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## Hawaii Volcanoes National Park

### Introduction

It's April 1997 and you are Vicky Lang, Assistant Regional Counsel at the U.S. Environmental Protection Agency ("EPA"), Region 9 in San Francisco. You have received a settlement offer from Barbara Goodyear, counsel for the Department of the Interior ("Interior") and the National Park Service, to resolve an administrative enforcement action brought by EPA against Interior for hazardous waste violations at the Hawaii Volcanoes National Park ("Park").

Goodyear has offered to settle the enforcement action, pending for over a year, by having Interior conduct a Supplemental Environmental Project ("SEP"). Under the SEP, Interior would develop a model hazardous waste management plan for use at all national parks. Goodyear argues that if Interior implements the SEP at an estimated cost of \$235,000, Interior should not have to pay a monetary penalty. In its administrative complaint, EPA demanded that Interior pay a \$243,800 penalty for the hazardous waste violations at the Park, which are serious.

What will your response to Goodyear's settlement offer be? Is the SEP proposed by Goodyear consistent with EPA's Interim Final SEP Policy? In addition to the SEP, should you demand that Interior pay a monetary penalty? Should a percentage of the SEP cost be used to mitigate the monetary penalty? What percentage?

### Hawaii Volcanoes National Park

In 1916, the U.S. Congress created Hawaii National Park on the Big Island of Hawaii. Re-named the Hawaii Volcanoes National Park in 1961, the Park now covers

Mary Decker prepared this case study, under the editorial guidance of Barton H. ("Buzz") Thompson, Jr., Robert E. Paradise Professor of Natural Resources Law, as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an environmental matter. Some or all of the characters or events may have been fictionalized for pedagogical purposes. Copyright © 1998 by the Board of Trustees of the Leland Stanford Jr. University. To request permission to use or reproduce case materials, write to Environmental and Natural Resources Law and Policy Program, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 or visit [www.stanford.edu/group/law/library/casestudies/lawschool.shtml](http://www.stanford.edu/group/law/library/casestudies/lawschool.shtml).

more than 230,000 acres, including 123,100 acres of wilderness. The Park encompasses geographic terrain of enormous diversity, including Kilauea, the world's most active volcano, the 13,661 foot peak of Mauna Loa, and coastline areas. On average, 2.5 million people visit the Park every year.

