, May 1993, and October 1993 reflect a pH of 2 or less?

142. Are WCI's pH measurements of sufficient quality for the intended purposes?

143. When comparing seventy-five (75) pairs of grab sample pH measurements taken during the period February 25, 1995 through December 31, 1995, with corresponding inflow pH measurements of Pond 6 wastewater with a pH value of 3.0 s.u. or below, does the close agreement of the inflow pH measurements and the grab sample measurements indicate that all of the pH measurements of 3.0 s.u. or less are reliable to within 0.2 pH units and most are reliable to within 0.1 pH units?

144. In comparing one hundred and ninety-three (193) pairs of

grab sample pH measurements taken during the period 1995 through 1998, with corresponding inflow pH measurements of Pond 6 wastewater with a pH value of 3.0 s.u. or below, does the close agreement of the inflow pH measurements and the grab sample measurements indicate that 98.4% of the pH measurements of 3.0 s.u. or less are reliable to within 0.2 pH units and most are reliable to within 0.1 pH units?

145. Do the 1995 weekly calibration logs contain analyses of pH 2 standard and corresponding analyses of pH 4 standard?

146. Because these standard analyses were conducted in 1995 along with inflow and grab sample pH measurements, are the pH standard analyses associated with an inflow measurement system that is reliable to within 0.2 pH units?

147. Do WCI CTP records dated February 1, 1993, contain pH readings of 12.4 s.u. for a Pond 6 wastewater inflow measurement? Do WCI CTP records dated February 3, 1997, contain the following pH readings for Pond 6 wastewater inflow pH measurements: (1) four at 12.6 s.u., (2) three at of 12.5 s.u., and (3) two at 12.4 s.u.

148. Can these high pH values observed on February 1, 1993, and February 3, 1997, be correlated with known uses of lime at the facility?

WCI'S CONTRACTOR MEASUREMENTS

149. On June 20, 1989, when Duncan, Lagnese & Associates ("DLA") conducted hourly sampling (one sample every hour for twenty-four hours) of the wastewater in the surface impoundments on behalf of

WCI, did twenty-one (21) of the twenty-four samples have a pH value of 2.0 or below?

150. During the period October 13-15, 1993, when Killam Associates conducted a study on behalf of WCI, to determine, among other things, the source of the acid wastewater in the surface impoundments, and collected three grab samples from waste streams that flow into the surface impoundments at the facility, did the three samples collected by Killam have pH values of 1.3, 1.7 and 2.0, respectively?

151. Based upon its sampling, did Killam Associates conclude that the pH of the wastewater in the surface impoundments was between 1.9 and 2.0 s.u. even after the addition of 700 pounds of lime per day?

WCI's KNOWLEDGE OF HAZARDOUS WASTE IN PONDS 5, 6 AND 6A

152. Did WCI make a determination as to whether the wastewater it conveyed to the surface impoundments was hazardous as required under RCRA?

153. Were WCI management personnel aware at least from the mid-1980s, that it was illegal to treat, store or dispose of wastewater that had a pH of 2.0 or below in surface impoundments?

154. Did WCI personnel inform Killam Associates personnel in 1993 that the pH of the wastewater in the impoundments was "below 2.0 for the past year and half?"

155. Did WCI personnel inform Killam Associates personnel that the pH of the wastewater in the impoundments ran between "1.8-

1.9?"

156. Did WCI personnel inform Killam Associates personnel that the pH of the wastewater in the impoundments was "between 1.0 and 4.0, averaging 2.0?"

157. Were various WCI management personnel aware that the pH of the wastewater in the impoundments was 2.0 or below for extended periods of time?

158. Did WCI personnel rely on a study conducted by Killam Associates in 1993, in which Killam determined that the pH of the wastewater in the impoundments was below 2.0 s.u., in proposing, designing and installing an automated lime injection system to raise the pH of the wastewater prior to its discharge to the impoundments?

159. By memorandum dated August 1, 1990, did WCI's Environmental Manager, Tom Shepker advise Ray Zeuner that USEPA was vigorously pursuing the elimination of unlined surface impoundments used for waste water and hazardous waste systems and that the installation of a four million-gallon tank to replace the ponds "will take us out from under RCRA for our water treatment system"?

160. Did Tom Shepker, at the request of WCI President, James Stack, generate monthly and daily environmental control reports, which were circulated to WCI management, including James Stack and Ray Zeuner? In these reports, did Mr. Shepker advise management of environmental issues such as the presence of low pH wastewater in the surface impoundments?

161. Is WCI owned by The Recco Group, Inc. (Recco), a New York investment firm owned by Ira Rennet, who served as Chairman of WCI's Board of Directors?

162. Did WCI's former president discuss environmental problems with Mr. Rennet, including regulatory violations, if a major capital expenditure was required to address the problem?

163. Did Mr. Rennet have the prerogative of deciding that WCI would not make such expenditures?

164. Did Ray Zeuner discuss with WCI's former president the possibility of replacing Ponds 5, 6 and 6A with an above-ground tank system?

165. Did Mr. Zeuner discuss with Mr. Stack concerns regarding low pH wastewater going into the Ponds?

166. Did Mr. Zeuner advise Mr. Stack that adding lime to the process was for the purpose of addressing "any lower pH, especially 2 or below"?

167. Did Mr. Stack receive monthly and daily environmental reports from Tom Shepker, which, on occasion, indicated that the pH of Pond 6 influent wastewater was 2.0 s.u. or below?

168. Was Mr. Stack aware of acid spills at the facility, low pH wastewater going into the Mahoning River and leaks of spent pickle liquor from tanks?

169. Did personnel in the Environmental Department at WCI discuss the possibility that spent pickle liquor had gotten into the

impoundments?

170. Did personnel in the Environmental Department at WCI discuss what type of closure would be required under RCRA for the surface impoundments if spent pickle liquor had gotten into the impoundments?

ECONOMIC BENEFIT DERIVED FROM THE VIOLATIONS AND ABILITY TO PAY CIVIL PENALTY

171. Did WCI obtain an economic benefit from delayed capital expenditures for closure of Ponds 5, 6 and 6A in a total amount of $6,427,000?

172. Did WCI obtain an economic benefit as a result of avoiding operation and maintenance for the operation and closure of Ponds 5, 6 and 6A totaling $2,631,000?

173. Did WCI, therefore, obtain a total economic benefit of its delayed compliance, therefore, of almost $9.1 million?

174. Does WCI have the ability to pay a $34,000,000 civil penalty?

First Claim for Relief

175. Does one or more of the surface impoundments at WCI's facility, Ponds 5, 6 and 6A, contain wastewaters from WCI's steelmaking processes that exhibit a pH of 2 or less during the time period relevant to the United States' Complaint?

176. Have the wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A exhibited the characteristic of corrosivity and are the wastewaters a hazardous waste within the

meaning of 40 C.F.R. § 261.20 and 261.22?

177. Have the wastewaters flowing into, contained in, or flowing out of Ponds 5, 6 and 6A included hazardous wastes from specific sources, namely spent pickle liquor, generated by steel finishing operations of facilities within the iron and steel industry listed at 40 C.F.R. Part 261, Subpart D under the U.S. EPA hazardous waste no. K062?

178. Have Ponds 5 and 6 been in use at the Defendant's facility for a period prior to 1950, remained in continuous use to the current date, and never been closed?

179. Was Pond 6A added on or about 1986 and has it been in continuous use to the current date without closure?

180. Have WCI's Ponds 5, 6 and 6A, continued to receive process wastewaters from November 8, 1988, up to and continuing to the date of filing of the United States' Complaint and to the present date?

181. Does WCI have a permit issued pursuant of Section 3005 or 3006 of RCRA, 42 U.S.C. §§ 6925 or 6926, to manage treat or store hazardous wastes in Ponds 5, 6, and 6A?

182. At the time that the Federal hazardous waste permit became effective, did WCI have an effective RCRA permit which authorized it to conduct hazardous waste management activities only as specified in the RCRA permit?

183. At all times relevant to this action, did the federal permit

specifically prohibit WCI from managing hazardous waste in Ponds 5, 6 and 6A?

184. Under its permits, whenever WCI becomes aware that it failed to submit any relevant fact, or submitted incorrect information in the permit application, is WCI required to promptly submit such facts or information to Ohio EPA and U.S. EPA?

185. Is WCI prohibited by its Part B permit from storing hazardous waste that is not identified in that permit?

186. Did WCI manage hazardous wastes not authorized by its permit in one or more of its Ponds 5, 6 and 6A?

187. Pursuant to the State of Ohio Hazardous Waste Management Permit, dated August 12, 1993, at all times relevant to this action, was WCI prohibited from operating any hazardous waste management unit except in accordance with that permit?

188. From September, 1988, to the present did WCI operate hazardous waste management units at the facility, Ponds 5, 6 and 6A, without obtaining any permit issued pursuant to RCRA authorizing such operation?

189. From September 8, 1988, to the present, did WCI operate the hazardous waste management units, Ponds 5, 6 and 6A, at its facility without interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), because no timely notice was ever filed by WCI stating that the facility was treating, storing, or disposing of a hazardous waste in Ponds 5, 6 and 6A, and because no timely Part A application was

filed by WCI pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, stating that the facility was treating, storing, or disposing of a hazardous waste in Ponds 5, 6 and 6A?

Second Claim for Relief

190. From September 1988, to the present, did WCI operate hazardous waste management units at its facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part A application and without amending any Part A application pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, 40 C.F.R. § 270.13 and O.A.C. § 3745-50-43?

Third Claim for Relief

191. From September 1988, to the present, did WCI operate hazardous waste management units at its facility, including Ponds 5, 6 and 6A, without including the hazardous waste management units in any Part B application and without amending any Part B application pursuant to 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44?

Fourth Claim for Relief

192. Did WCI's Ponds 5, 6 and 6A meet the minimum technological standards of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), or in 40 C.F.R. § 264.221 or O.A.C. § 3745-56-21 by November 8, 1988?

193. During the period from November 8, 1988, until at least 1995, did WCI continue to accept hazardous wastes at Ponds 5, 6 and 6A, and fail to close the impoundments consistent with Section 3005(j)

of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228, and O.A.C. § 3745-56-28?

194. Did WCI obtain an economic benefit from the delayed capital costs and avoided annual costs of closure of Ponds 5, 6 and 6A consistent with federal and State of Ohio RCRA closure requirements?

Fifth Claim for Relief

195. During the period from November 8, 1988, to the present, did WCI have a written closure plan consistent with federal and State of Ohio RCRA closure provisions at 40 C.F.R. § 264.112, and O.A.C. § 3745-55-12 that included closure of Ponds 5, 6 and 6A?

196. Did WCI obtain an economic benefit from the delayed capital costs and avoided annual costs of failing to prepare a closure plan consistent with federal and State of Ohio RCRA closure requirements?

Sixth Claim for Relief

197. During the period from November 8, 1988, to the present, did WCI fail to estimate closure costs and provide financial assurance under 40 C.F.R. Part 264 and O.A.C. § 3745-55-40 through 3745-55-51, for its hazardous waste management units, Ponds 5, 6 and 6A?

198. Did WCI obtain an economic benefit from the avoided annual costs of failing to prepare a closure costs estimate and providing financial assurance for Ponds 5, 6 and 6A consistent with federal and State of Ohio RCRA closure requirements?

Seventh Claim for Relief

199. During the period from November 8, 1988, to the present, did WCI fail to install, operate, and maintain a ground-water monitoring system for its hazardous waste management units, Ponds 5, 6 and 6A, which meets the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-55-02?

200. Do the wells installed by WCI to date meet the requirements of RCRA, 40 C.F.R. Part 264, Subpart F and O.A.C. §§ 3745-54-90 through 3745-55-02?

