



## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the parties against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

### **The National Emission Standards for Hazardous Air Pollutants**

3.1. Sections 112(c), (d) and (k) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for major sources and certain area sources within those categories. 42 U.S.C. §§ 7412(c), (d) and (k). These standards are known as the National

Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories and are codified at 40 C.F.R. Parts 61 and 63.

3.2. “Hazardous air pollutant” (HAP) is defined as “any air pollutant listed pursuant to” CAA Section 112(b), and includes, among other pollutants, hydrogen fluoride (HF), polycyclic organic matter (POM) (a chemical group that includes polycyclic aromatic hydrocarbons (PAHs)), and metals such as Nickel, Cadmium, Chromium, Lead, Manganese, and Arsenic. 42 U.S.C. § 7412(a)(6), (b)(1).

3.3. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3). Section 112 of the CAA defines “major source” as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1). An “area source” is any source that is not a “major source.” 42 U.S.C. § 7412(a)(2).

3.4. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

3.5. “Existing Source” means any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

3.6. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA

Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the [CAA].” 40 C.F.R. § 63.2.

3.7. Pursuant to 40 C.F.R. § 63.2, “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

3.8. CAA Section 112(i)(3), 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. See also 40 C.F.R. §§ 61.05 and 63.4.

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations

3.9. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA has promulgated the National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations (hereinafter the “Plating and Polishing NESHAP”), which has been amended and is codified at 40 C.F.R. Part 63, Subpart WWWWWW. See 73 Fed. Reg. 37,728 (July 1, 2008) and 76 Fed. Reg. 57,913 (Sept. 19, 2011).

3.10. Pursuant to 40 C.F.R. § 63.11504(a), the Plating and Polishing NESHAP applies to the owner or operator of a plating and polishing facility that is an area source of HAPs and is engaged in, *inter alia*, non-chromium electroplating, or that uses or has emissions of one or more plating and polishing metal HAP, as that term is defined in 40 C.F.R. § 63.11511.

3.11. The Plating and Polishing NESHAP sets forth, *inter alia*, control requirements (63.11507(a) through (f)), management practices (63.11507(g)), recordkeeping requirements (63.11509), and reporting requirements (63.11508) for affected facilities.

## Oregon State Implementation Plan

3.12. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3.13. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, the EPA has identified sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), fine particulate matter (PM<sub>2.5</sub>), particulate matter (PM or PM<sub>10</sub>), and ozone as criteria pollutants, and has promulgated NAAQS for such pollutants. *See* 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.11, and 50.15.

3.14. The CAA requires each state to adopt a plan for the implementation, maintenance, and enforcement of the NAAQS for pollutants, and to submit that plan to EPA for approval. 42 U.S.C. § 7410.

3.15. EPA has approved a state implementation plan (SIP) for the State of Oregon, and EPA has codified the approved SIP at 40 C.F.R. § 52.1970.

3.16. Pursuant to Oregon Administrative Rule (OAR) 340-216-0020(3), which EPA approved into the Oregon SIP, no person may construct, install, develop, or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an Air Contaminant Discharge Permit (ACDP).

3.17. Pursuant to OAR 340-200-0020(116), which EPA approved into the Oregon SIP, “person” means individual corporations, associations, firms, partnerships, joint stock companies,

public and municipal corporations, political subdivisions, the State of Oregon, and any agencies thereof, and the federal government and any agencies thereof.

3.18. The Oregon Department of Environmental Quality issued to Respondent Permit Number AQGP-026A on September 16, 2021, with an expiration date of April 1, 2031 (“AQDP-026A”), and Permit Number AQGP-002 on February 17, 2022, with an expiration date of December 1, 2022 (“AQGP-002”).

### **General Findings**

3.19. Respondent is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and OAR 340-200-0020(116).

3.20. At all times relevant to this Consent Agreement, Respondent was the “owner” and “operator” of the East Side Plating, Inc. facility at 8400 SE 26<sup>th</sup> Place, Portland, Oregon 97202 (the “Facility”), as those terms are defined in 40 C.F.R. § 63.2.

