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**COMPLAINT, FINDINGS OF VIOLATION AND  
COMPLIANCE ORDER, U.S. DEPARTMENT OF  
ENERGY, FEED MATERIALS PRODUCTION  
CENTER. EPA I.D. NO.: OH6 890 008 976**

**02/09/89**

**USEPA/DOE-FMPC  
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COMPLAINT**

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5HR-12

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Prentice Hall  
Registered Agent for  
Westinghouse Materials Company of Ohio, Inc.  
380 South Fifth Street  
Columbus, Ohio 43215-5436

Re: Complaint, Findings of Violation  
and Compliance Order  
U.S. Department of Energy  
Feed Materials Production Center  
EPA I.D. No.: OH6 890 008 976

Dear Sir or Madam:

Enclosed please find a Complaint and Compliance Order which specifies this Agency's determination of violations by Westinghouse Materials Company of Ohio, Inc., of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6901 et seq. This Agency's determination is based on inspections of the facility located at 7400 Willey Road, Fernald, Ohio (P.O. Box 398704, Cincinnati, Ohio 45239-8704) by authorized representatives of the United States Environmental Protection Agency (U.S. EPA) and other information in our files. The Findings in the Complaint state the reasons for such a determination. In essence, the facility failed to meet particular generator and operating requirements of RCRA.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, a written request for a hearing is required to be filed with Ms. Beverly Shorty, Regional Hearing Clerk (5MF-14), United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, within 30 days from receipt of this Complaint. A copy of your request should also be sent to Ms. Peg Andrews, Office of Regional Counsel (5CS-TUB-3), at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following service of this Complaint, you are extended an opportunity to request an informal settlement conference.

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If you have any questions or desire to request an informal conference for the purpose of settlement with Waste Management Division staff, please contact Catherine A. McCord, United States Environmental Protection Agency, RCRA Enforcement Branch (5HR-12), 230 South Dearborn Street, Chicago, Illinois 60604. Her phone number is (312) 886-4436.

Sincerely,

Basil G. Constantelos, Director  
Waste Management Division

Enclosure

cc: Michael Savage, OEPA - CO (all with enclosure)  
Graham Mitchell, OEPA - SWDO  
Don Marshall, OEPA - SWDO  
Joe LaGrone, U.S. DOE - ORO  
James Reafsnyder, U.S. DOE - FMPC  
Bruce Boswell, Westinghouse

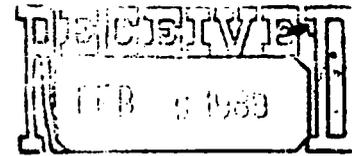
bcc: Robert Small, OWPE (OS-520)  
Peg Andrews, ORC  
Chip Landman, OS-500  
Anne Rowan, OPA  
Jean Sharp, 5HR-13  
Regional Hearing Clerk, 5MF-14  
Lisa Pierard, OH-RPB Chief

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REGIONAL HEARING CLERK  
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PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

IN THE MATTER OF )  
 )  
WESTINGHOUSE MATERIALS COMPANY OF OHIO )  
7400 WILLEY ROAD, )  
FERNALD, OHIO 45030 )  
P.O. BOX 398704 )  
CINCINNATI, OHIO 45239-8704 )  
 )  
EPA I.D. NO: OH6 890 008 976 )  
 )

COMPLAINT, FINDINGS OF  
VIOLATION AND COMPLIANCE  
ORDER

V-W- 89 R- 11

This Complaint is filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §6928(a)(1), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director, Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Westinghouse Materials Company of Ohio, Inc., operator of a facility owned by the United States Department of Energy (U.S. DOE) located at 7400 Willey Road, Fernald, Ohio 45030 (mailing address: P.O. Box 398704, Cincinnati, Ohio 45239-8704).

This Complaint is based on information obtained by the U.S. EPA, including interim status compliance inspections conducted by U.S. EPA, the Ohio Environmental Protection Agency (OEPA), and U.S. EPA contractors, in which violations of applicable State and Federal regulations were identified. Pursuant to 42 U.S.C. §6928(a)(1), and based on the information cited above,

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it has been determined that Westinghouse Materials Company of Ohio, Inc. has violated regulations promulgated under Section 3004 of RCRA, 42 U.S.C. §6924, including 40 CFR Parts 262, 265, 268, and 270.

JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002 (a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §6912(a)(1), §6926(b), and §6928 respectively. From July 15, 1983, until January 31, 1986, the State of Ohio had Phase I interim authorization pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, to administer a hazardous waste program in lieu of the Federal program. This authorization allowed either the State or U.S. EPA to enforce Ohio hazardous waste statutes and regulations, where applicable, in lieu of Federal statutes. U.S. EPA retained authority in matters related to the issuance of final RCRA Permits during this period. On January 31, 1986, the State of Ohio's authorization to carry out its hazardous waste program in lieu of the Federal program expired. Accordingly, this Complaint and Compliance Order seeks to enforce both Federal and State regulations as applicable.

FINDINGS OF VIOLATION

This determination of violation is based on the following:

1. Respondent, Westinghouse Materials Company of Ohio, Inc., (Westinghouse), is a person defined by Section 1004(15) of RCRA, 42 U.S.C. §6903(15), who operates a facility at 7400 Willey Road, Fernald, Ohio 45030 (P.O. Box 398704, Cincinnati, Ohio 45239-8704) that generates, treats, stores, and disposes of hazardous waste. As defined by 40 CFR 260.10, "operator" means

the person responsible for the overall operation of a facility. This facility is owned by the United States Department of Energy (U.S. DOE).

2. Section 3010(a) of RCRA, 42 U.S.C. §6930(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 identifying such hazardous waste 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 has been given.

3. U.S. EPA first published regulations concerning the identification, generation, transportation, treatment, storage, or disposal of hazardous waste on May 19, 1980. These regulations are codified at 40 CFR Parts 260 et seq. Notification to U.S. EPA of hazardous waste activity was required in most instances no later than August 18, 1980, including the activities of the Respondent.

4. Section 3005(a) of RCRA requires U.S. EPA to publish regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to obtain a RCRA Permit. Such regulations were published on May 19, 1980, and are codified at 40 CFR Parts 270 and 271 (formerly Parts 122 and 123), as amended. The regulations require that persons who treat, store, or dispose of hazardous waste submit Part A of the permit application no later than November 19, 1980.

5. Section 3005(e) of RCRA provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition on the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been complied with; and (3) an application for a permit has been made. This statutory authority to operate is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR Part 270.

6. The Respondent, Westinghouse Materials Company of Ohio, Inc., operates a facility, the Feed Materials Production Center at 7400 Willey Road, Fernald, Ohio 45030 (P.O. Box 398704, Cincinnati, Ohio 45239-8704). The Respondent is a Delaware corporation whose registered agent is Prentice Hall, 380 South Fifth Street, Columbus, Ohio 43215-5436.

7. On August 18, 1980, U.S. DOE filed a notification of hazardous waste activity with U.S. EPA pursuant to Section 3010 of RCRA. On July 7, 1984, U.S. DOE filed Part A of the permit application with U.S. EPA pursuant to Section 3005 of RCRA for hazardous waste storage in containers (S01) and tanks (S02) and disposal in a landfill (D80). The Respondent, Westinghouse Materials Company of Ohio, Inc., has failed to submit a notification of hazardous waste activity or Part A or B of the hazardous waste permit application properly identifying itself as the operator of the facility, in violation of 40 CFR 270.10(b) and 270.13(d). Westinghouse replaced National Lead of Ohio as the operator of the facility on January 1, 1986.

8. The Respondent, Westinghouse Materials Company of Ohio, Inc., generates, treats, stores, or disposes of hazardous waste. These wastes have been identified and listed as hazardous wastes under Section 3001 of RCRA.
9. On May 12-13, 1986, U.S. EPA and OEPA conducted an inspection of the facility operated by the Respondent.
10. On June 20, 1986, OEPA issued a Notice of Violation (NOV) which identified the following violations during the May 12-13, 1986, inspection:
- a. Failure to perform a waste determination on liquids being incinerated on-site, as required by 40 CFR 262.11 and Ohio Administrative Code (OAC) 3745-52-11;
  - b. Failure to include a description and the quantity of each hazardous waste received, and the methods and dates of its treatment, storage, or disposal at the facility in an operating record, as required by 40 CFR 265.73(a)(1) and OAC 3745-65-73(A)(1);
  - c. Failure to provide the U.S. EPA hazardous waste identification number and waste physical state in an operating record, as required by 40 CFR 265.73(b)(1) and OAC 3745-65-73(B)(1);
  - d. Failure to provide an estimated or actual weight, volume, or density of the waste in the operating record, as required by 40 CFR 265.73(b)(1) and OAC 3745-65-73(B)(1);
  - e. Failure to provide the location and quantity of each hazardous waste within the facility and the quantity at each location on a map or

diagram of each cell or disposal area, as required by 40 CFR 265.73(b)(2) and OAC 3745-65-73(B)(2); and

- f. Failure to provide an estimated year of closure in the closure plan, as required by 40 CFR 265.112 and OAC 3745-66-12.

