

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

TOPICS:

hazardous waste treatment, storage and disposal facility	tank system
RCRA Part B hazardous waste permit subsidiary	secondary containment system
permit approval application	Timely a manner as is possible
Notice of Deficiency (NOD)	leak or spill
bankruptcy	unfit for use
financial hardship	Performance Test Design Analysis
hazardous waste inspection	failed to respond
violations	civil penalties
drum tipper	noxious odor
operating log	hazardous waste transportation
Harm to human health or environment	labels
Permit Condition IV.G.	land ban notification
	land disposal restriction notifications

PRESIDING JUDGE:

Lasley

PARTY REPRESENTATIVES:

Petitioner: Joseph Wisneski, President
Millennium Environmental, Inc
IDEM: Cindy Shively Klem, Esq

ORDER ISSUED:

February 19, 2001

INDEX CATEGORY:

Enforcement
Land

FURTHER CASE ACTIVITY:

[none]

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Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

10. 329 IAC 3.1 incorporates by reference many of the federal hazardous waste rules found at 40 CFR 260-273. For ease of reference, applicable federal regulation citations are used without the incorporating state rule.
11. On June 8 & 9, 1998 and August 11 & 12, 1998, the IDEM conducted RCRA hazardous waste inspections at the facility and numerous violations were found.
12. Pursuant to Permit Conditions II.A and I.D.6 and/or 40 CFR 264.31, the owner/operator must maintain and operate the facility to minimize the release of hazardous waste. During the inspections conducted in June and August 1998 at the facility, IDEM inspectors found hazardous waste residues from drum tipper operations were noted on the tipper room walls, door, doorframes, floor, and associated equipment. Residues were present on conveyor equipment entering and leaving the tipper room and were dragged out onto the floor of the adjoining room. Additionally, there was a release of the hazardous waste from the piping behind the old tank farm along the concrete wall. The facility contended that the release from the piping occurred in 1993 and was remediated, but was unable to provide documentation of such. Also, several tyveks were lying on the floor and had not been properly containerized or labeled. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Items 4, 5 & 6; Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 1)
13. Pursuant to Permit Attachment IV referencing Table I and/or 40 CFR 264.195 and 40 CFR 264.15, the permittee shall conduct regularly scheduled inspections of the active facility for equipment malfunctions, structural deterioration, or operator error. The inspections will follow the written checklists as seen in Table 1, and the inspections will check for any discharges, malfunctions, deterioration, and operator errors which could lead to releases of hazardous waste constituents to the environment. Items that are identified to require remedial action or repair will be noted on the checklist. Further, the tank system must be inspected at least once each operating day the aboveground portions of the tank systems to detect corrosion or releases of waste. The owner/operator must document the inspections in the operating log and must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. During the inspection in June and August 1998, the IDEM inspectors found that the facility failed to document releases/leaks discovered through inspections, and failed to remedy the deterioration or malfunction which led to the releases as releases were observed in the tipper tank and tank farm areas. (Exh. 18, Inspection Rpt. dated June 8, 1998, Item 7; Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 2)
14. Pursuant to Permit Condition IV.G. and/or 40 CER 264.196 and 40 CFR 264.193, a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release. If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

prevent harm to human health or the environment. During the inspection conducted in August 1998, the IDEM inspector found that the hammer pump and transfer pump for the drum tipper routinely leaked into the secondary containment. Waste was allowed to accumulate on the floor and in the sump of the secondary containment system. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 2)

15. Pursuant to 40 CFR 262.34(a)(2), a generator may accumulate hazardous waste on site for ninety days or less without a permit or without having interim status provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. During the inspection conducted in August 1998, the IDEM inspector found that the facility failed to clearly mark the date upon which accumulation began for a 5500-gallon tank truck containing contaminated water from the truck loading/unloading overflow tanks and for tanker #133. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 5)
16. Pursuant to 40 CFR 262.34(a)(1)(iv)(B)(3), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste." During the inspection conducted in August 1998, the IDEM inspector found that the facility failed to label a 5500-gallon tanker truck containing contaminated water with the words, "Hazardous Waste." (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 6)
17. Pursuant to 40 CFR 264.71, if a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received and must immediately give the transporter at least one copy of the signed manifest. During the inspection conducted in August 1998, the IDEM inspector found that the facility failed to sign and date the manifests and failed to provide the transporter with a copy of the manifests for a load of 83 containers of hazardous waste from Haz Chem. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 7)
18. Pursuant to 329 IAC 13-7-4, if used oil contains greater than or equal to 1000- PPM total halogens, it is presumed to be hazardous waste. The owner or operator may rebut the presumption by demonstrating by analysis or knowledge of the product and use that the used oil has not been mixed with a listed hazardous waste. During the inspection conducted in August 1998, the IDEM inspector found the following: The facility was unable to rebut the presumption that used oil received from OSI Environmental, Inc. on August 5, 1998, was contaminated with hazardous waste. Subsequent information obtained by IDEM from the manufacturer was sufficient to rebut the presumption. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 8)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

19. Pursuant to 40 CFR 264.1085(g)(2), whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position. During the inspection conducted in August 1998, the IDEM inspector found that the hatches on the tops of tanks BT-1 and BT-2 were not secure. The hatches were not bolted down and there were visible cracks and gaps. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 9)
20. Pursuant to 40 CFR 264.1985(d), owner and operators controlling air pollutant emissions from a tank using tank 2 controls shall use one of the following tanks:
 - (i) A fixed roof tank equipped with an internal floating roof in accordance with the requirements of 40 CFR 264.1085(e);
 - (ii) A tank equipped with an external floating roof in accordance with the requirements of 40 CFR 264.1085(t);
 - (iii) A tank vented through a closed-vent system to a control device in accordance with the requirements of 40 CFR 264.1085(g);
 - (iv) A pressure tank designed and operated in accordance with the requirements of 40 CFR 264.1085(h);
 - (v) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements of 40 CFR 264.1085(i).

During the inspection conducted in August 1998, the IDEM inspector found that Blend Tanks BT-1 & BT-2 and the Tipper Tank, all subject to Level 2 controls, were not operated in accordance with 40 CFR 264.1085(d). As non-pressurized fixed roof tanks subject to Level 2 controls, Tanks BT-1 and BT-2 must either be vented through a closed vent system to a control device in accordance with 40 CFR 264.1085(g), or located in an enclosure vented through a closed-vent system to an enclosed combustion control device. Tanks BT-1 and BT-2 were also not vented through a closed vent system to any control device or located in an enclosure vented through a closed vent system to an enclosed combustion control device. Further, as an open tank without a fixed roof, subject to Level 2 controls, the Tipper Tank should have been located inside an enclosure that was vented through a closed-vent system to an enclosed combustion control device as specified in 40 CFR 264.1085(i). The Tipper Tank enclosure was not vented to an enclosed combustion control device, but the enclosure was vented through a caustic scrubber under a FESOP permit issued under 40 CFR, Part 70. However, the tank system is subject to Subpart CC regulations unless the unit is equipped with and operating under air emission controls in 40 CFR Parts 60, 61 and 63. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Items 10 & 11)

