

9/29/89

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



MIDWEST BANK & TRUST COMPANY,

Docket V-W-86-R-82

ROCKLAND MINERAL PROCESSORS,

Judge Greene

JOHN E. SUERTH,

Respondents

FINAL ORDER UPON DEFAULT

Resource Conservation and Recovery Act: 42 U.S.C. §6928(b) - Where respondent failed to request a hearing on a complaint and compliance order issued pursuant to 42 U.S.C. §6928(a), the compliance order became final after the period specified for requesting a hearing expired.

Rules of Procedure, 40 CFR §22.17: Where respondent failed to answer the complaint within the period provided, respondent was found to be in default pursuant to this section, to have admitted all facts alleged in the complaint, and to have waived the right to a hearing on such factual allegations.

Appearances

For complainant: Larry L. Johnson, Esquire, Office of Regional Counsel, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois

For respondent John L. Suerth: No appearance filed.

Before: J. F. Greene, Administrative Law Judge

FINAL ORDER UPON DEFAULT

Complainant herein moved for a default order against respondent John E. Suerth, and, in support, alleged the following:

1. On September 30, 1986, pursuant to the Resource Conservation and Recovery Act (RCRA), ("the Act"), 42 U.S.C. §6928(a), complainant filed an administrative complaint and compliance order, Docket No. V-W-86-R-82, against Midwest Bank and Trust Company which on that date was the trustee/title holder of record of a facility located at 2323 Mount Prospect Road, Des Plaines, Illinois;

2. On January 6, 1988, complainant was granted leave to file an amended complaint which named two additional respondents: John E. Suerth, holder of the beneficial interest in and operator of the facility when the alleged violations occurred and on the date the amended complaint was filed, as evidenced by documents attached to complainant's motion for default order; and Rockland Mineral Processors, Inc., subsequent purchaser of a portion of the facility.

3. On January 14, 1988, respondent John E. Suerth was served personally with a copy of the amended complaint and related documents by the United States Marshal Service, as evidenced by a document attached to complainant's motion for default order.

4. As of the date of filing of the motion for default order, respondent John E. Suerth had failed to answer or to make any other response to the amended complaint. He at no time answered, or moved for or requested an extension of time in which to answer the amended complaint and did not respond to complainant's motion for default order.

5. The amended complaint and compliance order herein assessed a civil penalty of \$66,500 against respondent John E. Suerth; and he was ordered, pursuant to the compliance order attached to the complaint, to pay said penalty for violations of RCRA §3005(a) [42 U.S.C. §6925(a)] and §3004(a)(6), [42 U.S.C. §6492(a)(6)] as amended, and for violations of regulations promulgated pursuant to the Act, 40 CFR §270.1(b), and for various other violations of the regulations alleged in the complaint including 40 CFR §265.13(b), failure to prepare a waste analysis plan; 40 CFR §265.31 and §265.173, leaking drums and open containers of waste at the site; 40 CFR 265.32, failure to maintain spill control and decontamination equipment; and 40 CFR §265.74, unavailability of hazardous waste manifests.

42 U.S.C. §6928(b) provides that a compliance order issued pursuant to §6928(a) shall become final unless, no later than thirty days after said order is served, the person named therein requests a public hearing. 40 CFR §22.17 provides that respondent may be found in default after motion upon failure to file a timely answer to the complaint, and that said default constitutes, for purposes of the pending action, an admission of all of the facts alleged in the complaint and a waiver of respondent's right to a hearing. 40 CFR §22.17(a) provides further that the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty days after a final order issued upon default, 42 U.S.C. §6928(b), 40 CFR 22.17(a).

Accordingly, it is found that the allegations of fact set forth in the the amended complaint have been admitted by respondent John E. Suerth. The

allegations of facts as set forth in the amended complaint attached to this final default order are hereby adopted as findings of facts.

#### CONCLUSIONS OF LAW

1. Respondent John E. Suerth is subject to the provisions of RCRA, pursuant to §1006(a), §2002(a)(1), §3006(b), §3008(a)(2); 42 U.S.C. §6905(a), §6912(a)(1), §6926(b), and 6928(a)(2).

2. Respondent John E. Suerth failed to request a public hearing within thirty days of service of the complaint, pursuant to 42 U.S.C. §6928(b); therefore, the compliance order became final after the period for request for hearing expired, 30 days after January 14, 1988, 42 U.S.C. §6928(b).

