

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Wisconsin Plating Works of Racine)
Wisconsin Plating Division)
Racine, Wisconsin)

EPA ID: WID006115646)

Respondent.)

DOCKET NO.: RCRA-05-2009-0009

Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6928(a)

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PROTECTION AGENCY

ANSWER TO COMPLAINT

NOW COMES, Wisconsin Plating Works of Works of Racine, by and through its attorneys, Stone Pogrund & Korey LLC, and for its Answer to Complaint states as follows:

I. COMPLAINT

Preliminary Statement

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

ANSWER: Respondent admits the allegations of paragraph 1.

2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

ANSWER: Respondent admits the allegations of paragraph 2.

3. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

ANSWER: Respondent admits the allegations of paragraph 3.

4. Respondent is Wisconsin Plating Work of Racine – Wisconsin Plating Division (herein referred to as “WPWW”), a corporation incorporated and doing business in the State of Wisconsin.

ANSWER: Respondent admits the allegations of paragraph 4.

5. U.S. EPA has provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

ANSWER: Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 5, and therefore denies the same.

6. This action is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. A copy of the Consolidated Rules is enclosed with the Complaint served on Respondent.

ANSWER: Respondent admits the allegations of paragraph 6.

Statutory and Regulatory Background

7. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

ANSWER: Respondent admits the allegations of paragraph 7.

8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6962, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

ANSWER: Respondent admits the allegations of paragraph 8.

9. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), the Administrator or U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on January 31, 1986. 51 Fed. Reg. 3783. The Administrator granted final authorization to administer additional RCRA and certain HSWA requirements on June 6, 1989 (54 Fed. Reg. 22278); January 22, 1990 (54 Fed. Reg. 48243); April 24, 1992 (57 Fed. Reg. 15029); August 2, 1993 (58 Fed. Reg. 31344); and October 4, 1994 (59 Fed. Reg. 39971). The U.S. EPA-authorized Wisconsin regulations are codified at Wisconsin Administrative Code (WAC) Chapter NR 600-690. See also 40 C.F.R. § 272.2500 et seq.

ANSWER: Respondent admits the allegations of paragraph 9.

10. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 2008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis.. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997, and a civil penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.

ANSWER: Respondent admits the allegations of paragraph 10.

General Allegations

11. Wisconsin Plating Works of Racine – Wisconsin Plating Division is and was at all times relevant to this Complaint the owner and operator, as defined by WAC NR 600.03(166) and (167) [40 C.F.R. § 260.10], of an electroplating installation located at 931 Carroll Street in Racine, Wisconsin 53403.

ANSWER: Respondent admits the allegations of paragraph 11.

12. Respondent is a “person” as defined by WAC NR 600.03(170) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

ANSWER: Respondent admits the allegations of paragraph 12.

13. At all times relevant to this Complaint, Respondent generated wastes at the facility, which were “solid wastes,” as defined in WAC NR 600.03(206); 289.01(33) [40 C.F.R. § 261.2].

ANSWER: Respondent admits the allegations of paragraph 13.

14. At all times relevant to this Complaint, Respondent generated “hazardous waste,” as that term is defined in WAC NR 605.04 [40 C.F.R. § 261.3].

ANSWER: Respondent admits the allegations of paragraph 14.

15. At all times relevant to this complaint, Respondent was an “generator,” as that term is defined in WAC NR 600.03(117) [40 C.F.R. § 260.10].

ANSWER: Respondent admits the allegations of paragraph 15.

16. At all times relevant to this complaint, Respondent was a “individual generation site,” as that term is defined in WAC NR 600.03(94) [40 C.F.R. § 260.10].

ANSWER: Respondent admits the allegations of paragraph 16.

17. At all times relevant to this Complaint, Respondent accumulated hazardous waste in containers, as that term is defined in WAC NR 600.03(44) [40 C.F.R. § 260.10].

ANSWER: Respondent admits the allegation of paragraph 17.

18. On March 27, 2008, U.S. EPA conducted an inspection (“Inspection”) of WPWW to evaluate Respondent’s compliance with the applicable requirements of RCRA.

ANSWER: Respondent admits the allegations of paragraph 18.

19. On April 24, 2008, U.S. EPA issued a Notice of Violation (“NOV”) to Respondent outlining the violations alleged in this Complaint.

ANSWER: Respondent admits the allegations of paragraph 19.

20. On September 24, 2008, U.S. EPA issued a Pre-Filing Notice to Respondent, which informed Respondent of its right to confer with U.S. EPA regarding the allegations outlined in the NOV, and of the U.S. EPA policy regarding inability to pay a penalty.

ANSWER: Respondent admits the allegations of paragraph 20.

COUNT 1:

Failure to Apply for and Obtain a Hazardous Waste Operator's License

21. Complainant incorporates paragraphs 1 through 20 of the Complaint as though set forth in this paragraph.

ANSWER: Respondent incorporates its answers to paragraphs 1 through 20 of the Complaint as though set forth herein.

22. At all times relevant to this Complaint, Respondent was a generator of wastewater treatment sludge from electroplating operations. This sludge carries the F006 hazardous waste number as defined in WAC NR 605.09(2) [40 C.F.R. §261.31].

ANSWER: Respondent admits the allegations of paragraph 22.

23. Respondent generates F006 sludge during each operating business day.

ANSWER: Respondent admits the allegations of paragraph 23.

24. At the time of the Inspection, Respondent had accumulated F006 waste in a 55-gallon container located beneath the wastewater treatment sludge press.

ANSWER: Respondent admits the allegations of paragraph 24.

25. The container identified in paragraph 24 was neither closed nor labeled either with the words "Hazardous Waste" or with other words that identified the material therein.

ANSWER: Respondent denies the allegations of paragraph 25. Respondent affirmatively alleges that it is Respondent's normal practice to label containers that contain waste products.

26. At a time prior to the Inspection, Respondent had accumulated F006 waste in a 15y³ container.

ANSWER: Respondent admits the allegations of paragraph 26.

27. According to manifest tracking records, an off-site shipment of F006 waste was made on May 10, 2007. The following shipment of F006 waste was made on December 19, 2007. The amount of time between these two dates is 223 days.

ANSWER: Respondent admits the allegations of paragraph 27.

28. Because the average weight of the F006 sludge that accumulates in the 15y³ container at WPWW is less than 20,000 kilograms, and because the sludge is sent off-site for high-temperature metals recovery, the Respondent is allowed 180 days to accumulate the F006 waste. See, 40 C.F.R. § 262.34(g) and (i) and WDNR Enforcement Discretion Memorandum – Generator Accumulation Time Limit for F006 Hazardous Waste (December 19, 2002).

ANSWER: Respondent denies the allegations of paragraph 28, and affirmatively alleges that Respondent is allowed 270 days to accumulate the F006 waste. See, 40 C.F.R. § 262.34(e).

29. On December 19, 2007, Respondent had stored its F006 waste on site for 43 days past the 180 days allowed in the regulations.

ANSWER: Respondent denies the allegations of paragraph 29, and incorporates its affirmative allegations stated in paragraph 28.

30. At the time of the Inspection, Respondent had accumulated, in a 30-gallon container, approximately two gallons of spill absorbent contaminated with cyanide waste.

ANSWER: Respondent admits the allegations of paragraph 30.

31. The container identified in paragraph 30 was sent off-site as reactive hazardous waste with the hazardous waste number D003, on April 29, 2008.

ANSWER: Respondent admits the allegations of paragraph 31.

32. The container identified in paragraph 30 was neither labeled as “Hazardous Waste” nor marked with the start date of accumulation.

ANSWER: Respondent denies the allegations of paragraph 32. Respondent affirmatively alleges that it is Respondent's normal practice to label containers that contain waste product.

33. As stated in paragraphs 25, 29 and 32, Respondent failed to comply with conditions for a hazardous waste license exemption.

ANSWER: Respondent denies the allegations of paragraph 33.

34. Neither U.S. EPA nor the State of Wisconsin had issued an operating license or a permit to Respondent to treat, store, or dispose of hazardous waste at WPWW.

ANSWER: Respondent admits the allegations of paragraph 34.

35. Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at WPWW at the time of the Inspection.

ANSWER: Respondent admits the allegations of paragraph 35.

36. Respondent violated Section 3005(a) of RCRA, 42 U.S.C. §6925(a) and the regulations at WC NR 680 [40 C.F.R. part 270], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S. C. § 6928.

ANSWER: Respondent denies the allegations of paragraph 36.

COUNT 2:

Failure to Conduct Weekly Inspections

37. Complainant reincorporates paragraphs 1 through 20 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent reincorporates its answers to paragraphs 1 through 20 of the Complaint as though set forth herein.