21. Pursuant to 40 CFR 264.1088(c)(5)(i) referencing 40 CFR 264.1034(c)(1-4) and 40 CFR 264.1035(b)(4)(iii), an owner or operator shall demonstrate using either a performance test as specified in 40 CFR 265.1088(c)(5)(iii) or a design analysis as specified in 40 CFR 264.1088(c)(5)(iv) the performance of each control device. During the inspection conducted in August 1998, the IDEM inspector found that the facility failed to conduct a

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

performance test or design analysis to demonstrate that the carbon absorption system for Tanks 1 through 10 in the New Tank Farm achieve the specified performance requirements. The carbon had not been changed for four years. (Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 12)

22. Pursuant to 329 IAC 3.1-7-11 & 12, a hazardous waste manifest must include the three digit handling codes that most closely represents the method used at the designated facility to treat, store, dispose, or recover each hazardous waste listed on the manifest. During the inspection conducted in June 1998, the IDEM inspector found that the facility failed to include the three digit handling codes for hazardous wastes on manifest Nos. INS 1180037 and INAS 1180052. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Item 1)
23. Pursuant to 40 CFR 268.7, all EPA hazardous waste numbers listed on manifests must be included on land disposal restriction notifications. During the inspection conducted in June 1998, the IDEM inspector found that the land disposal restriction notification for manifest number INA 1180048 did not include all EPA hazardous waste numbers that were listed on the manifest. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Items 2 & 3)
24. Pursuant to Permit Conditions, III.C & E and/or 40 CFR 264.171 & 173, if a container holding hazardous waste is not in good condition or if it begins to leak, the owner/operator shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in a way that complies with the requirements. A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, and must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. During the inspection conducted in June 1998, the IDEM inspector found that the facility failed to manage containers in a manner to prevent leakage from the containers. Several containers in the tipper room and surrounding areas and the container storage area were stored open or were leaking. (Exh. 18, Inspection Rpt. dated June 1998, Items 4, 5 & 6; Exh. 16, Inspection Rpt. dated September 29, 1988, Item 3)
25. Pursuant to Permit Attachment II.C, all containers shall have appropriate DOT transportation labels, a hazardous waste label identifying the waste type and generator, and the date the container was received into storage by the permittee. During the inspections conducted in June, August and September 1998, the IDEM inspector found that the facility failed to label at least two containers in the container storage area with a hazardous waste label and failed to place the start of accumulation date on at least one container of hazardous waste in the container storage area. Repeated unlabeled and undated container mismanagement violations were observed during the inspection on September 29, 1998. (Exh. 18, Inspection Rpt. dated June 8- 9, 1998, Items 11-12; Exh. 15, Inspection Rpt. dated August 11-12, 1998, Item 6; and Exh. 16, Inspection Rpt. dated September 29, 1998, Item 7)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

26. Pursuant to 329 IAC 13-7-5(g), containers and aboveground tanks used to store or process used oil at processing and refining facilities must be labeled or marked clearly with the words "used oil." During the inspection conducted of the facility in June 1998, the IDEM inspector found that the facility failed to label at least one tote of used oil with the words "used oil." (Exh. 18, Inspection Rpt. dated June 8- 9, 1998, Items 30, 31 & 33)
27. Pursuant to 329 IAC 13-7-5(c) and (h), containers and aboveground tanks used to store or process used oil at processing and refining facilities must not be leaking. Upon detection of a release of used oil to the environment, an owner or operator must perform the clean-up steps found in 329 IAC 13-7-5(h). During the inspection conducted in June 1998, the IDEM inspector found a tote of used oil leaked onto the ground and clean-up steps were not followed. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Items 30, 31 & 33)
28. Pursuant to 40 CER 264.196(c)(2), a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must immediately conduct a visual inspection of the release and based on that inspection, remove and properly dispose of any visible contamination of the soil or surface water. During the in June 1998, the IDEM inspector found that the facility failed to remove and properly dispose of visual contamination from a release of hazardous waste from the piping behind the old tank farm along the concrete wall. The facility contended that the release occurred in 1993 and was remediated, but it could not provide documentation of such. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Item 14)
29. Pursuant to Ind. Code § 13-30-2-1(1), no person may discharge, emit, cause, allow or threaten to discharge, emit, cause, or allow any contaminate or waste, including any noxious odor, either alone or in combination with contaminants from other sources into the environment in any form that causes or would cause pollution in violation of 40 CFR 264.31, 329 IAC 10-4-2, and 329 IAC 13. During the inspection conducted in June 1998, the IDEM inspector found that the facility allowed and threatened to allow the release of contaminants and waste into the environment. The facility also failed to prevent releases by allowing a release of used oil from a tote and a release of hazardous waste along the concrete wall behind the old tank farm. (Exh. 18, Inspection Rpt. dated June 8-9, 1998, Items 14, 31 & 33)
30. Pursuant to Permit Condition I.G.5 and 40 CFR 264.73(b)(2), the permittee shall maintain at the facility an operating record as required by 40 CFR 264.73. The operating record shall include the location of each hazardous waste within the facility and the quantity at each location. During the inspection conducted of the facility in September 1998, the IDEM inspector found that the facility failed to properly maintain the operating record. A drum of hazardous waste in Row C of the container storage area was not listed in the operating records, and six 55- gallon drums were listed in Row S of the records when they were actually located in Row M of the Container Storage Area. (Exh.16, Inspection Rpt. dated September 29, 1998, Item 1)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

31. Pursuant to Permit Condition II.H.4 and 40 CFR 264.35, the permittee shall maintain adequate aisle space as required by 40 CFR 264.35. The owner/operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operations. During the inspection in September 1998, the IDEM inspector found that the facility failed to maintain adequate aisle space around Row A of the CSA. (Exh. 16, Inspection Rpt. dated September 29, 1998, Item 5)
32. Pursuant to Permit Condition II.D. and 40 CFR 264.14(b), the permittee shall comply with the security provisions of 40 CFR 264.14(b) and (c) as described in the Procedures to Prevent Hazards, Attachment IV of the Permit. Entry to the facility shall be controlled by security personnel and a locked entrance. During the inspection conducted in September 1998, the IDEM inspector found that the facility failed to control the entry to the facility. The doors to the Container Storage room were propped open. (Exh.16, Inspection Rpt. dated September 29, 1998, Item 6)
33. On December 14, 1998, IDEM inspectors conducted a RCRA hazardous waste inspection at the facility and many compliance violations were discovered.
34. Pursuant to 40 CFR 264.73(b)(2), the owner/operator shall record in its operating record the location of each hazardous waste within the facility and the quantity at each location. During the inspection conducted in December 1998, the IDEM inspector found twenty-six 55-gallon drums of waste were not properly placed in a row in the container storage area, but were left sitting in front of Row Q and, therefore, were not listed in the operating record. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 1)
35. Pursuant to 40 CFR 268.7, the land ban notification must have all manifest numbers. During the inspection conducted in December 1998, the manifest number was missing from the land ban notification associated with manifest 1NA 1206995. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 2)
36. Pursuant to 40 CFR 265.173(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. During the inspection conducted in December 1998, the inspector found six open 5-gallon buckets of fibrebond compound containing styrene and one 55-gallon generated by the facility stored open in the compactor area. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 3)
37. Pursuant to 40 CFR 262.34, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste." During the inspection conducted in December 1998, the inspector found one 5-gallon bucket of hazardous waste near BT-1 not marked with the words "Hazardous Waste" or other words identifying the contents, nor was it stored closed. (Exh. 17, Inspection Report dated December 14, 1998, Item 4)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

38. Pursuant to 40 CFR 265.173(b), a container holding hazardous waste must not be opened, handled or stored in a manner which may rupture the container or cause it to leak. During the inspection conducted in December 1998, the inspector found liquid residue on the lids of a 5-gallon jug in Row Q and a 55-gallon drum in Row K. (Exh. 17, Inspection Report dated December 14, 1998, Item 5)
39. Pursuant to 40 CFR 270.13, the permittee must indicate the location of all storage areas. During the inspection conducted in December 1998, the inspector found a tanker truck with hazardous waste with a start of accumulation date in an unpermitted storage area. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 6)
40. Pursuant to 40 CFR 262.11, a person who generates a solid waste as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste. During the inspection conducted in December 1998, the inspector found that a waste determination had not been conducted for one 55-gallon drum of waste located near the scraping area of the Tipper Room. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 7)
41. Pursuant to Permit Condition ffl.E.3., drums of hazardous waste must not be stacked greater than two high in the designated container storage areas. During the inspection conducted in December 1998, the inspector found that drums were triple stacked in two areas in Row F in the Container Storage Area. (Exh. 17, Inspection Rpt. dated December 14, 1998, Item 8)
42. On December 22, 1998, IDEM issued a Notice of Violation (“NOV”) regarding the hazardous waste violations found during the inspections conducted in June, August and September of 1998. The proposed penalty for the violations was \$111,500. (Exh. 6, NOV dated December 22, 1998)
43. On March 23 & 24, 1999, and May 11 & 18, 1999, IDEM hazardous waste inspectors conducted inspections of the facility and several violations were found.
44. Pursuant to 40 CFR 262.11, a facility that generates a solid waste, as defined by 40 CFR 261.2, must determine if that waste is a hazardous waste. During the inspection conducted in March 1999, the inspector found that the facility had not made a waste determination for unknown material placed in a 3 yd hopper located outside adjacent to the tank farm, nor for a six 55-gallon containers of unknown material located inside the Tipper Room. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 6)
45. Pursuant to Permit Condition Attachment II, section III.A., the permittee shall follow the chart found in that section to determine the maximum number of drums and maximum volume of waste allowed at each permitted storage area. The maximum volume of stored waste at the facility is 65,450 gallons. During the inspection conducted in March 1999, the inspector found the following according to the facility’s operating log: Row Q and Row Q’ (which are located in Area A as defined in the permit) contained 96 containers. The permit stipulates that only 28 containers may be stored in Area A. The facility

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

exceeded the capacity in that area by 68 containers. Row K, K' and L (which are located in Area B as defined in the permit) contained 249 containers, and the permit stipulates that only 168 containers may be stored in Area B. Therefore, the facility exceeded the capacity in Area B by 81 containers. Rows N, O, and O' (which are located in Area E as defined in the permit), contained 144 containers. The permit allows 120 containers. Therefore, the facility exceeded the capacity of the area by 24 containers. Row P (which is located in Area F as defined in the permit) contained 89 containers. The permit stipulates that only 68 containers may be stored in Area F. Therefore, the facility exceeded the capacity of the area by 20 containers. In all, the facility exceeded its storage capacity by 193 containers or 10,615 gallons. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 6)

46. During the May 11 & 18, 1999 inspection, the IDEM inspector found the following: Row N contained seventy-five 55-gallon containers and one 15-gallon container. Row O contained 51 55-gallon containers, one 30-gallon container, and three 15-gallon containers. The two rows contained a total of 7,020 gallons. Rows N and O are located in Area E. Therefore, the facility exceeded the capacity of Area E by six 55-gallon containers or 420 gallons. Row M contained 24 55-gallon containers, one 35-gallon container, five 30-gallon containers, and four 15-gallon containers. The row contained a total of 1,565 gallons. Row M is located in Area D. The permit stipulates that only twenty-six containers or 1,430 gallons may be stored in Area D. Therefore, the facility exceeded the capacity of Area D by 135 gallons. Row P contained seventy-six 55-gallon containers. A row adjacent to Row P contained forty-six 55-gallon containers. The two rows contained a total of 6,710 gallons. The two rows are located in Area F. The permit stipulates that only 68 55-gallon drums, or 3,740 gallons, may be stored in Area F. Therefore, the facility exceeded the capacity of Area F by fifty-four 55-gallon containers, or 2,970 gallons. Area C contained 575 55-gallon containers, 38 30-gallon containers, 7 5-gallon containers, 6207-gallon container, 1 293-gallon tote, one 306-gallon container, and two 408-gallon containers. The area contained a total of 35,783 gallons. Their permit stipulates that only 640 drums, or 35,200 gallons, may be stored in Area C. Therefore, the facility exceeded the capacity of Area C by 583 gallons. (Exh. 19, Inspection Rpt. dated May 11-18, 1999, pgs.6 & 7)
47. Pursuant to 40 CFR 264.73(b)(2) and Permit Condition I.G.5, the permittee shall maintain at the facility an operating records as required by 40 CFR 264.73. The operating records shall include the location of each hazardous waste within the facility and the quantity at each location.
48. During the inspection in March 1999, the IDEM inspector found thirteen 55-gallon containers placed in front of Row 3. Ten of the containers were accounted for in the March 23, 1999 operating log as being in Row J', which does not exist. The other three containers were listed as being in Row I. Also, 29 containers were listed as being in Row O', but were not observed to be in the area during the inspection. Further, two containers were listed in the log as being in Row Q', but were not observed to be in the area during the inspection; and six unmarked, open 55-gallon containers of unknown waste were

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

observed inside the Tipper Room, but were not listed in the operating log. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 7)

49. During the inspection in May 1999, the IDEM inspector found 46 containers in a row adjacent to Row P in the Container Storage Area, and 186 drums in the sampling area in Rows R and S were not listed on the operating log. (Exh. 19, Inspection Rpt., dated May 11-18, 1999, pg. 6)
50. Pursuant to 40 CFR 268.50(c), an owner/operator of a treatment, storage, or disposal facility may only store hazardous wastes beyond one year if he bears the burden of proving that such storage is solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.
51. During the inspection in March 1999, the inspector found the following waste was stored for more than one year without meeting the burden of proof required to demonstrate that such storage was necessary to facilitate proper recovery, treatment, or storage: one cubic yard box of spent lead acid batteries located in Row A; one box of spent fluorescent bulbs placed on top of the box of batteries located in Row Q, dated 03/18/98; one 55-gallon container of lab-packed material generated by the facility and located in Row Q, dated 03/19/98; one 5-gallon container of lithium batteries located in Row L, dated 03/18/98. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 7)
52. During the inspection in May 1999, the inspector found the following waste was stored for more than one year without meeting the burden of proof required to demonstrate that such storage was necessary to facilitate proper recovery, treatment or storage: Row J, 10 containers; Row L, 16 containers; Row Q, 2 containers; Row C, one container; Row H, one container Row G, one container. (Exh. 19, Inspection Rpt. dated May 11-18, 1999, pgs. 8 & 9)
53. Pursuant to Permit Condition II.H.4 and 40 CFR 264.35 and/or 40 CFR 262.34(a)(4) referencing 40 CFR 265.35, the permittee shall maintain adequate aisle space as required by 40 CFR 264.35.
54. During the inspection in March 1999, the IDEM inspector found that the area between Row A and Row B contained a row of containers referred to as Row A' in the operating log. As a result, there was inadequate aisle space between Rows A and B. The area between Row J and the south wall contained a row of containers referred to as Row J' in the operating log. As a result, there was inadequate aisle space between Row J and the south wall. The area in front of Row Q contained a row of containers referred to as Row Q' in the operating log. As a result, there was inadequate aisle space between Row Q and parts of Area C. Also, there were six unmarked open drums in the Tipper Room, which were also stored open. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pgs. 7 & 8)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

55. During the inspection in May 1999, the IDEM inspector found that the area between Row A and Row B contained an additional row of approximately fifty- four containers. As a result, there was inadequate aisle space between Row A and Row B. The area in from t of Row Q contained two additional rows of containers (45 to 46 containers in each row). As a result, there was inadequate aisle space between Row Q and parts of Area C. The area adjacent to Row P contained an additional row of forty-six containers. As a result, there was inadequate aisle space around Row P. And, the area adjacent to Row K contained an additional row of approximately 61 containers. As a result, there was inadequate aisle space between Row K and parts of Area C. (Exh. 19, Inspection Rpt. dated May 11 & 18, 1999, pg. 9)
56. Pursuant to Permit Conditions III.C & E and 40 CFR 264.171 & 173, and/or 40 CFR 262.34(a)(1) referencing 40 CFR 265.173(a), if a container is holding hazardous waste is not in good condition or if it begins to leak, the owner/operator shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in a way that complies with the requirements. A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, and must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
57. During the inspection in March 1999, the IDEM inspector found that the facility failed to manage containers in a manner to prevent leakage from containers. Several containers in the Tipper Room and surrounding areas were stored open. Additionally, one container of waste located in Row P of the storage area was leaking. (Exh. 19, Inspection Rpt. dated March 23-24, 1999, pg. 8)
58. Pursuant to 40 CFR 265.1085(g)(2), whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position. During the inspection in May 1999, the IDEM inspector found that the hatches on the tops of Blend tanks BT-1 and BT-2 were not secure in that the hatches were not bolted down and there were visible cracks and gaps. (Ex. 19, Inspection Rpt. dated May 11 & 18, 1999)
59. Pursuant to 40 CFR 265.1085(d), owners and operator controlling air pollutant emissions from a tank using Tank 2 controls shall use one of the following:
- (i) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements of 40 CFR 265.1085(e);
 - (ii) A tank equipped with an external floating roof in accordance with the requirements of 40 CFR 265.1085(t);
 - (iii) A tank vented through a closed-vent system to a control devise in accordance with the requirements of 40 CFR 265.1085(g);
 - (iv) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control devise in accordance with the requirements of 40 CFR 265.1085(i).

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

60. During the inspection in March 1999, the IDEM inspector found that Blend Tanks BT-1, BT-2 and the Tipper Tank, (all subject to Level 2 controls), were not operated in accordance with 40 CFR 265.1085(d). As non-pressurized fixed roof tanks subject to Level 2 controls, Tanks BT-1 & BT-2 must either be vented through a closed-vent system to an enclosed combustion control device. The tanks were not vented through a closed vent system to any control device nor located in an enclosure vented through a closed-vent system to an enclosed combustion control device. As an open tank without a fixed roof, subject to Level 2 controls, the Tipper tank must be located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device as specified in 40 CFR 265.1085(i). The Tipper tank enclosure was not vented to an enclosed combustion control device. The enclosure is vented through a caustic scrubber operating under a FESOP permit issued under 40 CFR Part 70. However, the tank system is subject to Subpart CC regulations unless the unit is equipped with an operating under air emission controls in 40 CFR Parts 60, 61 and 63. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 8)
61. Pursuant to Permit Attachment IV referencing Table I, and 40 CFR 264.195 and 40 CFR 264.15, the permittee shall conduct regularly scheduled inspections of the active facility for equipment malfunctions, structural deterioration, or operator error. The inspections will follow the written checklists in Table 1. During the inspection in March 1999, the IDEM inspector found the facility failed to conduct daily inspections and document releases/leaks discovered through inspections. Containers blocked entry into the Tipper Room and secondary containment for the Tipper Room, thereby preventing the required inspections. Further, the facility failed to maintain documentation of inspections conducted in the secondary containment for the Tipper Room and failed to accurately fill out the inspection logs, in that actions which were taken to correct problems found during inspections were not recorded. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 9)
62. Pursuant to Permit Attachment II, III.C and/or 40 CFR 262.34(a)(2&3), all containers shall have appropriate DOT transportation labels, a hazardous waste label identifying the waste type and generator, and the date the container was received into storage by the permittee. A generator may accumulate hazardous waste onsite for ninety days or less without a permit or without having interim status provided that each container is clearly marked with the start of accumulation date and each container and tank is labeled clearly with the words "Hazardous Waste." In March 1999, the IDEM inspector found that the facility failed to label and provide the start of accumulation date for six containers of unknown material in the Tipper Room. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 9)
63. Pursuant to Permit Conditions II.A and I.D.6 and 40 CFR 264.31, the permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

permittee to achieve compliance with the conditions of the Permit. During the inspection in March 1999, the facility failed to maintain and operate the facility to minimize the release of hazardous waste in the hazardous waste was allowed to collect in an area underneath the out-bound conveyor belt for the Tipper Room. Additionally, hazardous waste was leaking out of a drum onto the floor. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 9)

64. Pursuant to 40 CFR 268.7, all hazardous waste codes listed on manifests must be included on land disposal restriction notifications. During the inspection in March 1999, the IDEM inspector found land disposal restriction notification for four manifests did not include the hazardous waste codes. (Exh. 23, Inspection Rpt. dated March 23-24, 1999, pg. 9)
65. On June 8, 1999, Joe Wisneski signed Partial Agreed Order H-13712 as President of ERD Waste Corp., and this Agreed Order addressed the violations listed in the December 22, 1998 NOV. Due to ENSA-IN's claim that it was unable to pay the penalty due to financial hardship, IDEM agreed to waive the penalty resulting from the December 22, 1998 NOV on the condition that the company submit information proving that it met the requirements of "inability to pay." (Exh. 8, Nancy Johnston's Affidavit, para 5; Exh. 9, Partial Agreed Order H-13712)
66. On June 29, 1999, the New Jersey Bankruptcy Court issued an Order Authorizing Sale of Substantially All Debtors' Assets Free and Clear of Liens, Claims and Encumbrances and Authorizing and Directing Debtors to Consummate All Related Transactions. This Order allowed MEI to purchase the assets of ERD Waste Corp., including ENSA-IN. (Exh. 3, Bankruptcy Court Order)
67. Follow-up inspections are customarily done at the request of the enforcement case manager following the execution of an Agreed Order to determine compliance with the Agreed Order's terms. (Exh. 8, Affidavit of Nancy Johnston, para. 7)
68. The "terms" of an Agreed Order are the time periods set forth in the Order Section of an Agreed Order. If compliance is not reached within the stated time period, then the "terms" of the Agreed Order have not been met. (Exh. 8, Affidavit of Nancy Johnston, para. 8; Exh. 9, Partial Agreed Order H-13712)
69. In July and August 1999, IDEM hazardous waste inspectors conducted follow-up inspections at the request of the enforcement case manager to determine compliance with the terms of the Agreed Order H-13712. The follow-up inspections revealed that not all of the terms of the Agreed Order had been met. Specially, the following terms of the Agreed Order were not met by the facility:

