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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**JUN -7 PM 3: 26**

**REGION IX**

**U.S. EPA, REGION IX  
REGIONAL HEARING CLERK**

In the Matter of:	)	
	)	
<b>Classic Plating, Inc.</b>	)	Docket No. RCRA-09-2011-05
	)	
EPA ID No. CAD 072924103	)	
Respondent.	)	
	)	
_____	)	

**MOTION FOR DEFAULT ORDER**

The Complainant, the United States Environmental Protection Agency ("EPA"), moves for the issuance of an order under 40 C.F.R. § 22.17, finding that Respondent Classic Plating, Inc. is in default in this matter. Complainant also moves for a finding that Respondent violated Sections 3002 and 3004 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6922 and 6924, and the regulations adopted pursuant thereto, as described generally in the Complaint and specifically in Counts I through V of the Complaint.

**I. Respondent Should Be Found In Default**

Title 40 of the Code of Federal Regulations ("40 CFR") § 22.17(a) provides that a party may be found in default upon failure to timely file an answer to the Complaint. The Complaint in this matter was filed on or about February 28, 2011. Pursuant to 40 CFR § 22.15(a), an Answer to the Complaint should be filed with the Regional Hearing Clerk within thirty (30) days of service of the Complaint. The Complaint was served by certified mail on the Respondent on

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March 8, 2011: No Answer to the Complaint has been filed with the Regional Hearing Clerk.

Thus, a finding of default is appropriate.

40 CFR § 22.17(c) provides that when the Presiding Officer finds that default has occurred, he shall issue a default order as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondent has failed to present any information tending to establish good cause for the failure to file an Answer to the Complaint. Accordingly, a finding of default is appropriate.

## II. Respondent's Actions Violated Hazardous Waste Requirements

Under 40 CFR § 22.17(a), default by Respondent constitutes, for purposes of this proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Because all the factual allegations of the Complaint are admitted and deemed true upon default, and such facts are legally sufficient to establish the alleged violations by a preponderance of the evidence, a Default Order should issue finding Respondent liable for the violations.

A. Count I of the Complaint alleges that the Respondent violated 22 CCR § 66262.34(a)(4) and 22 CCR § 66265.31, which require that the facility maintain and operate the facility in a manner to minimize the releases of hazardous wastes held in secondary containment [*see also* 40 CFR § 265.34(a)(4) and 40 CFR § 265.31]. The factual allegations of paragraphs 6 through 25 of the Complaint, which are deemed admitted upon default, establish the facts necessary for a finding that the violations occurred as alleged in Count I.

B. Count II of the Complaint alleges that the Respondent violated 22 CCR § 66262.34(a)(1)(A) and 22 CCR § 66265.173(a), which require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste as required [*see also* 40 CFR § 262.34(a) and 40 CFR § 265.173(a)]. The allegations of paragraphs 6 through 29 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count II.

C. Count III of the Complaint alleges that the Respondent violated 22 CCR § 66262.41(a), which requires that each owner or operator of a facility file a biennial report for the hazardous waste generated the prior year [*see also* 40 CFR § 262.41(a)]. The allegations of paragraphs 6 through 33 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count III.

D. Count IV of the Complaint alleges that the Respondent violated 22 CCR § 66262.34(a)(4) and 22 CCR § 66265.52(d), which require that each owner and operator of a facility must maintain a contingency plan that lists names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list shall be kept up to date [*see also* 40 CFR § 262.34(a)(4) and 40 CFR § 265.52(d)]. The allegations of paragraphs 6 through 37 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count IV.

E. Count V of the Complaint alleges that the Respondent violated 22 CCR § 66262.34(a) and 22 CCR § 66270.1(c), which require generators to obtain a permit for the storage of

hazardous waste [see also 40 CFR § 262.34(a)(2) and (3) and 40 CFR § 270.1(c)]. The allegations of paragraphs 6 through 43 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count V.

Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. California became authorized for RCRA effective August 1, 1992. See 57 Fed. Reg. 32726 (July 23, 1992).<sup>1</sup> A violation of California's authorized hazardous waste program, found at Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code ("H&SC") § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

By violating the requirements of California's authorized program, Respondent has violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, and 22 CCR §§ 66262.34(a)(4) and 66265.31 [see also 40 CFR §§ 265.34(a)(4) and 265.31]; 22 CCR §§ 66262.34(a)(1)(A) and 66265.173(a) [see also 40 CFR §§ 262.34(a) and 265.173(a)]; 22 CCR § 66262.41(a) [see also 40 CFR § 262.41(a)]; 22 CCR §§ 66262.34(a)(4) and 66265.52(d) [see

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<sup>1</sup> Certain later amendments were federally authorized in 2001. For a list of the amendments to 22 CCR § 66270.1 *et seq.* that were authorized in 2001, see 66 Fed. Reg. 33037 *et seq.* (June 20, 2001) and 66 FR 49118 *et seq.* (Sept. 26, 2001).

also 40 CFR §§ 262.34(a)(4) and 265.52(d)]; and 22 CCR §§ 66262.34(a) and 66270.1(c) [*see also* 40 CFR §§ 262.34(a)(2) & (3) and 270.1(c)].

Accordingly, the Presiding Officer should issue a Default Order finding the Respondent liable for the violations described in Counts I through V.

### III. An Appropriate Penalty Should Be Assessed

In assessing a penalty, the Presiding Officer must determine the amount of the penalty based on the evidence in the case, in accordance with the statutory criteria set forth in Section 3008(a)(3) of RCRA, and considering any civil penalty guidelines issued under RCRA. 40 CFR § 22.27(b). Based on the nature, circumstances, extent, and gravity of the violations described in Counts I through V of the Complaint, Complainant proposes that a civil penalty in the amount of \$841,780.00 be assessed against the Respondent.

The penalty for each count is based on the 2003 RCRA Civil Penalty Policy ("Penalty Policy" or "Policy"), as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19. Under the Policy, a gravity-based penalty component is determined through consideration of two factors: the potential for harm and the extent of deviation from a statutory or regulatory requirement. Policy, p. 2. Both the potential for harm and the extent of deviation in a particular count are characterized as major, moderate or minor, according to standards set forth in the Policy. *Id.*, pp. 12 - 18. These two factors are incorporated into a penalty matrix set forth in the Policy. *Id.*, p. 2. The Policy matrices were updated in 2005 to implement the Civil Monetary Penalty Inflation Adjustment Rule which was effective on March 15, 2004, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004),

and again in 2008 for violations that occur after Jan. 11, 2009. *See* 73 Fed. Reg. 75340 (Dec. 11, 2008).

The gravity-based component is selected from within the range for the appropriate cell within the matrix. *Id.*, p. 2. The Policy provides that the selection of the exact penalty amount within the cell is left to the discretion of enforcement personnel, so they may adapt the penalty amount to the gravity of the violation and its surrounding circumstances. *Id.*, p. 19.

The Policy also provides for multi-day penalties for continuing violations. *Id.*, p. 23. Once the duration of the violation is determined, the multi-day component of the penalty is calculated pursuant to a Multi-Day Matrix found in the Policy. *Id.*, p. 26. After the gravity-based penalty is calculated, including any multi-day component, it may be adjusted upward or downward to reflect the particular circumstances surrounding the violation, such as good faith efforts to comply, degree of willfulness or negligence, history of noncompliance, ability to pay, other unique factors, and supplemental environmental projects. *Id.*, p. 3. Multiple regulatory sections may be cited, but a single penalty for multiple claims may be appropriate to pursue in litigation or obtain in settlement. *Id.*

#### Count I – Failure to Minimize the Possibility of Release of Hazardous Waste

This violation began on or prior to August 14, 2009 and continued for at least 180 days. As stated in the Complaint, this violation presents a major potential for harm to the environment and is a major deviation from the regulatory requirement.

A major potential for harm to the environment and the regulatory program means that the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

The matrix value in the Penalty Policy for violations that are major/major is \$37,500 to \$28,330. Absent any unique mitigating or aggravating factors as set forth in the Penalty Policy, Complainant proposes a penalty of \$32,915, taken from the midpoint of the matrix for this Count. Multi-day penalties are considered mandatory for days 2-180 for violations with the gravity-based designation of major/major. Policy, p. 25. The multi-day matrix value in the Penalty Policy for violations that are major/major is \$7,090 to \$1,420. Complainant proposes a penalty of \$4,255, again taken from the midpoint of the matrix. A multi-day component of \$4,255 per day for 179 days increases the penalty by \$761,645 to a total gravity-based penalty of \$794,560 for this Count.

## Count II -- Failure to Close Containers

This violation continued for at least one day, August 14, 2009. As stated in the Complaint, this violation presents a minor potential for harm to the environment and is a minor deviation from the regulatory requirement.