3. Respondent John E. Suerth is in default for failure to answer the amended complaint, pursuant to motion and 40 CFR §22.17(a).

4. Respondent John E. Suerth was the owner of the beneficial interest and operator at the site at the time the alleged violations occurred.

5. The Part A application having been filed late, the facility did not achieve interim status and was therefore ineligible to receive hazardous waste pursuant to RCRA §3005(a), 42 U.S.C. §6925(a), and 40 CFR §270.1(b).

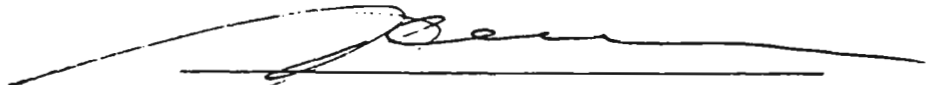
6. Respondent John E. Suerth violated the financial responsibility requirements of RCRA §3004(a)(6), 42 U.S.C. §6924(a)(6), as amended, and the following duly promulgated regulations: 40 CFR §265.13(b), §265.14(c), §265.15(d), §265.16(d), two violations; §265.31, §265.32, §265.33, §265.35, §265.53, §265.73, §265.74, §265.112, §265.173, §265.174, §265.192, §265.194,

and §265.143(a). Violation of the said regulations results in an initial total of \$187,300 in penalties. However, this amount has been reduced by \$119,800 to \$67,500 because of consolidation of the violations by violation category, i. e. several violations in one category result in only one penalty per category. Further, a reduction of \$1000, representing a payment by respondent Midwest Bank & Trust Company, Inc., is applied.

7. Accordingly, respondent is liable for a penalty of \$66,500 for violations of the Act and applicable regulations.

ORDER

Based upon the record and the foregoing findings of fact and conclusions of law, respondent's motion for default order should be and it is hereby GRANTED. Respondent John E. Suerth is hereby ORDERED to pay within sixty (60) days from the date hereof a civil penalty in the sum of \$66,500. Payment shall be by certified or cashier's check made payable to the United States Treasury and mailed to: Regional Hearing Clerk, United States Environmental Protection Agency Region 5, Post Office Box 70753, Chicago, Illinois 60673. A copy of said check shall be sent to Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.



J. F. Greene  
Administrative Law Judge

September 29, 1989  
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the Original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on October 4, 1989.

Shirley Smith  
Shirley Smith  
Secretary to Judge J. F. Greene

Beverly Shorty  
Regional Hearing Clerk  
Region V - EPA  
230 South Dearborn Street  
Chicago, IL 60604

Larry Johnson, Esq.  
Office of Regional Counsel  
Region V - EPA  
230 South Dearborn Street  
Chicago, IL 60604

George E. Bullwinkel, Esq.  
Burditt, Bowles, Radzius  
& Ruberry, Ltd.  
Counsel for Respondent  
Midwest Bank and Trust Company, Inc.  
333 West Wacker Drive  
Chicago, IL 60609

John Gosselin, Esq.  
Counsel for Respondent  
Rockland Mineral Processors, Inc.  
Box 129  
Batavia, Illinois 60510

John E. Suerth  
1341 Pine Street  
Glenview, Illinois 60025



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

REPLY TO THE ATTENTION OF:

5HE-12

001112

P 3: 05

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John E. Suerth  
c/o Midwest Bank and Trust Company, Inc.  
as Trustee for Land Trust #82-11-3985  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60635

AMENDED

RE: Complaint, Findings of Violation  
and Compliance Order  
2323 Mt. Prospect Road  
ILN 046 569 117

Dear Mr. Suerth:

COMPLAINT

Enclosed please find an Amended Complaint and Compliance Order which specifies this Agency's determination of certain violations by Midwest Bank and Trust Company, John E. Suerth and Rockland Mineral Processors, Inc. as owner/operators of the facility located at 2323 Mt. Prospect Road, Des Plaines, Illinois, of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6901 et seq., based on an inspection of the facility by the Illinois Environmental Protection Agency (IEPA) and United States Environmental Protection Agency (U.S. EPA) and on other information available to the U.S. EPA. U.S. EPA's Motion To Amend the Complaint and Compliance Order to add additional parties was allowed by Administrative Law Judge J.F. Greene on January 6, 1988, and this letter constitutes formal service of process upon you.

