



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3590

OCT 26 2009

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Receipt #: _____

Mr. Robert B. Casarona
 Roetzel & Andress
 1375 East Ninth Street
 Ninth Floor
 Cleveland, Ohio 44114

Re: Consent Agreement and Final Order
 Diamond Hard Chrome, Inc.
 Cleveland, Ohio
 OHR 000 012 880

RCRA-05-2010-0004

Dear Mr. Casarona:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on OCT 26 2009 with the Regional Hearing Clerk (RHC).

Please remit the first of 5 installments of the \$15,000 civil penalty, as prescribed in paragraph 83 of the CAFO, and reference all checks with the number BD2751059R002 and docket number RCRA-05-2010-0004. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Payment Schedule

Installment	Due By	Payment	Principal	Interest
1 st payment	October 31, 2009	\$3,000.00	\$3,000.00	\$0.00
2 nd payment	October 31, 2010	\$3,360.00	\$3,000.00	\$360.00
3 rd payment	October 31, 2011	\$3,270.00	\$3,000.00	\$270.00
4 th payment	October 31, 2012	\$3,180.49	\$3,000.00	\$180.49
5 th payment	October 31, 2013	\$3,090.00	\$3,000.00	\$90.00
Totals:		\$15,900.49	\$15,000.00	\$900.49

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Willie H. Harris". The signature is written in a cursive style with a large initial "W".

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Harry Sarvis, Ohio EPA Compliance Assurance Section, Columbus, Ohio (w/CAFO)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

RECEIVED

OCT 26 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2010-0004
)	
Diamond Hard Chrome Co., Inc.)	Proceeding to Commence and Conclude
Cleveland, Ohio,)	an Action to Assess a Civil Penalty
)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), on February 20, 2009.

4. Respondent is Diamond Hard Chrome Co., Inc., a corporation doing business in the State of Ohio.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. 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.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with the applicable cost estimate, financial assurance and responsibility requirements of RCRA, 42 U.S.C. §§ 6901 – 6939(e), and applicable federal regulations at 40 C.F.R. §§ 260.1 – 279.82 and authorized State regulations at Ohio Admin. Code Chapter 3745.

Statutory and Regulatory Background

12. 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, pursuant to sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, 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. §§ 6921-6939(e)) or 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.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

15. As set forth in the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-10(A), Ohio Admin. Code rules 3745-55-11 to 3745-55-15 (which concern closure) apply to the owners and operators of hazardous waste management facilities.

16. As set forth in the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-10(B)(1), Ohio Admin. Code rules 3745-55-16 to 3745-55-20 (which concern post-closure care) apply to the owners and operators of hazardous waste disposal facilities.

17. Under the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-40(A), the requirements of rules 3745-55-42, 3745-55-43, and 3745-55-47 to 3745-55-51 apply to owners and operators of hazardous waste facilities, except as provided otherwise in this rule or rule 3745-54-01 of the Administrative Code.

18. Under the authorized regulation at Ohio Admin. Code Rule 3745-55-40(B)(1), the requirements of rules 3745-55-44 and 3745-55-45 apply to owners and operators of disposal facilities.

19. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-42(A) requires an owner or operator to have a detailed written estimate, in current dollars of the cost of closing the facility in accordance with the requirements in rules 3745-55-11 to 3745-55-15 of the Administrative Code and applicable closure requirements in rules, 3745-55-78, 3745-55-97, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, 3745-57-51, 3745-57-91 to 3745-57-93, and 3745-205-102 of the Administrative Code.

20. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-42(B) requires the owner or operator to adjust the closure cost estimate for inflation on an annual basis as set forth in that rule.

21. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-43 requires an owner or operator of each facility to establish financial assurance for closure.

22. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-43 requires the owner or operator to choose from specified mechanisms for establishing financial assurance for closure.

23. Under the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-47(A), an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden

accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs.

24. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-47 specifies the methods the owner or operator may use to demonstrate financial responsibility under that Rule.

25. Under the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-44(A), the owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under rules 3745-56-28 and 3745-56-58 of the Administrative Code to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in rules 3745-55-17 to 3745-55-20, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, and 3745-57-93 of the Administrative Code.

26. Under the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-45, the owner or operator of a hazardous waste management unit subject to the requirements in rule 3745-55-44 of the Administrative Code must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty days prior to the initial receipt of hazardous waste or August 26, 1983, whichever is later.

27. The RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-45 sets forth the mechanisms the owner or operator may use to establish financial assurance for post-closure care.

28. Under the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-46, an owner or operator may satisfy the requirements for financial assurance for both closure and post-

closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in rules 3745-55-43 and 3745-55-45 of the Administrative Code. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

29. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. 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 3008 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 from January 31, 1997 through March 15, 2004, a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

30. Respondent was and is a "person" as defined by the RCRA authorized regulation at Ohio Admin. Code 3745-50-10(88), and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

31. From 1953 until 1991, Respondent operated a hard chrome plating business at 6300 Kinsman Avenue, Cleveland, Cuyahoga County, Ohio (the Kinsman facility).

32. The Kinsman facility consists of land, structures, other appurtenances, and/or improvements on the land used for treating, storing, or disposing of hazardous waste.

33. As a result of a January 13, 1991 fire at the Kinsman facility, plating bath solutions and contaminated rinse waters were disposed into the environment.

34. The wastes disposed at the Kinsman facility included solid wastes, including plating bath solutions and contaminated rinse waters.

35. The wastes disposed at the Kinsman facility included hazardous wastes, as defined by the RCRA authorized regulations at Ohio Admin. Code rules 3745-50-10(48), 3745-51-03 and 3745-51-24, with a hazardous waste number D007, due to the level of chromium in the wastes.

36. Respondent's processes at the Kinsman facility produced hazardous wastes identified or listed in the RCRA authorized regulations at Ohio Admin. Code 3745-51-01 to 3745-51-35 or caused a hazardous waste to become subject to regulation under Ohio Admin. Code Rules 3745-50-01 to 3745-270 [40 C.F.R. Parts 260-270].

37. The Kinsman facility is a hazardous waste facility as defined in the RCRA authorized regulation at Ohio Admin. Code 3745-50-10(A)(39).

38. The Kinsman facility is a hazardous waste disposal facility as defined in the RCRA authorized regulation at Ohio Admin. Code 3745-50-10(A)(28), and has U.S. EPA ID no. OHR000012880.

39. On March 31, 1994, Respondent was found guilty of illegal transfer and disposal of hazardous waste relating to its activities at the Kinsman Avenue facility and another adjacent facility.

40. As a stipulation of the sentencing, Respondent was required to remediate the contamination at the Kinsman facility and the other adjacent facility.

41. On September 29, 1995, Ohio's Director of Environmental Protection approved a closure plan for the Kinsman facility.

42. The approved closure plan for the Kinsman facility called for removal of the disposed hazardous wastes and groundwater monitoring to determine the rate and extent of potential contamination emanating from the Kinsman facility.

43. Ohio EPA issued a final closure letter to the Respondent for the Kinsman facility on September 12, 2006.

44. Until September 12, 2006, Respondent was subject to the Ohio regulations authorized pursuant to RCRA Section 3006, 42 U.S.C. § 6926, at Ohio Admin. Code rules 3745-55-11 to 3745-55-15, 3745-55-42, 3745-55-43, and 3745-55-47-51.

45. After September 12, 2006, Respondent remained subject to the Ohio regulations authorized pursuant to RCRA Section 3006, 42 U.S.C. § 6926, at Ohio Admin. Code rules 3745-55-16 to 3745-55-20, 3745-55-44 and 3745-55-45.

46. In reviews of financial assurance files for the Kinsman facility it conducted on February 12, 1999, December 26, 2002, December 22, 2003, and December 21, 2004, Ohio EPA found that Respondent was in violation of the closure cost-estimate requirements (Ohio Admin. Code rule 3745-55-42), the financial assurance requirements (Ohio Admin. Code rule 3745-55-43) and the liability coverage requirements (Ohio Admin. Code rule 3745-55-47).

47. Based on its reviews, Ohio EPA sent notices of violation (NOVs) to Respondent on February 19, 1999, December 26, 2002, October 31, 2003, January 6, 2004, and December 22, 2004, notifying Respondent that it was in violation of the closure cost-estimate requirements (Ohio Admin. Code rule 3745-55-42), the financial assurance requirements (Ohio Admin. Code rule 3745-55-43), and the liability coverage requirements (Ohio Admin. Code rule 3745-55-47).

48. A review of financial assurance files for the Kinsman facility conducted by U.S. EPA on July 11, 2007, revealed that Respondent had violated Ohio Admin. Code Rule 3745-55-42 requirements for a closure cost estimate and updates for inflation and Ohio Admin. Code Rule 3745-55-43 requirements for a valid financial assurance mechanism, and continued to violate Ohio Admin. Code Rule 3745-55-44(A) requirements for a post-closure plan and post-closure cost estimate and Ohio Admin. Code rule 3745-55-45 requirements for financial assurance.

49. Based on this review, U.S. EPA sent an NOV to Respondent on September 26, 2007, notifying Respondent of the violations of requirements for a closure cost estimate and updates for inflation, for financial assurance, for a post-closure plan and post-closure plan cost estimate and for liability coverage.

50. On January 29, 2008, U.S. EPA sent a second NOV to Respondent because U.S. EPA had not received a response to the September 26, 2007 NOV. The NOV notified Respondent of the violations of requirements for a closure cost estimate and updates for inflation, financial assurance, a post-closure plan and post-closure plan cost estimate, and liability coverage.

51. On May 15, 2008, Respondent responded to the violations noted in April 30, 2007, September 26, 2007, and January 29, 2007 NOVs, by providing a post-closure cost estimate and indicating that it was attempting to obtain a letter of credit and insurance coverage.

52. On June 4, 2008, U.S. EPA sent Respondent a pre-filing notice letter, advising Respondent that it was prepared to bring a civil administrative proceeding for specific alleged violations of RCRA, and planned to seek a civil penalty. U.S. EPA asked Respondent to identify any information Respondent thought U.S. EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, U.S. EPA asked Respondent to submit specific financial documents.

53. Respondent responded with correspondence dated June 20, 2008, June 23, 2008, July 15, 2008, and November 3, 2008, that, among other things, claimed an inability to pay and submitted documentation in support of an inability to pay the penalty.

54. Respondent submitted information in support of that claim on or about June 23, 2008, July 15, 2008, and November 3, 2008.

55. On September 8, 2008, Ohio EPA sent a Notice of Deficiency to Respondent regarding a May 27, 2008 post-closure plan for the unit closed as a landfill located at 6300 Kinsman Avenue, Cleveland, Ohio.

56. Respondent obtained a letter of credit in the amount of \$ 50,000, to cover the costs of post-closure care at the Kinsman facility.

COUNT 1. FAILURE TO HAVE COST ESTIMATE FOR CLOSURE

57. Complainant incorporates paragraphs 1 through 56 of this CAFO as though set forth in this paragraph.

58. Until September 12, 2006, the date of closure, Respondent was required by the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-42 to have a detailed written estimate, in current dollars of the cost of closing the Kinsman facility in accordance with the

requirements in rules 3745-55-11 to 3745-55-15 of the Administrative Code and applicable closure requirements in rules 3745-55-78, 3745-55-97, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, 3745-57-51, 3745-57-91 to 3745-57-93, and 3745-205-102 of the Administrative Code.

59. At all times relevant to this CAFO, Respondent did not have a detailed written estimate, in current dollars of the cost of closing the Kinsman facility in accordance with the requirements at rules 3745-55-11 to 3745-55-15 of the Administrative Code and applicable closure requirements in rules 3745-55-78, 3745-55-97, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, 3745-57-51, 3745-57-91 to 3745-57-93, and 3745-205-102 of the Administrative Code as required by Ohio Admin. Code Rule 3745-55-42(A).

60. Respondent's failure to have a detailed written estimate, in current dollars of the cost of closing the facility as required by Ohio Admin. Code Rule 3745-55-42(A) constitutes a violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-42(A) (40 C.F.R. § 264.142(a)).

61. The Respondent's violation of the RCRA authorized Ohio regulation at Ohio Admin. Code Rule 3745-55-42(A) subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 2: FAILURE TO ESTABLISH FINANCIAL ASSURANCE FOR CLOSURE

62. Complainant incorporates paragraphs 1 through 56 of this CAFO as though set forth in this paragraph.

63. Until September 12, 2006, the date of closure, Respondent was required to establish financial Assurance for Closure for the Kinsman facility as set forth in the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-43.

64. At all times relevant to this CAFO, Respondent has failed to establish financial Assurance for Closure for the Kinsman facility as required by Ohio Admin. Code Rule 3745-55-43.

65. Respondent's failure to establish financial Assurance for Closure as required by OAC Rule 3745-55-43 constitutes a violation of the RCRA authorized regulation at OAC Rule 3745-55-43 (40 C.F.R. § 264.143).

66. The Respondent's violation of the RCRA authorized regulation at OAC Rule 3745-55-43 subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 3: FAILURE TO HAVE A POST-CLOSURE COST ESTIMATE

67. Complainant incorporates paragraphs 1 through 56 of this CAFO as though set forth in this paragraph.

68. Respondent was required by the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-44(A) to have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the Kinsman facility in accordance with the applicable post-closure provisions in rules 3745-55-17 to 3745-55-20, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, and 3745-57-93 of the Administrative Code.

69. At all times relevant to this CAFO, Respondent did not have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the

Kinsman facility in accordance with the applicable post-closure provisions in rules 3745-55-17 to 3745-55-20, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, and 3745-57-93 of the Administrative Code, as required by Ohio Admin. Code Rule 3745-55-44(A).

70. Respondent's failure to have a detailed written estimate in current dollars, of the annual cost of post-closure monitoring and maintenance of the Kinsman facility as required by OAC Rule 3745-55-44(A) constitutes a violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-44(A). (40 C.F.R. § 264.144).

71. The Respondent's violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-44(A) subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 4: FAILURE TO ESTABLISH FINANCIAL ASSURANCE FOR POST-CLOSURE CARE

72. Complainant incorporates paragraphs 1 through 56 of this CAFO as though set forth in this paragraph.

73. Respondent was required by the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-45 to establish financial assurance for post-closure care of hazardous waste management units at the Kinsman facility.

74. At all times relevant to this CAFO, Respondent did not establish financial assurance for post-closure care at the Kinsman facility as required by Ohio Admin. Code Rule 3745-55-45.

75. Respondent's failure to establish financial assurance for post-closure care as required by OAC Rule 3745-55-45 constitutes a violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-45 (40 C.F.R. § 264.145).

76. Respondent's violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-45 subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 5: FAILURE TO DEMONSTRATE FINANCIAL RESPONSIBILITY

77. Complainant incorporates paragraphs 1 through 56 of this CAFO as though set forth in this paragraph.

78. Until September 12, 2006, the date of closure, Respondent was required by the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-47 to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Kinsman facility.

79. At all times relevant to this CAFO, Respondent failed to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Kinsman facility as required by Ohio Admin. Code Rule 3745-55-47(A).

80. Respondent's failure to demonstrate financial responsibility as required by Ohio Admin. Code Rule 3745-55-47(A) constitutes a violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-47(A) (40 C.F.R. § 264.147).

81. Respondent's violation of the RCRA authorized regulation at Ohio Admin. Code Rule 3745-55-47(A) subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Injunctive Relief

82. Respondent must comply with the following injunctive relief.

a) Within 60 days of the effective date of this CAFO, Respondent shall submit a revised post-closure plan to Ohio EPA, including a ground-water monitoring plan and a revised cost estimate, that meets the applicable RCRA authorized requirements; and submit a copy to U.S. EPA. It is understood that the revised plan submitted may need modifications before it is approved. This is part of the approval process. The need for modifications shall not be cause to consider the submittal "unacceptable" for the purposes of this CAFO as long as the revised submittal meets the submittal requirements applicable for a post-closure plan and a ground water monitoring plan.

b) Within 30 days of the date Ohio EPA approves a revised post-closure plan, Respondent must update its Financial Assurance to provide for the cost estimated in that approved plan if required by the applicable RCRA authorized requirements.

Civil Penalty

83. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$15,000. Complainant originally calculated a penalty amount of \$3,205,074, but lowered the penalty to \$15,000, to be paid in annual installments with interest, based on Respondent's limited ability to pay and the costs of post-closure care. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003, and Respondent's ability to pay. Respondent agrees to pay the penalty amount of \$15,000 plus interest in five equal annual installments of \$3,000 plus interest, for a grand total penalty of \$15,900.49. Respondent shall pay the first installment of \$3,000 on or before October 31, 2009, pay the second installment of \$3,360 on or before October 31, 2010, pay the third

installment of \$3,270 on or before October 31, 2011, pay the fourth installment of \$3,180.49 on or before October 31, 2012, and pay the fifth installment of \$3,090 on or before October 31, 2013. Respondent shall make payments as provided in the attached schedule of payment.

84. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must state In the Matter of Diamond Hard Chrome Co., Inc., the docket number of this CAFO and the billing document number.

85. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Walt Francis (LR-8J)
RCRA Branch
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

86. This civil penalty is not deductible for federal tax purposes.

87. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

88. If Respondent fails to comply with any provision of this CAFO, the full amount of civil penalty proposed in the CAFO, that being \$15,000, immediately shall become due and owing, to be paid by Respondent as provided in Paragraphs 83-86, minus any penalty amounts on the principal earlier paid by Respondent. (See 31 C.F.R. § 901.8)

General Provisions

89. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

90. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

91. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

92. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, the U.S. EPA’s RCRA Civil Penalty Policy, and the U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

93. The terms of this CAFO bind Respondent, its successors, and assigns.

94. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

95. Each party agrees to bear its own costs and attorney’s fees in this action.

96. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Diamond Hard Chrome Co., Inc.
Docket No.

Diamond Hard Chrome Co., Inc.
Mr. John R. Tankovich, Respondent

10-1-2009
Date

John R. Tankovich
Mr. John R. Tankovich, President
Diamond Hard Chrome Co, Inc.

United States Environmental Protection Agency, Complainant

10/19/09
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Diamond Hard Chrome, Inc.
Docket No. RCRA-05-2010-0004

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OCT 26 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/22/09
Date

Walter W. Kovalyuk
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

In the Matter of:
Diamond Hard Chrome, Inc.
 Docket No. *RCRA-05-2010-0004*

DIAMOND HARD CHROME, INC.
 CIVIL PENALTY SCHEDULE OF PAYMENT

Installment	Due By	Payment	Principal	Interest
1 st payment	October 31, 2009	\$3,000.00	\$3,000.00	\$0.00
2 nd payment	October 31, 2010	\$3,360.00	\$3,000.00	\$360.00
3 rd payment	October 31, 2011	\$3,270.00	\$3,000.00	\$270.00
4 th payment	October 31, 2012	\$3,180.49	\$3,000.00	\$180.49
5 th payment	October 31, 2013	\$3,090.00	\$3,000.00	\$90.00
	Totals:	\$15,900.49	\$15,000.00	\$900.49

U.S. ENVIRONMENTAL
 PROTECTION AGENCY

OCT 06 2008

OFFICE OF REGIONAL

CASE NAME: Diamond Hard Chrome
DOCKET NO: RCRA-05-2010-0004

RECEIVED
OCT 26 2009

CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
USEPA
REGION 5

I hereby certify that today I filed the original of this **Consent Agreement and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Mr. Robert B. Casarona
Roetzel & Andress
1375 East Ninth Street
Cleveland, Ohio 44114

Certified Mail # 7009 1680 0000 7666 9399

Dated: 10/26, 2009



Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency

Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590