A minor potential for harm to the environment and the regulatory program means that the violation poses a relatively low risk of exposure of humans or other environmental receptors to waste or constituents and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A minor deviation from the regulatory requirement means that the violator deviates somewhat from the regulatory or statutory requirements but most -- or all important aspects -- of the requirements are met.

The matrix value in the Penalty Policy for violations that are minor/minor is \$710 to \$150. Absent any unique mitigating or aggravating factors as set forth in the Penalty Policy, Complainant proposes a penalty of \$430, taken from the midpoint of the matrix for this Count.

## Count III -- Failure to Submit a Biennial Report

This violation occurred on March 1, 2008 and March 1, 2010. As stated in the Complaint, this violation presents a moderate potential for harm to the environment and is a major deviation from the regulatory requirement.

A moderate potential for harm to the environment and the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental

receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

The matrix value in the Penalty Policy for violations that are moderate/major is \$15,580 to \$11,330. Absent any unique mitigating or aggravating factors as set forth in the Penalty Policy, Complainant proposes a penalty of \$13,445, taken from the midpoint of the matrix for this Count. Because this violation occurred twice, the total penalty for this count is \$26,890.

#### Count IV - Failure to Properly Maintain a Contingency Plan

This violation began on or prior to August 14, 2009 and continued for at least 180 days. This violation presents a minor potential for harm to the environment and is a minor deviation from the regulatory requirement.

A minor potential for harm to the environment and the regulatory program means that the violation poses a relatively low risk of exposure of humans or other environmental receptors to waste or constituents and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A minor deviation from the regulatory requirement means that the violator deviates somewhat from the regulatory or statutory requirements but most -- or all important aspects -- of the requirements are met.

The matrix value in the Penalty Policy for violations that are minor/minor is \$710 to \$150. Absent any unique mitigating or aggravating factors as set forth in the Penalty Policy, Complainant proposes a penalty of \$430, taken from the midpoint of the matrix for this Count. Multi-day penalties are discretionary for all days of all violations with the gravity-based designation of minor/minor. Policy, p. 26. Complainant proposes no multi-day component be added to this Count.

#### Count V - Storage of Hazardous Waste without a Permit

This violation began on or prior to August 14, 2009 and continued for at least 180 days. As stated in the Complaint, this violation presents a major potential for harm to the environment and is a major deviation from the regulatory requirement.

A major potential for harm to the environment and the regulatory program means that the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

The matrix value in the Penalty Policy for violations that are major/major is \$37,500 to \$28,330. Absent any unique mitigating or aggravating factors as set forth in the Penalty Policy, Complainant proposes a penalty of \$32,915, taken from the midpoint of the matrix for this Count. Multi-day penalties are considered mandatory for days 2-180 for violations with the gravity-based designation of major/major. Policy, p. 25. The multi-day matrix value in the Penalty Policy for violations that are major/major is \$7,090 to \$1,420. Complainant proposes a penalty of \$4,255, again taken from the midpoint of the matrix. A multi-day component of \$4,255 per day for 179 days increases the penalty by \$761,645 to a total gravity-based penalty of \$794,560 for this Count.

The proposed penalties are summarized as follows:

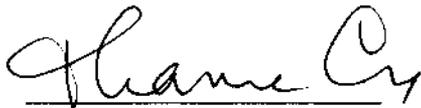
Count I	\$ 794,560.00
Count II	\$ 430.00
Count III	\$ 26,890.00
Count IV	\$ 430.00
Count V	<u>\$ 794,560.00</u>
Total	\$1,616,870.00

#### IV. Conclusion

Respondent should be found in default for failing to file an Answer to the Complaint in a timely manner. Accordingly, the Complainant requests that the Regional Judicial Officer issue an order finding that the Respondent violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§

6922 and 6924, and 22 CCR §§ 66262.34(a)(4) and 66265.31 [*see also* 40 CFR §§ 265.34(a)(4) and 265.31]; 22 CCR §§ 66262.34(a)(1)(A) and 66265.173(a) [*see also* 40 CFR §§ 262.34(a) and 265.173(a)]; 22 CCR § 66262.41(a) [*see also* 40 CFR § 262.41(a)]; 22 CCR §§ 66262.34(a)(4) and 66265.52(d) [*see also* 40 CFR §§ 262.34(a)(4) and 265.52(d)]; and 22 CCR §§ 66262.34(a) and 66270.1(c) [*see also* 40 CFR §§ 262.34(a)(2) & (3) and 270.1(c)]. Finally, an appropriate penalty should be assessed in the amount of \$1,605,270.00.