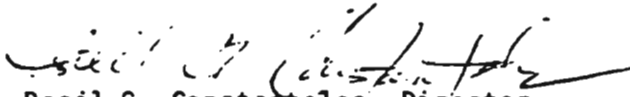
The Amended Complaint and Compliance Order states the reasons for such a determination, establishes a compliance schedule, and assesses a civil penalty for the violations as set forth in the Amended Complaint and Compliance Order. This Amended Complaint and Compliance Order is issued pursuant to Section 3008 of RCRA, 42 U.S.C. §6928.

Accompanying the Amended Complaint and Compliance Order is a Notice of Opportunity for Hearing. Should you desire to contest the allegations herein, or the assessed penalty, a written request for a hearing is required to be filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within 30 days from receipt of this Amended Complaint and Compliance Order. A copy of your hearing request should also be sent to Mr. Larry L. Johnson, Office of Regional Counsel, U.S. Environmental Protection Agency, 5CS-TUR-3, at the same address.

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

If you have any questions or desire to request an informal conference for purposes of settlement, please contact Mr. Walter Francis, United States Environmental Protection Agency, Waste Management Division, RCRA Enforcement Section, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-4921.

Sincerely,

  
Basil G. Constantelos, Director  
Waste Management Division

Enclosures

cc: Gary King, IEPA  
Glenn Savage, IEPA  
Harry Chappel, IEPA

Mr. R.E. Vansickle  
Rockland Mineral Processors, Inc.

Mr. John E. Suerth  
Glenview, Illinois



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5HE-12

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John E. Suerth  
1341 Pine Street  
Glenview, Illinois 60025

RE: Complaint, Findings of Violation  
and Compliance Order  
2323 Mt. Prospect Road  
ILD 046 569 117

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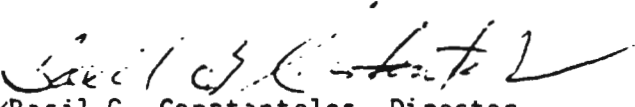
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Waste Management Division

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Glenn Savage, IEPA  
Harry Chappel, IEPA

Mr. R.E. Vansickle  
Rockland Mineral Processors, Inc.

Mr. John E. Suerth  
c/o Midwest Bank and Trust Company, Inc.  
as Trustee for Land Trust #82-11-3985  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60635



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:  
5HE-12

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. R.E. Vansickle  
Registered Agent for  
Rockland Mineral Processors, Inc.  
209 Seventh Street  
Rockford, Illinois 61104

RE: Complaint, Findings of Violation  
and Compliance Order  
2323 Mt. Prospect Road  
ILD 046 569 117

Dear Mr. Vansickle:

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Sincerely,



Basil G. Constantelos, Director  
Waste Management Division

Enclosures

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Glenn Savage, IEPA  
Harry Chappel, IEPA

Mr. John E. Suerth  
Glenview, Illinois

Mr. John E. Suerth  
c/o Midwest Bank and Trust Company, Inc.  
as Trustee for Land Trust 82-11-3985  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60635



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:  
5HE-12

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

George E. Bullwinkle, Esq.  
Burditt, Bowles, Radzius  
& Ruberry, Ltd.  
333 West Wacker Drive  
Chicago, Illinois 60606

RE: Complaint, Findings of Violation  
and Compliance Order  
2323 Mt. Prospect Road  
ILD 046 569 117

Dear Mr. Bullwinkle:

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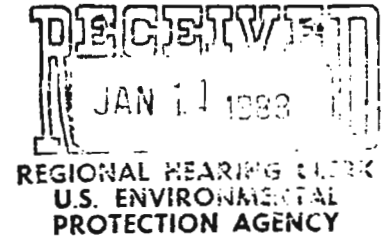
Mr. John E. Suerth  
c/o Midwest Bank and Trust Company, Inc.  
as Trustee for Land Trust #82-11-3985  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60635

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

IN THE MATTER OF: )  
 )  
MIDWEST BANK AND TRUST COMPANY, INC. )  
1606 NORTH HARLEM AVENUE )  
ELMWOOD PARK, ILLINOIS 60635 )  
 )  
JOHN E. SUERTH )  
1341 PINE STREET )  
GLENVIEW, ILLINOIS 60025 )  
 )  
ROCKLAND MINERAL PROCESSORS, INC. )  
QU VOE CHEMICAL INDUSTRIES, INC. )  
2323 MOUNT PROSPECT ROAD )  
DES PLAINES, ILLINOIS 60018 )  
 )  
ILD 026 569 117 )

