File 182
Delaware

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

105 South Meridian Street
P.O. Box 6015
Indianapolis 46206-6015
Telephone 317/232-8603

December 18, 1989

VIA CERTIFIED MAIL P 446 479 308

Mr. Duane E. Emerson
Senior Vice-President, Administration
Ball Corporation
345 South High Street
Muncie, Indiana 47305-2326

Re: Adoption of Agreed Order in
Cause No. H-135
Indiana Department of Environmental
Management
versus
Ball Corporation

Dear Mr. Emerson:

This is to inform you that the Commissioner of the Indiana Department of Environmental Management (Department) approved the Agreed Order negotiated between you or your representatives and members of our staff. A copy of the Final Order, executed by the Commissioner on behalf of the Department, is enclosed.

You are, no doubt, familiar with the terms of the Final Order necessary to ensure future compliance. The time frames for compliance are effective upon your receipt of this correspondence. As to the civil penalty provided for in the document, please forward a check, made payable to the Environmental Management Special Fund, to this office within thirty (30) days of the receipt of this correspondence.

Please direct any questions you may have, or any submittals required under the Order, to Ms. Debra K. Faulkner of our Hazardous Waste Enforcement Section at this address or contact her by telephone at AC 317/232-7202.

Sincerely,

Bruce H Palin

Bruce H. Palin
Acting Assistant Commissioner for
Solid and Hazardous Waste Management

DKF/dj

Enclosure

cc: Delaware County Health Department (with enclosure)
Ms. Deborah E. Albright, Deputy Attorney General (with enclosure)
Mr. Robert W. McClelland, Respondent Attorney (with enclosure)
Ms. Sally K. Swanson, U.S. EPA, Region V (with enclosure)
Office of Legal Counsel (with enclosure)
Mr. Dennis M. Zawodni (with <u>original</u> enclosure)

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

105 South Meridian Street
P.O. Box 6015
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Telephone 317-232-8603

STATE OF INDIANA)		BEFORE THE INDIANA DEPARTMENT OF
)	SS:	ENVIRONMENTAL MANAGEMENT
COUNTY OF MARION)		
IN THE MATTER OF THE:	)	
	)	
COMMISSIONER,	)	
INDIANA DEPARTMENT OF	)	
ENVIRONMENTAL MANAGEMENT	)	
	)	
Complainant,	)	
	)	
vs.	)	CAUSE NO. H-135
	)	
BALL CORPORATION	)	
	)	
Respondent.	)	

AGREED ORDER

Come now the parties to this cause and, being desirous of settling and compromising this action without hearing or adjudication of any issue of fact or law, hereby consent to the following FINDINGS and ORDER. This document shall not constitute any evidence or admission by any party hereto (which could be used by any third person, nonparty in any other action), but shall be solely for the purposes of settling this action.

FINDINGS

NOW, THEREFORE, upon the consent of the parties hereto, and for the purposes of this cause only, the following FINDINGS are made:

1. The Complainant is the Commissioner of the Indiana Department of Environmental Management (hereinafter referred to as "the Commissioner").

2. The Indiana Department of Environmental Management (hereinafter referred to as the "Department") has jurisdiction over both the parties and the subject matter of this action.

3. Respondent Ball Corporation, (hereinafter referred to as "Ball Corp."), is a company authorized to do business in Indiana and operates a place of business at 1509 South Macedonia, Muncie, Indiana.

4. Ball Corporation notified the United States Environmental Protection Agency (U.S. EPA) as a generator and treatment, storage, and disposal facility on August 20, 1980. The facility's U.S. EPA Identification Number is IND 000810713.

5. Based upon two inspections and a site visit at Respondent's facility which took place from August 12, 1986, to September 20, 1988, the Department has alleged that Respondent violated its hazardous waste rules. These allegations are found in the Statement of Issues filed in this cause on July 21, 1989. Ball Corporation has filed an answer denying these allegations. In order to resolve these issues, the parties agree to entry and issuance of the following Order by the Commissioner.

6. Since the issuance of the original Complaint in this cause, Respondent has represented to the Department that it has removed all waste from its hazardous waste storage areas in Buildings 48 and 56, has demolished Building 56, and is in the process of going through closure of both areas so that it will have generator status only. It is a condition of this agreement that Respondent continue to refrain from storing any wastes in Building 48 and that it continues to pursue closure of these areas. Respondent agrees that it shall not resume any storage of waste in Building 48 unless and until it is in full compliance with the hazardous waste rules for treatment, storage, or disposal facilities.

ORDER

WHEREFORE, based upon the above FINDINGS and upon the consent of the parties, it is hereby ORDERED that:

1. Within thirty (30) days of the effective date of the Order, Respondent shall submit the waste determinations and/or characterizations as required by 329 IAC 3-7-2, on the four-hundred (approximately 400) containers of waste, the waste lab chemicals (which were in Building 48), and the waste paint and thinner.

2. Within thirty (30) days of the effective date of the Order, Respondent shall develop and follow a written inspection schedule and an inspection log which shall require daily inspections of the exterior of Building 48 and weekly inspections of the interior of Building 48 until such time it is certified closed. These inspections shall be to determine if Building 48 is secure.

3. Within thirty (30) days of the effective date of the Order, Respondent shall submit a copy of the written inspection schedule and inspection log as required in Order Number 2 to this Office for approval.

4. Within thirty (30) days of the effective date of the Order, Respondent shall train all facility personnel involved in the management or handling of hazardous waste as required by 329 IAC 3-16-7(a),(b), and (c).

5. Within sixty (60) days of the effective date of the Order, Respondent shall develop personnel training records which include the information required in 329 IAC 3-16-7(d) and shall submit a copy to this Office for approval.

6. Upon the effective date of the Order, Respondent shall maintain and operate the facilities so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste.

7. Within thirty (30) days of the effective date of the Order, Respondent shall provide emergency equipment as required in 329 IAC 3-17-3.

8. Within thirty (30) days of the effective date of the Order, Respondent shall establish testing and maintenance procedures for all facility equipment as required in 329 IAC 3-17-4.

9. Within thirty (30) days of the effective date of the Order, Respondent shall attempt to make arrangements with local authorities as required in 329 IAC 3-17-7.

10. Within forty-five (45) days of the effective date of the Order, Respondent, as a generator, shall amend the Contingency Plan to include:

    a. The arrangements agreed to by State and local authorities as required by 329 IAC 3-18-3(c);

    b. The list of names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator as required in 329 IAC 3-18-3(d); and

    c. A list of all emergency equipment at the facility as required in 329 IAC 3-18-3(e).

11. Within forty-five (45) days of the effective date of the Order, Respondent shall submit a copy of the Contingency Plan to this office for approval.

12. Upon the notice of approval by this Office, Respondent shall maintain a copy of the Contingency Plan at the facility and submit a copy to all local police departments, fire departments, hospitals, and State and local emergency response teams. The Contingency Plan must be amended if necessary as required in 329 IAC 3-18-5.

13. Respondent has represented to the Department that it has removed all containers of hazardous waste from Building 48 including those containers in poor condition. The Department shall verify the removal. Respondent, as a generator, shall hereafter manage its containers in proper condition, store containers closed, keep incompatible wastes separated, and maintain adequate aisle space.

14. Within sixty (60) days of the effective date of the Order, Respondent shall submit to this office form f of the Biennial Report for 1987 as required in 329 IAC 3-19-6 for hazardous waste storage activities. Respondent, as a generator, shall continue to file Biennial Reports as required by 329 IAC 3-10-2.

15. Within ten (10) days of the effective date of the Order, Respondent shall mark the hazardous waste containers with the start of accumulation date and with the words "Hazardous Waste."

16. Within ninety (90) days of the effective date of the Order, Respondent shall submit to the Department a site assessment plan. The purpose shall be to conduct sampling and analysis in order to assess the degree and extent of contamination of the soil and any impact on the groundwater. This plan must:

    a. Address the area on the ground near the railroad tracks south of the lid manufacturing building. This is the area where approximately 10 to 20 gallons of spent mineral spirits were alleged to have been dumped every three months. Also, in this area was the waste weed killer residue (Share Crop) which was alleged to have been dumped on the ground during the August 12, 1986, inspection.

    b. Include a soil sampling grid that overlaps the area;

    c. Specify the method of determining the number and location of samples to be taken within the grid to yield a representative assessment of the contaminated area as outlined in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication" SW-846;

    d. Include the method of sample collection, per SW-846;

e. State that the maximum distance between each sample location is 20 feet;

f. State that soil samples will not be composited;

g. Clearly define all sampling and analytical protocol as defined in 329 IAC 3-6. A copy of Guidelines for Sampling and Analysis Plans is attached hereto as Exhibit A;

h. Specify that chain-of-custody of the samples shall be maintained and Quality Assurance and Quality Control (QA/QC) procedures shall be followed;

i. Include a statement in the initial proposal that a contingent plan for sampling outside the grid area will be submitted in the event that sampling shows contamination to exist at the limit of the grid area;

j. Include time frames for implementation of the site assessment plan; and

k. Be approved by the Department prior to implementation of the plan.

17. Within thirty (30) days of notice of approval of the site assessment plan by the Department, Respondent shall implement the plan as approved and in accordance with the time frames contained therein.

18. Within sixty (60) days of completion of the analyses, Respondent shall submit a cleanup or remedial action plan to the Department based upon the results of the site assessment plan. The cleanup or remedial action plan must:

a. Include the results of the analyses, chain-of-custody information, and the QA/QC records;

b. Address all areas determined by the analyses to be contaminated;

c. Address the groundwater, if it is determined to be affected;

d. Include a soil sampling and analysis plan to be performed after the cleanup has been done which verifies that all contamination has been removed. (This will include all items listed in Order No. 16 above.)

e. Include a time frame for implementation of the cleanup plan.

19. Within sixty (60) days of notice of approval by the Department, Respondent shall implement the cleanup plan as approved and in accordance with the time frames contained therein.

20. Within sixty (60) days of completion of the cleanup, Respondent shall submit certification by an independent registered professional engineer that the cleanup has been completed as outlined in the approved plan.

21. Upon Respondent's failure to submit an approvable site assessment or cleanup plan within the stated time frames, the parties shall attempt to negotiate an approvable plan. In the event that no such plan can be agreed upon, the Department shall write the plan. Respondent shall have a right to appeal the plan by requesting an Administrative Hearing. Respondent shall implement the final approved plan in accordance with the time frames contained therein.

22. Upon the effective date of the Order, Respondent shall ensure that the records of past hazardous waste shipments be retained for a minimum of three (3) years.

23. Upon the effective date of the Order, Respondent shall ensure that the emergency procedures outlined in the contingency plan will be followed when an emergency situation occurs at this facility.

24. Upon the effective date of the Order, Respondent shall implement the contingency plan immediately whenever there is a fire, explosion, or release of hazardous waste or constituents which could threaten human health or the environment.

25. Within fifteen (15) days of the effective date of the Order, Respondent shall provide immediate access to internal alarms.

26. Respondent shall pay, for any and all alleged violations, a civil penalty of $50,000 to the Indiana Environmental Management Special Fund within thirty (30) days of the effective date of the Order. This shall be addressed to the Office of Solid and Hazardous Waste Management, Attention: Cashier.

27. This Order resolves any and all alleged violations which were cited in the Department's Statement of Issues or which were within the knowledge of the Department and could have been cited from August 12, 1986, to the date of the technical recommendations of the Order, or which alleged violations may have continued from August 12, 1986, to the date of the technical recommendations of the Order, involving Respondent's operation of the hazardous waste storage areas in Buildings 48 and 56 at its facility and other areas specifically stated in the Statement of Issues. It is the intent of the parties

that all matters alleged in the original Complaint in this Cause as supplemented by the Statement of Issues whether continuing or not prior to the date of the technical recommendations, are forever settled and resolved herein.

TECHNICAL RECOMMENDATION

BY: Dennis M. Zawodni
Dennis M. Zawodni, Chief
Enforcement Section

DATE: August 30, 1989

BALL CORPORATION

BY: Duane E. Emerson
Duane E. Emerson

TITLE: Senior Vice-President, Administration

DATE: September 4, 1989

APPROVED FOR LEGALITY AND FORM

LINLEY E. PEARSON
Attorney General of Indiana

BY: Deborah E. Albright
Deborah E. Albright
Deputy Attorney General

DATE: 9-11-89

ATTORNEY FOR RESPONDENT

BY: Robert W. McClelland
Robert W. McClelland
Senior Attorney

DATE: Sept 4, 1989

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT this 26th day of November, 1989.

Kathy Prosser
Kathy Prosser
Commissioner

Enclosure

EXHIBIT A

GUIDELINES FOR SAMPLING AND ANALYSIS PLANS
Prepared by the
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF SOLID AND HAZARDOUS WASTE MANAGEMENT

Methods to be used for sampling and analysis are referenced in 320 IAC 4.1-5 and 320 IAC 4.1-6. In general, a sampling plan should address these areas:

1. Name of person sampling the waste and their relationship to your facility.

2. A written description of the sampling method used to obtain a representative sample of the waste and the rationale for using this method. Use "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Second Edition, July, 1982, SW-846 as a guide.

3. Provide information regarding any Quality Assurance/Quality Control (QA/QC) measures employed with the sampling method.

Specifically, each of the following details should be included in any sampling plan:

1. State the purpose or goal of the sampling program.

2. Give references such as maps or photographs of the sampling site(s) and state the dimensions of the area to be sampled.

3. Give information on the geology of the site, if applicable.

4. Give a brief description of the process generating the waste and the constituents of concern. Include any specifics and/or background information concerning the waste material.

5. Specify what parameters will be tested for in the samples. Do not use general categories such as metals, organics, chlorinated solvents, etc., but specify each parameter that will be tested for or each parameter that can be identified by the method used.

6. Are preliminary estimates of concentrations available? If these are available, they should be given.

7. Describe any field measurements to be taken or any testing to be done in the field.

8. Will statistical sampling strategies be used? Only in situations where the constituent approaches an action threshold limit, are statistical approaches necessary. Refer to SW-846 for information on statistical sampling.

9. Describe the type of sampling to be done (drummed waste, bag, can, tank, waste pile, lagoon, soil, well, etc.) and the physical state of the sample (aqueous, sludge, liquid, solid, etc.)

10. Will the samples be composited and if so, how will this be done? If the waste is distinctly multi-phased, compositing should not be used. Each phase should be sampled separately and contain a separate identification number. If the waste is homogeneous or stratified with no distinct phases, composite sampling may be advisable. Composite sampling of different wastes (e.g., different drums) should never be attempted.

11. Describe the numbers and volumes of samples to be taken. There are situations where taking a large number of samples may be justified even when the initial number of samples to be analyzed is expected to be small. Based upon the results of the initial number of samples analyzed, it could be determined if more samples are required for analysis. The time and cost savings of avoiding a second sampling program could more than offset the additional cost of supplies.

12. What equipment will be used for the sampling and how will it be decontaminated between samples?

13. What type(s) of containers will be used and how have these containers been prepared (cleaned)?

14. Will duplicate samples be collected and submitted for analysis? Will field blanks also be submitted for analysis?

15. How will the samples be preserved? Specify any preservatives to be added and how and when they will be added.

16. How will the chain-of-custody be maintained on the samples?

17. Assure that the sample holding time limits are not exceeded.

18. Give the method numbers of the analyses that the laboratory will perform and indicate which samples will be tested by each method

number given. In the case of organics analysis, the laboratory should be able to list what compounds can be quantitated and provide expected detection limits.

QA DATA REQUEST

The following information should accompany all analyses of solid waste submitted to the office of Solid and Hazardous Waste Management. This information is needed to substantiate the validity of the analyses.

For all samples submit the information in 1, 2, and 3.

1. Name, address, and telephone number of each laboratory providing analysis. Also include the name of the laboratory manager or contact person.

2. Name of person sampling the waste and their relationship to your facility. A written description of the sampling method used to obtain a representative sample of the waste and the rationale for using this method. Provide information regarding any QA/QC measures employed with the sampling method. Use SW-846 as a guide.

3. A description of the process generating the waste and the constituents of concern.

For the four characteristics, submit the information requested below. When a method number is requested it must, when necessary, come from SW-846 or a copy of the method must be provided.

D001-IGNITABILITY--Provide method number and laboratory QC information such as results of duplicates and standards used to determine the characteristic of ignitability for liquids. Provide narrative of method used, rationale for use, and explanation of findings for determination of the characteristic of ignitability for solids.

D002-CORROSIVITY--Provide method number and date and time of standardization of the instrument used to determine the characteristic of corrosivity for liquids. Provide narrative or number of method used, rationale for use, and explanation of findings for determination of the characteristic of corrosivity for solids.

D003-REACTIVITY--Provide narrative or number of method used, rationale for use, explanation of findings, and appropriate QC data for determination of the characteristic of reactivity. Specify whether sample is solid or liquid and provide supporting analytical data. As a minimum, cyanide and sulfide analysis (totals) are required.

D004-D016-EP TOXICITY--Provide description of extractor used and a picture or accurate drawing of the extractor. An acceptable extractor is described in Method 1310 of SW-846, Second Edition, July 1982. Provide a complete description of the operating conditions and method employed. Provide a description of the filtering apparatus and the filters used. Report the initial pH, amount of acid added, solids content of original sample (80 degree C° oven), volume of deionized water added for the extraction, and volume of final extract to be analyzed. Provide the method numbers of procedures used for sample preparation and analysis for metals. Provide all data pertaining to the use of the method of standard additions and any other QC measures employed to verify the precision and accuracy of results.

TOTAL METALS--Provide the method numbers of procedures used for sample preparation and analysis for metals. Provide any QA/QC data necessary to verify the precision and accuracy of results.

CYANIDE--Provide method number, QC measures, and data used for analysis.

SULFIDE--Provide method number, QC measures, and data used for analysis.

TOX--Provide method number and any laboratory QC measures used for analysis.

ORGANICS--Provide method numbers for sample preparation and analysis and column used for analysis. Provide any QA/QC data necessary to verify the precision and accuracy of results, including surrogate recoveries, field blanks and duplicates, and lab blanks and duplicates. Also indicate the method number for introducing volatile organic compounds into the GC. Provide the same information if Gas Chromatography/Mass Spectrometry (GC/MS) is used instead of GC.

OTHER--Any other analysis submitted should contain similar information.

REFERENCE: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, Second Edition, July 1982.

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