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

- a. Failed to comply with Order #2 of the Agreed Order by failing to operate the facility to minimize the possibility of a fire, explosion, or an unplanned sudden or non-sudden release of hazardous waste or contaminant to air, soil, groundwater, or surface water which could threaten human health or the environment. Waste was observed on the floor and in the sump of the secondary containment system for the tipper tank.
- b. Failed to comply with Order #3 of the Agreed Order by failing to ensure that the tipper room and its surrounding areas are managed to minimize releases of hazardous waste and contaminants. Waste was observed on the floor and in the sump of the secondary containment system for the tipper tank. The secondary containment was not inspected by IDEM during the July 29 inspection. Furthermore, the facility failed to submit to IDEM a plan that addresses additional controls and procedures to be implemented to minimize releases within 30 days of the effective date of the Order.
- c. Failed to comply with Order No. 6 of the Agreed Order by failing to remove leakage into the secondary containment within 24 hours. Waste was observed on the floor and in the sump of the secondary containment system for the tipper tank during the August 27 inspection. (Inspection Report dated August 27, 1999)
- d. Failed to comply with Order No. 17 by failing to provide documentation that the spillage of used oil which leaked from the tote has been adequately cleaned up, and that the soil contaminated from the release of hazardous waste from the piping behind the old tank farm has been cleaned up.
- e. Failed to comply with Order No. 19 by failing to maintain a copy of the operating records during the July 29 inspection, which was to include the location of each hazardous waste within the facility and the quantity at each location. The computer containing the operating log was down.

(Exh. 20 & 21, Inspection Rpts. dated July 29, 1999 and August 26, 1999)

- 70. On September 3, 1999, IDEM issued a Notice of Inadequacy to MEI setting forth which terms of Agreed Order H-13712 had not been addressed. (Exh. 7, Notice of Inadequacy) The Notice of Inadequacy was based on the results of the July and August 1999 follow-up inspections.
- 71. On December 3, 1999, IDEM issued a Draft Denial of the permit renewal application. The Draft Denial was based upon the facility's non-compliance as well as permit application deficiencies. (Exh. 12, Draft Denial) Further, MEI managers Larry Fry and Joe Jacobson were told that although the Draft Denial could not be avoided, MEI would still have an opportunity to avoid a final denial decision. (Exh. 11, Affidavit of Victor Windle, paras. 8 & 9)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

72. The Draft Denial was based on compliance violations discovered during inspections of the facility conducted by IDEM hazardous waste inspectors on June 8 & 9, 1998, August 11 & 12, 1998, September 29, 1998 and March 23 & 24, 1999 and May 11 & 18, 1999. The Draft Denial was also based on permit application deficiencies. (Exh. 12, Draft Denial)
73. On December 16, 1999 and January 13, 2000, IDEM conducted a RCRA hazardous waste inspection of the facility, and compliance violations were again discovered.
74. Pursuant to Permit Condition II.F. and 40 CFR 264.16, the permittee shall conduct personnel training. This training program shall follow the outline in Attachment VII of the permit. The permittee shall maintain training documents as required by 265.16(d) and (e). During the inspection in December 1999/January 2000, the IDEM inspector found that the facility failed to maintain training documents as required. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pg. 11)
75. Pursuant to Permit Conditions I.G.5 and 11.K.1 and 40 CFR 264.73(b)(2), the permittee shall maintain at the facility an operating record as required by 40 CFR 264.73. The operating record shall include the location of each hazardous waste within the facility and the quantity at each location. During the inspection conducted in December 1999/January 2000, the IDEM discovered that the facility failed to properly maintain the operating record. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pgs. 9-10)
76. Pursuant to 40 CFR 268.50(c), an owner/operator of a treatment, storage or disposal facility may only store hazardous wastes beyond one year if he bears the burden of proving that such storage is solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal. During the inspection conducted in December 1999/January 2000, the IDEM inspector found that the facility was storing hazardous wastes for more than one year without meeting the burden of proof required to demonstrate that such storage was necessary to facilitate proper recovery, treatment, or storage. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pg. 9)
77. Pursuant to Permit Condition II.H.4 and 40 CFR 264.35 and/or 40 CFR 262.34(a)(4) referencing 40 CFR 265.35, the permittee shall maintain adequate aisle space as required by 40 CFR 265.35. During the inspection conducted in December 1999/January 2000, the IDEM inspector found that the facility failed to maintain adequate aisle space. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pg. 9)
78. Pursuant to Permit Conditions III.C. and 40 CFR 264.17 1, if a container holding hazardous waste is not in good condition or if it begins to leak, the permittee shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in a way that complies with the conditions of the permit. During the inspection in December 1999/January 2000, the IDEM inspector found that

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

the facility failed to manage hazardous waste in a container in good condition and failed to transfer the contents to a container in good condition. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pg. 11)

79. Pursuant to Permit Condition P1.11.4, Permit Attachment Iv referencing Table I, 40 CFR 264.195 and 40 CFR 264.15, the permittee shall conduct regularly scheduled inspections of the active facility for equipment malfunctions, structural deterioration, or operator error. Items that are identified to require remedial action or repair will be noted on the checklist The owner/operator of a tank system must inspector at least once each operating day the aboveground portions of the tank systems to detect corrosion or releases of waste. The owner/operator must document the inspections in the operating log and must remedy any deterioration or malfunction of equipment or structures which the inspections reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. During the inspection in December 1999/January 2000, the IDEM inspector found that the facility failed to accurately fill out the inspector logs, in that actions which were taken to correct problems found during inspections were not recorded. (Exh. 22, Inspection Rpt. dated December 16, 1999 & January 13, 2000, pg. 12)
80. On February 1, 2000, IDEM issued a Notice of Violation regarding the compliance violations discovered during the inspections conducted in March and May 1999, and also for lack of financial assurance. (Exh. 10, NOV dated February 1, 2000)
81. On February 29, 2000 and March 8 & 15, 2000, IDEM conducted a RCRA hazardous waste inspection of the facility and major compliance issues were discovered.
82. Pursuant to Permit Condition III.C. and 40 CFR 264.171 and/or 40 CFR 262.34(a)(1) referencing 40 CFR 265.171, if a container holding hazardous waste is not in good condition or if it begins to leak, the permittee and/or generator shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in a way that complies with the conditions of the permit. During the February/March 2000, inspection, the IDEM inspector found that the facility failed to manage hazardous waste in container s that were in good condition. (Exh. 24, Inspection Rpt. dated February 29 & March 8 & 15, 2000, pg. 6)
83. Pursuant to 40 CFR 262.11, a person who generates a solid waste must determine if that waste is hazardous. During the inspection in February/March 2000, the IDEM inspector found that the facility failed to make proper hazardous waste determinations.(Exh. 24, Inspection Rpt. dated February 29 & March 8 & 15, 2000, pgs. 6-7)
84. Pursuant to Permit Attachment III.V.E., the secondary containment system must be inspected daily for the presence of liquids. If liquids are deterred in the secondary containment system, they are first sampled to determine the appropriate treatment process. The liquids are then removed by vacuum truck and processed. The facility failed

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

to determine the appropriate treatment process for liquids pumped from the secondary containment system of the new hazardous waste tank farm.

