

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Heartland Plating Co.,)
)
Estate of Gerhard Patigler,) Docket No. RCRA-07-2011-0004
)
and) UNILATERAL
) ADMINISTRATIVE
) ORDER
Marion Patigler,)
)
Respondents)
)
Proceeding under Section 7003 of the)
Resource Conservation and Recovery)
Act as amended, 42 U.S.C. Section 6973)

I. JURISDICTION AND PRELIMINARY STATEMENT

1. This Unilateral Administrative Order (Order) is issued to Heartland Plating Co. (Heartland), the estate of Gerhard "Gary" Patigler, and Marion Patigler (collectively, the Respondents). This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. § 6973(a). The authorities vested in the Administrator pursuant to RCRA have been further delegated to the EPA Regional Administrators and further to the Director of the Air and Waste Management Division by EPA Delegation Nos R7-8-022-A and R7-8-022-B, dated March 20, 1985.

II. STATEMENT OF PURPOSE

2. This Order concerns certain property located at 3900 Elm Street, Bettendorf, Scott County, Iowa, 52722, owned by Marion Patigler and/or the estate of Gerhard “Gary” Patigler, upon which Heartland Plating Co., operates a metal electroplating, plating, anodizing and coloring facility (the “Facility”). The Order requires Respondents to (i) refrain from removing or relocating the current materials located at the Facility until EPA has approved such activity; (ii) immediately certify compliance with RCRA or cease waste generation and management activities at the Facility until such certification can be made; (iii) identify all solid and hazardous wastes currently being treated, stored, or disposed at the Facility; (iv) restrict access to solid and hazardous wastes that have been stored and/or disposed at the Facility, and to areas where there has been a release of hazardous material within the Facility or otherwise on the 3900 Elm Street property; and (v) formulate a plan for proper management and/or disposal of all solid and/or hazardous wastes pursuant to the applicable requirements of RCRA, including immediate clean-up of releases, investigation to determine off-site migration of waste, and clean-up of the building and any contaminated surrounding areas.

III. PARTIES BOUND

3. This Order applies to and is binding upon the Respondents and their heirs, successors and assigns. Any change in ownership, corporate, or trust status of Respondents including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents’ responsibilities under this Order.

4. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

IV. FINDINGS OF FACT

5. Heartland is a Delaware corporation that operates a facility at 3900 Elm Street, Bettendorf, Scott County, Iowa, 52722. Heartland engages in various electroplating, plating, polishing, anodizing, and coloring operations at the Facility. The waste material from such operations often meets the definition of a hazardous waste. On or about August 6, 2010, Heartland submitted a Notification of Regulated Waste Activity to EPA, Region 7 when it began to eliminate waste inventory that had been generated from its waste water pretreatment system. Following its receipt of this Notification, EPA assigned a RCRA identification number for this facility: IAR000514729. Heartland reported itself as a generator of less than 100 kilograms per month of hazardous waste (i.e., a conditionally exempt small quantity generator).

6. Respondents' facility building is a structure of approximately 43,000 square feet in area and encompasses five plating lines, four of which were inoperative by October 20, 2010. The property is 1.697 acres in size.

7. Respondents' Facility currently employs two full-time employees.

8. Respondents' Facility is located in a mostly industrial area. Approximately 200 feet south of the Facility property is a flood levee which protects the property from flood events from the Mississippi River which is immediately adjacent to the levee. The Facility property lies within the 500-year flood zone, and the western portion of the property is within the 100-year flood zone. To the east of the property are an automobile salvage facility and a petroleum storage facility (Flint Hills Resources). At the time of the inspection, there were vacant lots immediately north and west of the Facility. In the vicinity of the Facility are Barton Solvents (northwest of the Facility) and Diamond Transportation Services, Le Claire Quarries, and

Premier Brick & Stone located west of the Facility. The nearest residences are approximately 1/3 mile northeast and ½ mile northwest of the Facility.

9. A plating company has operated at the Facility's location since 1978, and the real property upon which the Facility is located was purchased by Gerhard Patigler in 2003.

10. Heartland was incorporated in the state of Delaware on June 11, 2003, and Gerhard Patigler was the president of the corporation.

11. At the time of his death in June of 2009, Gerhard Patigler owned the real property upon which the Facility was situated and was the operator of the Facility. Probate has since been filed on the estate in both California and Illinois.

12. On or about November 13, 2009, Marion Patigler, daughter of Gerhard Patigler, was appointed Personal Representative of the estate of Gerhard Patigler by the Superior Court of California, County of Contra Costa, Case MSP09-01390. On or about December 22, 2009, Marion Patigler was appointed Administrator of the estate of Gerhard Patigler by the Superior Court of California, County of Contra Costa, Case MSP09-01390.