38. Pursuant to WAC NR 615.05(4)(a)2.b; 640.12(1); 680.22(21) [40 C.F.R. §§ 262.34(a)(1)(i); 265.174], an owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored.

ANSWER: Respondent admits the allegations of paragraph 38.

39. At all times relevant to this Complaint, Respondent stored containers of hazardous waste at WPWW.

ANSWER: Respondent admits the allegations of paragraph 39.

40. At the time of the Inspection, Respondent had accumulated, in a 30-gallon container, approximately two gallons of spill absorbent contaminated with cyanide waste.

ANSWER: Respondent admits the allegations of paragraph 40.

41. Respondent had not performed inspections for this 30-gallon container.

ANSWER: Respondent denies the allegations of paragraph 41.

42. Respondent's failure to conduct weekly container inspections violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 640.12(1); 680.22(21) [40 C.F.R. § 264.174], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

ANSWER: Respondent denies the allegations of paragraph 42.

COUNT 3:

Failure to Close a Hazardous Waste Satellite Accumulation Container

43. Complainant reincorporates paragraphs 1 through 20 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent reincorporates its answer to paragraphs 1 through 20 of the Complaint as though set forth herein.

44. Pursuant to WAC NR 615.05(6)(a); 615.05(4)(c)2. [40 C.F.R. §§ 262.34(a)(1)(i); 265.173(a)], owners and operators must keep satellite containers of hazardous waste closed unless adding or removing waste.

ANSWER: Respondent admits the allegations of paragraph 44.

45. At all times relevant to the complaint, Respondent stored hazardous waste in a 55-gallon satellite container at WPWW.

ANSWER: Respondent admits the allegations of paragraph 45.

46. At the time of the Inspection, Respondent had failed to close a 55-gallon container that was used to collect wastewater treatment sludge from a filter press.

ANSWER: Respondent is without sufficient knowledge to either admit or deny the allegations of paragraph 46, and therefore denies the same.

47. Waste was neither being added nor removed from the 55-gallon container at the time of the Inspection.

ANSWER: Respondent is without sufficient knowledge to either admit or deny the allegations of paragraph 47, and therefore denies the same.

48. Respondent's failure to keep a satellite container of hazardous waste closed violated Section 3005(A) of RCRA, 42 U.S.C. §6925(a) and the regulations at WAC NR 640.11(2); 680.22(23) [40 C.F.R. §264.173(a)], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

ANSWER: Respondent denies the allegations of paragraph 48.

II. CIVIL PENALTY

Respondent denies any civil penalty is due, required or appropriate, and contests Complainant's proposed Civil Penalty as the amount of the proposed Civil Penalty does not bear a reasonable relationship to the alleged violations, nor does the proposed Civil Penalty take into account Respondent's ability to pay, which has been substantially and adversely affected by the economic downturn.

III. COMPLIANCE ORDER

Respondent requests that the Court deny Complainant's proposed Compliance Order.

IV. OPPORTUNITY TO REQUEST A HEARING

Respondent hereby requests a hearing to contest all of the material facts in the Complaint and to contest the amount of the proposed penalty sought by Complainant, as provided for in

Section 22.15 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits."

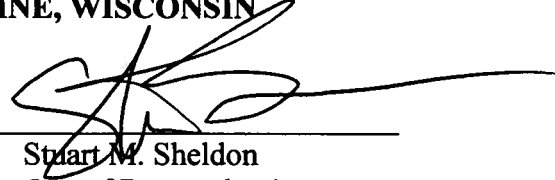
SETTLEMENT CONFERENCE

Respondent hereby requests an informal conference to discuss the facts of this case and to arrive at a settlement.

Respectfully submitted,

**WISCONSIN PLATING WORKS OF
RACINE, WISCONSIN**

By: _____



Stuart M. Sheldon
One of Respondent's attorneys

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Racine, Wisconsin

Respondent.

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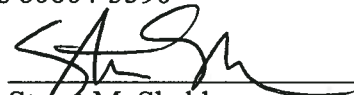
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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

I hereby certify that today I caused to be filed with the Regional Hearing Clerk (E-131), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, the original document Answer to Complaint, and that I issued to the Office of Regional Counsel by first class mail a copy of the original document:

Reginald A. Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard Chicago, Illinois 60604-3590


Stuart M. Sheldon

5/22/09
Dated

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