85. Pursuant to 40 CFR 262.12(c), a generator must not offer hazardous waste to transporters or to treatment storage or disposal facilities that have not received an EPA identification number. During the inspection conducted in February and March 2000, the IDEM inspector found that the facility offered hazardous waste to transporters and to a disposal facility that did not have EPA identification numbers. (Exh. 24, Inspection Report dated February 29 and March 8 & 15, 2000, pg. 6)
86. Pursuant to 829 IAC 3.1-7-3, a generator who offers hazardous waste for off-site treatment, storage, disposal, or recovery must complete the manifest adopted by the board. During the inspection conducted in February and March 2000, the IDEM inspector found that the facility offered hazardous waste or off-site treatment, storage, disposal, or recovery without completing a manifest. (Exh. 24, Inspection Rpt. dated February 29 and March 8 & 15, 2000, pg. 6)
87. On April 11, 2000, MEI executed an Agreed Order regarding the violations discovered during the inspections in March and May 1999 (and the lack of financial assurance). MEI agreed to pay a civil penalty of \$62,000, to be paid in installments.
88. On April 23, 2000, a fire occurred at MEI, following which IDEM conducted an inspection of the materials (paint filters) involved in fire. Although IDEM requested that the materials undergo another waste analysis, MEI shipped the materials off site. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, Comment Section)
89. On May 12, 2000, the IDEM issued a Final Denial decision denying the permit application, which was based solely on compliance issues and not deficiencies with the facility's permit application. The Final Denial was based on inspections of the facility conducted In June, August, September and December, 1999; March, May, July, August and September 1999; and February and March 2000. (Exh. 11, Affidavit of Victor Windle, para. 11; Exh. 14, Final Denial Letter)
90. On or about May 26, 2000, MEI filed its Petition to Review, Request for Adjudicatory Hearing, and Petition for Stay of Effectiveness of Denial of Hazardous Waste Permit. (Exh. 1, Petition for Review) MEI continued to operate under the stay order issued by this court on October 24, 2000.
91. On July 18, 19 & 27, 2000, the IDEM conducted a comprehensive RCRA inspection, including a technical inspection. During this inspection compliance violations were found, and many of the violations repeated earlier violations.

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

92. Pursuant to Permit Condition III.C. and 40 CFR 264.171 and/or 40 CFR 262.34 (a)(1) referencing 40 CFR 265.17 1, if a container holding hazardous waste is not in good condition or if it begins to leak, the permittee and/or generator shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in a way that complies with the conditions of the permit. During the July 2000 inspection, the IDEM inspector found that the facility failed to manage hazardous waste in containers that were in good condition. (Exh. 26, Inspection Report dated July 18, 19 & 27, 2000, pg. 7)
93. Pursuant to 40 CFR 262.11, a person who generates a solid waste must determine if that waste is hazardous. During the July 2000 inspection, the IDEM inspector found that the facility failed to make a proper hazardous waste determination. (Exh. 26, Inspection Report dated July 18, 19 & 27, 2000 pg. 8, Item 6)
94. Pursuant to 329 IAC 3.1-7-14, Permit Condition II.K.3, and 40 CFR 264.75, a generator who ships hazardous waste off-site or treats, stores, recovers, or disposes of hazardous waste and/or the permittee must prepare and submit a Biennial Report by March 1 of each even numbered year. During the July 2000 inspection, the IDEM inspector found that the facility failed to submit a complete 1999 Biennial Report by March 1, 2000. (Exh. 26, Inspection Report dated July 18, 19 & 27, 2000, pg. 8, Item 7)
95. Pursuant to Permit Condition II.D., Permit Attachments IV.I.B and IV.I.D., and 40 CFR 264.14, the permittee shall comply with the procedures described in 40 CFR 264.14 (b & c) as described in Attachment IV of the permit. The twenty- four (24) hour surveillance system is provided by an independent security firm that continuously monitors and controls entry into the facility. Entry into the facility is controlled by security personnel and a locked entrance. During the July 2000 inspection, the IDEM inspector found that the facility failed to maintain the security as required by the permit. (Exh. 26, Inspection Report dated July 18, 19 & 27, 2000, pg. 8, Item 8)
96. Pursuant to 40 CER 265.1050, owners or operators of facilities that treat, store, or dispose of hazardous waste must comply with the air emission standards of 40 CFR 265, Subpart BB, for equipment leaks. During the July 2000 inspection, the IDEM inspector found that the facility failed to comply with the 40 CFR 265, Subpart BB, standards for equipment leaks. (Exh. 26, Inspection Report dated July 18, 19 & 27, 2000, pg. 8, Item 9)
97. Pursuant to Permit Conditions II.A and I.D.6, 40 CFR 264.31, and IC 13-30-2-1(4), the permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Permit. No person shall deposit or cause or allow the deposit of any contaminants or solid waste upon the land, except through the use of sanitary landfills, incineration,

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

composting, garbage grinding, or another method acceptable to the solid waste management board. During the July 2000 inspection, the IDEM inspector found that the facility failed to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pgs. 6-7, Items 2-3)

98. Pursuant to Permit Condition IV.G.1, Permit Attachment III.V.B., and 40 CFR 264.193(e)(2)(iv), in order to prevent the release of hazardous waste or hazardous constituents to the environment, the permittee shall provide secondary containment that meets the requirements of 40 CFR 264.193. Secondary containment vault systems shall be provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete. During the July 2000 inspection, the IDEM inspector found that this facility failed to provide secondary containment that met the requirements of 40 CFR 264.193. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 7, Item 4)
99. Pursuant to Permit Condition II.C. and Attachment I, Appendix C, the permittee shall comply with the procedures described in the Waste Analysis Plan, Attachment I. To prevent possible sample contamination, all sampling equipment that comes in direct contact with the samples are cleaned prior to reuse using the procedure outlined below:
- a. Hexane rinse
 - b. Water rinse
 - c. Air dry.

During the July 2000 inspection, the IDEM inspectors found that the facility failed to follow the procedures set forth in the Waste Analysis Plan for equipment decontamination/preparation. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 8, Item 10)

100. Pursuant to Permit Condition ffl.I.3 referencing Attachment II, Attachment IV.V.D, and 40 CFR 264.177(c), the permittee shall separate containers of incompatible wastes as indicated in the Container Storage Plan, Attachment II, and 40 CFR 264.177(c). Incompatible wastes are segregated while in storage to prevent possible reactions. A storage container holding hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. During the July 2000 inspection, the IDEM inspector found that the facility failed to store incompatible hazardous wastes separately. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 9, Item 11)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

101. Pursuant to Permit Condition ffl.E.2 (b), containerized waste being transferred from one permitted unit to another (such as from container storage to tank storage) shall remain outside the permitted units only for the minimum time necessary to move the containers and transfer the waste. In no instance shall this transfer period exceed eight (8) hours. During the July 2000 inspection, the IDEM inspectors found that the facility stored containers of hazardous waste outside the permitted units in excess of eight (8) hours. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 9, Item 12)
102. Pursuant to Permit Attachment II.III.C, all containers in permitted storage areas shall have appropriate DOT transportation labels, a hazardous waste label identifying the waste type and generator, and the date the container was received into storage. During the July 2000 inspection, the IDEM inspectors found that the facility failed to mark containers of hazardous waste with the appropriate labels as required by the permit. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 10, Item 13)
103. Pursuant to Permit Attachment II.IV.B.5 and 40 CFR 264.17(a), non-sparking tools will be used to open containers for sampling. The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. During the July 2000 inspection, the IDEM inspectors found that the facility failed to use non-sparking tools to open containers and failed to take precautions to prevent accidental ignition of hazardous wastes. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 10, Item 14)
104. Pursuant to Permit Attachment II.IV.C.3, each shipment of empty containers shall be accompanied by a written notification to the recycler informing the recycler that the containers previously held RCRA listed hazardous waste. During the July 2000 inspection, the IDEM inspectors found that the facility failed to provide documentation that this notification is being provided to recyclers of containers of listed hazardous waste. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 11, Item 15)
105. Pursuant to Permit Attachment II.IV.D, a sign indicating the presence of incompatible waste will be posted at this area whenever Section A is storing incompatible wastes. Drums stored in this section will be on sound wooden or plastic pallets and shall not be double stacked. During the July 2000 inspection, the IDEM inspectors found that the facility stored incompatible wastes without posting the required sign and without storing the containers on sound wooden or plastic pallets. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 11, Item 16)
106. Pursuant to Permit Attachment II.IV.D, drums may be double stacked in a stable condition with a stabilizing media placed between lifts (e.g. pallet, plywood). During the inspection in July 2000, the IDEM inspectors found that the facility failed to stack containers according to the provisions of the permit. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 11, Item 17)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

107. Pursuant to Permit Attachment V.G-2, it is very important that the Emergency Coordinator receive detailed emergency reports; thus, training will be provided to personnel in emergency reporting and data gathering. A checklist will be provided at telephone stations to assist the discoverer of an incident. During the July 2000 inspection, the IDEM inspector found that the facility failed to provide a checklist at the telephone in the Inspection and Sampling area to assist the discoverer of an incident. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 11-12, Item 18)
108. Pursuant to Permit Attachment II.IV.B, off-loaded containers are placed into the Inspection and Sampling Area. The containers are opened to remove a sample by trained personnel wearing proper protective equipment. The container shall be resealed after sampling. The containers will be moved to the Staging or Storage Area after the proper treatment process has been determined. The length of time for this determination shall not exceed twenty-four (24) hours from the time of receipt of the container. During the July 2000 inspection, the IDEM inspector found that the facility failed to move containers from the Inspection and Sampling Area within twenty-four (24) hours from the time of receipt of the containers. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 12, Item 19)
109. Pursuant to Permit Conditions II.E and IV.H.4, Permit Attachment IV referencing Table 1,40 CFR 264.195, and 40 CFR 264.15, the permittee shall conduct regularly scheduled inspections of the active facility for equipment malfunctions, structural deterioration, or operator error. Items that are identified to require remedial action or repair will be noted on the checklist. The owner/operator of a tank system must inspect at least once each operating day the aboveground portions of the tank systems to detect corrosion or releases of waste. The owner/operator must document the inspections in the operating log of the facility and must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. During the July 2000 inspection, the IDEM inspector found that the facility failed to record the date and nature of repairs or other remedial actions in the inspection records. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 12, Item 20)
110. Pursuant to Permit Condition II.F and 40 CFR 264.16, personnel training should be conducted as required by 40 CFR 264.16. This training program shall follow the attached outline in Attachment VII of the permit. Facility personnel involved in hazardous waste management must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance. The permittee shall maintain training documents as required by 40 CFR 264.16(d) and (e). During the July 2000 inspection, the IDEM inspector found that the facility failed to document training as required in the permit. (Exh. 26, Inspection Rpt. dated 18, 19 & 27, 2000, pg. 12, Item 21.)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

111. Pursuant to Permit Conditions II.E & II.H.2, Attachment IV, and 40 CFR 264.15, the permittee shall follow the inspection schedule in Attachment IV. The permittee shall remedy any deterioration or malfunction discovered by an inspection as required by 40 CFR 264.15 (c). Records of inspections shall be kept as required by 40 CFR 264.15(d). The permittee shall test and maintain the equipment specified in Attachment IV as necessary to assure its proper operation in time of emergency. Such testing and maintenance activities are set forth in the inspection schedule in Attachment IV. During the July 2000 inspection, the IDEM inspector found that this facility failed to follow the inspection schedule specified in Attachment IV of the permit. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 18, Item 32)
112. Pursuant to the November 1, 1999 Permit Modification, the facility is required to conduct daily inspections on the modified pump and piping system in the facility production area that is utilized to pump waste from containers to the blend tanks in the production area. During the July 2000 inspection, the IDEM inspector found that the facility failed to conduct the inspections of the pump and piping system as required by the November 1, 1999 permit modification. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 18, Item 31)
113. Pursuant to Permit Condition II.H.1, Attachment V, and 40 CFR 264.32, the permittee shall equip the facility with the equipment set forth in the Contingency Plan, Attachment V, which is required by 40 CFR 264.32. During the July 2000 inspection, the IDEM inspector found that the facility failed to maintain the equipment as set forth in the Contingency Plan and/or failed to maintain it at the location specified in the Plan. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 15, Item 23)
114. Pursuant to Permit Conditions I.G.5 and II.K.1 and 40 CFR 264.73(b)(2), the permittee shall maintain at the facility an operating record as required by 40 CFR 264.73. The operating record shall include the location of each hazardous waste within the facility and the quantity at each location. During the July 2000 inspection, the IDEM inspector found that the facility failed to properly maintain the operating record. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 16, Item 24)
115. Pursuant to Permit Condition II.H.3, Attachment IV.III.B, and 40 CFR 264.34, the permittee shall maintain access to the communications or alarm systems as required by 40 CFR 264.34. Key personnel are issued hand held two-way radios. During the July 2000 inspection, the IDEM inspector found that the facility failed to provide personnel with an operable communications system. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 16, Item 25)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