DOCKET NO. V-W-86-R-82

AMENDED COMPLAINT FINDINGS OF  
VIOLATION AND COMPLIANCE ORDER



I. PREAMBLE

This Amended Complaint and Compliance Order is filed pursuant to Sections 3006(b) and 3008(a)(1) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C. §6926(b) and §6928(a)(1), respectively, 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 of the Waste Management Division, United States Environmental Protection Agency, Region V (U.S. EPA). The Respondents are Midwest Bank and Trust Company, a corporation, and as trustee for Trust #82-11-3985; John E. Suerth; and Rockland Mineral Processors, Inc. (RMP), the current owner and operator of the hazardous waste facility located at 2323 Mount Prospect Road, Des Plaines, Illinois, (Des Plaines facility).

This Amended Complaint and Compliance Order is based on information made available to the U.S. EPA and an inspection of the Des Plaines facility by U.S. EPA and the Illinois Environmental Protection Agency (IEPA).

Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), and based on information supplied by the IEPA, it has been determined that the Respondents are in violation of: (1) Section 3004 of RCRA, 42 U.S.C. §6924; (2) Title V of the Illinois Environmental Protection Act, Ill. Rev. Stat., Chapter 111 1/2, paragraph 1001 et seq., as amended; and (3) regulations adopted by the Illinois Pollution Control Board, found at 35 Ill. Adm. Code Part 725.

## II. JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 1006(a), 2002(a)(1), 3006(b) and 3008(a)(2) of RCRA, 42 U.S.C. §6905(a), §6912(a)(1), §6926(b) and §6928(a)(2), respectively.

On January 31, 1986, the State of Illinois was granted authorization by the Administrator of the U.S. EPA pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, to administer a hazardous waste program in lieu of the Federal program. As a result, facilities in Illinois qualifying for interim status under 40 CFR 270.70 are regulated under the Illinois provisions found at 35 Ill. Adm. Code Part 720 et seq. rather than the Federal regulations set forth at 40 CFR Part 265. Section 3008(a) of RCRA, 42 U.S.C. §6928(a), provides the U.S. EPA with the authority to enforce State regulations in those States authorized to administer a hazardous waste program. As required by Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), the U.S. EPA has provided written notice of the issuance of this enforcement action to the IEPA on November 25, 1987.

### III. DETERMINATIONS

1. Section 3010 of RCRA, 42 U.S.C. §6930, 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 the U.S. EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA.
2. Section 3005 of RCRA, 42 U.S.C. §6925, requires the 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 124, 270 and 271.
3. Section 3005(e) of the Act provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition of the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of the Act, 42 U.S.C. §6930(a), concerning notification of hazardous waste activity have been complied with; and (3) application for a permit has been made. This statutory authorization to operate, pending final action on the permit, is known as interim status. The U.S. EPA regulations implementing these provisions are found at 40 CFR Part 270. Applicable facility standards for interim status in Illinois are found at 35 Ill. Adm. Code Part 725.
4. On June 25, 1980, John E. Suerth, of Qu Voe Chemical Industries, Inc. submitted a notification of hazardous waste activity for the facility located at 2323 Mount Prospect Road, Des Plaines, Illinois (Des Plaines facility) as required by Section 3010(a) of RCRA, 42 U.S.C. §6930(a).

5. On January 6, 1981, John E. Suerth of Qu Voe Chemical Industries, Inc. filed a RCRA Part A permit application as required by Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and 40 CFR 270.1(b), to treat and store hazardous waste at the Des Plaines facility. Because the RCRA Part A permit application was not timely, no owner or operator of the Des Plaines facility qualified for interim status.
6. After January 5, 1983, John E. Suerth and Midwest Bank and Trust Co., Inc. owned and or operated a hazardous waste treatment and storage facility (35 Ill. Adm. Code 720.110) which stored hazardous waste as defined by 35 Ill. Adm. Code 721.121, and hazardous wastes from nonspecific sources as defined by 35 Ill. Adm. Code 721.131, in that the facility treated or stored the following wastes:
  - a. Thirty-six (36) containers bearing the marking "Hazardous Waste" and identifying the generator as Chemisphere, Inc.; some of these containers bore accumulation dates of "4/30".
  - b. Four containers marked "Waste Trichloro-ethane" and identifying the generator as "DPDO, Norfolk, Virginia"; and
  - c. 26,430 gallons of "mixed chlorinated solvents" reported, in the operator's Hazardous Waste Facility Annual Report to IEPA, as treated during 1983.
7. On March 15, 1985, Respondent Midwest Bank and Trust Company, Inc., filed an amended Part A permit application for the Des Plaines facility. This Respondent is an Illinois corporation, whose registered agent is Mr. Robert L. Woods.
8. On or before October 6, 1987, Respondent Rockland Mineral Processors (RMP), Inc. purchased a portion of the facility from co-owners John E. Suerth and Midwest Bank and Trust Company, Inc. and became the owner and or operator of the Des Plaines facility. RMP, Inc. is an Illinois corporation whose

registered agent is Mr. R.E. Vansickle.

9. On January 7, 1986, representatives of IEPA and U.S. EPA conducted an inspection of the Des Plaines facility. The Des Plaines facility was found to be in violation of 35 Ill. Adm. Code Part 725 as follows:
  - a. No waste analysis plan was available at the facility. (35 Ill. Adm. Code 725.113);
  - b. The storage areas were not equipped with signs bearing the legend "Danger, Unauthorized Personnel Keep Out". (35 Ill. Adm. Code 725.114);
  - c. No records of facility inspection were available. (35 Ill. Adm. Code 725.115);
  - d. No records of any employee job titles, job descriptions, or names were available. (35 Ill. Adm. Code 725.116(d));
  - e. No records of any employee training in hazardous waste management procedures were available. (35 Ill. Adm. Code 725.116);
  - f. The facility has not been maintained and operated to minimize the possibility of a sudden or nonsudden release of hazardous waste in that leaking drums were observed. (35 Ill. Adm. Code 725.131);
  - g. The facility lacked internal communication alarms, telephone, spill control and decontamination equipment. (35 Ill. Adm. Code 725.132);
  - h. The facility lacked testing and maintenance procedures for emergency equipment. (35 Ill. Adm. Code 725.133);
  - i. Containers in storage lacked adequate aisle space. (35 Ill. Adm. Code 725.135);

- j. No contingency plan was maintained at the facility. (35 Ill. Adm. Code 725.153);
  - k. The facility operating record was not available. (35 Ill. Adm. Code 725.173);
  - l. Hazardous waste manifests were not available. (35 Ill. Adm. Code 725.174 );
  - m. The closure plan was not available at the facility. (35 Ill. Adm. Code 725.212);
  - n. Containers of waste were stored open. (35 Ill. Adm. Code 725.273);
  - o. Container storage was not inspected daily. (35 Ill. Adm. Code 725.274);
  - p. The cistern failed to have a minimum two (2) feet of freeboard. (35 Ill. Adm. Code 725.292); and
  - q. Required daily and weekly tank (cistern) inspections were not performed. (35 Ill. Adm. Code 725.294).
10. According to information supplied to U.S. EPA by IEPA, as of August 18, 1986, neither the owner or operator has provided demonstration of compliance with applicable financial responsibility requirements. (35 Ill. Adm. Code 725.243 and 725.247 respectively).

IV. ORDER AND CONDITIONS FOR CLOSURE

The Respondents having been initially determined to be in violation of Section 3004 of RCRA, 42 U.S.C. §6924, and 35 Ill. Adm. Code Part 725, the following Compliance Order pursuant to Section 3008 of RCRA, 42 U.S.C. §6928(a)(1), is entered:

A. The Respondents shall, within thirty (30) days of this Compliance Order becoming final, comply with the following requirements:

1. Prepare and submit to U.S. EPA and IEPA a closure plan which meets the requirements of 35 Ill. Adm. Code 725, Subpart G.
2. Prepare a closure cost estimate in accordance with 35 Ill. Adm. Code 724.242(a) and provide this estimate to U.S. EPA and the IEPA. Said estimate shall be based on the closure plan prepared pursuant to this Compliance Order.

B. The Respondents shall, within 45 days of this Compliance Order becoming final, provide IEPA with proof of financial responsibility as required by 35 Ill. Adm. Code 725, Subpart H.

C. The Respondents shall, upon IEPA approval of the closure plan, perform said closure plan as approved.

D. The Respondents shall not transport nor cause to be transported any hazardous wastes from the Des Plaines facility without complying with the generator requirements of 35 Ill. Adm. Code Part 722. This prohibition shall apply to all hazardous wastes at the Des Plaines facility, including those contained in process equipment, reclamation equipment, and storage tanks.

E. Respondents 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: Mr. Walter Francis, RCRA Enforcement Section (5HE-12).