11. On July 3, 1986, U.S. EPA issued a NOV which identified the following violations noted during the May 12-13, 1986, inspection:

- a. Failure to determine if solid wastes generated or stored at the facility are hazardous wastes, as required by 40 CFR 262.11 and OAC 3745-52-11;
- b. Failure to conduct a waste analysis on all wastes generated at the facility, as required by 40 CFR 265.13(a) and OAC 3745-65-13(A);
- c. Failure to include in the operating record the description and quantity of each hazardous waste in storage at the facility, as required by 40 CFR 265.73(b)(1) and OAC 3745-65-73(B)(1);
- d. Failure to include the U.S. EPA hazardous waste code and physical state of all wastes treated, stored, or disposed of on-site, as required by 40 CFR 265.73(b)(1) and OAC 3745-65-73(B)(1);
- e. Failure to include a description of the method(s) used to treat, store, or dispose of hazardous waste in an operating record, as required by 40 CFR 265.73(b)(1) and 265.309(b) and OAC 3745-65-73(B)(1) and 3745-67-09(B);

- f. Failure to include a map showing the location and quantity of each hazardous waste disposed in the landfill, as required by 40 CFR 265.73(b)(2) and OAC 3745-65-73(B)(2);
- g. Failure to sign and date the manifest accompanying an incoming shipment of hazardous waste, as required by 40 CFR 265.71 and OAC 3745-65-71;
- h. Failure to implement an adequate groundwater monitoring program, as required by 40 CFR 265.90 and 40 CFR 265.91, and OAC 3745-65-91;
- i. Failure to prepare a detailed groundwater sampling and analysis plan, as required by 40 CFR 265.92(a) and OAC 3745-65-92(A);
- j. Failure to prepare an outline of a Groundwater Quality Assessment Program, as required by 40 CFR 265.93(a) and OAC 3745-65-93(A);
- k. Failure to prepare and maintain on-site a closure plan for the landfill, as required by 40 CFR 265.112 and OAC 3745-66-12;
- l. Failure to maintain at the facility a written post-closure plan for the landfill, as required by 40 CFR 265.118 and OAC 3745-66-18;
- m. Failure to include in the closure plan the year the facility is expected to close, as required by 40 CFR 265.112 and OAC 3745-66-12;  
and
- n. Failure to construct, operate, and maintain a run-off management system from the active portions of the landfill, as required by 40 CFR 265.302(b) and OAC 3745-67-02(B).

12. On August 15, 1986, OEPA issued a NOV which identified the following groundwater monitoring violations noted during the May 12-13, 1986, inspection:

- a. Failure to implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, as required by 40 CFR 265.90(a) and OAC 3745-65-90(A);
- b. Failure to install a groundwater monitoring system capable of yielding samples for analysis, as required by 40 CFR 265.91(a) and OAC 3745-65-91(A).
- c. Failure to develop an adequate groundwater sampling and analysis plan, as required by 40 CFR 265.92(a) and OAC 3745-65-92(A); and
- d. Failure to prepare an outline of a Groundwater Quality Assessment Program, as required by 40 CFR 265.93(a) and OAC 3745-65-93(A).

13. On July 14, 1987, U.S. EPA and OEPA conducted an inspection of the facility operated by the Respondent.

14. On July 24, 1987, OEPA issued a NOV for the July 14, 1987, inspection that included the following violations:

- a. Failure to complete adequate hazardous waste determinations, as required by 40 CFR 262.11 and OAC 3745-52-11;
- b. Failure to perform chemical and physical waste analyses, as required by 40 CFR 265.13(a)(1) and OAC 3745-65-13(A)(1);

- c. Failure to develop and follow an adequate waste analysis plan, as required by 40 CFR 265.13(b) and OAC 3745-65-13(B);
- d. Failure to include job descriptions in records of personnel training, as required by 40 CFR 265.16(d) and (e) and OAC 3745-65-16(D) and (E);
- e. Failure to document required training or job experience, as required by 40 CFR 265.16(d)(4) and OAC 3745-65-16(D)(4);
- f. Failure to amend the facility's contingency plan to reflect a change in emergency coordinators, as required by 40 CFR 265.54(d) and OAC 3745-65-54(D);
- g. Failure to maintain an adequate contingency plan that includes the location and physical description of on-site emergency equipment, as required by 40 CFR 265.52(e) and OAC 3745-65-52(E);
- h. Failure to document that the contingency plan has been distributed to local and State emergency service authorities, as required by 40 CFR 265.53 and OAC 3745-65-53;
- i. Failure to maintain adequate aisle space in the container storage areas, as required by 40 CFR 265.35 and OAC 3745-65-35;
- j. Failure to include the estimated date that the facility expects to begin closure in the closure plan, as required by 40 CFR 265.112(b)(7) and OAC 3745-66-12(B)(7);