116. Pursuant to 329 IAC 3.1-7-11, if a waste has more than four (4) additional EPA numbers associated with it, enter the words “multi-coded” instead of the additional codes for that waste in Item J. During the July 2000 inspection, the IDEM inspector found that the facility failed to enter the words “multi-coded” in Item 3 instead of the additional EPA waste codes for hazardous waste identified on State Manifest Document Number INA 1416727. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 16-17, Item 26)
117. Pursuant to 40 CFR 265.1085(g), each opening in a Level 2 tank not vented to a control device (i.e. the carbon adsorption system) shall be equipped with a closure device (i.e. cap, hatch, lid, valve, pressure relief valve, plug, seal, etc.). If the pressure in the vapor headspace of the tank is equal to or greater than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate with no detectable organic emissions. (A detectable emission is a reading of 500 ppm or greater, or for the seals around a rotating shaft, 10,000 ppm or greater.) During the July 2000 inspection, the IDEM inspector found that the facility failed to control organic emissions. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 17, Item 27)
118. Pursuant to 40 CFR 265.1085(g)(3) and 40 CFR 265.1090(b)(1), the tank closure devices must be visually inspected annually. The closed vent system and control device must be monitored annually. The facility must record the inspection dates and findings. During the July 2000 inspection, the IDEM inspector found that the facility failed to conduct the required annual inspections for the tank closure devices and the closed vent system and control device, and was unable to provide inspection records. (Exh. 26, Inspection Rpt. dated July 18, 19&27, 2000, pg. 17, Item28)
119. Pursuant to 40 CFR 265. 1088(c)(3) referencing 40 CFR 265.1033(h), a facility using a carbon adsorption system must monitor the exhaust stream from the adsorption system daily for breakthrough unless other design criteria has been met. During the July 2000 inspection, the IDEM inspector found that the facility failed to monitor the carbon adsorption system for the blend tanks daily. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 17, Item 29)
120. Pursuant to Permit Conditions II.E & II.H.2, Attachment IV, and 40 CFR 264.195, the permittee shall follow the inspection schedule in Attachment IV. The permittee shall test and maintain the equipment specified in Attachment IV as necessary to assure its proper operation in time of emergency. Such testing and maintenance activities are set forth in the inspection schedule in Attachment IV. These inspections will check for any discharge, malfunctions, deterioration, or operator errors which could lead to releases of hazardous waste constituents to the environment. The owner/operator must develop and follow a schedule and procedure for inspecting overfill controls. A facility must inspect overfill control equipment at least once each operating day to ensure that it is in good working order. During the July 2000 inspection, the IDEM inspector found that the facility failed to have methods in place to determine if the overfill alarm system for the blend tanks was in working order. (Exh. 26, Inspection Rpt. dated July 18, 19 & 27, 2000, pg. 17-18, Item 30)

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

121. Following a fire in a roll-off container at the facility, on April 27,2000, an IDEM inspector visited the facility. Pursuant to 40 CFR 262.11, a person who generates a solid waste must determine if that waste is hazardous. During the April 2000 inspection, the IDEM inspector found that the facility had not made a waste determination on paint filters. Further, this facility failed to respond to a May 17, 2000 'Hazardous Waste Determination letter from IDEM which requested further information regarding the waste determination on waste paint filters which were received by the facility from Knapheide locations in Quincy, Illinois, and re-containerized by the facility. (Exh. 25, Office Memo regarding April 23, 2000 fire; Exh. 26, Inspection Rpt. dated July 18, 19 & 27,2000, pg. 1, Comment Section)

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication has jurisdiction over the decisions of the commissioner of the Indiana Department of Environmental Management pursuant to Ind. Code § 4-21.5-7.
2. The Order granting IDEM's Motion for Summary Judgment is a Final Order issued pursuant to Ind. Code § 4-21.5-3-27, the motion is granted in its entirety.
3. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
4. The IDEM has established a factual basis which the decision to deny the permit was based upon.
5. The IDEM has submitted as Exhibit 15 of its summary judgment motion an Affidavit Concerning Records of Regularly Conducted Activity signed by the keeper of the records at IDEM. Therefore, the Inspection Reports listed in the Affidavit are hereby deemed admissible and not hearsay evidence. Ind. Rule of Evidence 803(6)
6. Petitioner did not respond or present any evidence demonstrating the IDEM acted without cause or reason in its decision to deny to permit.
7. The Commissioner is within her discretion to deny to permit application per Ind. Code. §13-15-7-1.
8. The Environmental Law Judge does not need to reach a decision regarding the Notice of Deficiency Items in the facility's permit application. Those deficiencies were not part of the agency's decision to deny the permit.
9. The United States Bankruptcy Court, District of New Jersey, does not have jurisdiction to prevent the IDEM from making decisions regarding the facility's permit as those decisions are regulatory in nature.

Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)

10. The terms of both Agreed Orders entered into by the facility were not met as the facility failed to reach compliance within the time frame set forth in those Agreed Orders. Therefore, the violations were never settled.
11. The results of the IDEM inspections conducted in February, March, April and July of 2000 were never addressed in an Agreed Order. Therefore, the violations found during those inspections were never part of a settlement.
12. The civil penalty that would have been assessed by IDEM in Agreed Order H-137 12 is valid and may be recovered from the facility. That penalty amount is \$111,500.
13. The civil penalty assessed by IDEM in Agreed Order H-13784 is valid and may be recovered from the facility. That penalty amount is \$62,000.

ORDER

1. IDEM's Motion for Summary Judgment is hereby granted in its entirety.
2. Petitioner MEI's Petition for Review of dated May 26, 2000 is hereby denied.
3. The RCRA hazardous waste permit renewal application for the facility is hereby denied.
4. Petitioner shall cease accepting hazardous waste at the facility immediately.
5. Petitioner shall implement closure of the facility pursuant to the approved closure plan immediately.
6. Petitioner is assessed a Civil Penalty of \$111,500 and \$62,000, for a total of \$173,500. Said Penalty amount shall be due and payable to IDEM within thirty (30) days of the Date of this Order.
7. Civil penalties are payable by check to the Environmental Response Fund. Checks shall include the Cause Number of this Order and shall be mailed to: Cashier, IDEM, 100 North Senate Avenue, P.O. Box 7060, Indianapolis, IN 46206-7060.
8. In the event that the Civil Penalty required in paragraph 5 is not paid within thirty days of the effective date of this Order, Petitioner shall pay interest, which shall begin to accrue immediately after this 30 day period, on the unpaid balance of the rate established by Ind. Code § 24-4.6-1-101.
9. The Petitioner, its agents, servants, employees, successors, assigns and all persons, firms or corporations acting through or for the Petitioner on the effective date of this Order or on the date of retaining their services must comply with the conditions of this Order. No change in ownership, corporate or partnership status of the Petitioner shall in any way alter its status or responsibilities under this Order.

**Objection to the Denial of Hazardous Waste Permit Ind 98059047
Hazardous Environmental, Inc.
2001 OEA 4 (00-S-J-2523)**

You are further notified that pursuant to IC 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of IDEM. This is a Final Order that may be subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial V Review is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED in Indianapolis, Indiana this 9th day of February 2001.

Linda C. Lasley
Environmental Law Judge