

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2009 FEB -3 AM 10:12  
REGIONAL HEARING  
CLERK

In the matter of: <b>KIMBER MANUFACTURING, INC.</b> 1 Lawton Street Yonkers, New York 10705  Respondent	<b><u>CONSENT AGREEMENT</u></b> <b><u>AND</u></b> <b><u>FINAL ORDER</u></b>  <b>DOCKET NO. CWA-02-2008-3402</b>
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**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), herein simultaneously commencing and concluding this proceeding by the issuance of this Consent Agreement and Final Order ("CA/FO"), against Respondent KIMBER MANUFACTURING, INC. ("Respondent"), and,

Respondent neither admits nor denies the allegations and findings contained in the CA/FO and does not admit any liability to the United States arising out of the matters alleged in the CA/FO; and,

Complainant and Respondent having agreed that, notwithstanding their respective positions herein, settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

**I. PRELIMINARY STATEMENT**

1. EPA is initiating this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1319(g); and 40 CFR §22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), which set forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 CFR §22.18 (b)(2) and (3).

In the matter of:  
**KIMBER MANUFACTURING, INC.**

### Federal NPDES Requirements

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
3. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
4. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
5. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity. The regulations at 40 CFR §122.26(b)(14) establish requirements for storm water discharges associated with industrial activity.
6. Additionally, under the authority granted to the New York State Department of Environmental Conservation ("NYSDEC") by the EPA under Section 402(b) of the Act, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
7. The terms "Industrial Storm Water Permit", "Multi Sector General Storm Water Permit" or "MSGP" mean the SPDES Multi-Sector General Permit, Permit for Storm Water Discharges Associated with Industrial Activity defined by the present general permit number GP-0-06-002 and/or the previous Industrial Storm Water Permit series denoted as GP-98-03. The current MSG denoted as GP-0-06-002 was issued by the NYSDEC, pursuant to Section 402 of the Clean Water Act, and became effective on March 28, 2007 and will expire on March 27, 2012. The previous MSGP denoted as GP-98-03 became effective on November 1, 1998 and expired on November 1, 2003 unless administratively extended by the NYSDEC.

8. Operators regulated under 40 CFR §122.26(b)(14) must seek MSGP coverage by filing a Notice of Intent or Termination ("NOIT") form under the terms and conditions of the MSGP GP-0-06-002 (or previous MSGP, namely GP-98-03), or if all of the conditions of No Exposure certification apply, they must be submitted in accordance with 40 CFR 122.26.

#### Federal Pretreatment Requirements

9. Section 307(d) of the Act, 33 U.S.C. §1317(d), makes it unlawful for the owner or operator of any facility which introduces pollutants into a treatment works to operate such facility in violation of any applicable pretreatment standard, general or categorical, which is promulgated by the Administrator of EPA.
10. Pursuant to Sections 307 and 308 of the Act, 33 U.S.C. §§1317 and 1318, the Administrator of EPA promulgated General Pretreatment Regulations at 40 C.F.R. Part 403 for certain facilities which introduce pollutants into publicly owned treatment works ("POTW").
11. The Westchester County Department of Environmental Facilities ("WCDEF") is an "Approved Pretreatment Program" within the meaning of 40 C.F.R. §403.3(d). Therefore, WCDEF is the "Control Authority" pursuant to 40 C.F.R. §403.12(a), as defined for the purposes of 40 C.F.R. §403.12(b), (d) and (e).
12. Pursuant to Sections 307(b) and 308(a) of the Act, 33 U.S.C. §§1317(b) and 1318(a), the Administrator of EPA promulgated 40 C.F.R. §403.12(e) which requires an industrial user subject to a categorical pretreatment standard to submit to the "Control Authority" (defined at 40 C.F.R. §403.12(a)) "Periodic Reports on Continued Compliance" ("Periodic Reports"). These reports, due during the months of June and December of each year, must, among other things, indicate the nature and concentration of those pollutants in the effluent subject to the applicable Categorical Pretreatment Standards.
13. Pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), the Administrator of EPA promulgated the Categorical Pretreatment Standards for the Metal Finishing Point Source Category ("Pretreatment Standards for Existing and New Sources"), 40 C.F.R. Part 433. These standards were effective on July 15, 1983.
14. 40 C.F.R. §433.10(a) specifies that plants performing any one of six metal finishing operations are subject to the requirements of Part 433. The six metal finishing operations are: electroplating, electroless plating, anodizing (chromating, phosphating, and coloring), chemical etching and milling, and printed circuit board manufacture. 40 C.F.R. §433.10(a) further specifies that, if a plant performs any of

