

NC R 000001451

38

HUNTON & WILLIAMS

P. O. Box 109

RALEIGH, NORTH CAROLINA 27602

TELEPHONE (919) 899-3000

FACSIMILE (919) 833-6352

(919) 899-3096

MCLEAN, VIRGINIA
MIAMI, FLORIDA
NEW YORK, NEW YORK
NORFOLK, VIRGINIA
RICHMOND, VIRGINIA
WARSAW, POLAND
WASHINGTON, D.C.

ATLANTA, GEORGIA
BANGKOK, THAILAND
BRUSSELS, BELGIUM
CHARLOTTE, NORTH CAROLINA
HONG KONG
KNOXVILLE, TENNESSEE
LONDON, ENGLAND

WILLIAM D. DANNELLY



FILE NO. 55685.000002
DIRECT DIAL: (919) 899-3025
DIRECT FAX: (919) 833-6352

October 26, 1999

William R. Miller, Esq.
North Carolina Department of Justice
114 West Edenton Street
Post Office Box 629
Raleigh, North Carolina 27602-0629

Re: American Distillation, Inc. - Administrative Order on Consent

Dear Bill:

Enclosed you will find a copy of the fully executed Administrative Order on Consent with ADI. You will note that this copy reflects the fact that Will Oliver has initialed paragraph 10(f), which was stricken prior to entry of the Order.

With best regards, we are

Very truly yours,

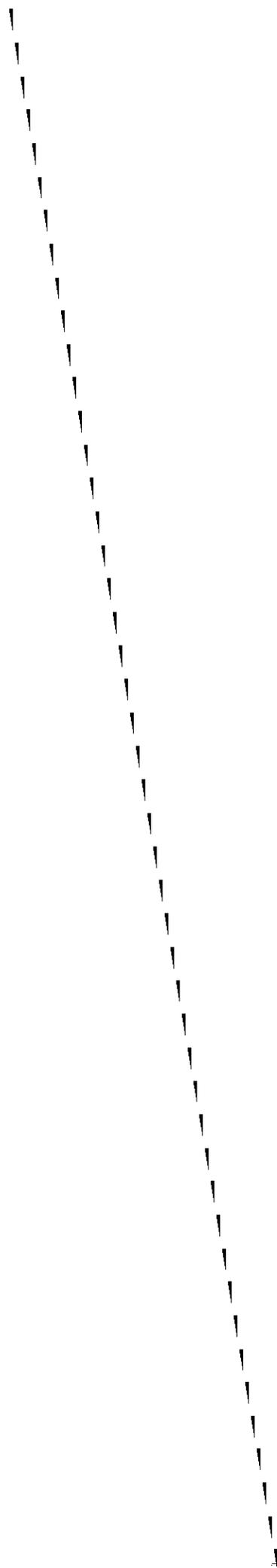
HUNTON & WILLIAMS

William D. Dannelly
William D. Dannelly

WDD:bhb
Enclosure

cc: Mr. Andrew J. Simmons (w/o enclosure)
Mr. Wilmer M. Oliver (w/o enclosure)

0.5 200

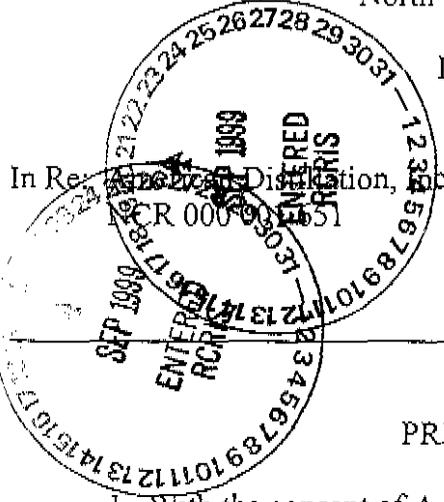


~~# 298-084473~~

37

North Carolina Department of Environment
and Natural Resources
Division of Waste Management
Hazardous Waste Section

9-21-99



In Re: American Distillation, Inc.
RCR 000-99-056

) ⁰⁰¹
) H-24-97 ADMINISTRATIVE ORDER
) ON CONSENT
) Docket # 99-056

NCR 00001651

PRELIMINARY STATEMENT

1. With the consent of American Distillation, Inc. (referred to herein as "ADI"), the North Carolina Department of Environment and Natural Resources, through its Division of Waste Management, hereby issues this Administrative Order on Consent to resolve issues concerning the management of hazardous waste at ADI's facility located at 1690 Royster Rd, Leland, North Carolina. Without any admission of fact or law, and without any admission of liability, ADI consents to the entry of this Administrative Order and agrees to comply with each of the terms of the Order.

FINDINGS OF FACT:

2. Based on its investigation of the American Distillation, Inc. facility and operation, the Division makes the following findings of fact :

(a). On December 18, 1980, the United States Environmental Protection Agency (EPA) authorized North Carolina to operate a state hazardous waste program in accordance with the provisions of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the North Carolina Solid Waste Management Act (NC General Statutes 130A), and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code, 15A NCAC 13A.

(b). Pursuant to RCRA, the North Carolina Solid Waste Management Act (referred to herein as the "Act"), and rules promulgated thereunder (referred to herein as "the Rules"), the N. C. Department of Environment and Natural Resources is authorized to enforce standards for generation, transportation, treatment, storage, and disposal of hazardous wastes. The Secretary of the Department has delegated this authority to the Director of the Division of Waste Management, William L. Meyer.

(c). ADI is the operator of a facility located at 1690 Royster Road, in Leland, Brunswick County, North Carolina (referred to herein as the "Site").

(d). ADI is a "person" as that term is defined in N.C.G.S. 130A-290(a)(22) and 15A NCAC 13A .0102.

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
FEDERAL BUREAU OF
INVESTIGATION
U. S. DEPARTMENT OF
JUSTICE
WASHINGTON, D. C.
MAY 19 1964

(e). ADI generates hazardous waste as defined in N.C.G.S. 130A-290(a)(8) and 15A NCAC 13A .0106. ADI is listed with the Division as a small quantity generator of hazardous waste.

(f). ADI's primary operation is the commercial reclamation of ethyl alcohol and other alcohol blends.

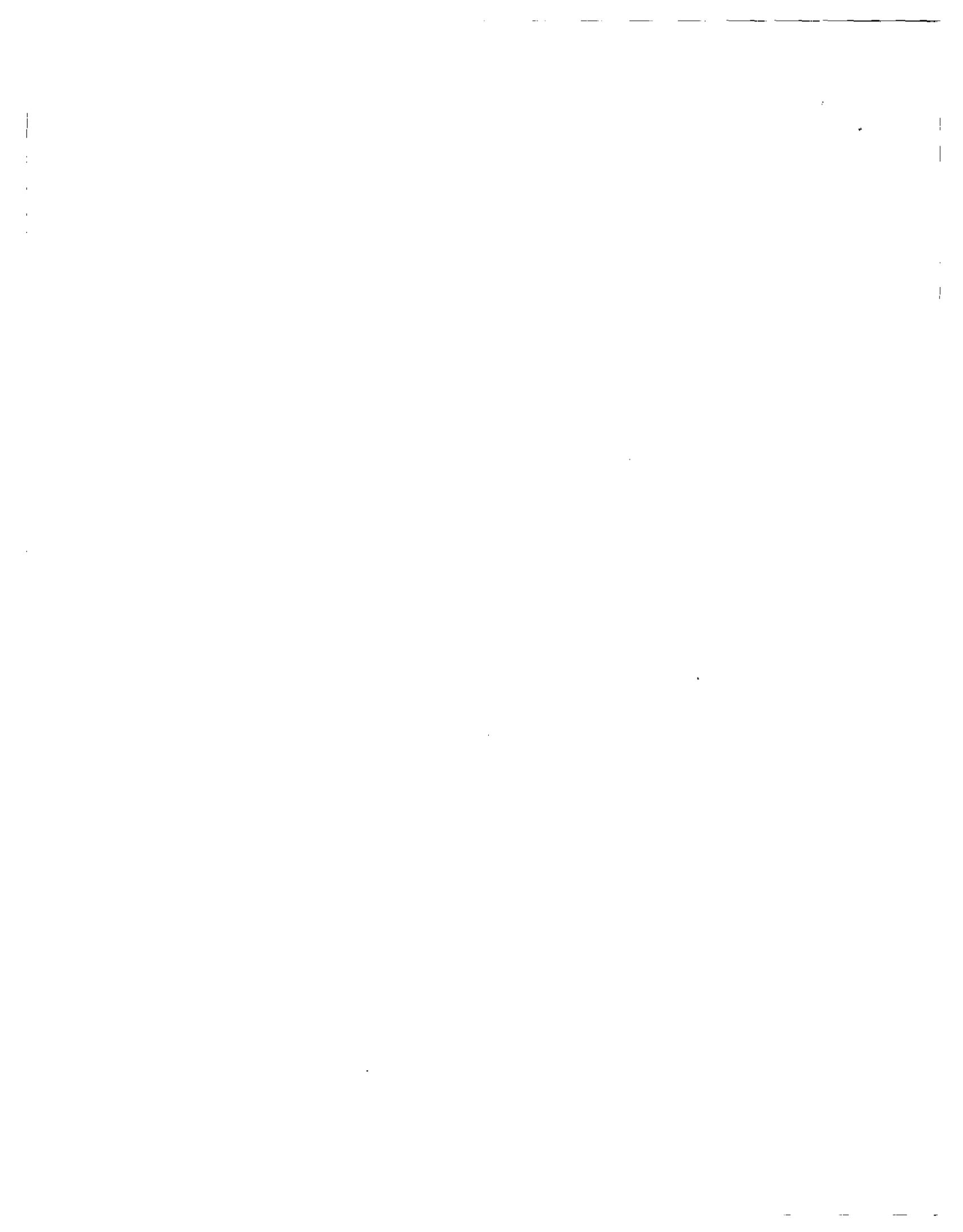
(g). 40 CFR 260.30(b), adopted by reference at 15A NCAC 13A .0103, provides that, in accordance with the standards and criteria in 40 CFR 260.31 and the procedures in 40 CFR 260.33, certain recycled materials which are reclaimed and then reused within the original production process in which they were generated may be granted, on a case by case basis, a variance from classification as a solid waste.