13. On or about June 3, 2010, Marion Patigler was appointed Independent Administrator of the estate of Gerhard Patigler by the Circuit Court of the Fourteenth Judicial Circuit, Mercer County, Illinois, Probate Division, Case 201P16.

14. On a RCRA Subtitle C Site Identification Form for the Heartland Plating Co. Facility filed with EPA on August 6, 2010, Marion Patigler identified herself as the contact person, owner, and operator of the Heartland Facility in Bettendorf, Iowa, and stated that she had been the legal owner of the Facility since June 20, 2009.

15. Pursuant to a Statement of Change of Registered Office and/or Registered Agent filed with the Iowa Secretary of State on August 17, 2010, Marion Patigler is the new registered agent for Heartland at 3900 Elm Street in Bettendorf, Iowa, and identifies herself thereon as the “Administrator of the Estate.”

16. On October 20, 21, and 22, 2010, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (herein after “the inspection”) to determine the hazardous waste management practices at the Facility, observe site conditions, and document the status of containers of wastes. During the inspection, the EPA inspector documented numerous totes, tanks, drums, and other containers and materials stored in an abandoned manner throughout the Facility, including numerous containers that were open and unable to be closed. The inspector documented that Heartland had failed to conduct a hazardous waste determination on any of the containers of waste on-site at the time of the inspection. The inspector also documented that many of the materials had been stored on-site for a long time, and, in most instances, the corporation could not provide specific dates upon which it began storing the containers of waste. Many containers were not labeled. From container labels and via input from Heartland personnel, EPA was able to determine that Heartland is storing and/or treating solid and/or hazardous wastes including but not limited to chromium, zinc, cyanide, cobalt, potassium permanganate, sulfuric acid, hydrochloric acid, sodium hydroxide, and hydrogen peroxide.

17. On or about Friday, August 8, 2008, a tank containing hydrochloric acid failed, resulting in a release of material that was reported to Iowa Department of Natural Resources (IDNR) on August 12, 2008. During EPA’s October 2010 investigation, it was evident that releases of wastes had occurred in multiple locations in the Facility and its grounds, and that

such releases would likely recur due to the deteriorating conditions of the containers of wastes on-site and the haphazard manner in which they are currently being stored. Among other potentially dangerous materials, EPA found numerous tanks and drums of acid, cyanide, and other hazardous substances.

18. The EPA inspector also noted the presence of the following incompatible wastes, among others, being stored together, without being separated by means of a dike, berm, wall or other device:

- a. strong acids and strong bases stored in proximity to each other (e.g., sodium hydroxide was stored near sulfuric acid, hydrochloric (muriatic) acid, and chromic acid);
- b. sodium cyanide stored next to sulfuric acid;
- c. strong oxidizers (e.g., potassium permanganate and hydrogen peroxide) were stored in proximity to acids, solvents, and organic products.

The mixing of these incompatibles could lead to consequences such as heat generation, violent reaction, fire, explosion, and generation of flammable and/or toxic gas.

19. During the inspection, EPA personnel documented that four of the five plating lines at the Facility were no longer being used. Several of the tanks in these plating lines contained thousands of gallons of caustic chemicals (e.g., hydrochloric acid, sulfuric acid, sodium hydroxide) that would be corrosive hazardous wastes (EPA characteristic waste code D002) due to pH readings less than or equal to two or pH readings greater than or equal to 12.5. In addition, several of the tanks in these plating lines contained chromium and other metals that would fail the Toxicity Characteristic Leaching Procedure (TCLP).

20. In one area of the Facility, EPA personnel documented approximately 80 drums, numerous totes, and various types of open, corroded and/or damaged containers that contained

wastes generated by the Facility. None of these containers were labeled as hazardous wastes. Several of the drums contained markings indicating their contents including pH readings of “1” and “14.” Some of the totes in this area were labeled as “Zinc Chloride Cobalt” and were dated “9-5-08.” Approximately ten (10) plastic children’s pools in this area were being used by the Facility as open containers in which to evaporate waste sludge generated by the Facility’s wastewater pretreatment plant, now inactive.

21. An EPA inspector documented that old chemicals in one area of the Facility had been stored, unused, since Heartland began operations at the location in 2003.

22. An EPA inspector observed several feet of waste sludge inside the clarifier component of the former wastewater pretreatment system, now inactive.

23. The Facility has several large aboveground storage tanks containing thousands of gallons of process wastewater.

24. There was a wastewater sludge pit at the Facility that contained approximately four (4) feet of wastes. The wastewaters accumulated in this pit were formerly pumped to the Facility’s wastewater pretreatment plant, now inactive. At the time of the inspection, Facility representatives indicated that the wastewater accumulated in the pit would be pumped into totes.