Respectfully submitted,



Thanne Cox  
Assistant Regional Counsel  
Office of Regional Counsel

6/7/2012  
Date

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of	)	U.S. EPA Docket No.
	)	RCRA- 9-2011-0005
Classic Plating, Inc.	)	
	)	ORDER ON MOTION FOR
EPA ID No. CAD 072924103	)	DEFAULT JUDGMENT
	)	
<u>Respondent.</u>	)	

**INTRODUCTION**

This proceeding arises under Section 3008 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6928. This proceeding is governed by 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 (Consolidated Rules), 40 CFR §§ 22.1-22.32.

**PROCEDURAL HISTORY**

On February 28, 2011, the United States Environmental Protection Agency (EPA or Complainant) filed a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing against Classic Plating, Inc. (Respondent). In sum Complainant alleged five RCRA violations: (1) failure to minimize the possibility of release of hazardous waste in violation of 22 CCR § 66262.34(a)(4) and 22 CCR §66265.31 (*see also* 40 CFR § 265.34(a)(4) and 40 CFR §265.31);<sup>1</sup> (2) failure to close containers in violation of 22 CCR §66262.34(a)(1)(A) and 22 CCR §66265.173(a) (*see also* 40 CFR §262.34(a) and 40 CFR §265.173(a)); (3) failure to submit Biennial Reports in violation of 22 CCR §66262.41(a) (*see also* 40 CFR §262.41(a)); (4) failure to have a complete contingency plan in violation of 22 CCR §66262.34(a)(4) and 22 CCR § 66265.52(d) (*see also* 40 CFR §262.34(a)(4) and 40 CFR § 265.52(d)); and (5) storing hazardous waste without a permit in violation of 22 CCR § 66262.34(a) and 22 CCR § 66270.1(c) (*see also* 40 CFR §262.34(a)(2) & (3) and 40 CFR §270.1(c)).

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<sup>1</sup> All citations to the "CCR" refer to Division 4.5 of Title 22 of the current California Code of Regulations. Complainant is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992) and September 26, 2001 (66 FR 49118, September 26, 2001). Corresponding Federal citations are provided in brackets.

40 CFR § 22.15(a) required Respondent to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on March 8, 2011. However, Respondent failed to answer the Complaint.

On June 7, 2012, Complainant filed a Motion for Default pursuant to 40 CFR § 22.17, seeking a finding of default in this case and proposing a penalty of \$1,616,870.00. Respondent did not oppose Complainant's Motion for Default.

### **FINDINGS OF FACT**

Pursuant to 40 CFR § 22.17 and based upon the entire record in this matter, I make the following factual findings:

1. Respondent, Classic Plating, Inc. ("Respondent") operates a plating facility located at 2985 E. Miraloma Ave., Suite U, Anaheim, CA 92805 (the "Facility").
2. Respondent is a "person" as defined in 22 CCR § 66260.10 [*see also* 40 CFR § 260.10]; and an "operator" of a facility as defined in 22 CCR § 66260.10 [*see also* 40 CFR § 260.10].
3. Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 CCR §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 CFR §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, contaminated paper (F006/CA-181), polishing debris (CA-352), nitric and sulfuric acid (D002/D007), and chrome filter cake and sludge (F006)
4. Complainant issued a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (Complaint) against Respondent on February 28, 2011.
5. Pursuant to 40 CFR § 22.15(a), Respondent was required to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on March 8, 2011.
6. To date, neither Complainant nor the Regional Judicial Clerk has received Respondent's answer to the Complaint.
7. On June 7, 2012, Complainant filed a Motion for Default Order, seeking a finding of default in this case and proposing a penalty of \$1,616,870.00. The Motion included an analysis of each count and a proposed penalty, applying the 2003 RCRA Civil Penalty Policy to the counts.

8. To date, neither Complainant nor the Regional Judicial Clerk has received a response to the Motion for Default.

### DISCUSSION

The Consolidated Rules, 40 CFR § 22.17(a), apply to motions for default, and provide in pertinent part:

(a) Default. A party may be found to be in default; after motion, upon failure to file a timely answer to the complaint;...Default by respondent constitutes, for purposes of the proceeding only, an admission of all facts alleged in the complaint and a waiver of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

(c) Default Order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

The Consolidated Rules at 40 CFR § 22.17(a) require that if a default has occurred, the Presiding Officer shall issue a default order against the defaulting as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondent has made no showing that good cause exists to defeat Complainant's Motion for Default Order.

The Motion included an analysis of each count and a proposed penalty, applying the 2003 RCRA Civil Penalty Policy to the counts.

The Consolidated Rules, 40 CFR § 22.27(b), apply to the assessment of a civil penalty:

If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. ...If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by the complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collections Improvement Act of 1996, 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) for violations that occur

after March 15, 2004, 69 Fed. Reg. 7121 (Feb. 13, 2004), and authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after Jan. 11, 2009. 73 Fed. Reg. 75340 (Dec. 11, 2008). Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$32,500 per day, as appropriate, for each day during which a violation cited in the above outlined Counts continued up to (and including) January 11, 2009, and up to \$37,500 for each day during which a violation continued after January 11, 2009.

The penalty calculations system established through EPA's June 2003 RCRA Civil Penalty Policy ("Penalty Policy") is based upon Section 3008 of RCRA, 42 U.S.C. § 6928. Under this section, the seriousness of the violation and any good faith efforts to comply with applicable requirements are to be considered in assessing a penalty. The Penalty Policy consists of: (1) determining a gravity-based penalty for a particular violation from a penalty assessment matrix, (2) adding a "multi-day" component, as appropriate, to account for a violation's duration, (3) adjusting the sum of the gravity-based and multi-day components, up or down, for case specific circumstances, and (4) adding to this amount the appropriate economic benefit gained through non-compliance. The Environmental Appeals Board has emphasized that the agency's penalty policies should be applied wherever possible because such policies "assure that statutory factors are taken into account and are designed to assure that penalties are assessed in a fair and consistent manner." *M.A. Bruder & Sons, Inc.*, 10 E.A.D. 598, 613 (EAB 2002).

The gravity-based component of the Penalty Policy is determined by considering two factors: (1) the potential for harm, and (2) the extent of deviation from the statutory or regulatory requirement. *See* Penalty Policy, p. 12. The potential for harm and the extent of deviation components may be characterized as "major", "moderate", or "minor", according to standards set forth by the Penalty Policy. *Id.* at 15-18. The gravity-based component is selected from a pecuniary range for the appropriate cell. *Id.* at 18. EPA revised the penalty matrices set forth in the 2003 Penalty Policy for violations that occur after March 15, 2004 and after January 12, 2009. The Penalty Policy provides that the selection of the exact penalty amount within the cell is left to the discretion of enforcement personnel, so they may adapt the penalty to the gravity of the violation and its surrounding circumstances. *Id.* at 19.

The Penalty Policy also provides a multi-day calculation for continuing violations. *Id.*, p. 23. After the gravity-based penalty is calculated, including any multi-day component, enforcement personnel may adjust the penalty upward or downward to reflect the particular circumstances surrounding the violation, such as good faith efforts to comply, degree of willfulness or negligence, history of noncompliance, ability to pay, other unique factors, and supplemental environmental projects. *Id.*, p. 3.

The Penalty Policy also mandates the recapture of any significant economic benefit of noncompliance that accrues to a violator. The economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in significant

economic benefit to the violator. *Id.*, p. 28. In the interest of simplifying and expediting an enforcement action, enforcement personnel may forego calculating the economic benefit component where it appears that the amount of the component is likely to be less than the amount specified by the Penalty Policy for all violations alleged in the complaint. *Id.*, p. 28. Likewise, it is not necessary to calculate an economic benefit for a violation if the economic benefit is estimated to be below \$2,000. *Id.*

Section 22.17(c) of the Consolidated rules, 40 CFR § 22.17(c), provides that when a respondent is found to be in default, "The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." When reaching a penalty determination, Section 22.27(b) of the Consolidated Rules states that the Presiding Officer shall consider any evidence in the record and any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail how the assessed penalty corresponds to any penalty criteria set forth in the Act. As stated above, Section 22.27(b) of the Consolidated Rules prohibits the Presiding Officer from assessing a penalty greater than that proposed in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Pursuant to 40 CFR § 22.17(a), a default by a respondent constitutes an admission of all facts alleged in the Complaint. See also 40 CFR § 22.15(d) (respondent's failure to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation); *In the Matter of K Industries, Inc.*, Docket No. RCRA-06-2003-0915, 2005 RJO Lexis 109 (March 2, 2005); *In re Matter of Aero Design, Inc.*, Docket No. RCRA-04-2002-4006, 2003 EPA RJO Lexis 12 (April 1, 2003),

### **Count I – Failure to Minimize the Possibility of Release of Hazardous Waste**

On August 14, 2009 and October 8, 2010, an EPA inspector observed approximately two inches and five inches, respectively, of chrome plating liquid hazardous waste spilled from tanks and held in the secondary containment at the Facility.