**Fig. 1. Island of Hawaii**



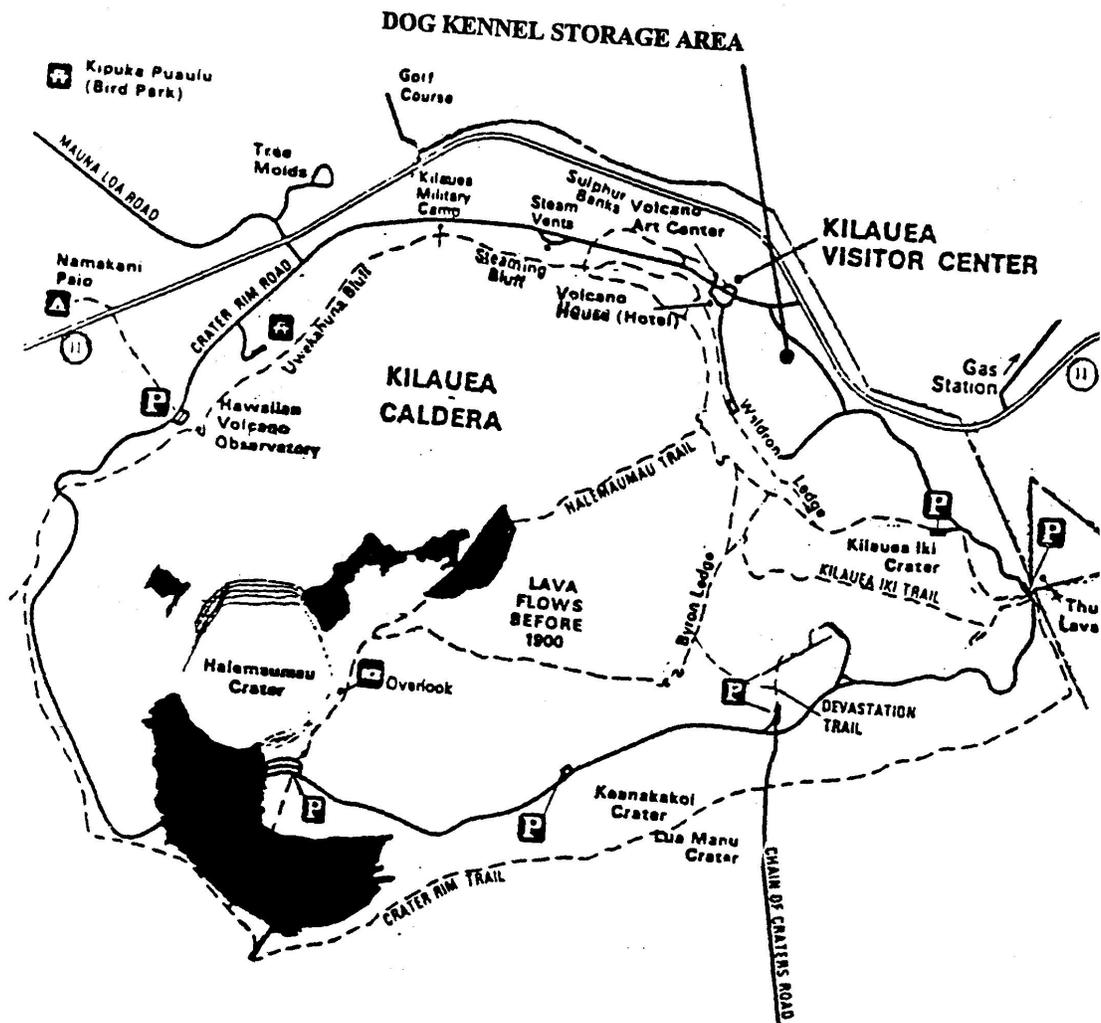
Tourists aren't the only ones making use of the Park. Both the U.S. Geological Survey and the National Biological Survey (formerly the U.S. Fish and Wildlife Survey) operate research facilities there. The Geological Survey studies the Park's active volcanoes. The Biological Survey conducts research on the management of endangered ecosystems. Under the National Park Service Organic Act, 16 U.S.C. §1, et seq., the National Park Service must promote and regulate use of the national parks, allowing people to enjoy the parks while preserving their scenery, wildlife, and history for future generations. The U.S. Department of the Interior directs and manages National Park Service operations, as well as the operations of seven other governmental bureaus. See attached Exhibit A for a chart showing Interior's organizational structure.

## Hazardous Waste Generated at the Park

The Park's maintenance operations generate hazardous wastes largely consisting of old paint, used oil, and discarded vehicle batteries. Historically, the Park has also stored and disposed of hazardous wastes generated by Interior's Geological and Biological Surveys (mostly lab wastes, including mercury and chromic acid). In 1995, when EPA inspected the Park, neither the Geological Survey nor the Biological Survey had their own EPA hazardous waste generator identification numbers.

The Park maintains a small hazardous waste storage facility located about half a mile southeast of the main Visitor Center. At an elevation of 4,000 feet, the hazardous waste storage area receives about 80 inches of rain annually. The Park does *not* have a RCRA hazardous waste storage permit. Since 1989, the Park has been registered with EPA as a small quantity generator. Under Federal RCRA regulations, small quantity generators located more than 200 miles from a hazardous waste disposal facility must move hazardous wastes off-site within 270 days after the waste is generated. Because no hazardous waste disposal sites exist in the Hawaiian Islands, the Park must ship its hazardous waste to the mainland for disposal.

Fig. 2. Hawaii Volcanoes National Park Site Map



## **EPA Region 9 Plans an Inspection**

In the early summer of 1995, two inspectors from the RCRA Compliance, Monitoring and Enforcement Section of EPA Region 9 in San Francisco prepared to visit the Hawaiian Islands for a series of surprise hazardous waste inspections. Working as a team, J. Anthony Terrell and Molly Measer planned to conduct the inspections. Their first stop would be the Hawaii Volcanoes National Park.

Though the Park had registered with EPA as a RCRA small quantity generator in 1989, this was the first inspection EPA had conducted there. In part, this was due to court rulings, including the U.S. Supreme Court's decision in *United States Department of Energy v. Ohio*, 503 U.S. 607 (1992), that concluded EPA lacked authority to issue administrative enforcement orders and assess penalties against Federal facilities. Hampered in its efforts to issue unilateral RCRA compliance orders to Federal facilities, EPA negotiated agreements with Federal facilities aimed at improving hazardous waste management. But significant hazardous waste compliance and contamination problems remained at many Federal facilities.

In response to this situation, Congress enacted the Federal Facilities Compliance Act of 1992, amending §6001 of RCRA to expressly authorize EPA administrative enforcement actions and penalty assessments against Federal facilities. The 1992 Act effectively established that Federal facilities must meet the same RCRA requirements as private companies, or face the same enforcement consequences that private violators are subject to.

Soon after the Act's passage, EPA Region 9 began inspecting and issuing compliance orders to Federal facilities owned and managed by the Department of Defense. In 1995, EPA expanded its RCRA inspection and compliance efforts to other Federal facilities, including national parks and public lands managed by the Department of the Interior.

## **EPA Inspectors Arrive at the Park**

On July 27, 1995, a rainy Thursday morning, EPA inspectors Terrell and Measer arrived. At the time, the Park's designated hazardous waste managers, Dennis Footer, Chief of Maintenance, and Jose Ramirez, Roads and Trails Foreman, were away. Jack Minassian, the Park's Fire Management Officer and "back-up" hazardous waste manager, accompanied the inspectors.

A light rain was falling as the inspection commenced. Terrell and Measer were surprised to find the small building designated for hazardous waste storage completely empty. Instead, the inspectors found the Park's hazardous waste containers stacked nearby in an abandoned dog kennel. The 30' x 30' kennel consisted of a concrete pad and curbing enclosed by a chain link fence. It had been built in 1978 to house hunting dogs used to track feral pigs. At the time of the inspection, the door to the kennel was padlocked, but the kennel had no signs indicating that hazardous wastes were stored there. And no roof. Plastic tarps lay on top of cardboard waste containers sitting directly on wet concrete. The inspectors could see no

hazardous waste labels on the containers. Some containers were rusted and the inspectors observed oily sheens and stains. Empty poly-overpack drums lay stacked among the waste containers. Overpacks usually store multiple containers of compatible wastes in one large drum, for ease of handling and prevention of spills, but these were empty. The inspectors also noted open and unlabeled containers of waste in three satellite accumulation areas: the auto shop, a storage shed, and the welding shop. Altogether, the inspectors identified more than 30 hazardous waste containers that were unlabeled, mislabeled, rusting, leaking, or deteriorating.

The EPA inspectors took photographs during the inspection, one of which is reproduced below.

**Fig. 3. The Dog Kennel**



Minassian could not answer many questions Terrell posed about hazardous waste handling and storage practices at the Park. The next day Ramirez returned from Kona. Ramirez explained that he had moved the hazardous waste containers into the dog kennel about two weeks earlier, so he could apply a water-proof epoxy to the floor of the hazardous waste storage area. Ramirez also told the inspectors that the Park had accumulated more hazardous waste than usual, because Park employees had conducted a “sweep” through the Park to collect and dispose of old hazardous materials and accumulated wastes. These collected wastes had been inventoried and plans for disposal were underway. The Park’s 4-page waste inventory is attached as Exhibit B to this case study.

By examining Park records, Terrell learned that on December 20, 1994, more than seven months before the inspection, the Hazardous Materials Coordinator for Interior's Western Regional Office had submitted a \$26,043 requisition to their management to cover the estimated disposal costs for the inventoried wastes. Based on the Park's records, and absent accumulation start dates on the storage containers, Terrell determined that wastes in the dog kennel had been stored at the Park since at least December 16, 1994.

After returning to his office in San Francisco, Terrell prepared a detailed inspection report and a five page list of potential RCRA violations. Excerpts of this report are attached as Exhibit C. On October 13, 1995, the Chief of EPA Region 9's Compliance and Enforcement Section sent a letter and a copy of the inspection report to the Park Superintendent, demanding compliance with RCRA within 30 days. The Superintendent was asked to send written confirmation of compliance to inspector Terrell.

## **The National Park Service Responds**

In November, Interior's National Park Service submitted a two-inch thick bound document to Terrell entitled Response to Violation Notice, describing the steps it had taken to remedy the identified violations. One of the steps taken by the Park Superintendent was to end the cooperative waste handling arrangement between the Park and the Geological and Biological Surveys. Concerned that acceptance of waste from these research stations could cause the Park to be defined as a *large* quantity generator, the Superintendent had notified these field offices that they would now have to make their own arrangements for hazardous waste storage and disposal.