(h). 40 CFR 260.31(b), adopted by reference at 15A NCAC 13A .0103, provides that DENR may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

- 1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
- 2) The prevalence of the practice on an industry-wide basis;
- 3) The extent to which the material is handled before reclamation to minimize loss;
- 4) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
- 5) The location of the reclamation operation in relation to the production process;
- 6) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- 7) Whether the person who generated the material also reclaims it;
- 8) Other relevant factors.

(i). 40 CFR Part 262, adopted by reference at 15A NCAC 13A .0107, contains standards and requirements applicable to generators of hazardous waste. 40 CFR Part 264, adopted by reference at 15A NCAC 13A .0109, contains standards and requirements applicable to hazardous waste treatment, storage and disposal facilities. 40 CFR Part 270, adopted by reference at 15A NCAC 13A .0113, contains standards and requirements applicable to facilities obtaining a permit for hazardous waste treatment, storage and disposal.

(j). By letter dated September 14, 1995, the North Carolina Hazardous Waste Section (HWS) issued to ADI a variance from classifying certain material as a solid waste for one year to allow the recycling of a mixture of approximately 75% isopropyl alcohol



and 25% water under the explicit provisions stated in the correspondence. Under the terms of the variance, ADI was to use its distillation system to reclaim the isopropyl alcohol and resell it back to the original client for direct reuse. Shipments were to be separated to allow each client's material to be returned back to that same client. A waste determination was to be made on the solid waste generated from the distillation process to see if it was a hazardous waste. If the process waste were hazardous, ADI was to ensure the process waste is shipped to a properly permitted hazardous waste treatment/storage/disposal facility. Regardless of its classification, the client was to be consulted as to where the waste generated from its material would be sent prior to the waste leaving ADI. At no time was the volume of crude on-site awaiting distillation to exceed 50,000 gallons. All materials shipped to and from the facility were to be shipped in accordance with the requirements of the Department of Transportation. All materials managed on-site were to be managed in accordance with all local/state/federal fire codes.

(k). On February 14, 1996, ADI submitted a request to the HWS for a solid waste variance to reclaim a mixture of 40% ethanol, 50% ethyl ether and 10% water. On February 25, 1996, ADI submitted a request to the HWS for a solid waste variance to reclaim a methyl alcohol mixture. On March 11, 1996, ADI submitted a request to the HWS for a solid waste variance to reclaim a mixture of n-octane and t-butyl alcohol.

* (l). On March 13, 1996, the HWS visited the ADI site. During the visit, the ADI property was described as a five acre parcel including a fenced in railcar unloading area large enough for two rail cars. ADI described a pipeline that was to be completed within 90 days to the rail unloading area for purposes of off-loading the material for which the variances were requested. ADI indicated all incoming crude material was to be tested on site by gas chromatography. All operations were to remain on-site as previously noted. The HWS talked with ADI about ADI applying for a hazardous waste treatment/storage permit due to the variety of materials ADI had an interest in reclaiming.