A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Mr. Gary King, Senior Attorney, Division of Land Pollution Control, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

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.

V. 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, the continuing nature of the violations, and the ability of the Respondents to pay penalties, the Complainant proposes to assess a civil penalty in the amount of SIXTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$67,500), jointly and severally against the Respondents, Midwest Bank and Trust Company, Inc., John E. Suerth, and RMP, Inc. pursuant to Sections 3008(c) and 3008(g) of RCRA, 42 U.S.C. §6928. Attachment 1 of the Amended 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 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, 230 South Dearborn Street, Chicago, Illinois 60604.

Failure to comply with any requirements of the Order shall subject the above-named Respondents to joint and several 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).

VI. NOTICE OF OPPORTUNITY FOR HEARING

The above-named Respondents have the right to request a hearing to contest any material factual allegations set forth in the Amended Complaint and Compliance Order, or the appropriateness of any proposed compliance schedule or penalty. Unless said Respondents have filed an answer not later than thirty (30) days

from the date this Amended Complaint is served, Respondents may be found in default of the above Amended Complaint and Compliance Order.

To avoid a finding of default by the Regional Administrator, you must file a written answer to this Amended Complaint with the Regional Hearing Clerk, Planning and Management Division, U.S. EPA, Region V at 230 South Dearborn Street, Chicago, Illinois 60604, within thirty (30) days of your receipt of this notice. A copy of your answer and any subsequent documents filed in this action should also be sent to Larry L. Johnson, Assistant Regional Counsel, at U.S. EPA, Region V, 230 S. Dearborn Street, 5CS-TUB-3, Chicago, Illinois 60604. Failure to answer within (30) days of receipt of this Amended 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 you have 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 you intend to place at issue. 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 Amended Complaint.


VII. SETTLEMENT CONFERENCE

Whether or not you request a hearing, you 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 penalty assessment in relation to the size of your business, the gravity of the violations, and the effect of the penalty on your ability to continue in business.

Respondents 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 Amended 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 Mr. Walter S. Francis, RCRA Enforcement Section (5HE-12), at the address cited above, or by calling him at (312) 353-4921.

DATED this 7<sup>th</sup> day of December, 1987.

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

VIII. CERTIFICATE OF SERVICE

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

Mr. John E. Suerth  
1341 Pine Street  
Glenview, Illinois 60025

Mr. R.E. Vansickle  
Registered Agent for  
Rockland Mineral Processors, Inc.  
209 Seventh Street  
Rockford, Illinois 61104 Mr.

John E. Suerth  
c/o Midwest Bank and Trust Company, Inc.  
as Trustee for Land Trust #82-11-3985  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60635

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

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

Dated this 7<sup>th</sup> day of December, 1987.

Dennis M. Teague  
Secretary, Solid Waste Branch  
U.S. EPA, Region V

ATTACHMENT I  
PENALTY SUMMARY

Corresponding Federal Regulation 40 CFR	Regulation Applicable at Time of Violation Ill. Adm. Code	Nature of Requirement Date of Violation	Penalty Assessed
265.13(b)	725.113	Waste Analysis Plan	\$9,500.00
265.14(c)	725.114	Warning Signs in Storage Area	300.00
265.15(d)	725.115	Records of Facility Inspections	9,500.00
265.16(d)	725.116(d)	Records of Employee Job Titles, Descriptions, and Names	2,250.00
265.16(d)	725.116	Records of Employee Training in Hazard- ous Waste Management Procedures	2,250.00
265.31	725.131	Maintenance and Operation of Facility- Leaking Drums	22,500.00
265.32	725.132	Required Equipment	9,500.00
265.33	725.133	Emergency Equipment	9,500.00
265.35	725.135	Required Aisle Space	22,500.00
265.53	725.153	Contingency Plan	9,500.00
265.73	725.173	Operating Record	9,500.00
265.74	725.174	Unmanifested Waste Report	9,500.00
265.112	725.212	Closure	22,500.00
265.173	725.273	Management of Containers	6,500.00
265.174	725.274	Inspections	6,500.00
265.192	725.292	General Operating Requirements, Tanks	6,500.00
265.194	725.294	Inspections	6,500.00
265.143(a)	725.243	Financial - cost estimate for closure	22,500.00
		Total =	187,300.00
		Penalty consolidated by violation category, resulted in a reduction of \$119,800.00.	
		Consolidated Total =	<u>\$67,500.00</u>