## **Enter Vicky Lang, Assistant Regional Counsel, EPA Region 9**

Vicky Lang graduated from law school in 1986. After clerking for a Federal court judge for a year and working as a litigator at a large San Francisco law firm for six years, Lang had joined the Hazardous Waste Section of Region 9's Office of Regional Counsel in 1994.

Lang reviewed Terrell's inspection report, and later, the Park Service's lengthy response to the notice of violation. She knew that Interior faced similar hazardous waste violations on public lands in Arizona managed by the Bureau of Reclamation and the Bureau of Indian Affairs. Lang met with Terrell to discuss how the counts in an administrative enforcement complaint against the Park might be structured, what evidentiary issues might exist, and what administrative penalty might be appropriate.

After staff and managers in EPA's Office of Regional Counsel and the RCRA Enforcement Office conferred, a joint decision was made to file an administrative enforcement action against Interior. On December 10, 1995, Lang filed EPA's Determination of Violation, Consent Order and Notice of Right to Request Hearing ("Complaint") with EPA's administrative hearing officer.

EPA's Complaint contained two counts. Count I alleged storage of hazardous waste without a permit from December 12, 1994 until October 13, 1995, when the Park shipped the wastes off-site for disposal. Count II alleged failure to maintain hazardous waste storage containers in good condition. The Complaint assessed a \$243,800 administrative civil penalty against Interior. The Complaint alleged that the Park was a *large* quantity generator, i.e., generating 1,000 or more kilograms of hazardous waste per month. The Park was therefore required to move hazardous waste off-site within 90 days. EPA based its contention that the Park was a large quantity generator on the assumption that the waste in the dog kennel at the time of the inspection (more than 1,000 kilograms) was generated in December 1994.

## **EPA's 1990 RCRA Civil Penalty Policy**

EPA calculated the \$243,800 administrative penalty included in its Complaint using the 1990 RCRA Civil Penalty Policy ("RCRA Penalty Policy") as guidance. The RCRA Penalty Policy is reprinted at 21 Environmental Law Reporter 35273. EPA applies this policy to both administrative civil penalty cases and civil judicial cases. Penalty calculation has four steps:

1. calculating a gravity-based penalty for a particular violation, based on EPA's gravity-based matrix;
2. adding, where appropriate, a multi-day penalty component, based on EPA's multi-day matrix, to account for a violation's duration;
3. adjusting the combined gravity and multi-day penalty components up or down, depending on case-specific circumstances; and
4. adding the appropriate economic benefit gained by the violator through non-compliance.

EPA's RCRA Penalty Policy equation looks like this:

(gravity component) + (multi-day component) + or – (adjustments) + (economic benefit) = penalty

EPA uses the RCRA Penalty Policy both to calculate the penalty amount included in an administrative complaint and to document and explain penalty amounts EPA agrees to in settlements.

### **Step 1: The Gravity-based Penalty Component**

EPA considers two factors in determining the gravity-based penalty component:

1. the potential for harm to human health, the environment, and the RCRA program;  
and
2. the extent to which the violations deviate from RCRA requirements.

Using these two factors, EPA determines the seriousness of the violation and identifies the appropriate penalty amount from the EPA Penalty Policy matrix shown in Figure 4 below.

**Fig. 4 Gravity-based Matrix**

		Deviation from RCRA Requirements		
		MAJOR	MODERATE	MINOR
Potential for Harm	MAJOR	\$25,000 to 20,000	\$19,999 to 15,000	\$14,999 to 11,000
	MODERATE	\$10,999 to 8,000	\$7,999 to 5,000	\$4,999 to 3,000
	MINOR	\$2,999 to 1,500	\$1,499 to 500	\$499 to 100

EPA ranked Count I, hazardous waste storage without a permit, as a “major” violation for these two factors based on the violation’s seriousness. That is, Count I creates both a major potential for harm and represents a major deviation from RCRA requirements — what EPA terms a major-major violation. EPA’s RCRA Penalty Policy provides specific definitions for major, moderate and minor potential for harm and for major, moderate, and minor deviation from RCRA requirements. Based on the gravity-based matrix above, major-major violations are subject to a \$25,000-20,000 penalty for the first day of violation. From this range, EPA assigned a \$22,500 gravity-based penalty component to Count I.

EPA ranked Count II, maintaining improper hazardous waste storage containers, as a moderate-moderate violation. Under the gravity-based matrix, moderate-moderate violations are subject to a \$7,999-5,000 penalty for the first violation day. From this range, EPA assigned a \$6,500 gravity-based penalty component to Count II.

### **Step 2: The Multi-day Penalty Component**

EPA’s RCRA Penalty Policy applies an additional multi-day penalty component for violations that continue for day two through 180. Under the Policy, EPA may impose multi-day penalties for violations that continue after 180 days, *at the Agency’s discretion*.

EPA applies the multi-day penalty component as follows:

- a *mandatory* multi-day penalty applies to major-major, major-moderate, and moderate-major violations;

- a multi-day penalty *presumptively* applies to major-minor, moderate-moderate, and minor-major) violations; and
- a *discretionary* multi-day penalty applies to moderate-minor, minor-moderate, and minor-minor violations.

Figure 5 shows the multi-day matrix from EPA's RCRA Penalty Policy.

**Fig. 5 Multi-day Matrix (Minimum Daily Penalty)**

		Deviation from RCRA Requirements		
		MAJOR	MODERATE	MINOR
Potential for Harm	MAJOR	\$5,000 to 1,000	\$4,000 to 750	\$3,000 to 550
	MODERATE	\$2,200 to 400	\$1,600 to 250	\$1,000 to 150
	MINOR	\$600 to 100	\$300 to 100	\$100

Based on the multi-day matrix above, Count I of the Complaint, a major-major violation, is subject to a \$5,000-1,000 per day penalty for days two through 180 of violation. EPA exercised its discretion to cap the multi-day penalty at 180 days for Count I violation (even though EPA's complaint alleged the violation continued for 303 days). From the \$5,000-1,000 per day applicable penalty range, EPA assigned a \$1,200 per day multi-day penalty to Count I.

EPA elected not to add a multi-day penalty component for Count II, a moderate-moderate violation.

The total gravity-based penalty (the sum of the gravity and multi-day penalty components) for Counts I and II of the Complaint are as follows:

$$\text{Count I: } \$22,500 \text{ (gravity)} + (\$1,200 \times 179 \text{ days} = \$214,800) \text{ (multi-day)} = \$237,380$$

$$\text{Count II: } \$6,500 \text{ (gravity)} + (\text{no multi-day component}) = \$6,500$$

### **Step 3: Adjustments**

After EPA determines the gravity-based component and adds any appropriate multi-day penalty component, EPA may then adjust the penalty up or down to reflect individual circumstances. For example, EPA may adjust the penalty amount downward based on good faith efforts to meet hazardous waste requirements and inability to pay the calculated fine. On the other hand, EPA may adjust the penalty upwards based on a history of noncompliance and willful disregard of hazardous waste requirements.

Under its RCRA Penalty Policy, EPA does not consider downward adjustments while calculating the penalty amount included in the complaint, except for downward adjustments based on the violator's good faith efforts to comply. Similarly, EPA does not consider upward adjustments while calculating the penalty amount included in the complaint, except for upward adjustments based on a history of noncompliance. EPA addresses most adjustment factors during settlement discussions.

Here EPA made no adjustments, up or down, in calculating the penalty amount included in the Complaint it filed against Interior.

### **Step 4: The Economic-Benefit Component**

Under its RCRA Penalty Policy, EPA uses a computer model called BEN to calculate the economic benefit the violator gained through its noncompliance. If the BEN computations show the profit gained from noncompliance was \$1,000 or less, EPA generally treats the violations as having provided no economic benefit to the violator. This was the case for the Park's violations – after running the BEN model EPA concluded that Interior gained no economic benefit from the Park's noncompliance.

Figure 6 below summarizes the penalty calculation for the \$243,800 penalty that EPA included in its Complaint against Interior.

**Fig. 6. Calculating EPA’s \$243,800 Monetary Penalty**

<u>Penalty Component</u>	<u>Count I</u> (storing hazardous waste without a permit)	<u>Count II</u> (maintaining improper storage containers)
Gravity-based	\$22,500 for day 1 of a major-major violation	\$6,500 for day 1 of a moderate-moderate violation
Multi-day	\$1,200 per day for 179 days, or total of \$214,800	none applied
Economic Benefit	none	none
Sub Totals	\$237,300	\$6,500

Grand Total:  $\$237,300 + \$6,500 = \$243,800$

### **Interior Responds**

On February 13, 1996, Interior’s attorney, Assistant Field Solicitor Barbara Goodyear, filed an answer to EPA’s Complaint and requested a hearing under the Administrative Procedure Act, 42 U.S.C. §554. Goodyear, working out of Interior’s San Francisco Field Office, argued in her answer that the Park was a small quantity generator and EPA’s penalty calculation, based on large quantity generator status, was excessive.

### **Settlement Discussions Begin**

Soon after Goodyear filed her answer, the EPA Chief Administrative Law Judge notified Lang and Goodyear by letter that no Administrative Law Judge (“ALJ”) was available to handle the case. The Chief Judge urged the parties to proceed with settlement discussions. Aware of the case backlog and hoping to resolve the matter expeditiously, Lang and Goodyear had already arranged a settlement meeting at EPA’s office on February 23, 1996. At the meeting, Goodyear proposed that the enforcement action be settled by having Interior install a vehicle wash rack at the Park. The vehicle wash rack, a “supplemental environmental project” or SEP, would help prevent oily surface water run-off and would cost Interior an estimated \$90,000 to construct. Interior’s three-page SEP proposal is attached as Exhibit D. Under this settlement offer, Interior would pay no monetary penalty. Lang objected

to the vehicle wash rack SEP and elimination of a cash penalty as inconsistent with EPA policy.

EPA's Interim Revised SEP Policy, attached as Exhibit E, defines a SEP as an environmentally beneficial project undertaken to settle an enforcement action. SEPs must achieve environmental and public health protection that might otherwise not occur — i.e., they must require violators to conduct activities not otherwise legally required. Section E of EPA's SEP Policy notes that a monetary penalty is an important settlement element, including settlements that involve SEPs. Specifically, the Policy states:

Except in extraordinary circumstances, if a settlement includes a SEP, the penalty should recover, at a minimum, the economic benefit of noncompliance plus 10 percent of the gravity component, or 25 percent of the gravity component only, whichever is greater.

Lang knew that a Federal agency like Interior would usually pay SEP implementation costs from its own budget, while the specific park found in violation would pay the cash penalty from the park's own operating budget.

After the February settlement conference, EPA and Park staff held a follow-up SEP brainstorming session. But efforts to resolve the matter quickly foundered. In May 1996, Lang wrote to Goodyear trying to revive the settlement talks. Goodyear responded by arguing that the penalty for Count I should be reduced to \$55,100 based on Interior's understanding of the facts surrounding the inspection. Goodyear also promised to submit a new, more detailed SEP proposal, after an appropriate penalty amount was agreed to. In August, Lang offered to reduce the penalty for Counts I and II from \$243,800 to \$205,500. Correspondence between Goodyear and Lang is attached as Exhibit G.

## **The ADR Option**

While Goodyear considered Lang's counter-demand, the Chief Administrative Law Judge invited the parties to participate in a new pilot program evaluating Alternative Dispute Resolution ("ADR"). Participation in the ADR pilot program would be voluntary and would require the parties' consent. The ADR process would last no more than 60 days, starting from the assignment date of the case to a neutral ALJ. The parties would jointly determine the precise role played by the ALJ. In October 1996, Lang notified the Chief ALJ that EPA declined to participate in the ADR pilot program because the parties were currently engaged in what appeared to be fruitful settlement discussions.

## **Judge Bullock takes the Case**

In November 1996, almost a year after Lang filed the original Complaint, ALJ Charles E. Bullock took up the case. Judge Bullock immediately issued an order establishing hearing deadlines. He noted in his order that the parties had already had sufficient time to reach a

voluntary settlement and should now prepare for trial. Judge Bullock set the following deadlines for exchanging pre-trial information:

- 2/18/97 Complainant's Initial Prehearing Exchange
- 3/14/97 Respondent's Answering (Direct and Rebuttal) Prehearing Exchange
- 4/1/97 Complainant's Rebuttal Prehearing Exchange (if necessary)

In accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR §22, Judge Bullock ordered that the prehearing exchanges include all witness names, including experts; summaries of all expected testimony; and copies of all documents intended to be introduced into evidence.

### **Lang Files a Second Amended Complaint**

In January 1997, Lang decided that EPA's Complaint should be amended to specifically allege that the Park's generator status (large or small) made no difference with regard to the penalty assessed under Count I. Lang contended that the Park's failure to comply with generator labeling requirements, including accumulation start dates, meant that the Park was subject to RCRA storage facility permit requirements. Neither the 90-day nor the 270-day generator storage exemptions applied. Instead, EPA alleged that hazardous waste storage without a permit began on the very first day of improper storage, not on the 91<sup>st</sup> day or the 271<sup>st</sup>. Lang hoped this amendment would deflect Interior's defensive argument that as a small quantity generator it should be subject to a smaller penalty. But to amend the Complaint a second time, Lang would need the ALJ's permission. Lang had already amended the Complaint once before, to attach a supporting document that was inadvertently excluded when EPA served the original Complaint.

Judge Bullock granted Lang's request and she filed a Second Amended Complaint, demanding the same \$243,800 penalty as before. Goodyear filed an answer and requested a hearing. In her answer, Goodyear again argued that the Park was a small quantity generator and EPA's penalty calculation was excessive. Judge Bullock then set a revised prehearing exchange schedule as follows:

- 4/14/97 Complainant's Initial Prehearing Exchange
- 5/14/97 Respondent's Answering (Direct and Rebuttal) Prehearing Exchange
- 5/28/97 Complainant's Rebuttal Prehearing Exchange (if necessary)

## **EPA's Prehearing Exchange**

Lang now began preparing EPA's prehearing exchange, a laborious task. Tracking down documents, reviewing them, and then selecting documents to be submitted into evidence took many hours. The effort, however, was worth it. EPA's RCRA information requests uncovered some interesting documents.

In May 1991, the Park's Foreman had written to the Chief of Maintenance of Interior's Western Regional Office:

*I would like to recommend that the Department of Interior or the National Park Service develop a special Task Force for dealing with hazard [sic] materials. The individual park units do not have the expertise needed to comply with the strict requirements these materials call for . . . A person well versed in hazard materials needs to visit each park, see what they have, what their problems are and guide them through the disposal and storage requirements . . . If we continue to operate in this fashion it is only a matter of time until we get into trouble.*

In a February 1992 memo, the Park's Foreman noted to the Superintendent:

*The area that we are storing hazardous waste in does not meet EPA regulations. The entire area needs to be roofed over in order to protect the stored containers from the rain.*

In March 1992, the Superintendent wrote to the National Park Service's Western Regional Director, saying:

*It appears that HAVO is in violation of EPA regulations which limit storage of hazardous wastes to 90 days – some of the wastes having been in storage for several years.*

Armed with this new evidence, Lang completed EPA's Prehearing Exchange and filed it on February 18, 1997. It included forty-one supporting evidentiary documents.

## **Goodyear Makes a Counter-Offer**

Ever since Goodyear unveiled the vehicle wash rack SEP at the first settlement meeting, Lang had been encouraging Goodyear to develop an alternative SEP proposal consistent with EPA's SEP Policy. Lang had provided Goodyear with copies of several SEPs that EPA had previously found acceptable. In early 1997, Goodyear forwarded a new SEP proposal to Lang. The new SEP required that Interior develop a model hazardous waste and

hazardous materials management plan for use at all national parks. Interior's proposed model RCRA program plan SEP is attached as Exhibit H.

Lang and Goodyear finally agreed that \$205,500 was a reasonable penalty for the violations. Goodyear remained adamant, however, that Interior should not have to pay any cash penalty since the new model RCRA program SEP would cost Interior an estimated \$235,000. Goodyear argued that language in Section E of EPA's SEP Policy supported her contention that EPA need not collect a penalty in an enforcement action against a governmental entity.

## **Conclusion**

It is April 1997. You are EPA Region 9 Assistant Regional Counsel Vicky Lang and are seeking to resolve this administrative enforcement matter as efficiently as possible (i.e., without the time and expense of trial, if possible). Should you accept Goodyear's counter-offer to conduct the model RCRA program SEP, without payment of a cash penalty? Does the new SEP meet EPA SEP Policy requirements?

Assume you continue to demand a cash penalty. What will your counter-demand to Goodyear be? Assume a SEP acceptable to EPA will cost Interior \$235,000 to implement. What mitigation percentage do you recommend under these circumstances? You can use the worksheet attached as Exhibit F to record your calculations.

### **Case Study Exhibits**

- Exhibit A: Interior's Organizational Chart
- Exhibit B: Waste Inventory
- Exhibit C: Excerpts of the EPA Inspection Report
- Exhibit D: Interior's proposed vehicle wash rack SEP
- Exhibit E: EPA Interim Revised SEP Policy
- Exhibit F: EPA Worksheet for SEP Penalty Calculation
- Exhibit G: Correspondence between counsel
- Exhibit H: Interior's draft model RCRA program SEP