On November 23, 2010, pursuant to RCRA Section 3013(a), 42 U.S.C. § 6934(a), EPA issued an Order Requiring Testing, Analysis, and Reporting to the Respondent requiring it to: (1) collect and analyze four samples of the liquid waste at various locations within secondary containment; (2) evaluate of the condition of the secondary containment; (3) conduct a structural assessment of the secondary containment using a certified third party professional engineer; and (4) submit an operating plan on how the Facility will manage and minimize potential releases of hazardous materials to or from secondary containment and into the environment. Respondent did not comply with the Order Requiring Testing, Analysis, and Reporting and liquid hazardous wastes remain in the secondary containment. As such, Respondent failed to maintain and operate the facility in a manner to minimize the releases of hazardous wastes held in secondary containment.

22 CCR §66265.31 (*see also* 40 CFR §265.31) requires that facilities maintain and operate to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a “Major” potential for harm to the environment and the regulatory program means that the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent’s failure to address liquid waste in secondary containment and to develop an operating plan to minimize potential releases of hazardous materials to or from secondary containment and into the environment, in violation of 22 CCR §66265.31 (*see also* 40 CFR §265.31), should be characterized as “Major” under the Penalty Policy. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as “Major” on the record before me.

B) **Extent of Deviation**: The Penalty Policy defines a “Major” extent of deviation as a situation wherein the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 17. Respondent’s failure to prevent or minimize releases of hazardous waste into and from secondary containment constituted a “Major” deviation from the requirement to minimize the possibility of a release of hazardous waste.

The Penalty Policy provides that after classifying the potential for harm and the extent of deviation, EPA enforcement personnel have the discretion to select the exact amount within a particular cell of the gravity penalty matrix so they may adapt the penalty amount to the gravity of the violation and its surrounding circumstances. *See* Penalty Policy at 19. Enforcement personnel should analyze and rely on case-specific factors in selecting a dollar figure from this range. Such factors include the seriousness of the violation, the environmental sensitivity of the areas potentially threatened by the violation, the size and sophistication of the violator, the number of days of violation, and other relevant matters.

The matrix value in the Penalty Policy for violations that are major/major is \$28,330 to \$37,500. Complainant’s selection of \$32,915, which represents the middle of the Major Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) Multi-Day Penalty Calculation

Multi-day penalties are considered mandatory for days 2-180 for violations with the gravity-based designation of major/major. See Penalty Policy at 25. The multi-day matrix value in the Penalty Policy for violations that are major/major is \$1,420 to \$7,090. Complainant proposes a penalty of \$4,255, again taken from the midpoint of the matrix. A multi-day component of \$4,255 per day for 179 days increases the penalty by \$761,645 to a total gravity-based penalty of \$794,560 for this Count.

### Count II – Failure to Close Containers

On August 14, 2010, the EPA inspector observed an open, one cubic yard container holding wastewater treatment filter cake press hazardous waste (F006), and an open 55-gallon container holding wood contaminated with nitric acid hazardous waste (D002/D006). On October 8, 2010, the inspector also observed an open bin holding wastewater treatment filter cake press hazardous waste (F006).

22 CCR §66265.173(a) (*see also* 40 CFR §265.173(a)) requires that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste as required. Respondent failed to comply with the requirement to store hazardous waste at its Facility in a closed container.

#### 1) Gravity-Based Penalty

A) **Potential for Harm**: A minor potential for harm to the environment and the regulatory program means that the violation poses a relatively low risk of exposure of humans or other environmental receptors to waste or constituents and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. Complainant accurately concluded that this violation posed a “Minor” potential for harm.

B) **Extent of Deviation**: A minor deviation from the regulatory requirement means that the violator deviates somewhat from the regulatory or statutory requirements but most -- or all important aspects -- of the requirements are met. Respondent’s failure to comply with the requirements for storing hazardous waste in closed containers supports categorizing this violation as a “Minor” deviation from the regulatory requirement.