(m). On March 27, 1996, the HWS added to ADI's previously approved solid waste variance for reclamation of an isopropyl alcohol mixture, approval of ADI's February 25, 1996 proposal to reclaim a methyl alcohol mixture. The same conditions cited in paragraph (j) above applied. The solid waste variance was issued for a period of one year. The HWS denied ADI's February 14, 1996 request for a solid waste variance for a mixture of 40% ethanol, 50% ethyl ether and 10% water, and its March 11, 1996 request for a mixture of n-octane and t-butyl alcohol.

(n). On April 2, 1997, the HWS extended for 90 days ADI's solid waste variance described in paragraph (m) above while the HWS evaluated ADI's request to continue the variance. An alternative being considered was to terminate the variance and require ADI to apply for a commercial hazardous waste treatment and storage permit for the reclamation of the isopropyl and methyl alcohol mixtures.

(o). On June 20, 1997, the HWS issued to ADI another one year solid waste variance for the reclamation of isopropyl and methyl alcohol mixtures as requested in



ADI's correspondence. A piping system was to be constructed to transfer the materials being reclaimed from railcars to ADI's tank farm and distillation process. The tanker unloading area was to be paved, but the railcar area was said not to have a paved/sealed surface. ADI was to establish and maintain emergency procedure contingency plans with North Brunswick and New Hanover County local response teams. The variance stipulated existing conditions stated in previous variance approvals in addition to compliance with all applicable local/state/federal health and environmental program regulations including those implemented by the Division of Air Quality, Division of Water Quality, Division of Waste Management, Division of Coastal Management and Occupational Safety and Health Division.

(p). On August 7, 1997, the HWS added reclamation of an isobutyl alcohol mixture to the variance issued on June 20, 1997 and described in paragraph (o) above.

* (q). During a November 24, 1997, site visit to the High Rise Service Company, Inc. facility adjacent to the ADI site, Mr. Larry Perry, Eastern Compliance Unit Supervisor, observed several hundred 55-gallon drums and 85-gallon overpack drums that were not labeled and dated. Further investigation revealed that some of these drums contained still bottoms from ADI and were being stored off-site at the High Rise facility.

(r). On December 3, 1997, the HWS revoked its June 20, 1997 solid waste variance based on information collected during its investigation at High Rise. In its letter revoking the variance, the HWS directed ADI to submit to the HWS an inventory of materials currently on site awaiting processing, materials in the distillation system itself, residues on-site and off-site, a list of clients who, since September 1995, sent materials to ADI under the variances, and a work plan for managing the current material and waste on site.

(s). On December 17, 1997, Mr. Andy Simmons, Mr. Will Oliver and Mr. Larry Rosetti, all with ADI, met with the HWS regarding the revoked solid waste variance. Mr. Oliver stated that the only material ever processed under the variance was the isopropyl alcohol waste stream. ADI indicated the original material was to be processed to recover 75% as a useful product. The still bottoms ("bottoms") were moved to the railcars in hope of working out a system for someone to buy it as a product. After some period of time, ADI said they talked about recovering more isopropyl alcohol from the still bottoms. The still bottoms were difficult to handle: they needed to be melted back down and they caused a problem with foaming. This meeting was the first time the HWS had been informed about the multi-processing steps ADI intended to utilize to reclaim the isopropyl alcohol. At the December 17, 1997 meeting, ADI also indicated the rail siding was actually located on High Rise's property rather than on ADI's property. ADI indicated they had been audited by their potential clients and those clients were not shown the storage areas on the High Rise property nor did those clients know the intermediate material was being moved and stored off-site.



(t). On December 31, 1997, Mr. Will Oliver submitted the information requested on the status of the material managed by ADI under the solid waste variance. The report indicated no material was presently located on the ADI site. ADI indicated that 77,000 gallons of "in-process" and "unprocessed new crude" were being managed at the railroad siding on the High Rise property located about 300 feet from the ADI site. The stored material was said to be either "in process" material containing 15-25% alcohol or unprocessed crude waiting to be distilled. The "in process" material would undergo one final distillation before ADI planned to return the spent still bottoms to Witco Corporation for disposal, if necessary.

(u). On October 15, 1998, ADI submitted a request to reinstate the solid waste variance to process isopropyl alcohol, methanol, and isobutyl alcohol.

RELEVANT STATUTES AND REGULATIONS

3. 40 CFR 261.2(b)(3), adopted by reference at 15A NCAC 13A .0106, states in part that materials are solid waste if they are abandoned by being accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

4. N.C.G.S. 130A-290, defines "storage" as the management of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

5. N.C.G.S. 130A-290 defines "treatment" as any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

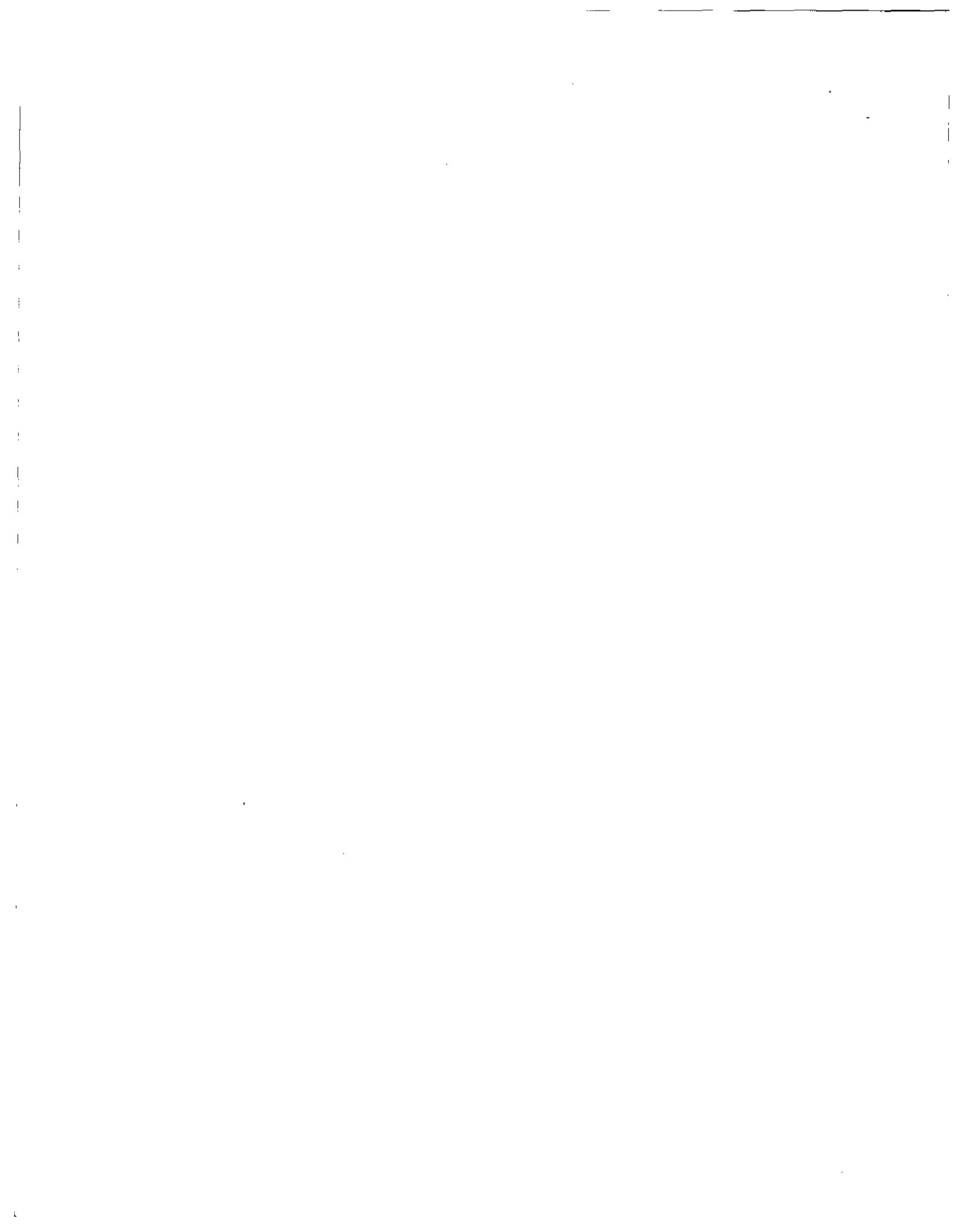
6. 40 CFR 261.3(a), adopted by reference at 15A NCAC 13A .0106, states in part that a solid waste, as defined in Section 261.2, is a hazardous waste if:

(a). It is not excluded from regulations as a hazardous waste under section 261.4(b); and

(b). It meets any of the following criteria:

(1). It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(2). It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20 and 260.22 of this Chapter.



7. 15A NCAC 13A .0109(a), states that any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this section.

FINDINGS AND CONCLUSIONS

8. Based on the Findings of Fact above, the Division concludes that ADI provided to the Division certain information upon which the Division relied in granting its approval of a solid waste variance to ADI and which information inaccurately described ADI's management of materials at its facility. In particular, ADI represented that materials received from Witco Corporation under the variance would be managed on-site at the ADI facility when in fact such materials were stored off-site at the adjacent High Rise facility. When the materials were off-loaded from the rail cars and processed at the ADI facility, intermediate process materials were transferred back to the rail cars at High Rise for storage. Further, the maximum volume of used material managed by ADI exceeded the 50,000 gallons allowed to be managed under the variance.

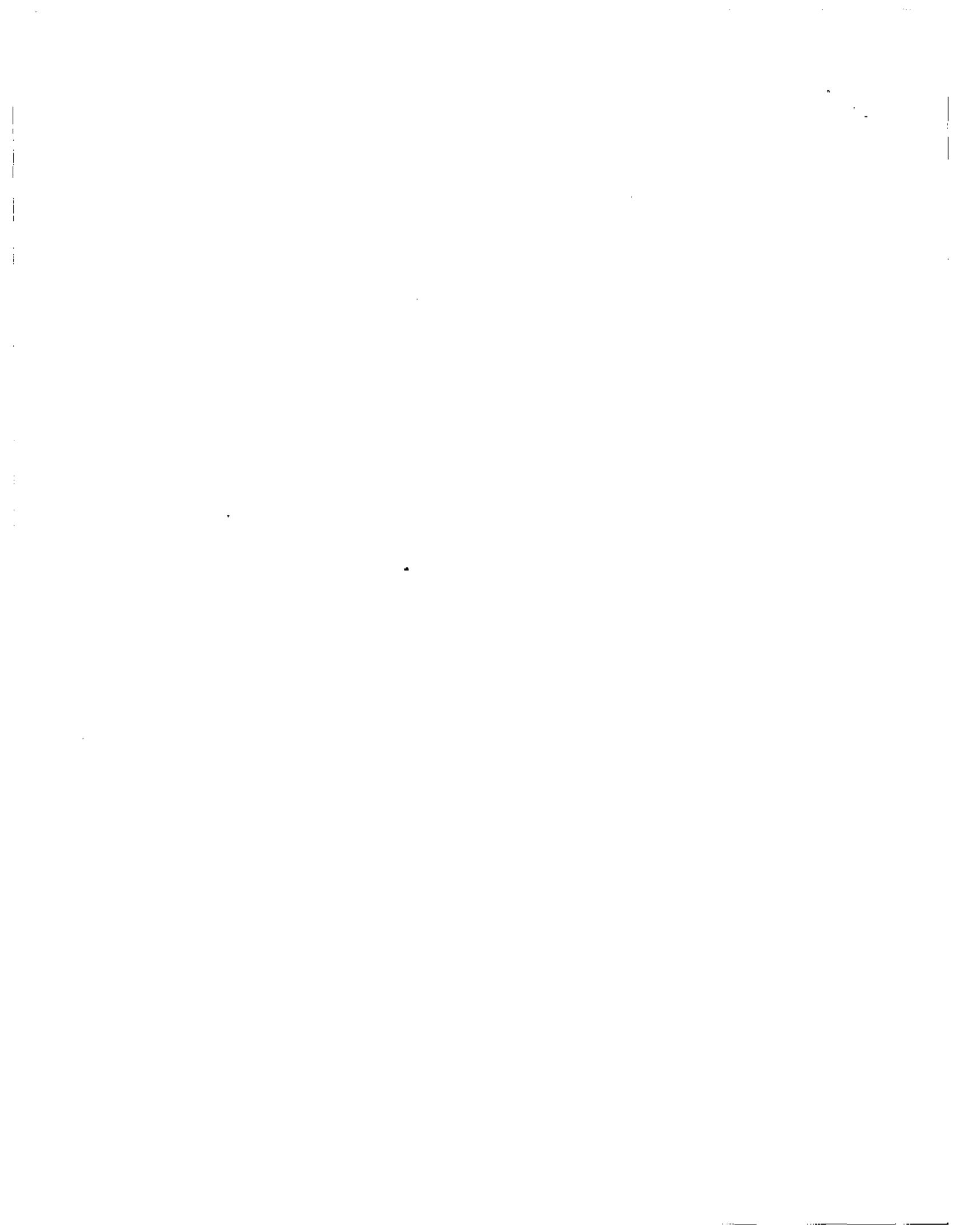
9. Because the materials from Witco Corporation were not managed in accordance with the provisions of the variance, the variance did not apply to those materials and those materials are therefore a hazardous waste not covered by any variance. ADI treated and stored such hazardous waste at its Leland, Brunswick County, North Carolina site, transferred such hazardous waste off-site to the adjacent High Rise facility, and therefore ADI is subject to all applicable requirements of 40 CFR 262, adopted by reference at 15A NCAC 13A.0107, 40 CFR Part 264, adopted by reference at 15A NCAC 13A.0109, and 40 CFR Part 270, adopted by reference at 15A NCAC 13A.0113.

ORDER

10. Based upon the Findings and Conclusions above, ADI is hereby ordered to take the following actions:

(a). Pay an administrative penalty in the amount of \$25,000.00 to be paid in five annual installments of \$5,000.00 each with the first installment to be made on or before February 1, 2000. Subsequent installments shall be made on or before February 1 of each of the next four years. Payment shall be made by check or money order, payable to the Division, and mailed to Jill E. Burton, Acting Chief, Hazardous Waste Section, Division of Waste Management, P.O. Box 29603, Raleigh, North Carolina 27611-9603.

(b). Comply with 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107. Specifically, ADI shall not treat, store, dispose of, transport, or offer for transportation, any hazardous waste without having first received an EPA identification number from the Department for the appropriate hazardous waste management activity, and shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an appropriate EPA identification number.



(c). Comply with 40 CFR 262.20(a), adopted by reference at 15A NCAC 13A .0107. Specifically, ADI shall prepare a hazardous waste manifest in accordance with the instructions included in the appendix to part 262 when transporting, or offering for transportation, hazardous waste for off-site treatment, storage, or disposal.

(d). Comply with 15A NCAC 13A .0109(a). ADI shall comply with the requirements set forth in this section if the facility treats, stores or disposes of hazardous waste.

(e). Comply with 40 CFR 270.10(a), adopted by reference at 15A NCAC 13A .0113. If ADI intends to operate as a hazardous waste treatment, storage or disposal facility, ADI shall complete, sign, and submit an application to the HWS as described in this section and Sections 270.70 through 270.73.

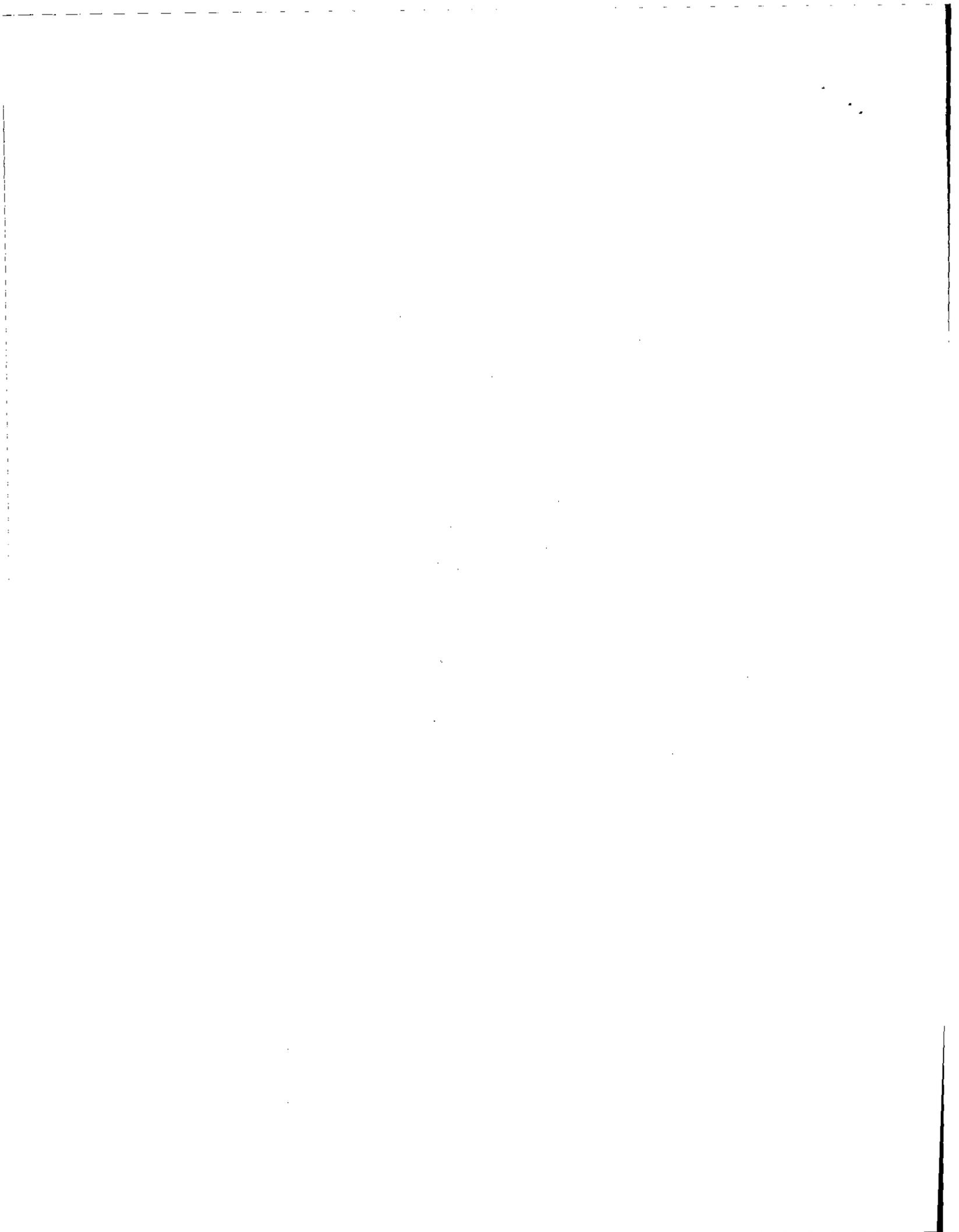
wdm (f). ~~Process not later than six months after the effective date of this Order all Witco isopropyl alcohol materials remaining at the rail siding on the property at High Rise Service Company, Inc. as of May 1, 1999 (the "Witco materials"). ADI shall process the Witco materials in accordance with the options and procedures described in ADI's letter to Linda Culpepper dated March 22, 1999 and shall use the equipment and storage facilities presently being used on the rail siding and on ADI property. ADI shall report to the Division at least once each month on the procedures being implemented, any proposed modifications in the procedures, and its progress in completing the processing. ADI shall keep the Division informed of the processing technique, obtain approval in advance for any changes, and comply with any modifications to those procedures as directed orally or in writing by Linda Culpepper, or such other person identified by the Division. ADI shall initiate processing of the Witco materials as soon as reasonably feasible after execution of this agreement.~~