these six operations, Part 433 applies to wastewater discharges from those operations and from an additional forty (40) operations. These additional operations include, but are not limited to, cleaning, sand blasting, solvent degreasing and electrostatic painting.

15. This Consent Agreement and Final Order alleges that Respondent failed to comply with the federal NPDES requirements in violation of the Act and §§ 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342; and, the federal pretreatment requirements in violation of the Act and Section 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318 and.
16. EPA, simultaneously with the issuance of this CA/FO, is notifying the State of New York regarding this action and is offering an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
17. This action is being public noticed.

## **II. STATEMENT OF FACTS**

Complainant alleges as follows:

18. Respondent, Kimber Manufacturing, Inc., owns and/or operates a manufacturing facility located at 1 Lawton Street, Yonkers, New York 11705 (the "Facility").
19. Commencing on or about January 1, 1997, the Facility has been introducing non-domestic treated wastewater from its manufacturing processes into the Westchester County Department of Environmental Facilities ("WCDEF") Sewage Treatment Plant (Yonkers Joint), a "treatment works" within the meaning of Section 212(2)(a) of the Act, 33 U.S.C. §1292(2)(a), which is publicly owned.
20. The facility is an Industrial User ("IU") within the meaning of 40 C.F.R. §403.3(h).
21. At the Facility, Respondent performs an electroplating black oxide process, a coating operation pursuant to 40 C.F.R. §433.10(a).
22. Specifically, Respondent is subject to the Pretreatment Standards for Existing and New Sources, 40 C.F.R. §433.17.

**Failure to submit the BMR, Compliance Reports and Periodic Reports to the Control Authority**

23. As a non-domestic user of a POTW, Respondent is required to comply with the requirements and standards promulgated by the EPA pursuant to Section 307 of the Clean Water Act, 33 U.S.C. §1317, including the General Pretreatment Standards found at 40 C.F.R. §403.
24. Pursuant to 40 C.F.R. §403.12(b), Respondent was required to submit to the Control Authority a baseline monitoring report ("BMR") regarding the discharge of wastewater from the IU to the WCDEF Sewage Treatment Plant including, among other things, the following:
  - a) A description of the operations at the IU, including a measurement of the IU's average production rate;
  - b) A record of measurement of the average daily flow and maximum daily flow of regulated process wastewater from the IU to the POTW; and
  - c) A sampling and analysis of the nature and concentration of regulated pollutants present in the IU's wastewater from each regulated process. The sample shall be representative of daily operations.
25. Pursuant to 40 C.F.R. §403.12(b), and 40 C.F.R. §433.17, Respondent was required to submit a BMR to the Control Authority at least ninety (90) days prior to commencement of discharge. The BMR was due no later than October 3, 1996.
26. Pursuant to 40 C.F.R. §403.12(d) and 40 C.F.R. §433.17, Respondent was required to submit to the Control Authority, within ninety (90) days following commencement of the introduction of wastewater into the POTW, a report on Compliance with Categorical Pretreatment Standard Deadline (a "90-day Compliance Report") containing the information listed in 40 C.F.R. §§403.12(b)(4)-(6). The ninety (90)-day Compliance Report was due no later than April 3, 1997.
27. Respondent is subject to 40 C.F.R. §403.12(e) and was required to submit the Periodic Reports for the facility by June 30 and December 31 every year.
28. Respondent failed to submit pretreatment reports as required by the General Pretreatment Regulations, 40 C.F.R. Part 403.
29. Based upon above findings, Respondent is in violation of Sections 307 and 308 of the Act, 33 U.S.C. §§1317 and 1318.

Failure to obtain a SPDES permit for the storm water discharge

30. Respondent has conducted industrial activity under SIC Code 3484 and therefore is regulated under 40 CFR 122.26(b)(14) and the NYSDEC MSGP.
31. Storm Water runoff from the site discharges to Tibbetts Brook, which discharges to the Saw Mill River, a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).
32. Respondent failed to obtain a SPDES General Permit for Storm Water Discharges Associated with Industrial Activity.
33. Based upon above findings, Respondent is in violation of §§ 301 and §402 the Act, 33 U.S.C. §§1317 and 1318.

### **III. TERMS OF SETTLEMENT**

34. This Consent Agreement and Final Order shall apply to and be binding upon the Complainant and the Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
35. For purposes of this CA/FO, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CA/FO and that Complainant's allegations, if proven, would state a claim upon which relief can be granted against Respondent.
36. For purposes of this CA/FO, Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in this CA/FO, consents to the terms of this Consent Agreement and Final Order.
37. For purposes of this CA/FO, Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Consent Agreement.
38. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Eighty Five Thousand (\$85,000.00) Dollars.
39. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and Final Order, and consents to the payment of the civil penalty cited in the foregoing Paragraph.

### **IV. PAYMENT OF PENALTY**

In the matter of:  
**KIMBER MANUFACTURING, INC.**

40. No later than forty-five (45) days after the date signature on the Final Order (at the end of this document), Respondent shall pay the penalty of Eighty Five Thousand (\$85,000.00) Dollars by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Respondent shall perform payment pursuant to the following:

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**WIRE TRANSFERS:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Respondent shall also send copies of this payment to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

and,

In the matter of:  
**KIMBER MANUFACTURING, INC.**

Henry Mazzucca  
Division of Enforcement and Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

41. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the “due date”.
- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
  - b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
  - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
42. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent’s federal or state taxes.

**V. GENERAL PROVISIONS**


43. The Respondent waives any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed



settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

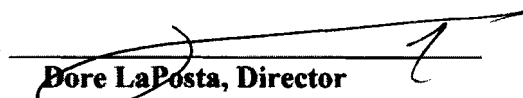
44. Except as provided in Paragraph 46, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
45. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
46. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Consent Agreement and Final Order.
47. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any claims not resolved by this CA/FO subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
48. Nothing in this CA/FO shall be construed to create any rights in, or grant any cause of action to, any person not a party to this CA/FO; provided however, that the preceding clause shall not be construed to waive or nullify any rights that any person not a signatory to this CA/FO may have under applicable law.
49. Each undersigned representatives of the parties to this Consent Agreement certify that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
50. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY:   
LESLIE EDELMAN  
President  
Kimber Manufacturing, Inc.  
1 Lawton Street  
Yonkers, New York 11705

DATE: Sept 12, 2008

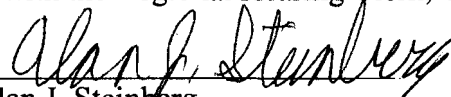
COMPLAINANT:

BY:   
**Dore LaPosta, Director**  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

DATE: SEPTEMBER 24, 2008

**VI. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

12-8-08 

Date

Alan J. Steinberg  
Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the matter of: <b>KIMBER MANUFACTURING, INC.</b> 1 Lawton Street Yonkers, New York 10705  Respondent	<b><u>CONSENT AGREEMENT</u></b> <b><u>AND</u></b> <b><u>FINAL ORDER</u></b>  <b>DOCKET NO. CWA-02-2008-3402</b>
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**Certificate of Service**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

**Copy by Certified Mail**

**Return Receipt Requested:**    **LESLIE EDELMAN**  
President  
Kimber Manufacturing, Inc.  
1 Lawton Street  
Yonkers, New York 11705

**Original and One Copy**

**By Internal Mail (pouch):**    Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Date: 12/12/08                        
NAME: