

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

September 23, 2021 @ 8:47 am

USEPA – Region II

Regional Hearing Clerk

In the Matter of

National Metal Finishings Corporation, Inc,
Inc.

Respondent.

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended.

CONSENT AGREEMENT

AND

FINAL ORDER

Docket No. RCRA-02-2021-7101

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as “RCRA” or the “Act”).

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. Part 22.

The parties agree that settling this matter by entering into this CA/FO is an appropriate means of resolving the RCRA claims specified herein against National Metal Finishings Corporation, Inc, (“Respondent”), without litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is National Metal Finishings Corporation, Inc.
2. Respondent's facility is located at 100 W. Main Street, Bound Brook, NJ 08805.
3. Respondent operates a manufacturing facility organized pursuant to the laws of the State of New Jersey.
4. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.*
5. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 279.
6. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which includes the regulations referenced below.
7. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Administrative Code (N.J.A.C.) 7:26G-4.1(a).
8. Respondent's Bound Brook, New Jersey, facility constitutes an "existing hazardous waste management facility" or "existing facility" as those phrases are defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a) (hereinafter "Facility").
9. Respondent is and has been the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
10. Respondent is and has been the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
11. Respondent, in carrying out its manufacturing activities, has been generating, and continues to generate, at its facility, "solid waste," as defined in 40 C.F.R. § 261.2 as incorporated by reference in N.J.A.C. 7:26G-5.1(a).
12. Respondent in carrying out its manufacturing activities has been generating, and continues to generate, at its facility, "hazardous waste."
13. As of August 8, 2018, and prior and subsequent thereto, Respondent has been a "generator" at its facility of "hazardous waste" as those terms are defined in 40 C.F.R. 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).

14. On or about August 8, 2018, a duly designated representative of EPA conducted an inspection of the facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations (the "2018 Inspection").
15. On October 11, 2018, EPA issued to Respondent a Notice of Violation, which specified the requirements of RCRA which EPA believed Respondent had violated, and an Information Request Letter ("NOV" and "IRL"). On February 28, 2019 EPA received Respondent's reply to the IRL.
16. Based on the Inspection and Respondent's Response to EPA's IRL, EPA determined that as of August 8, 2018, and prior and subsequent thereto, Respondent had failed to obtain a permit to store hazardous waste which it was obligated to have when it failed to satisfy required conditions for storing such waste without a permit.
17. EPA had reason to believe, based on manifests Respondent had generated, that since at least 2013 Respondent has been an intermittent large quantity generator of hazardous waste mainly owing to having accumulated more than 6000 kilograms of hazardous waste on-site and/or generating greater than 1000 kilograms of spent chromium plating bath in certain calendar months in the years 2013, 2016, 2018 and 2020.
18. During the August 8, 2018 Inspection, Respondent represented to EPA that it did not generate any waste and that it recycled all its wastewater rinsate back into the plating bath.
19. Subsequent to the Inspection, EPA and Respondent discussed EPA's concerns with Respondent's representation and agreed that Respondent would hire a consultant to evaluate its operations.
20. Based on the consultant's report, Respondent has represented that it will henceforth operate as a small quantity generator, and specifically has informed EPA that it will cease storing hazardous waste in its large storage tank and replace it with 275-gallon totes and will ship its hazardous waste off-site for disposal within 180 days of generating the waste.
21. The parties have agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the

provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following requirements:

1. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of paragraphs 2-3 of this Consent Agreement is restitution or required to come into compliance with law.
2. Respondent shall comply with the applicable hazardous waste rules for the generation and management of hazardous waste. Assuming Respondent is a small quantity generator in the future (as represented to EPA by Respondent in the consultant's report), Respondent shall comply with the Small Quantity Generator requirements at 40 C.F.R. 262.34 (2015) until the State of New Jersey becomes authorized (i.e. approved) by EPA for 40 C.F.R. 262.16 (2015)(under EPA's Generator Improvement Rule).
3. Once the State of New Jersey regulations that correspond to EPA's Generator Improvement Rule have been formally authorized by EPA, then Respondent shall comply with the State regulations that have been authorized.
4. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
5. Respondent shall pay a civil penalty to EPA in the total amount of **THIRTY-FOUR THOUSAND DOLLARS (\$34,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer plus accrued interest of \$85.00 (for a total amount of \$34,085.00) in accordance with the following schedule:
 - a. a payment of \$17,000 shall be received by EPA *on or before* 30 days from the date of the Regional Judicial Officer's signature of the Final Order; and
 - b. a payment of \$17,085.00 shall be received by EPA *on or before* 180 days from the date of the Regional Judicial Officer's signature of the Final Order.
6. If the payment(s) is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check(s) shall be identified with a notation thereon listing the following: ***IN THE MATTER OF National Metal Finishings Corporation, Inc.***, and shall bear thereon the **Docket No. RCRA-02-2021-7101**. If Respondent chooses to make payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
- 5) Field Tag 4200 of the Fedwire message should read **D 8010727** Environmental Protection Agency.
- 6) Name of Respondent: National Metal Finishings Corporation, Inc.
- 7) Docket Number: **RCRA 02-2021-7101**

7. Failure to pay the requisite civil penalty amount(s) in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.

- a. Furthermore, if the payment(s) is not made on or before the dates specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date any payment was to have been made, in which payment of the amount remains in arrears.
- b. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for any payment. Any such non-payment penalty charge on the debt will accrue from the date any penalty payment becomes due and is not paid.
- c. The civil penalty provided for herein constitutes "penalt[ies]" within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.
- d. If Respondent fails to make timely payment in accordance with the requirements set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, if timely payment is not made on or before a due date Respondent shall also be liable for, and shall pay, handling charges, and late penalty charges set out in sub-paragraph e, below, and shall remit such payment in accordance with the payment instructions in Paragraph 6 of this Consent Agreement, above.

- e. If timely payment is not made on or before a due date, then pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.
- 8. Complainant shall email to Respondent (to the representative designated in Paragraph 9, *infra*, a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO upon it by email and by an employee of EPA other than the Regional Hearing Clerk.
- 9. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Wilk, Enforcement Officer
RCRA Compliance Branch
Enforcement & Compliance Assurance Division
US Environmental Protection Agency
290 Broadway, 21st Floor
New York, New York 10007-1866
Wilk.John@epa.gov

and

Carl R. Howard, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway
New York, New York 10007
Howard.Carl@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:


Lou Fahsbender, President
National Metal Finishings Corporation, Inc.
897 South Avenue
Middlesex, NJ 08846-2569
Lou@nmfinishings.com

and

David Singer, Esq.
DSinger@vellasinger.com

10. Full payment of the penalty described in Paragraphs 5, 6 and 7 of the Consent Agreement, *supra*, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in paragraph 16 and 17, *supra*, of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
11. Respondent certifies under penalty of law that the information in its submissions on July 13, 2020, April 1, 2021 and June 15, 2021 regarding Respondent's financial condition is accurate, complete, and not misleading and is reflective of current financial hardship that would be posed by a lump sum penalty payment. EPA has relied on these submissions in the negotiation of this settlement.
12. The provisions of this Consent Agreement shall be binding upon both Complainant and Respondent along with their authorized representatives and successors or assigns.
13. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.
14. Each party hereto agrees to bear its own costs and attorney's fees in this matter.
15. The undersigned signatory for Respondent certifies that he/she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
16. EPA and Respondent agree that the parties may use electronic signatures for this matter.

RESPONDENT: NATIONAL METAL FINISHINGS CORPORATION, INC.

BY: 

(Authorized Signature)

NAME: James G Schleck
(Please Print)

TITLE: Chairman of the Board

DATE: _____

COMPLAINANT: _____
for Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

**In the Matter of National Metal Finishings Corporation, Inc.
Docket Number: RCRA 02-2021-7101**

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of In the Matter of National Metal Finishings Corporation, Inc., bearing Docket No. RCRA-02-2021-7101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of National Metal Finishings Corporation, Inc.
Docket Number: RCRA 02-2021-7101

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

By E-mail:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by E-mail:

Lou Fahsbender, Owner
National Metal Finishings
Corporation, Inc.
897 South Avenue
Middlesex, NJ 08846-2569
Lou@nmfinishings.com

And,

David Singer, Esq.
DSinger@vellasinger.com

Yolanda Majette,
WTS Branch Secretary