DESIGNATED PROJECT COORDINATORS

11. Documents, including reports, approvals, disapprovals, and other correspondence which must be submitted under this Order, shall be sent to the following addresses and to any other addresses which ADI and the Division designate in writing:

(a). Documents submitted to the Division shall be sent to:

Jill E. Burton, Acting Chief
Hazardous Waste Section
401 Oberlin Rd., Suite 150
Raleigh, NC 27605



(b). Submittals to ADI shall be addressed to:

Wilmer Oliver
Secretary and Technical Representative
American Distillation, Inc.
1690 NE Royster Road
Leland, North Carolina 28451

DELAY IN PERFORMANCE

12. If any event occurs which causes delay in the achievement of the requirements of this order, ADI shall have the burden of demonstrating that the delay was caused by circumstances beyond the reasonable control of ADI which could not be overcome by its due diligence. ADI shall promptly notify the Division orally and shall, within seven (7) calendar days of oral notification to the Division, advise the Division in writing of the anticipated length and cause of the delay and the timetable by which ADI intends to obtain compliance. If the Division agrees that the delay has been or will be caused by circumstances beyond the reasonable control of ADI, the time for performance will be extended for a period equal to the delay resulting from such circumstances. Neither increased costs of performance of the terms of this order nor changed economic circumstances shall be considered as circumstances beyond the control of ADI.

DISPUTE RESOLUTION

13. If ADI objects to any disapproval or other decision made by the Division pursuant to this order, ADI may notify the Division in writing of its objection within fourteen (14) calendar days of receipt of the decision and request reconsideration, amendment, or other modification. If, within fourteen (14) days following receipt of the request, the Division and ADI have not reached mutual agreement regarding the objection raised, the Division will provide ADI with a written response to the objection and to ADI's request.

The above Order is effective on this the 21st day of Sept, 1999.

DIVISION OF WASTE MANAGEMENT
N. C. DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

By: Michael A. Kelly
Michael A. Kelly, Deputy Director
Division of Waste Management

AMERICAN DISTILLATION, INC.

By: Wilmer Oliver
Wilmer Oliver
Secretary and Technical Rep.

H:\ORDER\ADIAOC2.WPD