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- k. Failure to include a schedule for closure of each hazardous waste management unit in the closure plan, as required by 40 CFR 265.112(b)(6) and OAC 3745-66-12(B)(6);
- l. Failure to include equipment decontamination procedures for the container storage areas in the closure plan, as required by 40 CFR 265.112(b)(4) and OAC 3745-66-12(B)(4); and
- m. Failure to store containers in accordance with requirements of 40 CFR 265.173(a) and OAC 3745-66-73(A).

15. On September 2, 1987, OEPA issued a NOV for violation of the following groundwater monitoring requirements for the landfill (Pit #4):

- a. Failure to implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, as required by 40 CFR 265.90(a) and OAC 3745-65-90(A);
- b. Failure to install an adequate upgradient well(s), as required by 40 CFR 265.91(a)(1) and OAC 3745-65-91(A)(1); and
- c. Failure to install at least three downgradient wells at the limit of the waste management area in a manner that ensures immediate detection of statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer, as required by 40 CFR 265.93(a)(2) and OAC 3745-65-93(A)(2).

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16. On November 10, 1987, OEPA issued a second NOV for the following continuing violations from the July 14, 1987, inspection:

- a. Failure to obtain a detailed chemical and physical analysis of a representative sample of any hazardous waste prior to treatment, storage, or disposal of the waste, as required by 40 CFR 265.13(a) and OAC 3745-65-13(A);
- b. Failure to update the waste analysis plan for new hazardous waste, as required by 40 CFR 265.13(b) and OAC 3745-65-13(B);
- c. Failure to include adequate job descriptions in records of personnel training, as required by 40 CFR 265.16(d) and OAC 3745-65-16(D);
- d. Failure to document that the contingency plan has been distributed to all local and State emergency authorities, as required by 40 CFR 265.53 and OAC 3745-65-53;
- e. Failure to maintain adequate aisle space in container storage area, as required by 40 CFR 265.35 and OAC 3745-65-35;
- f. Failure to meet satellite storage quantity limitations, as required by 40 CFR 262.34(c)(1) and (2) and OAC 3745-52-(C)(1) and (2); and
- g. Failure to maintain an adequate closure plan for the container storage area, as required for 40 CFR 265.112 and OAC 3745-66-12.

17. On December 23, 1987, OEPA issued a third NOV for the following continuing violations from the July 14, 1987, inspection:

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- a. Failure to complete waste analysis, as required by 40 CFR 265.13(a)(1) and OAC 3745-65-13(A)(1);
- b. Failure to update the waste analysis plan, as required by 40 CFR 265.13 and OAC 3745-65-13;
- c. Failure to have adequate job descriptions in employee hazardous waste training records, as required by 40 CFR 265.16(d)(3) and OAC 3745-65-16(D)(3);
- d. Failure to develop a contingency plan in accordance of requirements of 40 CFR 265.52 and OAC 3745-65-52;
- e. Failure to develop a closure plan in accordance with requirements of 40 CFR 265.112 and OAC 3745-66-12; and
- f. Failure to maintain adequate aisle space, as required by 40 CFR 265.35 and OAC 3745-65-35.

18. On December 21, 1987, U.S. EPA issued a NOV, which identified the following violations noted during the July 14, 1987, inspection:

- a. Failure to maintain an inspection log or summary, as required by 40 CFR 265.15(d) and OAC 3745-65-15(D);
- b. Failure to have adequate emergency communication devices in "Bay 7", as required by 40 CFR 265.32(b) and OAC 3745-65-32(B);
- c. Failure to document that the contingency plan has been distributed to all local and State emergency authorities, as required by 40 CFR 265.53 and OAC 3745-65-53; and

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- d. Failure to send a notification with the shipments of restricted waste spent solvent waste, as required by 40 CFR 268.7(a)(1).

19. On April 19, 1988, U.S. EPA issued a second NOV that identified the following violations noted during the July 14, 1987, inspection:

Failure to maintain inspection records, as required by 40 CFR 265.15(d) and OAC 3745-65-15(D).

20. On July 20, 1988, OEPA conducted an inspection of the facility operated by the Respondent.

21. On July 29, 1988, OEPA issued a NOV which identified the following violations noted during the July 20, 1988, inspection:

- a. Failure to adequately complete manifests, as required by 40 CFR 262.20(a) and (b) and OAC 3745-52-20(A) and (B);
- b. Failure to develop adequate job descriptions and personnel training records, as required by 40 CFR 265.16(d) and (e) and OAC 3745-65-16(D) and (E);
- c. Failure to maintain adequate aisle space in the container storage areas, as required by 40 CFR 265.35 and OAC 3745-65-35;
- d. Failure to maintain an adequate contingency plan that includes an inventory and location of emergency equipment, as required by 40 CFR 265.52(d) and OAC 3745-65-52(D);
- e. Failure to include an evacuation plan as a part of the contingency plan, as required by 40 CFR 265.52(f) and OAC 3745-65-52(F);

- f. Failure to adequately designate emergency coordinators, as required by 40 CFR 265.55 and OAC 3745-65-55;
- g. Failure to include in the facility's contingency plan provisions for notification to the Regional Administrator of any incident that requires contingency plan implementation, as required by 40 CFR 265.56(j) and OAC 3745-65-56(J);
- h. Failure to store containers in "Bay 5" closed (punctured lids and missing bungs), as required by 40 CFR 265.173 and OAC 3745-66-73;
- i. Failure to store hazardous waste in containers that are in good condition and failure to transfer waste in leaking drums to drums in good condition, as required by 40 CFR 265.171 and OAC 3745-66-71;
- j. Failure to use a container for the storage of hazardous waste that is compatible with the material to be stored, as required by 40 CFR 265.172 and OAC 3745-66-72; and
- k. Failure to complete adequate inspections for the container storage area, as required by 40 CFR 265.174 and OAC 3745-66-74.

22. During OEPA's July 20, 1988, inspection of the facility operated by the Respondent, the following land disposal restriction violations were also identified:

- a. Failure to mark all containers of land disposal restricted waste to identify the contents and date(s) of entering storage, as required by 40 CFR 268.50(a)(2); and

- b. Failure to track the location, quantity of wastes, and dates that wastes enter and leave storage, as required by 40 CFR 268.50 and 265.73 and OAC 3745-65-73.

23. On December 5-8, 1988, U.S. EPA conducted an inspection of the facility operated by the Respondent and observed the following violations:

- a. Accumulation of over 55-gallons of spent solvent in the maintenance shop satellite accumulation area, in violation of 40 CFR 262.34(c)(1) and OAC 3745-52-34(C)(1);
- b. Accumulation dates have faded on some drums in the container storage areas and drum #959 did not have an accumulation date, as required by 40 CFR 268.50(a)(2)(i);
- c. Failure to maintain the TSD portion of the facility's annual report on-site, as required by 40 CFR 265.74(a) and OAC 3745-65-74(A);
- d. Failure to list the emergency equipment in the KC-2 and pilot plant warehouses in the contingency plan, as required by 40 CFR 265.52(e) and OAC 3745-65-52(E);
- e. Failure to include an evacuation plan in the contingency plan, as required by 40 CFR 265.52(f) and OAC 3745-65-52(F);
- f. Failure to address deficiencies in the facility's contingency plan identified by U.S. EPA and OEPA in previous inspections, as required by 40 CFR 265.54;.

- g. Failure to include job descriptions in the personnel training records, as required by 40 CFR 265.16(d)(2) and OAC 3745-65-16(D)(2);
- h. Failure to update personnel training records for 1988 training, as required by 40 CFR 265.16(d)(4) and OAC 3745-65-16(D)(4);
- i. Failure to conduct four weekly inspections in the pilot plant warehouse container storage area during the period of April to July 1988, as required by 40 CFR 265.174 and OAC 3745-66-74;
- j. Failure to conduct daily inspections of storage tanks prior to August 1, 1988, as required by 40 CFR 265.195(a) and OAC 3745-66-95(A);
- k. Operating records failed to adequately describe the movement of hazardous waste containers for the KC-2 warehouse, as required by 40 CFR 265.73(b)(2) and OAC 3745-65-73(B)(2);
- l. Operating records failed to address a spill, or associated cleanup, in "Bay 5" on October 4, 1988, as required by 40 CFR 265.73(b)(2) and OAC 3745-65-73(B)(2);
- m. Closure plans for the container storage areas and storage tanks did not give the estimated years of final closure, as required by 40 CFR 265.112(b)(7) and OAC 3745-66-12(B)(7);
- n. Failure to develop and maintain on-site a post-closure plan for "Pit 4" landfill, as required by 40 CFR 265.118(a) and OAC 3745-66-18(A);

- o. Failure to revise the facility's waste analysis plan to incorporate land disposal restriction requirements of 40 CFR Part 268, as required by 40 CFR 265.13(b)(6);
- p. Failure to complete a paint filter liquids test for the TCA still bottoms containing 160 ppm of PCBs to determine whether the still bottoms are a California List waste, as required by 40 CFR 265.13(b)(6) and 268.7;
- q. Failure to send land disposal restriction notifications with 10 shipments of F-solvent waste to U.S. DOE in Oak Ridge in 1987, as required by 40 CFR 268.7;
- r. Failure to properly identify hazardous waste constituents with the applicable treatment standard on land disposal restriction notifications and certifications, as required by 40 CFR 268.7;
- s. A revised Part A permit application was submitted to U.S. EPA on July 28, 1988. The Respondent has been storing hazardous waste in "Bay 6" without approval for the revised Part A permit application, in violation of 40 CFR 270.1(b);
- t. Failure to submit a notification of hazardous waste activity or Part A or B of the hazardous waste permit application, in violation of 40 CFR 270.10(b) and 270.13(d);
- u. Failure to complete waste analysis for waste being incinerated on-site during 1986, as required by 40 CFR 265.13 and OAC 3745-65-13. Failure to complete waste analysis caused waste to be

treated in a hazardous waste management unit that did not have interim status or a permit, in violation of 40 CFR 270.1(c); and

- v. Failure to provide the required notices of closure and to submit closure plans for the barium chloride treatment unit and incinerator within required timeframes, as required by 40 CFR 265.112(d).

24. U.S. EPA and OEPA have reviewed groundwater monitoring reports for the "Pit 4" landfill. The following violations have been identified:

- a. The Results and Conclusions section of May 1987 RCRA Groundwater Monitoring Report - Round 4 concluded that the distribution of radiological and non-radiological constituents appear to be localized around waste pit #4. No confirmatory sampling was performed, as required by 40 CFR 265.93(c)(2) and OAC 3745-65-93(C)(2);
- b. Failure to develop and follow an adequate groundwater sampling and analysis plan, as required by 40 CFR 265.92(a) and OAC 3745-65-92(A); and
- c. Failure to install a groundwater monitoring system capable of yielding groundwater samples for analysis, as required by 40 CFR 265.91(a).

25. U.S. EPA and OEPA have reviewed the Respondent's Groundwater Quality Assessment Program Plan. The following violations have been identified:

- a. Failure to specify quarterly sampling for site-specific parameters, as required by 40 CFR 265.93(d)(7)(i) and OAC 3745-65-93(D)(7)(i);
- b. Using either flow direction, east or northeast, indicates that the landfill (waste pit #4) is not monitored by the required three downgradient wells, as required by 40 CFR 265.91(a)(2) and OAC 3745-65-91(A)(2);
- c. Failure to list sampling and analytical methods, as required by 40 CFR 265.93(d)(3)(ii) and OAC 3745-65-93(D)(3)(ii);
- d. Failure to include sampling and analytical methods for relevant hazardous wastes and hazardous waste constituents, as required by 40 CFR 265.93(d)(3)(ii);
- e. Failure to define the rate, extent, and concentrations of hazardous waste or hazardous waste constituents, as required by 40 CFR 265.93(d)(5) and OAC 3745-65-93(D)(5);
- f. Failure to perform confirmatory sampling, as required by 40 CFR 265.93(c)(2) and OAC 3745-65-93(C)(2); and
- g. Failure to define the rate and extent of migration and concentrations of hazardous waste and hazardous waste constituents in the groundwater, as required by 40 CFR 265.93(d)(4) and OAC 3745-65-93(D)(4).

26. A review of other information available to U.S. EPA indicates that from January 1986 to March 1986, the Respondent treated barium chloride

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wastes in a hazardous waste management unit that did not have interim status or a permit, in violation of 40 CFR 270.1(c).

COMPLIANCE ORDER

Respondent having been initially determined to be in violation of the above cited rules and regulations, the following Compliance Order pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, is entered:

- A. Respondent shall, immediately upon this Order becoming final, cease all treatment, storage, or disposal of any hazardous waste except such treatment, storage, or disposal as shall be in compliance with the standards for hazardous waste treatment, storage, and disposal facilities except as provided in Paragraphs B through S below.
- B. Within ten (10) days of this Order becoming final, Respondent shall submit to U.S. EPA and OEPA a Notification of Hazardous Waste Activity and Part A and B of the facility's permit application with the Respondent designated as Operator.
- C. Within thirty (30) days of this Order becoming final, Respondent shall submit to U.S. EPA and OEPA a revised Groundwater Quality Assessment Program Plan that fulfills the requirements of 40 CFR 265.93(d)(3).
- D. Respondent shall not accept any hazardous waste from off-site until full compliance has been achieved with requirements of 40 CFR 262, 265, 268, and 270. Respondent shall notify U.S. EPA and OEPA thirty (30) days prior to receipt of any waste generated off-site.

E. Respondent shall not treat, store, or dispose of any hazardous waste on-site other than in hazardous waste management units in the currently approved Part A permit application until a change in interim status has been approved or the final permit has been issued for the facility.

F. Within ten (10) days of this Order becoming final, Respondent shall date all tanks and containers of land disposal restricted waste, in accordance with requirements of 40 CFR 268.50.

G. Within ten (10) days of this Order becoming final, Respondent shall maintain the TSD portion of the facility's annual report on-site, in accordance with requirements of 40 CFR 265.74.

H. Within thirty (30) days of this Order becoming final, Respondent shall revise the facility's contingency plan to include a list of emergency equipment in the KC-2 and pilot plant container storage areas, in accordance with requirements of 40 CFR 265.52(e).

I. Within thirty (30) days of this Order becoming final, Respondent shall revise the facility's contingency plan to include an evaluation plan, in accordance with requirements of 40 CFR 265.52(f).

J. Within thirty (30) days of this Order becoming final, Respondent shall submit a revised contingency plan to U.S. EPA that fulfills the requirements of 40 CFR 265.54.

K. Within ten (10) days of this Order becoming final, Respondent shall revise personnel training records to include job descriptions, in accordance with requirements of 40 CFR 265.16(d)(2).

L. Within ten (10) days of this Order becoming final, Respondent shall update personnel training records for 1988 training, as required by 40 CFR 265.16(d)(4).

M. Within ten (10) days of this Order becoming final, Respondent shall modify operating records so that they adequately describe the movement of hazardous waste containers and any events requiring implementation of the contingency plan, in accordance with requirements of 40 CFR 265.73(b)(2).

N. Within thirty (30) days of this Order becoming final, Respondent shall revise the facility's closure plan(s) to provide for the estimated year(s) of final closure, in accordance with requirements of 40 CFR 265.112(b)(7).

O. Within sixty (60) days of this Order becoming final, Respondent shall develop and maintain on-site a post-closure plan for the landfill, as required by 40 CFR 265.118(a).

P. Within thirty (30) days of this Order becoming final, Respondent shall revise the facility's waste analysis plan to incorporate the requirements of the land disposal restrictions of 40 CFR Part 268, in accordance with requirements of 40 CFR 265.13(b)(6).

Q. Within sixty (60) days of this Order becoming final, Respondent shall complete a paint filter liquids test for all appropriate waste streams, in accordance with requirements of 40 CFR 265.13(b)(6). Analytical results shall be submitted to U.S. EPA within the sixty day period.

R. Within ten (10) days of this Order becoming final, Respondent shall forward land disposal restriction notifications to all receiving TSDs for shipment of land disposal restricted waste, in accordance with requirements of 40 CFR 268.7.

S. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted no later than the time stipulated above to the U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604. Attention: Catherine McCord, RCRA Enforcement Branch. A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Michael Savage, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-1049 and Don Marshall, Ohio Environmental Protection Agency, 40 South Main Street, Dayton, Ohio 45402.

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

PROPOSED CIVIL PENALTY

In view of the above determination and in consideration of the seriousness of the violations cited herein, the potential harm to human health and the environment, and the ability of the Respondent to pay penalties, the Complainant proposes to assess a civil penalty in the amount of ONE HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$196,500) against the Respondent,

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pursuant to Sections 3008(c) and 3008(g) of RCRA, 42 U.S.C. §6928.

Attachment 1 to the Complaint provides a detailed summary of the proposed civil penalty. Payment shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to U.S. EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should be sent to both the Regional Hearing Clerk, Planning and Management Division, and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel, U.S. EPA, (5CS-TUB-3) 230 South Dearborn Street, Chicago, Illinois 60604.

Failure to comply with any requirements of the Order shall subject the above-named Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued noncompliance with the deadlines contained in this Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

NOTICE OF OPPORTUNITY FOR HEARING

The above-named Respondent has the right to request a hearing to contest any material factual allegation set forth in the Complaint and Compliance Order or the appropriateness of any proposed compliance schedule or penalty. According to 40 CFR Part 22, you are required to request a hearing within thirty (30) days of the date that the Complaint is served. To avoid a finding of default by the Regional Administrator you must file a written answer to this Complaint with the Regional Hearing Clerk, Planning and Management Division, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within thirty (30) days of receipt of this notice. A copy of your answer and any subsequent documents filed in this action should be sent

to Ms. Peg Andrews, Office of Regional Counsel, at the same address.