25. An EPA inspector observed poor housekeeping throughout the Facility including spills and releases next to the plating lines.

26. An EPA inspector observed leaks in the roof of the Facility and extensive corrosion of the plating line tanks, a number of which contained corrosive chemicals and chromium plating chemicals at the time of the inspection.

27. Based upon EPA observations of greater than 1,000 kilograms of hazardous waste present at the Facility and Respondents’ improper management and handling of the hazardous

wastes at the Facility, Respondents are operating as a Treatment, Storage, and Disposal (“TSD”) Facility and a Large Quantity Generator of hazardous waste

28. The hazardous wastes or hazardous constituents identified below may have the following effects on human health or the environment:

a. CHROMIUM is a metal and, when a waste contains more than 5 parts per million (ppm) chromium as analyzed using the TCLP, is a D007 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Human exposure occurs through inhalation, ingestion, and dermal absorption. The lungs, kidneys, liver, and skin, and the immune system may also be affected. Long-term exposure to chromium may cause lung cancer.

b. LEAD is a metal and, when a waste contains more than 5 ppm as analyzed using the TCLP, is a D008 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Humans may be exposed to lead through ingestion of contaminated water or soils or by inhalation of lead particles in the air. Lead has many toxic effects on human health and is classified by EPA as a probable human carcinogen. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect. Children are especially vulnerable to the effects of lead exposure.

c. CADMIUM is a metal, and when a waste contains more than 1 ppm as analyzed using the TCLP, is a D006 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Cadmium can enter the body through ingestion and inhalation. Most of the cadmium that enters the body goes to the kidney and liver and can remain there for many years.

d. ARSENIC is a metal, and when a waste contains more than 5 ppm as analyzed using the TCLP, is a D004 RCRA characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VII to 40 C.F.R. Part 261. Arsenic is a naturally occurring element widely distributed in the earth's crust. In the environment, arsenic is combined with oxygen, chlorine, and sulfur to form inorganic arsenic compounds. Arsenic in animals and plants combines with carbon and hydrogen to form organic arsenic compounds.

e. NICKEL is a metal that is used in alloys and plating due to its corrosion-resistant nature. Nickel is used in many industrial and consumer products, including stainless steel, magnets, coinage, rechargeable batteries, electric guitar strings and special alloys. It is also used for plating and as a green tint in glass. Nickel is primarily an alloy metal, and its chief use is in the nickel steels and nickel cast irons, of which there are many varieties. It is also widely used in many other alloys, such as nickel brasses and bronzes, and alloys with copper, chromium, aluminum, lead, cobalt, silver, and gold. Nickel sulfide fume and dust is believed to be carcinogenic, and various other nickel compounds

may be as well. Sensitized individuals may show an allergy to nickel affecting their skin, also known as dermatitis.

f. ZINC CHLORIDE is a corrosive inorganic salt. Symptoms of high-concentration zinc chloride exposure include dyspnea, cough, pleuritic chest pain, bilateral diffuse infiltrations, pneumothorax, and acute pneumonitis, resulting from respiratory tract irritation. Dermal exposure to zinc chloride can result in severe skin irritancy.

g. CYANIDE compounds include any of the various salts or esters of hydrogen cyanide containing a CN group. Cyanide wastes are RCRA characteristic hazardous wastes (D003 RCRA characteristic waste code) since when they are exposed to pH conditions between 2 and 12.5, they can generate toxic gases, vapors or fumes in quantities sufficient to present a danger to human health or the environment. Spent cyanide electroplating bath wastes may also have several RCRA listed hazardous waste codes including F007, F008, and F009. Cyanide compounds and their RCRA listed hazardous waste codes also may include barium cyanide (P013), calcium cyanide (P021), copper cyanide (P029), cyanides (soluble cyanide salts) not otherwise specified (P030), cyanogens (P031), cyanogen chloride (P033), ethyl cyanide (P101), hydrogen cyanide (P063), nickel cyanide (P074), potassium cyanide (P098), potassium silver cyanide (P099), silver cyanide (P104), sodium cyanide (P106), and zinc cyanide (P121). Humans exposed to a small amount of cyanide by breathing it, absorbing it through their skin, or eating foods that contain it may have some or all of the following symptoms within minutes: rapid breathing, restlessness, dizziness, weakness, headache, nausea and vomiting, and rapid heart rate. Exposure to a large amount of cyanide by any route may cause other health effects including convulsions, low blood pressure (hypotension), slow heart rate (bradycardia), loss of consciousness, lung injury and respiratory failure leading to death. Survivors of serious cyanide poisoning may develop heart and brain damage.

h. POTASSIUM PERMANGANATE is an inorganic chemical compound that was formerly known as permanganate of potash or Condy's crystals. Permanganates are strong oxidizers that yield oxygen readily to stimulate the combustion of organic matter. Thus, potassium permanganate is a RCRA characteristic hazardous waste with a D001 waste code. Potassium permanganate should be kept separated from oxidizable substances. When solid potassium permanganate is mixed with pure glycerol or other simple alcohols it will result in a violent combustion reaction.

i. SULFURIC ACID is a clear, colorless, oily liquid that is very corrosive. Sulfuric acid is very corrosive and irritating and causes direct local effects on the skin, eyes, and respiratory and gastrointestinal tracts when there is direct exposure to sufficient concentrations. When waste sulfuric acid has a pH equal to 2 or less as determined by a pH meter using Method 9040C, the waste is a D002 RCRA characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261.

j. HYDROCHLORIC ACID is a solution of hydrogen chloride (HCl) in water, that is a highly corrosive, strong mineral acid with many industrial uses. It is also known as muriatic acid or spirits of salt. It is a strong acid and is corrosive and irritating. The acid

reacts with most metals, to produce hydrogen and the metal's chloride, and with oxides, hydroxides, and many salts. Hydrochloric acid has similar effects on the human body as described above for sulfuric acid. When waste sulfuric acid has a pH equal to 2 or less as determined by a pH meter using Method 9040C, the waste is a D002 RCRA characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261.

k. SODIUM HYDROXIDE is used to manufacture soaps, rayon, paper, explosives, dyestuffs and petroleum products. It is also used in laundering and bleaching, metal cleaning and processing, oxide coating, and electroplating. It is also commonly present in drain and oven cleaners. Very low levels of sodium hydroxide can produce irritation of the skin and eyes, and exposure to sodium hydroxide solids and/or concentrated liquid can cause severe burns in the eyes, skin and gastrointestinal tract. Sodium hydroxide is very corrosive, and when dissolved in water or neutralized with a strong acid it liberates substantial heat, which could ignite combustible materials. When waste sodium hydroxide has a pH equal to 12.5 or more as determined by a pH meter using Method 9040C, the waste is a D002 RCRA characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261.

l. HYDROGEN PEROXIDE is an oxidizer that is commonly used as a bleach. It is a clear liquid, slightly more viscous than water, that appears colorless in dilute solution. It is used as a disinfectant, antiseptic, oxidizer, and in rocketry as a propellant. The oxidizing capacity of hydrogen peroxide is so strong that it is considered a highly reactive oxygen species. Peroxides are strong oxidizers that yield oxygen readily to stimulate the combustion of organic matter. Thus, hydrogen peroxide is a RCRA characteristic hazardous waste with a D001 waste code.

29. Exposure to the hazardous constituents outlined above through dermal contact, ingestion or inhalation present health risks to people who come into contact to these materials. Such persons may include the property owners, Heartland's personnel, contractors, emergency responders, state, local and federal regulators, and trespassers. As previously described, mixtures of incompatible wastes could result in heat generation, violent reaction, fire, explosion, and generation of flammable and/or toxic gas. Furthermore, all or part of the Facility is located within the 500-year and 100-year flood zones, and the Mississippi River is within several hundred feet of the Facility. Consequently, an uncontained release of solid and/or hazardous waste could result in a discharge to the river and contamination of the shallow alluvial

groundwater aquifer. The abatement actions required by the Order are necessary to remove the endangerment posed by current Facility conditions.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

30. Respondents are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

31. The property located at 3900 Elm Street, Bettendorf, Scott County, Iowa, 52722 is a “facility,” and, at all times relevant to this action Marion Patigler and/or the estate of Gerhard Patigler was an “owner” of the Facility, and Respondent Heartland Plating Co. and/or Marion Patigler is or was an “operator” of the Facility within the meaning of 40 C.F.R. § 260.10.

32. The wastes stored and handled at Respondents’ Facility are “solid wastes” and/or “hazardous wastes,” as defined in Sections 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 1004(5) of RCRA, 42 U.S.C. § 6903(5), respectively.

33. The presence of solid wastes, hazardous wastes, and/or hazardous constituents at the Facility resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes, hazardous wastes, and/or hazardous constituents.

34. Present conditions at the Facility may constitute an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

35. Respondents have contributed to such handling, storage, treatment, transportation and/or disposal of solid wastes, hazardous wastes and/or hazardous constituents at the Facility within the meaning of RCRA and its implementing regulations.

VI. NOTICE TO STATE AND LOCAL AUTHORITIES

36. The State of Iowa and appropriate local authorities have been notified of the issuance of this Order pursuant to Section 7003(c) of RCRA, 42 U.S.C. § 6973(c).

VII. ORDER

37. Based on the foregoing and pursuant to Sections 3007 and 7003 of RCRA, 42 U.S.C. §§ 6927 and 6973, Respondents are hereby ORDERED to perform the activities described in Section VIII of this Order and all other activities required by this Order.

VIII. WORK TO BE PERFORMED

38. Immediate Compliance with RCRA/Restriction of Access: Upon receipt of this Order, Respondents shall cease all solid and/or hazardous waste handling activities at the Facility and take active steps as outlined in this order to stop releases of solid and hazardous wastes into the environment. Within five (5) days of the effective date of this Order, Respondents shall provide a certification to EPA, wherein Respondents describe how all of the waste storage and management activities at the Facility are being conducted in compliance with the applicable provisions of RCRA and its implementing regulations. Respondents shall not resume any waste handling activities until EPA has reviewed and approved the certification required herein. Also within five (5) days of the effective date of this Order, Respondents shall restrict access to areas of the property where there has been a release of solid and/or hazardous waste. Measures to accomplish this may include, but are not limited to, posting “no trespassing” signs or signs directing visitors to the Facility away from areas where solid or hazardous waste contamination may be present, installing gates to be closed after business hours and fence to restrict access to the Facility by the public, or other similar measures. Respondents shall provide

a written description, photographs, or other documentation of the measures taken to comply with this paragraph within seven (7) days of completion of such measures to EPA's representative identified in paragraph 50 below.

39. Posting: Immediately upon receipt of this Order, Respondents shall post a sign at the Facility which provides notice of the hazardous conditions present at the Facility in accordance with the requirements of Section 7003(c) of RCRA, 42 U.S.C. § 6973(c). The sign to be posted shall be at least twenty-four (24) by thirty-six (36) inches, and shall be made of weatherproof material in white or a brightly-colored background with large, clearly contrasting lettering. The sign shall be posted in a prominent place at or near the public entrance to the Facility, and shall state: "Warning: Conditions at this facility may present an imminent and substantial endangerment to human health or the environment." Failure to post the sign as directed in this paragraph will constitute a violation of this Order.

40. Immediate use of containers in good condition. Within fourteen (14) days of the effective date of this Order, Respondents shall ensure that all hazardous wastes, regardless of the current management (in piles, open containers, containers in poor condition, or degrading containers), are placed into closed containers in good condition, as required by 40 C.F.R. § 265.171. Respondents shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired, pursuant to 40 C.F.R. § 265.172, and will ensure that incompatible wastes are not placed in proximity to one another, pursuant to 40 C.F.R. § 265.177. Within twenty-one (21) days of the effective date of this Order, Respondents

shall provide documentation (e.g., written statements, photographs, etc.) to the EPA representative identified in paragraph 50 below that all containers holding hazardous wastes are in good condition.

41. Notice of Intent to Comply: Within five (5) days of the effective date of this Order, Respondents shall each notify EPA of their intent to comply with this Order in accordance with Section XIII (Notice of Intent to Comply) below.

42. Selection of contractor: Within seven (7) days of the effective date of this Order, Respondents shall select a third-party contractor, subject to EPA approval, to carry out all activities at the Facility set forth below. EPA retains the right to disapprove of the selected contractors and/or subcontractors retained by the Respondents.

a. All work performed pursuant to this Section (Work to be Performed) shall be under the direction and supervision of a Project Manager, who shall be a professional engineer or geologist with expertise in hazardous waste clean-up. Respondents' Project Manager shall be responsible for administration of all of the Respondents' actions required by the Order. To the greatest extent possible, Respondents' Project Manager shall be readily available during all work to be performed hereunder. Respondents shall notify the EPA representative named in paragraph 50 of the name and qualifications of their selected Project Manager within seven (7) days of the effective date of this Order.

b. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Section (Work to be Performed) at least seven (7) days prior to commencement of such work. If EPA disapproves of a selected Project Manager or contractor, Respondents shall retain a different Project Manager or contractor within five (5) business days following EPA's disapproval and shall notify EPA of the new Project Manager's or contractor's name and qualifications within seven (7) business days of EPA's disapproval. If EPA still disapproves of the selected contractor or Respondents fail to select a new contractor, Respondents' failure to select a contractor shall be deemed a violation of this Order and EPA reserves the right to perform any or all of the work required by this Order and to seek reimbursement of its costs from Respondents pursuant to applicable statutory authorities.

43. Conduct Complete Inventory and Hazardous Waste Determinations on All Containers, Drums, Tanks, Totes, Supersacks, Piles: Within fourteen (14) days of the effective date of this Order, Respondents shall submit to EPA's representative, identified in paragraph 50 below, a written inventory of all containers, drums, tanks, totes, supersacks, and piles at the Facility. The description shall include a notation regarding the size of the container, its contents and quantity thereof. The description shall also include a waste determination in accordance with the requirements of 40 C.F.R. § 262.11.

44. If Respondents claim any of the inventoried materials above as useable or saleable product, then Respondents must identify the material, describe the condition of the container, describe the location of the material in the warehouse and provide a photograph. In addition, Respondents must provide written documentation of: how the product has been used in the past; the product's intended use in the future; and the Material Safety Data Sheet (MSDS). Respondents, however, shall refrain from relocating or removing from the Facility any of the materials identified above without approval from EPA except as allowed by this Order.

45. As part of this inventory, Respondents shall submit to EPA's representative identified in paragraph 50 a written Inventory and Immediate Removal plan for immediately shipping all hazardous waste currently located at the Facility to an appropriate hazardous waste disposal facility and a schedule for such activities. Off-site removal of the hazardous wastes shall be carried out in such a manner as to ensure that no releases of any of the materials to the environment, including fugitive releases to the air, occur at any time during preparations for

removal or during any removal-related activities. The plan shall be reviewed by EPA in accordance with the procedures identified in paragraph 50 below and shall include the following:

- a. Identification of facility for disposal of all hazardous wastes: The plan shall identify the disposal facility where Respondents propose to ship these wastes.
- b. Disposal of all spent or waste acids, sludges, wastewater, outdated and unuseable chemicals, or other waste: The plan shall provide that within thirty (30) days of EPA's approval of Respondents' contractor selection, all activities related to the off-site shipment of the hazardous wastes will commence and shall continue in accordance with

an EPA-approved schedule. The plan shall also provide that the off-site disposal of these materials be completed no later than sixty (60) days of EPA's approval of the plan.

- c. Documentation: The plan shall provide that within ten (10) days of completion of off-site disposal of the solid and/or hazardous wastes, Respondents shall provide to the EPA documentation demonstrating that all disposal activities are complete and that all such activities were carried out in accordance with the applicable requirements of RCRA. Documents to be provided shall include all manifests, bills of lading, and other pertinent records.

This plan shall be implemented immediately upon approval by EPA.

46. Waste Management Handling Plan: Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA's representative, identified in paragraph 50 below, a written plan which demonstrates that all solid and/or hazardous waste generated at Respondent's Facility in the future will be managed and otherwise handled in compliance with RCRA and in a manner which will prevent future releases of the wastes to the environment. The plan shall specifically describe how releases of solid and/or hazardous waste will be prevented during each step of handling. The plan shall be implemented immediately upon approval by EPA. The plan

shall include a detailed description of how Respondent will ensure that the hazardous wastes are identified and handled in accordance with RCRA and its implementing regulations.

47. Site Characterization: Within thirty (30) days of completion of off-site shipment of the wastes pursuant to the Inventory and Immediate Removal Plan referenced above, Respondents shall submit to EPA's representative identified in paragraph 50 below, a Site Characterization Work Plan for the investigation of contamination of the areas where hazardous wastes were stored, managed, and/or released. The Site Characterization Work Plan shall include a Field Sampling Plan, Quality Assurance Project Plan (QAPP), and Health and Safety Plan (HASP) to assess on-site contamination, and any off-site migration of waste-

- a. The Site Characterization Work Plan shall include a schedule for completion of activities to characterize any contaminated areas at the Facility. It shall also include:
 - i. a diagram of the Facility and its structures, a narrative and pictorial description of the locations to be sampled, and the materials or media to be sampled;
 - ii. a list of the hazardous constituents for which each sample shall be analyzed, based on the composition of the chemicals that were used and stored at the Facility; and
 - iii. a statement of the action levels proposed for the hazardous constituents described in paragraph ii above that shall indicate whether contamination from hazardous wastes stored at the Facility is present.
- b. The QAPP shall address quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans" (EPA QA/R-5, EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans" (EPA QA/G-5, EPA/240/R-02/009, December 2002, as well as other such applicable guidance identified by EPA. The QAPP shall describe the procedures that will be used for sampling and analysis of the solid wastes identified in the inventory for the purpose of conducting hazardous waste determinations in accordance with RCRA, including 40 C.F.R. § 262.11. The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and

analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations.

c. The HASP will be implemented during field activities. The HASP shall be consistent with applicable Occupational Safety and Health Administration regulations.

48. EPA shall review and approve, disapprove or require modification of the Site Characterization Work Plan, the QAPP, and the HASP, as set forth in paragraph 50 below. Respondents shall carry out all activities required pursuant to the EPA-approved plan in accordance with the schedules contained therein. Failure to timely complete activities shall be a violation of this Order. Within sixty (60) days of Respondents' completion of the field work, Respondents shall provide a Site Characterization Final Report to the EPA representative identified in paragraph 50 below.

49. The Site Characterization Work Plan shall include a schedule for completion of activities. Failure to timely complete activities shall be a violation of this Order. Within sixty (60) days of Respondents' completion of the field work, Respondents shall provide a Site Characterization Final Report to EPA's representative identified in paragraph 50 below.

50. All plans submitted pursuant to this section of this Order shall be reviewed in accordance with the procedures outlined in this paragraph. The EPA will review the plan and may approve the plan, approve the plan with modifications, or disapprove the plan and provide comments to Respondents. If the plan is disapproved with comments, Respondents shall incorporate EPA's comments and resubmit the plan within fourteen (14) days of receipt of EPA's comments. If Respondents fail to revise the plan in accordance with EPA's comments, then EPA

may unilaterally modify the work plan or report and Respondents shall implement such work plan or report as necessary to complete the work pursuant to this Order. If the plan is approved either upon initial submission or resubmission, Respondents shall commence implementation of the plan immediately upon receipt of EPA's written approval of the plan. Upon approval of the plan by EPA, the plan, including all activities and schedules for such activities, shall be incorporated into and made an enforceable part of this Order, and failure to implement any plan in accordance with the scheduled contained therein shall be deemed a violation of this Order.

The EPA representative to whom all plans must be submitted is:

Kevin Snowden
Environmental Scientist
AWMD/WEMM
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

51. EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order. These tasks could include, but are not limited to: clean-up activities at the Facility to approved levels, expanded investigatory sampling of the air, soil, surface water, and/or groundwater to determine the nature and extent of contamination, excavation and disposal of contaminated materials, or other activities as necessary to protect human health or the environment. In the event such a determination is made, EPA will notify Respondents in writing that Respondents must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within seven (7) days of the receipt of such request, Respondents may request a meeting with EPA to discuss the additional work. Within thirty (30) days of notification of the need for additional work, or according to an alternative

schedule agreed to by the parties, Respondents shall submit a work plan for such additional work to EPA, which shall include a schedule for implementation of the plan. The plan will be reviewed by EPA in accordance with the procedures set forth herein. Upon approval by EPA, Respondents shall perform the additional work according to the EPA-approved plan. The EPA-approved plan shall be incorporated into and become an enforceable part of this Order. All additional work performed by Respondents under this subparagraph shall be performed in a manner consistent with this Order.

52. Split samples: Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. Respondents shall notify EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

53. Completion Report: The Respondents shall submit a final Completion Report that details all activities conducted at the Facility pursuant to the Order within forty-five (45) days after completion of all activities conducted pursuant to this Order. The report shall include, but is not limited to, the following:

- a. A description of the actions that have been taken to comply with each element of the Order;
- b. Copies of all results of chemical or physical analyses conducted during this action, including waste profiles, the results of field screening or other on-site or off-site analyses, and analyses of all samples;
- c. Copies of all hazardous waste manifests or other appropriate shipping papers (i.e., Land Disposal Restriction Notifications) that describe origin and destination, dates, amount, and the description of the materials being transported off-site;

- d. Copies of certificates of disposal from the selected disposal facilities; and
- e. Written certification that all solid and hazardous waste leaks and spills have been cleaned up in accordance with the requirements of this Order. The certification statement shall be signed by a responsible official and shall contain the following language:

I certify under penalty of law that the information contained in or accompanying this document is true, accurate, and complete.

As to the identified portions of this document for which I cannot personally verify the accuracy, I certify that based on my inquiry of the person or persons directly responsible for gathering the information, the information is true, accurate, and complete.

- f. A “responsible official” for purposes of this provision means any person who performs policy or decision-making functions for the Respondents in connection with activities at the Facility.

IX. RECORD RETENTION

54. Until ten (10) years after Respondents’ receipt of EPA’s notification pursuant to Section XVIII (Modification and Termination) of this Order, Respondents shall preserve and retain all non-identical copies of records and documents (including those in electronic form) which relate in any manner to the performance of the work required under this Order. Respondents shall also instruct their contractors and agents to preserve all such documents for a period of ten (10) years.

X. OPPORTUNITY TO CONFER

55. Respondents may, within three (3) days after the effective date of this Order, request a conference with EPA to discuss this Order. The conference must be scheduled to occur on or before December 10, 2010.

56. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondents intend to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference shall be made. Respondents may appear in person or by an attorney or other representative, at any conference held pursuant to Respondents' request hereunder. A request for a conference with EPA does not, in any way, delay or continue any of the deadlines or work to be performed by the Respondents.

57. Requests for a conference shall be made by telephone followed by written confirmation mailed by the following business day to the EPA contact identified in paragraph 50.

XI. COMPLIANCE WITH OTHER LAWS

58. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

59. In the event of any action or occurrence during performance of the work which causes or threatens a release of solid or hazardous waste or discharge of pollutants from the Facility that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including but not limited to, any plans submitted pursuant to this Order, in order to prevent,

abate or minimize such release or endangerment caused or threatened by the release.

Respondents shall also immediately notify the EPA representative identified in paragraph 50 above, or, in the event of his unavailability, notify the Regional Spill Line number listed in paragraph 60 below.

60. In addition, in the event of any release of a hazardous substance from the Facility, Respondents shall immediately notify the EPA Regional Spill Line at (913) 281-0991 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9602(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIII. NOTICE OF INTENT TO COMPLY

61. Each Respondent shall provide, within five (5) days after the effective date of this Order, written notice to EPA stating whether each Respondent will comply with the terms of this Order. The notice shall be sent to EPA's representative identified in paragraph 50 above. If any Respondent does not unequivocally commit to perform the work required by this Order, that Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any Respondents' assertions.

XIV. ENFORCEMENT AND RESERVATIONS

62. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to RCRA or any other applicable law. Such additional enforcement actions may include, but are not necessarily limited to: actions taken pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess civil penalties and/or seek injunctive relief; actions taken pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to compel corrective action at the Facility; or further actions under Section 7003 of RCRA to address conditions that may present an imminent and substantial endangerment to human health or the environment caused by any future releases of solid waste or hazardous waste from the Facility. In addition, Respondents shall be subject to civil penalties of up to \$7,500 per day for any violation of this Order under Section 7003(b) of RCRA, 42 U.S.C. § 6973.

63. Notwithstanding any provision of this Order, the United States hereby reserves all of its information gathering, inspection and all enforcement authorities and rights under RCRA and any other applicable statutes or regulations. The United States expressly reserves all rights it has to issue additional orders or to take other action it deems necessary or appropriate to address any other areas of the Facility which the United States deems a threat to human health or the environment.

64. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person for any liability arising out of or relating in any way to the Facility.

65. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by said court order.

66. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to RCRA or any other applicable law. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. criminal liability; and
- c. liability arising from the past, present, or future disposal, release or threat of release of solid or hazardous waste or the discharge of pollutants from the Facility.

XV. SAMPLING AND ACCESS

67. EPA and/or its authorized representatives shall have access to the Facility at all reasonable times for the purpose of reviewing the progress of Respondents in carrying out the provisions of this Order and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this Order shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927, or other statutory authority.

XVI. EFFECTIVE DATE AND COMPUTATION OF TIME

68. This Order shall become effective five (5) calendar days from the date this Order is filed. All times for performance of ordered activities shall be calculated from this effective date as documented by the file time/date stamp on the first page of this Order.

XVII. ADMINISTRATIVE RECORD

69. The EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment weekdays between the hours of 8:30 a.m. and 4:00 p.m. at the offices of EPA Region 7, located at 901 North 5th Street, Kansas City, Kansas, 66101. To review the Administrative Record, please contact EPA's representative identified in paragraph 50 above.

XVIII. MODIFICATION AND TERMINATION

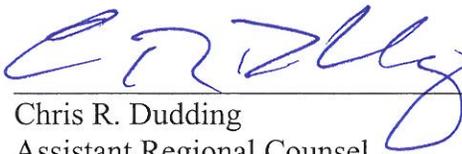
70. EPA may modify or revoke this Order based upon information discovered during the course of implementation of the Order. Modifications to any plan, deadline, or schedule, may be made in writing by the EPA representative or at EPA representative's oral direction. If an EPA representative makes an oral modification, it will be memorialized in writing within

fourteen (14) days; provided, however, that the effective date of the modification shall be the date of the EPA representative's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the appropriate Division Director pursuant to this paragraph.

71. The provisions of this Order shall remain in full force and effect until all actions required by this Order have been completed and EPA has notified the Respondents, in writing, that the actions required by this Order have been completed. Respondents shall notify EPA in writing at such time as it believes that all such actions have been completed. EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this Order. EPA's provision of written notice to Respondents pursuant to this paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.

IT IS SO ORDERED:


Becky Weber
Director
Air and Waste Management Division

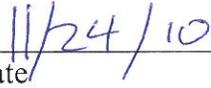

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date note below I filed the original and one true and correct copy of the signed original Unilateral Administrative Order with the Regional Hearing Clerk, Region 7. I further certify that I sent by express mail, return receipt requested, a true and correct copy of the signed original Unilateral Administrative Order to:

Marion Patigler
2103 Flamingo Ct.
Pinole, California 94564





Date