201. Did WCI obtain an economic benefit from the delayed capital costs and avoided annual costs of failing to install, operate and maintain a ground-water monitoring system consistent with federal and State of Ohio RCRA closure requirements?

Eighth Claim for Relief

202. At various times from September 1, 1988, until at least 1995, did WCI land dispose hazardous waste with a pH of less than or equal to 2.0, and exhibiting the characteristic of corrosivity, and spent pickle liquor, in or from its Ponds 5, 6 or 6A, which did not meet the treatment standards specified at O.A.C. § 3745-59-40 through 3745-59-43, in violation of 40 C.F.R. §§ 268.32 and 268.35(a), and O.A.C. §§ 3745-59-32 and 3745-59-35(A)?

203. Did WCI obtain an economic benefit from the delayed capital costs and avoided annual costs of failing to meet the treatment standards for land disposal of hazardous waste with a pH of

less than or equal to 2.0, and exhibiting the characteristic of corrosivity in its Ponds 5, 6 or 6A, consistent with federal and State of Ohio RCRA closure requirements?

II. Contested Issues of Law

The United States' contested issues of law, in addition to those implicit in the foregoing issues of fact, are as follows:

First Claim for Relief:

1. Whether Ponds 5, 6 and 6A at the facility are surface impoundments as defined by 40 C.F.R. § 260.10, and O.A.C. § 3747-50-10(A)?

2. Whether Ponds 5, 6 and 6A at the facility are hazardous waste management units as defined by 40 C.F.R. § 260.10, and O.A.C. § 3747-50-10(A)(49) and are subject to regulation as hazardous waste management units subject to the provisions of RCRA and the O.A.C.?

3. Whether the wastewater treated, stored and disposed of in Ponds 5,6 and 6A by WCI at times relevant to the complaint, is a solid waste as defined by RCRA at 40 C.F.R. § 261.2?

4. Whether WCI's discharges into Ponds 5, 6 and 6A of one or more of the cold steel processing wastewaters from its Facility operations constitute treatment, storage and disposal of hazardous wastes under RCRA, 42 U.S.C. §§ 6901 et seq.

5. Whether each day of WCI's discharges into Ponds 5, 6 and 6A of all cold steel processing wastewaters from its Facility operations, from May 11, 1993 to the present, without a permit issued

pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); O.R.C. §§ 3734.02(F) and 3734.04; and O.A.C. § 3745-50-45, constitutes a separate day of violation of these requirements.

6. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Second Claim for Relief:

7. Whether each day WCI operated hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part A application, and without amending any Part A application, from May 11, 1993 to the present constitutes a separate day of violation of 40 C.F.R. § 270.13 and O.A.C. § 3745-50-43, and a separate day of violation of 40 C.F.R. § 270.72 and O.A.C. § 3745-50-45, respectively.

8. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed

$25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Third Claim for Relief:

9. Whether each day WCI operated hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part B application, and without amending any Part B application to include information pertaining to Ponds 5, 6 and 6A, from May 11, 1993 to the present, constitutes a separate day of violation of 40 C.F.R. § 270.14 and O.A.C. § 3745-50-44.

10. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Fourth Claim for Relief:

11. Whether each day WCI operated hazardous waste

management units at its Facility, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, without meeting the minimum technological standards of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), constitutes a separate day of violation of RCRA.

12. Whether each day WCI continued to accept hazardous wastes at the hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, and failed to close Ponds 5, 6 and 6A as required by Section 3005(j) of RCRA, 42 U.S.C. § 6935(j); 40 C.F.R. § 264.228; and O.A.C. § 3745-56-28, constitutes a separate day of violation of RCRA.

13. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Fifth Claim for Relief:

14. Whether each day WCI did not have a closure plan that identifies the steps necessary to perform partial or final closure for the hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, constitutes a separate

day of violation of 40 C.F.R. § 264.112 and O.A.C. § 3645-55-12.

15. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Sixth Claim for Relief:

16. Whether each day WCI failed to have and maintain a detailed written estimate, in current dollars, of the costs of the closing its hazardous waste management units, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, constitutes a separate violation of 40 C.F.R. §§ 264.140 through 264.151 and O.A.C. §§ 3745-55-40 through 3745-55-51.

17. Whether each day WCI failed to provide financial assurance for the closure of its hazardous waste management units, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, constitutes a separate violation of 40 C.F.R. §§ 264.140 through 264.151 and O.A.C. §§ 3745-55-40 through 3745-55-51.

18. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and

civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Seventh Claim for Relief:

19. Whether each day WCI failed to install, operate, and maintain a groundwater monitoring system meeting the requirements of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3745-55-02, constitutes a separate violation of RCRA.

20. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Eighth Claim for Relief:

21. Whether each day WCI land disposed of hazardous waste

with a pH of less than or equal to 2.0, and exhibiting the characteristic of corrosivity, in its hazardous waste management units, including Ponds 5, 6 and 6A, from May 11, 1993 to the present, which did not meet the treatment standards specified in O.A.C. §§ 3745-59-40 through 3745-59-43, constitute a separate violation of 40 C.F.R. §§ 268.32 and 268.35(a), and O.A.C. §§ 3745-59-32 through 3745-59-35(a).

22. Whether, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), WCI is liable for injunctive relief and civil penalties for each day of violation of RCRA and the federally approved hazardous waste management program for Ohio, not to exceed $25,000 per day for each day of violation prior to January 31, 1997, and pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134, 61 Fed. Reg. 69360, and 62 Fed. Reg. 13514, for civil penalties not to exceed $27,500 per day for each day of violation occurring on or after January 31, 1997.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
	)	
Defendant.	)	
	)	
	)	

FINAL PRETRIAL ORDER

This action came before the Court at a final pretrial conference held on the twenty-seventh day of May, 1999, pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

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II. NATURE OF ACTION AND JURISDICTION:

A. This is a civil action brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for injunctive relief and civil penalties against defendant, WCI Steel, Inc. ("WCI"), for violations

of RCRA, 42 U.S.C. § 6901 et seq., the Ohio Administrative Code ("O.A.C."), and WCI's hazardous waste management permit issued pursuant to RCRA and the O.A.C.

B. The jurisdiction of the Court is invoked under Title 28, United States Code, Sections 1331, 1345 and 1355, and Title 42, United States Code, Section 3008(a).

C. The jurisdiction of the Court is disputed.

III. TRIAL INFORMATION:

A. The estimated length of trial is 10 days.

B. Trial to Court is set for June 14, 1999.

STATEMENTS OF THE PARTIES AND LISTS

A. General Nature of the Claims of the Parties

(1) Plaintiff asserts eight claims for relief in its Complaint, as follows:

First Claim for Relief: This is a claim for civil penalties and injunctive relief for violations of RCRA, based upon WCI's operation of hazardous waste management units without attaining interim status or obtaining a permit issued pursuant to RCRA authorizing such operation. From September 1988, to the present, WCI has operated hazardous waste management units at its integrated steel plant located at 1040 Pine Avenue, S.E., Warren Ohio (the "Facility"), including Ponds 5, 6 and 6A, without ever filing timely notice stating that the Facility was treating, storing or disposing of hazardous waste in Ponds 5, 6 and 6A pursuant to Section 3005(e) of RCRA, 42 U.S.C. §

6925(e). Moreover, WCI filed no timely Part A application pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, stating that the Facility was treating, storing or disposing of hazardous waste in Ponds 5, 6 and 6A. Pursuant to State of Ohio ("Ohio") Hazardous Waste Management Permit, dated August 12, 1993, WCI was prohibited from operating any hazardous waste management unit except in accordance with that permit.

Second Claim for Relief: Plaintiff's second claim is for civil penalties and injunctive relief for WCI's failure to include in a Part A application all past, present and future hazardous waste treatment, storage and disposal areas at its Facility pursuant to 40 C.F.R. § 270.13 and O.A.C. § 3645-50-43, and for failure to amend a Part A application prior to making certain specified changes in treatment, storage or disposal of hazardous wastes pursuant to 40 C.F.R. § 270.72 and O.A.C. § 3745-50-45. From September 1988, to the present, WCI operated hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part A application and without amending any Part A application.

Third Claim for Relief: The third claim is for civil penalties and injunctive relief for WCI's failure to include in a Part B application, among other things, chemical and physical analysis of the hazardous waste and hazardous debris to be handled at the Facility, including all information which must be known to treat, store or dispose of the wastes at the Facility properly pursuant to 40 C.F.R. §

270.14 and O.A.C. § 3745-50-44. From September 1988, to the present, WCI operated hazardous waste management units at its Facility, including Ponds 5, 6 and 6A, without including these hazardous waste management units in any Part B application, and without amending any Part B application to include information pertaining to Ponds 5, 6 and 6A.

Fourth Claim for Relief: The fourth claim is for civil penalties and injunctive relief for WCI's failure, as an owner or operator of a surface impoundment in the State of Ohio that treated, stored or managed a hazardous waste, to cease accepting any hazardous wastes in WCI's Ponds 5, 6 and 6A by November 8, 1988, unless the impoundments met the minimum technological requirements of Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A). During the period from November 8, 1988 to at least 1995, WCI continued to accept hazardous wastes at Ponds 5, 6 and 6A, failed to meet the minimum technological requirements referenced in the previous sentence, and failed to close the impoundments as required by impoundments Section 3005(j) of RCRA, 42 U.S.C. § 6935(j), 40 C.F.R. § 264.228 and O.A.C. § 3745-56-28.

Fifth Claim for Relief: The fifth claim is for civil penalties and injunctive relief for WCI's failure, during the period from November 8, 1988 to the present, to have a written closure plan that identifies the steps necessary to perform partial or final closure of the Facility at any point during its active life. Thus, WCI violated federal and State of Ohio RCRA closure requirements at 40 C.F.R. §

264.112 and O.A.C. § 3745-55-12, that require WCI, as an owner or operator of hazardous waste management units, including Ponds 5, 6 ans 6A, to have such a written closure plan.

Sixth Claim for Relief: The sixth claim is for civil penalties and injunctive relief for WCI's failure, during the period from November 8, 1988 to the present, to have and maintain a detailed written estimate, in current dollars, of the cost of closing WCI's hazardous waste management units, including Ponds 5, 6 and 6A, in accordance with 40 C.F.R. Part 264 and O.A.C. §§ 3745-55-40 through 3745-55-51. During this same period of November 8, 1988 to the present, WCI, as an owner and operator of hazardous waste management units, including Ponds 5, 6 and 6A, also failed to comply with the financial assurance provisions of 40 C.F.R. § 264.143 and O.A.C. § 3745-55-43.

Seventh Claim for Relief: The seventh claim is for civil penalties and injunctive relief for WCI's violations of 40 C.F.R. Part 264, Subpart F, and O.A.C. §§ 3745-54-90 through 3645-54-99 and 3645-54-01 through 3745-54-02, for failing to install, operate, and maintain a groundwater monitoring system for its surface impoundments, Ponds 5, 6 and 6A, during the period November 8, 1988 to the present that satisfies the criteria in these regulations.

Eighth Claim for Relief: The eighth claim is for civil penalties and injunctive relief for WCI's failure to meet the treatment standards specified at O.A.C. §§ 3745-59-40 through 3745-59-43, for

WCI's land disposal of hazardous waste with a pH of less than or equal to 2.0, and exhibiting the characteristic of corrosivity, in or from its Ponds 5, 6 and 6A, in violation of 40 C.F.R. §§ 268.32 and 268.35(a) and O.A.C. §§ 3745-59-32 through 3745-59-35(A). WCI violated these requirements during various times from July 7, 1987 until at least 1995.

(2) Defendant Claims: Defendant denies liability as asserted in the First through Eighth Claims for Relief for the following reasons:

All Claims: All of the U.S.'s eight claims for relief are based upon a single allegation: that WCI Steel's wastewater Ponds, known as Ponds 5, 6 and 6A, are subject to the requirements for hazardous waste units under RCRA and analogous Ohio law solely because they once contained wastewaters that could have been characterized as having a pH of 2.0 under the U.S. EPA methods specified in 40 C.F.R. § 261.22(a)(1). However, the U.S. simply has no valid or reliable data or other evidence to support this allegation that was generated in accordance with the mandatory U.S. EPA methods required by its regulation. U.S. EPA must follow its own regulations, particularly where they establish a regulatory threshold based upon a mandatory measurement technology. The Agency may not lawfully use a methodology other than that specified in the regulation unless it first undergoes formal rulemaking. See Donner Hanna Coke Corp. v. Costle, 464 F. Supp. 1295 (W.D.N.Y. 1979). Therefore, there is no evidence, as a

matter of law, showing that any of the Ponds is or has ever been subject to RCRA. Thus, all eight of the U.S.'s claims for relief necessarily must fail.

In addition, much of the U.S.'s claims relate to times prior to the applicable federal five-year statute of limitations period and therefore are time-barred. Finally, the injunctive relief requested by the Complaint would subject WCI Steel to potentially inconsistent legal obligations due to provisions in the proposed Consent Decree that has been lodged with this Court in a related action between the same Parties (Case No. 4:95CV1442) relating to Ponds 6 and 6A.

B. Uncontroverted Facts

The following facts are established by admissions in the pleadings, including discovery, and by stipulations of counsel:

WCI Operations

1. Defendant is a corporation organized under the laws of the State of Ohio, doing business in Ohio and having its principal place of business partially located in the City of Warren, Warren Township, and Howland Township, all of which are located in Trumbull County, Ohio.

2. Defendant's integrated steel facility is located partially in the City of Warren, Warren Township, and Howland Township, all of which are located in the Northern District of Ohio.

3. Any claims for civil penalties for violations prior to May 11, 1993 would be time barred.

4. The United States provided notice of the commencement of this action to the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6828(a)(2) on May 11, 1998.

5. WCI owns and operates an integrated steel facility located at 1040 Pine Avenue, S.E. in Warren, Ohio. WCI began its operation of the steelmaking facility on September 1, 1988. WCI's facility produces hot rolled strip steel, pickled and oiled hot rolled, cold rolled and coated flat steel products. WCI's steel production operations include one iron-making blast furnace; a two vessel basic oxygen furnace steelmaking shop; a 56" hot strip mill; the Nos. 5 and 6 hydrochloric acid pickling lines; a hydrochloric acid regeneration plant; a 4-stand tandem cold rolling mill; batch annealing facilities; temper cold rolling mills; two sheet slitters; a hot dip galvanizing line; a hot dip terne coating line; a silicon steel anneal and coating line; and ancillary utility and pollution control equipment. On or about January 1992, a twin-strand continuous slab caster and ladle metallurgy, including a vacuum degasser, became operational as part of WCI's steel production operations. Prior to April 1992, WCI's steel production operations included several soaking pits and a blooming mill.

6. WCI is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), O.A.C. § 3745-50-10(A)86, and 40 C.F.R. § 260.10.

7. WCI's integrated steel plant, and all buildings, structures and surface impoundments located there, is a "facility" within the meaning of 40 C.F.R. § 260.10 and O.A.C. § 3745-50-10(A)(35).

8. Warren Consolidated Industries, Inc., acquired the Facility on August 31, 1988 from LTV Steel Company ("LTV").

9. In December 1991, Warren Consolidated Industries, Inc. changed its corporate name to WCI Steel, Inc.

10. The owner/operator of the Facility prior to LTV was Republic Steel Company ("Republic").

11. WCI steel facility has a system for collecting wastewater from the No. 5 and 6 pickle lines; terne line; galvanize line; tandem mill; hot strip finishing line; silicon line, acid regeneration plant runoff; mobile equipment shop; 004 scale pit; 52" and 54" temper mills; locomotive/repair machine shop; and waste oil tank decant water from its facility operations.

12. WCI's wastewater collection system consists of series of underground sewers leading from the steel processing areas to an in-ground pump station known as the No. 9 pump station, a force-main from the No. 9 pump station leading to a sump located on the bank of the Mahoning River, south of the acid regeneration plant, known as a "bosh box," and a gravity sewer from the bosh box to Pond 5.

13. Wastewater remaining in Pond 5 after settling and oil separation processes take place is thereafter conveyed to Pond 6.

WCI's wastewater treatment system is designed to pump the water in Pond 6 to the CTP.

14. Ponds 5, 6 and 6A have been in use by WCI from November 8, 1988 to the present, with the exception of any downtime.

15. The Central Wastewater Treatment Plant ("CTP") at its facility was installed by Republic in 1984 for the purpose of treating all process wastewater from the steel finishing operations (including acid pickling, cold rolling and coatings), a wastewater stream from the BOF shop, and a wastewater stream from the boiler house operations.

16. From September 1, 1988 to the present, WCI has used Pond 6A to intercept seepage from Pond 6 at WCI's facility. Seepage intercepted by Pond 6A has been pumped back to Pond 6 from which it is pumped to the CTP for treatment prior to discharge.

17. In December 1993, WCI installed an automated lime slurry injection system at the No. 9 Lift Station.

18. From September 1, 1988 to the present, WCI's CTP operators are directed to record, on various turn audit forms, the pH values reflected on the CTP pH meters, including the pH meter for the Pond 6 influent. The CTP has probes, manufactured by Great Lakes Instruments, Inc., located at the aeration influent box, the aeration effluent tank, the rapid mix tank and No. 3 clarifier. The CTP probes and meters were installed at or about the time that the CTP was constructed in 1984.

19. Since September 1, 1988, WCI personnel from its Combustion Department generally calibrated the pH probe for the Pond 6 influent at least once per week, by removing the pH probe from the box in which it is normally submerged and calibrating it with two buffer solutions of specified pH.

20. Since September 1, 1988, WCI's CTP operators generally recorded pH readings from the pH meters located at the aeration influent box, the aeration effluent tank, the rapid mix tank, and the No. 3 clarifier at one- or two-hour intervals. The pH meter associated with the pH probe at the aeration influent box has a digital display.

21. Since September 1, 1988, WCI's CTP operators have, on occasion, collected grab samples of the influent wastewater from Pond 6 after it entered the aeration influent box to determine whether the probe needed re-calibration or maintenance. The grab sample was collected by placing a beaker in the influent wastewater from Pond 6 after it entered the aeration influent box.

22. Since September 1, 1988, WCI's CTP operators took a pH reading of collected grab samples using a bench pH meter. The bench pH meter used by the WCI CTP operators generally was calibrated using a single buffer solution with a specified pH value of either 2, 4, 7 or 10.

23. WCI has not included or identified Ponds 5, 6 and 6A as hazardous waste management units in any RCRA Part A permit Application

or amended Permit Application.

24. WCI has not included or identified Ponds 5, 6 and 6A as hazardous waste management units in any RCRA Part B permit Application or amended Permit Application.

25. WCI has never had interim status under Section 3005 of RCRA, 42 U.S.C. § 6925, authorizing WCI to manage, treat or store hazardous wastes in Ponds 5, 6 and 6A.

26. Ponds 5, 6 and 6A do not meet all minimum technological requirements contained in Section 3004(o)(1)(A) of RCRA, 42 U.S.C. § 6924(o)(1)(A), or in 40 C.F.R. § 264.221 or O.A.C. § 3745-56-21.

27. On or about July 25, 1990, WCI applied to the Ohio EPA for a Clean Water Act permit to install a four million gallon storm surge tank. The surge tank was not installed.

28. WCI submitted a RCRA Part B Permit Application for the Facility on or about November 7, 1988 which was subsequently revised several times.

29. On August 12, 1993, the Ohio EPA issued to WCI an Ohio Hazardous Waste Installation and Operation Permit ("Ohio EPA Permit"). The Ohio EPA Permit expired on August 12, 1998.

30. On November 11, 1993, U.S. EPA issued WCI the federal portion of a RCRA hazardous waste permit ("U.S. EPA Permit"). The U.S. EPA Permit expires ten years from the effective date.

31. In 1993, U.S. EPA personnel conducted a multimedia inspection of the WCI Facility.

32. During June 1997, U.S. EPA personnel and contractors conducted an inspection of the WCI Facility, which included sampling activities.

33. WCI submitted a written Closure Plan for the Ponds in April 1991.

34. WCI's ground water monitoring activities in the vicinity of Ponds 5, 6 and 6A are being conducted as part of the corrective action process under WCI's RCRA Part B permit.

35. All of the documents produced by WCI in this action are true and authentic, meet the hearsay exception for business records in F.R.E. 803(6) and are admissible for purposes of this proceeding.

36. All of the documents produced by the U.S. in this action are true and authentic, meet the hearsay exception for public records and reports in F.R.E. 803(8) and are admissible for purposes of this proceeding.

C. Issues of Fact and Law

(1) Plaintiff's Contested Issues of Fact and Law: The contested issues of fact and law remaining for decision are provided in Appendix B.

(2) Defendant's Contested Issues of Fact and Law: The contested issues of fact and law remaining for decision are provided in Appendix C.

D. Witnesses

(1) Plaintiff will call, or will have available for

testimony at trial, those witnesses, including expert witnesses, listed on Appendix D hereto.

(2) Defendant will call, or will have available for testimony at trial, those witnesses, including expert witnesses, listed on Appendix E hereto.

E. Expert Witnesses

Parties shall be limited to those expert witnesses whose reports have been timely exchanged in advance of trial.

F. Trial to the Court

(1) Plaintiff's proposed Findings of Fact and Conclusions of Law are attached to this Final Pretrial Order as Appendix F.

(2) Defendant's proposed Findings of Fact and Conclusions of Law are attached to this Final Pretrial Order as Appendix G.

G. Trial to the Jury

Not applicable.

H. Use of Depositions and/or Audio/Video Tapes

(1) Testimony of the Plaintiff's Witnesses that will be offered by deposition are listed in Appendix H.

(2) Testimony of the Defendant's Witnesses that will be offered by deposition are listed in Appendix I.

I. Exhibits

The Parties will offer as Exhibits those items listed herein as follows:

(1) Plaintiff's Exhibits — Appendix J.

(2) Defendant's Exhibits – Appendix K.

J. Pending Motions

Plaintiff United States' Motion In Limine for Admission of Summaries of Voluminous Documents is pending at this time.

Defendant WCI Steel's Motions in Limine to Exclude Expert Testimony of Joe Lowry and Gary Amendola Relating to Waste Characterization and to Exclude Pre-May 11, 1993 Evidence are pending as well.

K. Modification of Order

This Final Pretrial Order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel, or on motion of the Court.

L. Settlement Efforts

The Parties participated in mediation on June 1, 1999. The mediation was unsuccessful. The Parties are unable to reach agreement.

IT IS SO ORDERED

JUDGE JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

Counsel for: The United States of America

_____

Counsel for: WCI Steel, Inc.

APPENDICES TO FINAL PRETRIAL ORDER

Appendix A.	Defendant WCI Steel, Inc.'s Claims: Included in Text.
Appendix B.	Plaintiff United States' Contested Issues of Fact and Law.
Appendix C.	Defendant WCI Steel, Inc.'s Contested Issues of Fact and Law.
Appendix D.	List of Plaintiff United States' Witnesses.
Appendix E.	List of Defendant WCI Steel, Inc.'s Witnesses.
Appendix F.	Plaintiff United States' Proposed Findings of Fact and Conclusions of Law.
Appendix G.	Defendant WCI Steel, Inc.'s Proposed Findings of Fact and Conclusions of Law.
Appendix H.	Plaintiff United States' List of Witnesses Whose Testimony Will Be Offered By Deposition.
Appendix I.	Defendant WCI Steel, Inc.'s List of Witnesses Whose Testimony Will Be Offered By Deposition.
Appendix J.	Plaintiff United States' Exhibit Index.

Appendix K. Defendant WCI Steel, Inc.'s Exhibit Index.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
Defendant.	)	

Introduction

Squire, Sanders, and Dempsey retained Charles Blumenschein and tasked him to provide findings and expert opinions on the following subjects:

- Evaluation of the purpose and permit status of the ponds
- Whether EPA conducted proper sampling of the ponds in order to adequately characterize the contents of the ponds as a hazardous waste
- Evaluation of a possible Risk-Based Closure approach

The first task involved Mr. Blumenschein merely reviewing defendant's applications[1] submitted pursuant to the Clean Water Act , 33 U.S.C. §§1241, *et. seq.*, and then opining on the intent of WCI to use these ponds as hazardous waste management units based upon his review of flow diagrams. Although the National Pollution Discharge Elimination System ("NPDES")

[1]The applications were dated December 28, 1988, and October 24, 1994. Mr. Blumenschein's expert report neither addresses the effect of the permit application in existence prior to December 28, 1988, nor addresses the effect of WCI's failure to mention Pond 6A in the permit applications (Blumenschein Depo, p. 148, L1-2; p 155, L17-18), and or the failure to explicity list Pond 6 in the (Blumenschein Depo, p. 149, L14)

permit system under the Clean Water Act regulates WCI's discharges to the Mahnoning River, in reaching his conclusions Mr. Blumenschein did not evaluate whether WCI had ever submitted a RCRA permit application to use these ponds as treating, storing or disposing of hazardous waste, and did not evaluate whether these impoundments met the Resource Conservation and Recovery Act ("RCRA"), 42. U.S.C. §§ 6901 *et. seq.*; regulatory definition of what constituted a wastewater treatment unit.[2]

The second task involved Mr. Blumenschein making a series of legal determinations starting with: a) Method 9040A was applicable to sampling and analysis conducted in May 1993 rather than the Method 5.2, which is the method cited by the regulation; b) U.S. Environmental Protection Agency must follow each requirement of the voluminous SW-846 in conducting sampling done as part of its enforcement activities; c) in order to prove the ponds were used to treat, store and dispose of hazardous waste, the U. S. Environmental Protection Agency must prove (using all the procedures outlined in SW-846) that the entire impoundment exhibited the characteristic of corrosivity; and d) it was permissible for WCI to put pH wastewaters in the impoundment which had a pH of 2 or less.[3] All of the conclusions expressed by Mr. Blumenschein that the U.S. Environmental Protection Agency did not follow proper sampling and analysis protocols of SW-846 were not based on an actual review of the sampling plans, quality assurance plans or other standard operating procedures used by U.S. EPA during the May 1993 sampling event, but rather based upon his conclusions that SW-846 mandated 43 samples; and that all 43 samples needed to exhibit the characteristic of corrosivity to prove that the pond

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[2]Blumenschein Depo, p 104, L10-18.

[3]Blumenschein Depo, p. 200, L 6-22.

exhibited the characteristic of corrosivity, and hence the ponds were being used to treat, store or dispose of a hazardous waste.

ARGUMENT

Task 1.

Mr. Blumenschein is a professional engineer by trade, not a lawyer. His opinions and conclusions pertaining to the legal effect of the Clean Water Act permits and WCI's intent in using the impoundments should be excluded because these conclusions clearly are not an analysis of factual evidence, but rather are nothing more than legal argument and legal conclusions. Opinion testimony by experts on the meaning of laws or regulations and the effect of application of laws and regulations, is generally not allowed because expert testimony is intended to assist the trier of fact in determing facts in issue; legal issues fall within the province of the court. "Experts are supposed to interpret and analyze facutal evidence. They do not testify about the law because the judge's special legal knowledge is presumed to be sufficient, and it is the judge's duty to inform the jury about the law that is relevant to their deliberations. *United States v. Curtis*, 782 F.2d, 593, 599 (6th Cir. 1986); *United States v. Vreeken*, 803 F.2d 1085, 1091 (10th Cir. 1986), *cert. denied* 479 U.S. 1067 (1987). *United States v. Ingredient Technology Corp*, 698 F.2d 88, 97 (2nd Cir.), *cert. denied* 462 U.S. 1131(1983).

Also, expert testimony as to the meaning of laws is generally only admissible when it is introduced to prove or disprove a defendant's understanding of the law, when that understanding is material to defendant's knowledge or intent. *United States v. Hatchett*, 918 F. 2d 631, 639-640 (6th Cir. 1990) (attorney's interpretation of tax code admissible to show defendant's good faith reliance on advice of counsel, but not admissible to show actual status of law), *cert. denied* 115 L.Ed.2d 1008 (1991). Since RCRA is a strict liability statute, Blumenschien's expert testimony

as to WCI's intent when it discharged its wastewater should be excluded.

Moreover, Mr. Blumenschein opinion that regulation of the impoundments as hazardous waste management units under RCRA is precluded by the existence of NPDES is clearly erroneous. His opinion ignores both the express legislative history that targeted surface impoundments, including surface impoundments tied to wastewater treatment plants, for either closure or retrofitting,as well as the fact that WCI has already conceded that these impoundments could be regulated under RCRA when it applied for and accepted a permit under the RCRA corrective action permit wherein the impoundments are designated as solid waste management units or SWMU 2.

Task 2

Mr. Blumenschein did not conduct a factual analysis of the nature and type of sampling actually performed by the U.S. EPA in May 1993 [4], e.g., the standard operating procedures in effect for the sampling, the quality assurance/ quality control procedures, sample collection, sampling plan, assessment of adherence to Method 5. 2, and or a comparison of Method 5.2 to Method 9040A[5]. Instead Mr. Blumenschien sets up a house of cards premised on a series of legal determinations that under RCRA, characteristic of corrosivity can only be determined by Method 9040A; the use of all aspects of SW-846 is mandatory[6] even in enforcement contexts; the entire impoundment must exhibit the characteristic of corrosivity to be regulated; and 43 samples are needed to impoundment is regulated.

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[4]Blumenschein's report does not address U.S. EPA's June 1993 sampling event.

[5]Blumenschein Depo. p 170, L 19-23; p 171, L 3-7; p. 174 L 13-22; p 178, L 2-7; p. 179, L4-5; L 820; p. 192, L 20-24; p. 193, L 6-20; p. 212, L 1-21

[6]Blumenschein's Depo, p. 203, L9-12.

In making his legal judgements, Mr. Blumenschein does not even bother referencing the RCRA statutory history, and the preambles to RCRA regulations discussing SW-846, even though it is well settled that when the language of a statute or regulation is ambiguous, courts may look to extrinsic evidence, including legislative or regulatory history, to resolve the ambiguity. *United States v. Barry*, 888 F.2d 1092, 1093 (6th Cir. 1988) (Congressional reports considered to determine statutory intent); *Ohio Manufacturers Ass'n v. City of Akron*, 801 F.2d 824, 833 (6th Cir. 1986) (preamble to regulation considered as evidence of regulatory intent.

Conclusion

Mr. Bluemenschien's opinion as to validity of U.S. EPA's sampling which is solely based on his analysis of the requirements of the law and regulations, rather than a factual analysis of the sampling conducted, should be excluded as the legal argument it is, rather than the factual analysis it purports to be. For the foregoing reasons, the United States respectfully requests this Court to preclude the introduction of Mr. Blumenschein's report and testimony relating to . *Michigan United Conservation Clubs v. Lujan,* 949 F.2d 202, 210 (6th Cir. 1991), when plaintiffs sought to introduce affidavits from several members of Congress to prove that the Secretary of the Interior had issued regulations contrary to Congressional intent[7]

Respectfully submitted,

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[7] *Id.* At 209-210.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
	)	
Defendant.	)	
	)	
	)	

THE UNITED STATE'S MOTION IN LIMINE TO
EXCLUDE THE TESTIMONY OF CHARLES BLUMENSCHIEN

The United States respectfully submits this Motion in Limine to exclude the expert report and testimony of Charles D. Blumenschein on the following subjects:

1). Whether a WCI impoundment identified in a Clean Water Act, 18 U.S.C. §§ 1251 *et. seq.*, NPDES permit application could be subject to regulation under the Resource Conservation and Recovery Act ("RCRA"), 42. U.S.C. §§ 6901 *et. seq.*;

2). Interpretations of the statutory and regulatory requirements of RCRA as it applies to methods of characterization of solid wastes, and when and where solid wastes are to be characterized, and or any guidances issued by federal and state regulatory authorities; and,

3). His conclusions about whether U.S. EPA's sampling were representative and/or sufficient to demonstrate that the solid wastes exhibited the characteristic of corrosivity, which are based on his erroneous interpretations of the statutory and regulatory requirements of RCRA and the legal effect of the existence of a Clean Water Act permit governing discharges to the

Mahoning River.

The testimony and report of this witness, who is not a lawyer, on the above subjects are nothing more than sworn legal argument submitted under the guise of expert objectivity. As a general matter, expert testimony is limited to the analysis and interpretation of facts and this witness' report and testimony on the above subjects have encroached upon the province of the Court by providing legal opinions and conclusions concerning the construction and meaning of the RCRA statute and regulations.

The grounds for this Motion In Limine are more fully set forth in the following Memorandum in Support.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:98CV1082
	)	
WCI STEEL, INC.,	)	
	)	JUDGE JAMES S. GWIN
	)	
Defendant.	)	
	)	
	)	

Appendix I

DEFENDANT WCI STEEL, INC.'S DEPOSITION DESIGNATIONS

PAMELA ALLEN

From	To
p. 5 line 20	p. 7 line 24
p. 19 line 17	p. 21 line 18
p. 25 line 4	p. 25 line 20
p. 26 line 15	p. 26 line 22
p. 34 line 14	p. 35 line 18
p. 51 line 6	p. 52 line 21
p. 53 line 24	p. 54 line 11
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p. 67 line 17	p. 70 line 17
p. 71 line 15	p. 74 line 24
p. 76 line 16	p. 77 line 5
p. 87 line 11	p. 88 line 22

p. 89 line 11	p. 90 line 7
p. 90 line 20	p. 94 line 11

NED BAKER

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KEN BARDO

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KRIS CODER

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p. 28 line 10	p. 29 line 23
p. 31 line 1	p. 31 line 17
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p. 33 line 21	p. 34 line 7
p. 35 line 2	p. 35 line 25
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p. 47 line 13	p. 48 line 19
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MARK CONTI (WATER CASE DEPOSITION)

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p.393 line 24	p.394 line 14
p.458 line 23	p.459 line 12
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BRIAN FREEMAN

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GORDON GARCIA

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RICHARD GRADISHAR

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82, 19	83, 2
126, 8	127, 11
130, 5	130, 24
136, 7	138, 20
161, 4	161, 12
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195, 17	195, 24
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213, 13	214, 4
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LARRY LINS (WATER CASE DEPOSITION)

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p.92 line 5	p.93 line 11
p.165 line 15	p.166 line 12
p. 167 line 7	p.168 line 18
p.171 line 14	p. 171 line 22
p. 191 line 3	p.191 line 15
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p.207 line 14	p.208 line 2
p.210 line 3	p.211 line 8
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JOSEPH LOGAN

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MICHAEL RIBORDY

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