Failure to answer within thirty days of receipt of this Complaint may result in a finding by the Regional Administrator that the entire amount of penalty sought in the Complaint is due and payable and subject to the interest and penalty provisions contained in the Federal Claims Collection Act of 1966, 31 U.S.C. §3701 et seq.

Your answer should clearly and directly admit, deny, or explain each of the factual allegations of which Respondent has knowledge. Said answer should contain: (1) a definite statement of the facts which constitute the grounds of defense; and (2) a concise statement of the facts which Respondent intends to place at issue in the hearing. The denial of any material fact, or the raising of any affirmative defense, shall be construed as a request for a hearing. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, are applicable to this administrative action. A copy of these Rules is enclosed with this Complaint.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with U.S. EPA concerning: (1) whether the alleged violations in fact occurred as set forth above; (2) the appropriateness of the compliance schedule; and (3) the appropriateness of any proposed penalty in relation to the size of Respondent's business, the gravity of the violations, and the effect of the proposed penalty on Respondent's ability to continue in business. Respondent may request an informal settlement conference at any time by contacting this office. Any such request, however, will not affect either the thirty-day time limit for responding to this Complaint or the thirty-day time limit for requesting a formal hearing on the violations alleged herein. U.S. EPA encourages all parties to pursue the possibilities of settlement through informal conferences. A request for an informal conference should be made in writing to Catherine McCord, RCRA Enforcement Branch (5HR-12), at the address cited above, or by calling her at (312) 886-4436.

Dated this 9<sup>th</sup> day of February, 1989.

  
 Basil G. Constantelos, Director  
 Waste Management Division  
 Complainant  
 U.S. Environmental Protection Agency  
 Region V

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Complaint to be served upon the persons designated below, on the date below, by causing said copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to:

Prentice Hall  
Registered Agent for  
Westinghouse Materials Company  
of Ohio, Inc.  
380 South Fifth Street  
Columbus, Ohio 43215-5436

and

Mr. Bruce Boswell  
Westinghouse Materials Company  
of Ohio, Inc.  
7400 Willey Road  
Fernald, Ohio 45030

I have further caused the original of the Complaint and this Certificate Service to be served in the Office of the Regional Hearing Clerk located in the Planning and Management Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, on the date below.

These are said persons' last known addresses to the subscriber.

Dated this 9th day of February, 1989.

  
Secretary, Office of RCRA  
U.S. EPA, Region V

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ATTACHMENT 1  
PENALTY SUMMARY

Regulation Applicable At the Time of Violation	Corresponding Ohio Regulations Ohio Adm. Code	Nature of Requirement	Penalty Assessed
40 CFR 270.1, 270.10, 270.13		Failure to sign notification and permit application upon becoming operator	\$22,500
40 CFR 265.90(d)(3)	OAC 3745-65-90(D)(3)	Inadequate Groundwater Assessment Plan	\$17,500
40 CFR 265.91 and 92	OAC 3745-65-91 and 92	Inadequate groundwater monitoring and sampling	\$17,500
40 CFR 268.13 and 40 CFR 268.7		LDR Testing and Notification	\$22,500
40 CFR 265.73 40 CFR 268.50	OAC 3745-65-73	Inadequate Operating Record	\$17,500
40 CFR 265.13(b)(6) 40 CFR 262.11	OAC 3745-52-11	Inadequate Waste Analysis Plan	\$17,500
40 CFR 265.16	OAC 3745-65-16	Inadequate Job Descriptions and Training Records	\$ 6,500
40 CFR 265.52, 53, 55	OAC 3745-65-52, 53, and 55	Inadequate Contingency Plan and Distribution, Emergency Coordinator Designation	\$ 9,500
40 CFR 262.34 40 CFR 270.1(b)	OAC 3745-52-34	Storage of Waste Outside Storage Areas and Excess Satellite Accumulation	\$17,500
40 CFR 265.174 40 CFR 265.195	OAC 3745-66-74 OAC 3745-66-95	Inadequate Inspections	\$17,500

ATTACHMENT 1  
PENALTY SUMMARY

Regulation Applicable At the Time of Violation	Corresponding Ohio Regulations Ohio Adm. Code	Nature of Requirement	Penalty Assessed
40 CFR 265.35	OAC 3745-65-35	Inadequate Aisle Space	\$ 6,500
40 CFR 265.74	OAC 3745-65-74	Failure to Maintain Annual Report On-site	\$ 6,500
40 CFR 265.173(a)	OAC 3745-66-73(A)	Failure to Store Waste in Containers in Good Condition and Closed	\$17,500
			<hr/> \$196,500

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