The matrix value in the Penalty Policy for violations that are minor/minor is \$150 to \$710. Complainant’s selection of \$430, which represents the middle of the Minor Potential/Minor Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) Multi-Day Penalty Calculation

This violation continued for at least one day, August 14, 2009 or October 8, 2010. However, Complainant is not seeking a penalty for multi-days. Accordingly, the penalty for this count is \$430.

### Count III – Failure to Submit Biennial Reports

As of October 8, 2010, the Facility failed to submit biennial reports for 2007 and 2009. 22 CCR § 66262.41(a) (*see also* 40 CFR § 262.41(a)) requires each owner or operator of a facility to file a biennial report for the hazardous waste generated the prior year by March 1 of each even numbered year.

#### 1) Gravity-Based Penalty

A) **Potential for Harm**: A moderate potential for harm to the environment and the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. Respondent failed to file two biennial reports. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as “Moderate” based on the record before me.

B) **Extent of Deviation**: A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. Respondent’s failure to comply with the requirements for providing biennial reports supports categorizing this violation as a “Major” deviation from the regulatory requirement.

The matrix value in the Penalty Policy for violations that are Moderate Potential/Major Deviation is \$11,330 to \$15,580. Complainant’s selection of \$13,445, which represents the middle of the Moderate Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

#### 2) Multi-Day Penalty Calculation

This violation occurred twice and each violation continued for at least one day, March 1, 2008 and March 1, 2010. Complainant is not seeking a multi-day penalty. However, because this violation occurred twice, the total penalty for this count is \$26,890.

#### **Count IV - Failure to Have a Complete Contingency Plan**

During inspections on August 14, 2009 and October 8, 2010, the facility contingency plan lacked the home address of the emergency coordinator. 22 CCR § 66265.52(d) (*see also* 40 CFR § 265.52(d)) requires owners and operators of a facility to maintain a contingency plan that lists names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list shall be kept up to date.

##### **1) Gravity-Based Penalty**

A) **Potential for Harm**: A minor potential for harm to the environment and the regulatory program means that the violation poses a relatively low risk of exposure of humans or other environmental receptors to waste or constituents and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. Complainant accurately concluded that this violation posed a "Minor" potential for harm.

B) **Extent of Deviation**: A minor deviation from the regulatory requirement means that the violator deviates somewhat from the regulatory or statutory requirements but most -- or all important aspects -- of the requirements are met. Respondent's failure to include the home address of the emergency coordinator is a "Minor" deviation from the requirement to file such reports.

The matrix value for violations that are Minor Potential/Minor Deviation is \$150 to \$710. Complainant proposes a penalty of \$430, taken from the midpoint of the matrix for this Count. Complainant's selection of \$430, which represents the middle of this cell, is consistent with the record of the proceeding and with RCRA.

##### **2) Multi-Day Penalty Calculation**

This violation began on or prior to August 14, 2009 and continued for at least 180 days. However, Complainant is not seeking multi-day penalties for this count.

#### **Count V - Storage of Hazardous Waste without a Permit**

On August 14, 2009, the EPA inspectors observed four containers of wastewater treatment filter cake press hazardous wastes (F006) which had been stored at the Facility for longer than 90 days. The containers were labelled with accumulation start dates of April 17, 2008, January 8, 2009, April 8, 2009, and May 5, 2009. The containers had been stored at the Facility for 394, 127, 37, and 10 days, respectively, beyond the 90-day period allowed for generators to store hazardous waste without a permit or interim status.

On August 14, 2009 and October 8, 2010, the EPA inspector observed approximately two inches and five inches, respectively, of chrome plating liquid hazardous waste (F006) spilled from tanks and held in the secondary containment. Because secondary containment was not labelled with accumulation start dates, the specific duration of storage of the liquid hazardous wastes has not been determined; however, more than 90 days lapsed between the EPA inspections. As such, these liquid hazardous wastes have been stored at the Facility longer than the 90-day period allowed for generators to store hazardous waste without a permit or interim status.

22 CCR § 66270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 CCR § 66270.1(c) [*see also* 40 CFR § 270.1(c)].

22 CCR § 66262.34(a) (*see also* 40 CFR §§ 262.34(a)(2) and (3)), provides that a large quantity generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or interim status so long as certain conditions applicable to the accumulation of that waste are met pursuant to 22 CCR § 66262.34(a)(4) (*see also* 40 CFR § 262.34(a)(4)).

Respondent failed to meet the conditional exemption when it stored waste more than 90 days, 22 CCR Section 66262.34(a) (*see also* 40 CFR §262.34(a)(2) and (3)), and stored hazardous waste without a permit in violation of 22 CCR Section 66270.1(c) (*see also* 40 CFR §270.1(c)).

#### 1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a major potential for harm to the environment and the regulatory program means that the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent's failure to meet the permit exemption by storing wastes on-site for greater than 90 days should be characterized as "Major" under the Penalty Policy. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as "Major" on the record before me.

B) **Extent of Deviation**: A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. Respondent's failure to comply with the permitting exemption by storing wastes on-site for greater than 90 days constituted a "Major" deviation.

The matrix value in the Penalty Policy for violations that are Major Potential/Major Deviation is \$28,330 to \$37,500. Complainant's selection of \$32,915, which represents the middle of the Major Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## **2) Multi-Day Penalty Calculation**

Multi-day penalties are considered mandatory for days 2-180 for violations with the gravity-based designation of major/major. *See* Penalty Policy at 25. The multi-day matrix value in the Penalty Policy for violations that are Major Potential/Major Deviation is \$7,090 to \$1,420. Complainant proposes a penalty of \$4,255, again taken from the midpoint of the matrix. A multi-day component of \$4,255 per day for 179 days increases the penalty by \$761,645 to a total gravity-based penalty of \$794,560 for this Count.

## **PENALTY MODIFICATION**

The Penalty Policy provides for downward adjustments to the proposed penalty for a violator's good faith efforts to comply, limited ability to pay, performance of environmental projects, or other unique factors. *See* Penalty Policy at 34-41. Complainant did not propose any adjustments to the proposed penalty because none were supported by the circumstances of the violations. Respondent failed to submit any evidence that would support any downward adjustment. Therefore, Complainant's position is consistent with the record and RCRA.

## **CONCLUSION**

After considering the record and the Penalty Policy, I assess a penalty in the amount of \$1,616,870.00.

## **ORDER**

RESPONDENT IS HEREBY ORDERED to pay a civil penalty in the amount of ONE MILLION, SIX HUNDRED SIXTEEN THOUSAND, EIGHT HUNDRED SEVENTY DOLLARS (\$1,616,870.00). This penalty shall become due and payable, without further proceedings, thirty (30) days after this order becomes final. This Order shall become final within forty-five (45) days after its service upon the parties and without further proceedings, unless (1) a party appeals the Initial Decision to the Environmental Appeals Board, (2) a party moves to set aside the order, or (3) the Environmental Appeals Board elects to review this Initial Decision on its own initiative. *See* 40 CFR § 22.27(c). Procedures for appealing this Initial Decision are listed in the Consolidated Rules at 40 CFR § 22.30.

Payment shall be made by forwarding a money order, cashier's check, or certified check, in the amount of \$1,616,870.00 payable to Treasurer of the United States of America to:

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

All payments shall indicate the name of the facility, any EPA identification number of the facility, Respondent's name and address, and the EPA docket number for this action. At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region IX, ORC  
75 Hawthorne Street  
San Francisco, CA 94105

If the civil penalty is not paid within the prescribed time period, interest will be assessed pursuant to Section 11 of the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3717, based on the present value of funds owed to the United States Treasury at the time the Initial Order becomes final, and such rate will remain in effect until full payment is received. A six percent (6%) per annum late payment penalty will also be applied on any principle amount not paid within ninety (90) days of the due date.

IT IS SO ORDERED

Date:

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Motion for Default Order and draft Default Order was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent certified mail, return receipt requested, to:

Shafiqul Alam, P.E.  
President  
Classic Plating, Inc.  
2985 E. Miraloma Ave. Suite-U  
Anaheim, CA 92805

6/7/12  
Date

Shafiqul Alam  
Name



CERTIFICATE OF SERVICE

I hereby certify that the original Motion for Default Order and draft Default Order in the matter of Classic Plating, Inc., Docket No. RCRA 09-2011-05, was filed with the Regional Hearing Clerk, Region IX, on June 7, 2012 and that a copy was sent by UPS overnight/express mail, with delivery confirmation, to:

Shafiqul Alam, P.E.  
President  
Classic Plating, Inc.  
2985 E. Miraloma Ave. Suite-U  
Anaheim, CA 92805

7/3/12

Date

A handwritten signature in black ink, appearing to read 'Shafiqul Alam', is written over a horizontal line.

Name

