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REGIONAL HEARING CLERK  
EPA REGION VI

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

IN THE MATTER OF:	§	
	§	CONSENT AGREEMENT
HARRISON ELECTROPOLISHING, L.P.	§	AND FINAL ORDER
	§	Docket No. RCRA-06-2016-0951
HOUSTON, TEXAS	§	
	§	
RESPONDENT	§	

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (CAFO) is entered into by the United States Environmental Protection Agency Region 6 (EPA or Complainant) and Respondent, Harrison Electropolishing, L.P. (Respondent), located at 13002 Brittmoore Park Drive in Houston, Texas.

2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(2).

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein. However, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. This CAFO resolves only those violations that are alleged herein.

6. Respondent consents to the following: issuance of the CAFO hereinafter recited; the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO; and to the specific stated compliance order.

## II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984, and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO. Furthermore, Respondent agrees not to contest the validity of this CAFO, or its terms or conditions.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a Texas Partnership, registered to do business in the State of Texas on January 12, 2001.

10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

11. Respondent is an "owner" or "operator" of the Houston facility within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. § 260.10).

12. Respondent is a "generator" of hazardous waste at the facilities, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

13. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX. ADMIN. CODE § 335(C) and/or (F) (40 C.F.R. §§ 262 and/or 270).

14. Between October 2015 and May 2016, EPA conducted an investigation and record review (Investigation) of Respondent's performance as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder.

15. During the Investigation, EPA discovered that Respondent generated hazardous waste, as defined in 30 TEX. ADMIN. CODE § 335.1(69), (40 C.F.R. § 261.3), and offered for transport and treatment the following amounts for the relevant years:

- a) 32,377 kilograms (kg) in 2011;
- b) 45,238 kg in 2012;
- c) 69,647 kg in 2013;
- d) 81,612 kg in 2014; and
- e) 61,735 kg in 2015.

16. From the Investigation, EPA determined that between 2011 and 2015, Respondent generated hazardous waste in quantities that exceeded its generator status of a small quantity generator (SQG) by generating more than the threshold amount of 1,000 kg of hazardous waste per month, which qualified Respondent for the large quantity generator (LQG) status under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).

17. From the Investigation, EPA determined that Respondent violated the requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), by failing to identify its proper generator status as an LQG, rather than an SQG, under the RCRA notification requirements.

18. From the Investigation, EPA determined that Respondent violated the regulations promulgated at 40 C.F.R. § 262.34(a)(4), for failing to meet specific recordkeeping and contingency plan requirements of an LQG.

**Claim 1: Notification Requirements**

19. Complainant hereby restates and incorporates by reference Paragraphs 1 through 18.

20. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed waste shall file with the Administrator or authorized State, a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. This includes a subsequent notification for a change in the status of a generator. *See also* 30 TEX. ADMIN. CODE § 335.6(c).

21. At the time of the Investigation, Respondent, for the applicable years, did not file with the Administrator or with the State of Texas, a notification for a change in hazardous waste activities.

22. Respondent failed to file the required subsequent notification of hazardous waste activities in violation of 30 TEX. ADMIN. CODE § 335.6(c) (42 U.S.C. § 6930(a)).

**Claim 2: Failure to Operate Within Proper Generator Status**

23. Complainant hereby restates and incorporates by reference Paragraphs 1 through 22.

24. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

25. From the Investigation, EPA determined that Respondent exceeded the SQG status indicated on the online system (RCRAInfo) for the applicable years.

26. While operating as an LQG during the relevant years, Respondent failed to comply with specific recordkeeping and contingency plan requirements for an LQG.

27. Respondent failed to operate within its designated status for its respective years in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. § 262 and/or 270).

#### IV. COMPLIANCE ORDER

28. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall certify the following:

- a. Respondent filed a subsequent "Notification of Regulated Waste Activity: EPA Form 8700-12" to reflect actual waste generation, if needed.
- b. Respondent has developed and implemented standard operating procedures to ensure that it is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
  - i. training personnel involved in emergency response;
  - ii. recordkeeping for training records;
  - iii. guaranteeing an adequate contingency plan is in place.

29. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Harrison Electropolishing, L.P., and shall include the following certification:

I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Copies of all documents required by the CAFO shall be sent to the following:

Ashley Pederson  
U.S. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Waste Compliance III Section (6EN-H3)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

30. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of \$19,000.00.

31. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

32. The following are Respondent's options for transmitting the penalties:

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

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

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Wire Transfers should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

The case name and docket number (**In the Matter of Harrison Electropolishing, L.P., Docket No. RCRA-06-2016-0951**) shall be documented on or within your chosen method of payment to ensure proper credit.

33. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Mark Potts, Chief  
Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Ashley Pederson

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days pursuant to 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. Costs**

35. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.



**C. Supplemental Environmental Project (SEP)**

36. Description of the SEP:

- a) Respondent shall complete the following SEP which the parties agree is intended to secure significant environmental or public health protection and improvements. Not more than sixty (60) days from the effective date of this CAFO, Respondent will fund the purchase of Sensit G2 portable instruments, or the functional equivalent, used for gas detection and confined space monitoring for the Cy Fair Fire Department.
- b) Respondent's actions will result in improved safety for local first responders and the public they serve. The funding will result in replacement of all standard use gas detectors on 17 Engines, 4 Aerials, 3 Rescues, and provide at least one spare. The fire department's current detectors are nearing 10 years old, parts are getting difficult to find and no other source of funding is available to replace this safety equipment for these first responders.
- c) Respondent shall perform the SEP activities in accordance with the terms and schedule of the SEP Proposal (Attachment I), which is incorporated herein by reference.

37. Cost of the SEP:

- a) The total expenditure for the SEP shall be no less than **\$56,000**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

38. SEP Reports:

- a) Respondent shall submit a final SEP Completion Report to EPA within two (2) weeks of the completion of this project. The SEP Completion Report shall contain the following information:
  - i. A detailed description of the SEP as implemented;
  - ii. A description of any operating or logistical problems encountered and the solutions thereto;
  - iii. Itemized final costs with copies of receipts for all expenditures;
  - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
  - v. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.
- b) Respondent agrees that failure to submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for the stipulated penalties pursuant to Paragraph 42.
- c) Respondent shall submit by first class mail, all notices and reports required by this CAFO to:

Ashley Pederson (6HW-H3)  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

39. EPA's acceptance of SEP Report:

- a) After receipt of the SEP Completion Report described in Paragraph 38, EPA will notify the Respondent, in writing, regarding:

- i. Any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies;
  - ii. Whether EPA concludes that the project has been completed satisfactorily;  
or
  - iii. Whether EPA determines that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 42.
- b) If EPA elects to exercise option found in Paragraph 39a)i, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA that are necessary to comply with the terms of this CAFO or applicable law, including actions necessary to complete the SEP, to obtain the intended benefits of the SEP or which otherwise result from any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 42.

40. Respondent shall certify the truth and accuracy of each of the following:

- a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$56,000.00**;
- b) That, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law, or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
- d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g) Respondent has performed a reasonable inquiry to ensure that this SEP does not inadvertently augment federal appropriations by certifying the following:
  - i. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 36, and

- ii. Respondent has inquired of the SEP implementer (Cy-Fair Volunteer Fire Department) as to whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by implementer that it is not a party to such a transaction.

41. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

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**Kristi Harrison**  
**Quality Administrator**  
**Harrison Electropolishing, L.P.**  
**Houston, Texas**

42. Stipulated Penalties for Failure to Complete SEP/Failure to spend agreed-on amount:
- a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 36 and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 37, Respondent shall be liable for

stipulated penalties according to the provisions set forth below: Except as provided in subparagraphs (i) – (iv) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of **\$56,000.00**.

- i. If the SEP is not completed in accordance with Paragraphs 36-41, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- ii. If the SEP is completed in accordance with Paragraphs 36-41, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of **\$11,200.00**.
- iii. If the SEP is completed in accordance with paragraphs 36-41, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- iv. For failure to submit the SEP Completion Report required by Paragraph 38, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

- b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 32. Interest and late charges shall be paid as stated in Paragraph 34.
- e) Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

43. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language prominently displayed: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act."

44. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor shall it be

construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

**C. Termination and Satisfaction**

45. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 28. Unless EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

**D. Effective Date of Settlement**

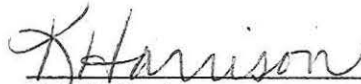
46. This CAFO shall become effective upon filing with the Regional Hearing Clerk.



**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

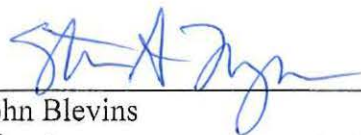
FOR THE RESPONDENT:

Date: 9-29-16

  
\_\_\_\_\_  
Kristi Harrison  
Harrison Electropolishing, L.P.

FOR THE COMPLAINANT:

Date: 10/11/16

  
\_\_\_\_\_  
For John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order 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. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 10/13/14

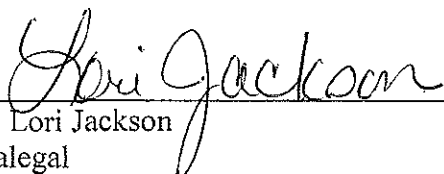
  
\_\_\_\_\_  
Renea Ryland  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of October, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method below:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED** 1004116000303538562

Kristi Harrison  
Quality Administrator  
Harrison Electropolishing, L.P.  
13002 Brittmoore Park Drive  
Houston, Texas 77041

  
\_\_\_\_\_  
Ms. Lori Jackson  
Paralegal