3.21. At all times relevant to this Consent Agreement, the Facility was an “affected source” as that term is defined at 40 C.F.R. § 63.2.

3.22. At all times relevant to this Consent Agreement, Respondent’s Facility was subject to the NESHAP regulations at 40 C.F.R. Part 63, Subpart WWWW.

3.23. On July 13, 2022, and November 9, 2022, EPA conducted inspections of the Facility.

### **Count 1: Failure to Implement Standards for Non-Chromium Electrolytic Plating Tanks**

3.24. Pursuant to 40 C.F. R. § 63.11507(a), the requirements of paragraphs (1), (2), or (3) of that subsection apply to the owner or operator of a non-cyanide electroplating, electroforming, or electrofinishing tank that: contains one of more of the plating and polishing metal HAPs; and, operates at a pH of less than 12.

3.25. The tanks referred to in 40 C.F.R. § 63.11507(a) are collectively referred to as “electrolytic” process tanks, as that term is defined in 40 C.F.R. § 63.11511.

3.26. Pursuant to 40 C.F.R. § 63.11507(a), the owner or operator of an electrolytic process tank must comply with one of the following standards:

- a. Use a wetting agent/fume suppressant in the bath of the affected tank according to the requirements of 40 C.F.R. § 63.11507(a)(1)(i) through (iii);
- b. Capture and exhaust emissions from the affected tank to either a composite bed mesh pad, a packed bed scrubber, or a mesh pad mist eliminator, according to the requirements of 40 C.F.R. § 63.11507(a)(2)(i) and (ii); or
- c. Cover the affected tank surface according to 40 C.F.R. § 63.11507(3)(i) and (ii).

3.27. The electrolytic process tank standards are also a condition of Respondent’s AQGP-002, Condition 3.1.

3.28. At the time of the inspections, EPA identified six tanks that meet the definition of an electrolytic process tank and that Respondent was not operating in compliance with any of the three standards under 40 C.F.R. § 63.11507(a): TS-2504, TS-2505, TS-2506, TS-2821, TS-2416B, and TS-2620.

3.29. By failing to comply with any of the compliance options at these electrolytic process tanks, Respondent violated 40 C.F.R. § 63.11507(a) and AQGP-026A, Condition 3.1.

**Count 2: Failure to Comply with Tank Management Practices**

3.30. Pursuant to 40 C.F.R. § 63.11507(a), the owner or operator of an electrolytic process tank must comply with the management practices set forth in subsection (g) of that section.

3.31. As relevant here, 40 C.F.R. § 63.11507(g)(9) requires Respondent to perform general good housekeeping, such as regular sweeping or vacuuming, if needed, and periodic washdowns, as practicable.

3.32. As relevant here, 40 C.F.R. § 63.11507(g)(10) requires Respondent to minimize spills and overflow of tanks, as practicable.

3.33. As relevant here, 40 C.F.R. § 63.11507(g)(12) requires Respondent to perform regular inspections to identify leaks and other opportunities for pollution prevention.

3.34. The electrolytic process tank management practices are also a condition of Respondent's AQGP-026A, Condition 9.1.

3.35. At the time of the November 9, 2022, inspection, EPA observed widespread noncompliance with these requirements, including:

- a. Lines 24 and 26: the sump pump was filled with a significant amount of spilled plating solution due to hoses that were left running, submerged pipes that were disconnected, and dragout from the plating tanks. Plating liquid was splashing onto the catwalk due to an air leak. EPA observed poor housekeeping throughout the lines, including dirt and residue covering the tanks. This included affected tanks TS-2402, TS-2461B, TS-2417, TS-2619B, TS-2620, TS-2630, TS-2633, and TS-2633.
- b. Line 28: EPA observed poor housekeeping throughout the line, including dirt and residue covering the tanks. This included affected tanks TS-2801, TS-2861C, TS-2817C, TS-2818C, TS-2819C, TS-2820C, TS-2821, and TS-2831.
- c. Line 25: the sump pump was filled with a significant amount of spilled plating solution, and a Facility representative was unable to identify the last time



Respondent had pumped out the sumps. EPA also observed poor housekeeping throughout the line, including dirt and residue covering the tanks. This included affected tanks TS-2504, TS-2505, TS-2506, TS-2509, and TS-2510.

- d. Line 21: the sump pump was filled with a significant amount of spilled plating solution. EPA also observed poor housekeeping throughout the line, including dirt and residue covering the tanks. This included affected tanks TS-2101D, TS-2102B, TS-2109B, and TS-2111.
- e. Line 22: EPA observed poor housekeeping throughout the line, including dirt and residue covering the tanks. This included affected tanks TS-2206, TS-2210, TS-2212, TS-2213, TS-2214C, TS-2215, and TS-2216.

3.36. By failing to comply with applicable management practices at these affected electrolytic process tanks, Respondent violated 40 C.F.R. § 63.11507(g) and AQGP-026A Condition 9.1.

**Count 3: Failure to Maintain Records of Compliance with Management Practices**

3.37. Pursuant to 40 C.F.R. § 63.11507(a), the owner or operator of an electrolytic process tank must comply with one of the three compliance options listed in paragraphs (a)(1) through (3) of that section.

3.38. According to records provided to EPA, Respondent has chosen the first compliance option under 40 C.F.R. § 63.11507(a)(1)—“use a wetting agent/fume suppressant in the bath of the affected tank”—for the following tanks: TS-2206, TS-2619B, TS-2630, TS-2633, and TS-2634.

3.39. Pursuant to 40 C.F.R. § 63.11508(d)(3), the owner or operator of a tank using the wetting agent/fume suppressant compliance option must demonstrate compliance by, *inter alia*, recording each addition of wetting agent/fume suppressant to the tank bath.

3.40. Pursuant to 40 C.F.R. § 63.11509(e)(3) and (f), Respondent must keep these records generated for a minimum of five years following the date of each occurrence.

3.41. According to records provided to EPA, Respondent failed to maintain records of wetting agent/fume suppressant chemical additions to electrolytic nickel-plating tanks for calendar years 2019, 2020, and 2021.

3.42. By failing to maintain these records, Respondent violated 40 C.F.R. § 63.11509(e)(3) and (f).

#### **Count 4: Failure to Maintain Records of Tank Ampere Hours**

3.43. Pursuant to Conditions 10.1.g and 10.2 of Respondent's AQGP-026A, Respondent must maintain records of the total ampere hours for each tank that uses or has emissions of one or more of the plating and polishing metal HAPs (cadmium, chromium, lead, manganese, or nickel) for a minimum of five years.

3.44. At the time of the November 9, 2022, inspection, Respondent was not operating ampere meters at any of its electrolytic nickel-plating tanks, in violation of Conditions 10.1.g and 10.2 of Respondent's AQGP-026A.

#### **Enforcement Authority**

3.45. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, as amended, EPA may assess a civil penalty of not more than \$57,617 per day of violation.

#### IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is \$139,505 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery (no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
R10\_RHC@epa.gov

John Keenan  
U.S. Environmental Protection Agency  
Region 10  
Keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by

the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [Henderson.Jessica@epa.gov](mailto:Henderson.Jessica@epa.gov), within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

\_\_\_\_\_

\_\_\_\_\_  
GARY REHNBERG  
East Side Plating, Inc.

DATED:

FOR COMPLAINANT:

\_\_\_\_\_

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2024-0040
	)	
EAST SIDE PLATING, INC.	)	<b>FINAL ORDER</b>
	)	
Portland, Oregon	)	
	)	
Respondent.	)	
	)	
_____	)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.



1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

---

Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: East Side Plating, Inc., Respondent, Docket No.: CAA-10-2024-0040**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Brandon Cobb  
U.S. Environmental Protection Agency  
Region 10

cobb.brandon@epa.gov

Gary Rehnberg  
East Side Plating, Inc.  
8400 SE 26<sup>th</sup> Place  
Portland, Oregon 97202

gary@eastsideplating.com

DATED this \_\_\_\_ day of \_\_\_\_\_ 2024.

---

Regional Hearing Clerk  
EPA Region 10