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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of)	U.S. EPA Docket No.
)	RCRA- 9-2012- <u>0004</u>
Electrochem Solutions, LLC.)	
)	
)	CONSENT AGREEMENT AND
EPA ID No. CAR000020875)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Electrochem Solutions, LLC., ("Respondent" or "Electrochem"). Respondent owns and operates a facility located at 32500 Central Avenue, in Union City, California, 94587 (the "Facility"). The Facility's EPA Identification Number is CAR000020875. Respondent is a metal finishing company that performs a number of activities on fabricated aluminium or steel based parts. Example metal finishing activities include cleaning and applying anodized finishes, chromate conversion coatings, copper plating, gold plating, electroless nickel plating, bright nickel plating, silver plating, passivation, tin and tin-lead plating, and sand or glass bead blasting.
2. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) perform waste determinations, a violation of 22 California Code of Regulations ("C.C.R.") § 66262.11 [see also 40 C.F.R. § 262.11]; (2) provide an internal communication or alarm system, a violation of 22 C.C.R. §66265.34(b) [see also 40 C.F.R. §265.34(b)]; (3) maintain and operate the facility to minimize the possibility of any unplanned release, a violation of 22 C.C.R. §66265.31 [see also 40 C.F.R. §265.31]; (4) implement a personnel training program, a violation of 22 C.C.R. §66265.16 [see also 40 C.F.R. §265.16]; (5) maintain a complete contingency

plan, a violation of 22 C.C.R. §66265.52 [*see also* 40 C.F.R. §265.52]; (6) close hazardous waste accumulation and treatment containers, a violation of 22 C.C.R. §66265.173(a) [*see also* 40 C.F.R. §265.173(a)]; (7) provide adequate aisle space for hazardous waste containers, a violation of 22 C.C.R. §66265.35 [*see also* 40 C.F.R. §265.35] and (8) obtain a permit for storage of hazardous waste, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

3. These are all in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq., and state regulations adopted pursuant thereto.¹

B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to ' 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
7. Respondent's hazardous waste manifests indicate it is a large quantity "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. §260.10].
9. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R.

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992), September 26, 2001 (66 FR 49118, September 26, 2001) and October 7, 2011 (76 FR 62303, October 7, 2011). Corresponding Federal citations are provided in brackets.

§§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, plating wastewater treatment sludges (F006, D007), spent plating solutions (D002, D006, D007, D008, F007, and/or F009), and discarded/spent chemicals (D002).

11. On December 3, 2010 and March 9, 2011, EPA inspectors conducted RCRA Compliance Evaluation Inspections ("CEI") at the facility. Based upon the findings EPA made during the inspections, and additional information obtained subsequent to the inspections, EPA determined that Respondent had violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has re-delegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Perform Waste Determination

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66262.11 states that a facility which generates waste, as defined by 22 C.C.R. § 66261.2, must determine if the waste is a hazardous waste [*see also* 40 C.F.R. § 262.11].
18. At the time of the EPA inspection, on December 3, 2010, the EPA Inspectors observed discarded gloves, masking tape and other debris contaminated with either plating wastes, plating solutions and/or solvents in non-hazardous solid waste accumulation areas. EPA inspectors also observed various unlabeled containers of unknown wastes or materials at the Facility. Electrochem had not determined if the wastes accumulated were hazardous.

19. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT II

Failure to Provide an Internal Communication or Alarm System

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 22 C.C.R. § 66265.34(b) requires that whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device. [*see also* 40 C.F.R. § 265.34(b)].
22. At the December 3, 2011, inspection, the EPA Inspectors did not observe a device which could immediately summon assistance, if required.
23. Therefore EPA alleges that Respondent has violated 22 C.C.R. § 66265.34(b) [*see also* 40 C.F.R. §265.34(b)].

COUNT III

Failure to Maintain and Operate the Facility to Minimize the Possibility
of any Unplanned Release

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 22 C.C.R. § 66265.31 provide that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment [*see also* 40 C.F.R. § 265.31].
26. On December 3, 2010, the EPA Inspectors observed approximately eight-nine (89) open hazardous waste storage/treatment containers in the Bulk Waste Processing Area. The area was not covered, exposing the containers to precipitation and the containers were not stored in secondary containment. EPA also observed that grated sump drains located within the Waste Chemical Storage Area were filled with water and debris preventing their designed use as secondary containment structures. This presented a risk that hazardous waste spilled within the Chemical Waste Storage Area would flow to a nearby storm drain.
27. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 265.31].

COUNT IV

Failure to Implement a Personnel Training Program

28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.
29. 22 C.C.R. § 66265.16(a), requires that facility personnel 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 with the general facility standards set forth in the regulations. [*see also* 40 C.F.R. §265.16(a)]
30. At the time of the December 3, 2010, inspection, EPA found that facility personnel with hazardous waste management responsibilities had not been trained in accordance with the Training Program described in the Facility Hazardous Materials Management Plan.
31. After the December 3, 2010, inspection, Electrochem submitted training documentation regarding training for some of the employees, but not all of the individuals had been provided the training.
32. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16].

COUNT V

Failure to Maintain a Complete Contingency Plan

33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. 22 C.C.R. § 66265.52(d) states that the plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date. [*see also* 40 C.F.R. § 265.52(d)]
35. During the December 3, 2010 inspection, EPA Inspectors found that the contingency plan did not include the home address and phone number for each emergency coordinator.
36. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.52 [*see also* 40 C.F.R. § 265.52].

COUNT VI

Failure to Close Hazardous Waste Containers

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. 22 C.C.R. § 66265.173(a) provides that a satellite container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173(a)]. 22 C.C.R. § 66265.173(a) provides that a container

holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173(a)].

39. On December 3, 2010, the EPA Inspectors observed open hazardous waste satellite accumulation containers located within the Main Wet Process and Anodizing Areas containing spent plating solutions, spent acids and/or sludge wastes. The inspectors noted that no wastes materials were being added to or removed from the containers by facility personnel during the inspection.
40. At the December 3, 2010, inspection, EPA Inspectors observed within the Bulk Waste Processing Area approximately eight-nine (89) open, unlabeled plastic containers of F006 and/or D002 hazardous waste with the tops cut off and being left open to facilitate evaporation, settlement of solids and/or easier access to the accumulated waste. The inspectors noted that no wastes materials were being added to or removed from the containers by facility personnel during the inspection. Evaporation and settlement of solids is defined as hazardous waste treatment 22 C.C.R. § 66260.1 [*see also* 40 C.F.R. § 260.10]
41. On March 9, 2011, the EPA Inspectors observed twenty-eight (28) open containers when no waste was being added or removed. The lids to the containers were placed on top of the containers, but not closed properly.
42. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)];

COUNT VII

Failure to Provide Adequate Aisle Space for Hazardous Waste Containers

43. Paragraphs 1 through 42 above are incorporated herein by this reference as if they were set forth here in their entirety.
44. 22 C.C.R. §66265.35 requires that owners or operators 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 operation in an emergency. [*see also* 40 C.F.R. §265.35]
45. At the December 3, 2010, inspection, EPA Inspectors found that adequate aisle space was not provided for the majority of containers in the Bulk Storage and Chemical Waste Storage Areas.
46. At the March 9, 2011, inspection, EPA Inspectors found that debris on top and around containers prevented the inspection of at least 6 containers.
47. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. §265.35].

COUNT VIII
Storage of Hazardous Waste Without a Permit

48. Paragraphs 1 through 47 above are incorporated herein by this reference as if they were set forth here in their entirety.
49. 22 C.C.R. § 66270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].
50. 22 C.C.R. § 66262.34(a) provides that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator meets certain conditions applicable to the accumulation of that waste [*see also* 40 CFR § 262.34(a)]. Failure to meet the conditions of the exemption subjects the generator to the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1]. Those conditions include the requirements of 22 C.C.R. § 66265.34(b) [*see also* 40 C.F.R. § 265.34(b)]; 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 265.31]; 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16]; 22 C.C.R. § 66265.52 [*see also* 40 C.F.R. § 265.52]; 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)] and 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. §265.35].
51. Large quantity generators who accumulate waste longer than 90 days, fail to label hazardous waste containers appropriately, accumulate greater than 55-gallons of hazardous waste at satellite accumulation areas, or fail to keep closed a hazardous waste container except when adding or removing waste from the container, fail to meet the requirements of § 66262.34, and are subject to the permitting requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].
52. On January 4, 2011, Electrochem reported to EPA that 48 RCRA hazardous waste containers exceeded the 90-day limit. On March 17, 2011, Electrochem reported to EPA that 12 RCRA hazardous waste containers exceeded the 90-day limit, and 6 RCRA hazardous waste containers were reported on April 13, 2011 by Electrochem to be exceeding the 90-day limit. Electrochem stated that the remaining inventory exceeding the 90-day limit would be off site by the end of April 2011.
53. 22 C.C.R § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)(3)], and 22 C.C.R. § 66262.34(f), require that generators who accumulate hazardous waste onsite without a permit, or grant of interim status, shall label containers with the words “hazardous waste” and with the composition and physical state of wastes, a statement of the hazardous waste properties of the waste, and the name and address of the person producing the waste, and the date when accumulation of the waste begins. Generators who fail to label containers of hazardous waste, fail to meet the requirements of 22 C.C.R. § 66262.34(a) [*see also* 40 C.F.R. §§ 262.34(a)(2) and 262.34(a)(3)] and 22 C.C.R. 66262.34(f), and are subject to the permitting requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. 270.1].
54. During the December 3, 2010 CEI, the EPA Inspectors observed approximately one

hundred eighty (180) hazardous waste containers that were not properly labelled, as required. All the observed containers were missing one or more pieces of the following information: (1) generator address; (2) composition and physical state of the hazardous waste; (3) the properties of hazardous waste at the Facility, and (4) the start date when waste accumulation begins.

55. Therefore, EPA alleges that Respondent has violated the requirements of 22 C.C.R. § 66270.1(c) [*see also* 40 CFR § 270.1].
56. 22 C.C.R. § 66262.34(e)(1) provides that a generator may accumulate as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste listed in 22 C.C.R. § 66261.33(e) [*see also* 40 C.F.R. § 261.33(e)] in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status. Failure to meet the conditions of the exemption subjects the generator to the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].
57. During the December 3, 2010 CEI, the EPA Inspectors observed two or more 55-gallon containers of hazardous waste at satellite accumulation points located within the Main Wet Processing and Anodizing Areas of the Facility.
58. 22 C.C.R. § 66262.34(a)(1) [*see also* 40 C.F.R. § 262.34(a)(1)] requires that large quantity generators who accumulate hazardous waste or treat hazardous waste in containers onsite without a permit, or grant of interim status, comply with the requirements of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 265.173]. 22 C.C.R. § 265.173(a) [*see also* 40 CFR § 265.173] requires that containers holding hazardous waste shall always be closed during transfer or storage, except when necessary to add or remove waste.
59. As detailed above in Counts II-VII, Respondent failed to comply with the requirements of 22 C.C.R. § 66265.34(b) [*see also* 40 C.F.R. § 265.34(b)]; 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 265.31]; 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16]; 22 C.C.R. § 66265.52 [*see also* 40 C.F.R. § 265.52]; 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)] and 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35] and therefore failed to meet the conditions of 22 C.C.R. § 66262.34.
60. Respondent's failure to meet the requirements set forth or referenced by 22 C.C.R. § 66262.34 subject the Facility to the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. §§ 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].

D. CIVIL PENALTY

61. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty

of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

62. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
63. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO, and this CA/FO and Respondent's compliance with it shall not be construed as an admission by Respondents of any wrongdoing or liability. Notwithstanding the foregoing, Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.
64. Respondent certifies that it has submitted financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time the Respondent executes this CA/FO.

F. PARTIES BOUND

65. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and H has been paid in accordance with Section H, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
66. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
67. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. COMPLIANCE TASKS

68. In accordance with Section 3008 of RCRA, 42 U.S.C. Section 6928, Respondent is ordered to come into compliance with the requirements of 40 C.F.R. Part 262 and consents to construct a roof over the Bulk Waste Processing Area. Respondent shall complete the construction of a new roof over the Bulk Waste Processing Area within 180 days of the Effective Date of this CA/FO. Respondent shall submit documentation showing that the new roof was constructed to John Schofield at the address below in paragraph 69 within 30 days of the construction of the new roof.
69. Respondent shall submit hazardous waste inventory reports on a quarterly basis for a two year period. The first hazardous waste inventory report is due within fifteen days of the end of the first quarter 2012. The remaining reports will be due within 15 days of the end of the quarter. The last quarterly report will be submitted by January 15, 2014. The reports must include the following information for each hazardous waste accumulation (storage) container: (1) contents, (2) accumulation start date, (3) quantity of each hazardous waste container, and (4) accumulation (storage) location. The hazardous waste inventory reports shall be submitted by either U. S. Mail or by e-mail (as portable file document (pdf))to:

John Schofield (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.
schofield.john@epa.gov

H. PAYMENT OF CIVIL PENALTY

70. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS, (\$25,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.

71. Respondent shall submit payment of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) in accordance with the payment plan specified in Paragraph 72 of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America" (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson (314-418-4087)

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact =Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter “sfo1.1” in the search field
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent’s name, the case title, and docket number, to both:

Bryan Goodwin
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

John Schofield (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

72. The first payment of \$12,500 is due within 30 days of the effective date of this CA/FO. The second payment of \$12,500 plus accrued interest, is due within 60 days of the effective date of the CA/FO as detailed in the following table:

Payment	Principal	Interest	Total Due	Principal Balance
1	\$12,500	\$0	\$12,500	\$12,500
2	\$12,500	\$10.27	\$12,510.27	\$0

73. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States

Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed if payment is not received by the due date, with an additional \$15.00 charge for each subsequent 30-day period the payment is not received. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

74. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit any of the reports required by Paragraph 69 above by the dates set forth in this CA/FO or for failure to comply with the compliance schedule required by Paragraph 68 above for construction of the roof over the Bulk Waste Processing Area: TWO HUNDRED DOLLARS (\$200) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.

For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.

75. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
76. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 71.
77. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
78. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. RESERVATION OF RIGHTS

79. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
80. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
81. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
82. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.
83. Notwithstanding any other provision of this CA/FO, the EPA reserves, and this CA/FO is without prejudice to, the right to reinstitute or reopen proceedings against Respondent in this action or in a new action, or to commence a new action seeking relief other than as provided in this CA/FO, if the financial information provided by Respondent, or the financial certification made by Respondent in Paragraph 64 of this CA/FO is false, or in any material respect, inaccurate.

K. OTHER CLAIMS

84. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

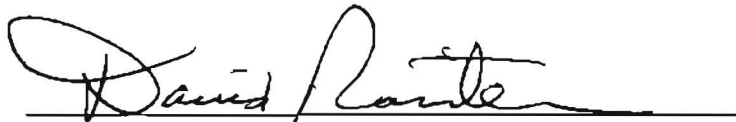
L. MISCELLANEOUS

85. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
86. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
87. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

12/1/11

Date



David Rossiter, President
Electrochem Solutions, LLC

12/19/11

Date



Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2012-0004) be entered and that Electrochem Solutions, LLC, pay a civil penalty of (\$25,000.00) due in accordance with the payment plan specified in Paragraph 72 of this Consent Agreement and Final Order. Payment must be made pursuant to Section H of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

12/19/11

Date

A handwritten signature in black ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order in the matter of Electrochem Solutions, LLC, has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent by Certified Mail, Return Receipt Requested, to:

Mr. David Rossiter
President, CEO
Electrochem Solutions, LLC
32500 Central Avenue
Union City, CA 94587

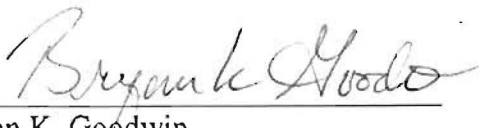
Certified Mail No. 7011 0110 0001 9065 6262

and by Hand Delivery to:

Janet Magnuson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Date

12/19/11


Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7011 0110 0001 9065 6262
Return Receipt Requested

In reply, refer to WST-3

DEC 20 2011

Mr. David Rossiter
President, CEO
Electrochem Solutions, LLC
32500 Central Avenue
Union City, CA 94587

Re: In the matter of Electrochem Solutions, LLC.
U.S. EPA Docket No. RCRA-09-2012-

Dear Mr. Rossiter:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Janet Magnuson at (415) 972-3887.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosure