



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

REPLY TO THE ATTENTION OF:

DE-9J

MAY 22 2006

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Receipt #: 70010320000614490456

Mr. Jerry Kovatch  
President  
Precision Metalsmiths, Incorporated  
1081 East 200<sup>th</sup> Street  
Cleveland, Ohio 44117

Re: Consent Agreement and Final Order  
Precision Metalsmiths, Inc.  
Docket Number: RCRA-05-2006-0010 + BL# 2750662R001  
EPA ID: OHD004156451

Dear Mr. Kovatch:

Enclosed please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. We filed the originals with the Regional Hearing Clerk on MAY 22 2006. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division

Enclosures

cc: Harry Sarvis - OEPA  
Geoffrey K. Barnes, Esq. - Squire, Sanders & Dempsey L.L.P

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

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

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

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

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

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

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

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	) <b>Docket No. RCRA-05-2006-0010</b>
	)
<b>Precision Metalsmiths, Inc.</b>	) <b>Proceeding to Assess a Civil Penalty under</b>
<b>1081 E. 200<sup>th</sup> Street</b>	) <b>Section 3008(a) of the Resource Conservation</b>
<b>Cleveland, Ohio 44117</b>	) <b>and Recovery Act of 1976, as amended</b>
<b>EPA ID No.: OHD 004 156 451</b>	) <b>42 U.S.C. § 6928(a)</b>
	)
<b>Respondent.</b>	)
_____	)

US EPA  
PROTECTING  
REGION 5  
6 MAY 22 AM 11:50  
REGION 5

**Consent Agreement and Final Order**

The United States Environmental Protection Agency (“U.S. EPA”) and Precision Metalsmiths, Inc., of 1081 East 200<sup>th</sup> Street in Cleveland, Ohio, have agreed to a settlement of this action before filing of a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) 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 (“Consolidated Rules”) by the filing of this Consent Agreement and Final Order (“CAFO”). 40 CFR §§ 22.13(b), 22.18(b)(2) and (3).

**I. Preliminary Statement and Jurisdiction**

1. This civil administrative action is instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a).
2. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.
3. Complainant is, by lawful delegation, the Chief, Enforcement and Compliance

Assurance Branch, Waste, Pesticides and Toxics Division, Region 5, U.S. EPA.

4. Respondent is Precision Metalsmiths Inc., a corporation doing business in Ohio.

5. U.S. EPA has promulgated regulations, codified at 40 CFR Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of the U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). The U.S. EPA granted Ohio final authorization to administer certain HSWA and additional RCRA requirements effective June 7, 1991, 56 Fed. Reg. 14203 (April 8, 1991) (corrected effective August 19, 1991 (56 Fed. Reg. 28088 (June 19, 1991))); September 25, 1995, 60 Fed. Reg. 38502 (July 27, 1995); December 23, 1996, 61 Fed. Reg. 54950 (October 23, 1996); and, January 24, 2003, 67 Fed. Reg. 64594 (October 21, 2002). The U.S. EPA-authorized Ohio regulations are codified at Ohio Administrative Code (OAC) Chapters 3745-49 through 69. See also 40 CFR § 272.1800 *et seq.*

8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides U.S. EPA with the authority to

enforce State regulations in those States authorized to administer a hazardous waste program.

9. The U.S. EPA has provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. Statutory and Regulatory Background**

10. Under Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 CFR Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

11. Under OAC 3745-52-34(A) and 40 CFR § 262.34(a), a large quantity generator of hazardous waste is exempt from the requirement to have an operating permit or interim status if it does accumulate hazardous waste for 90 days or less and complies with all of the other conditions for a storage permit exemption set forth in OAC 3745-52-34(A) and 40 CFR § 262.34(a).

12. Under OAC 3745-52-34(A) and 40 CFR § 262.34(a), in order for a large quantity generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with specific conditions including, but not limited to, clearly marking and making visible for inspection the date upon which each period of accumulation begins on each container or tank of hazardous waste as set forth in OAC 3745-52-34(A)(2) [40 CFR § 262.34(a)(2)], labeling or marking each container and tank with the words “Hazardous Waste” while being accumulated on site as set forth in OAC 3745-52-34(A)(3) [40 CFR § 262.34(a)(3)], and not accumulating hazardous waste for more than 90 days as set forth in OAC 3745-52-34(A) [40 CFR § 262.34(a)].

13. Under OAC 3745-52-34(B) [40 CFR § 262.34(b)], a generator who accumulates hazardous waste for more than 90 days or fails to comply with any one of the other

conditions for a storage permit exemption set forth in OAC 3745-52-34(A) and 40 CFR § 262.34(a), including labeling and dating each container of hazardous waste, is an operator of a storage facility and is subject to the requirements of OAC 3745-50-40 to 3745-50-62 and Chapters 3745-54 to 3745-57 and 3745-65 to 3745-69 40 of the OAC and 40 CFR Parts 265 and 270.

14. OAC 3745-65-16(A) [40 CFR § 265.16(a)] requires the owner or operator of facilities that treat, store, or dispose of hazardous waste (TSDF) to ensure that facility personnel successfully complete a program of classroom instruction or on-the-job training.

15. OAC 3745-65-16(B) and (C) [40 CFR § 265.16(b) and (c)] requires that facility personnel must successfully complete the training program within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Facility personnel must take part in an annual review of the initial training.

16. OAC 3745-65-16(D)(4) [40 CFR § 265.16(d)(4)] requires owners or operators to maintain records that document that the training or job experience required under OAC 3745-65-16(A), (B), (C) [40 CFR §§ 265.16(a), (b), (c)] has been given to, and completed by facility personnel.

17. OAC 3745-65-16(D)(2) [40 CFR § 265.16(d)(2)] requires owners or operators of a TSDF to maintain a written job description for each position related to hazardous waste management. The description must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

18. OAC 3745-65-52(E) [40 CFR § 265.52(e)] requires owners or operators of a TSDF to have a contingency plan for its facility that contains complete a list of all emergency equipment

where this equipment is required. The list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

### **III. Factual Allegations and Violations**

19. Respondent is a "person" as that term is defined under OAC 3745-50-10, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 CFR § 260.10.
20. Respondent "owns and operates" an investment casting foundry which utilizes lost wax technology located at 1081 East 200<sup>th</sup> Street, Cleveland, Ohio 44117 (Facility), as those terms are defined under OAC 3745-50-10(78)(79) and 40 CFR § 260.10.
21. Respondent's Facility consists of contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
22. Respondent's Facility is a "facility" as that term is defined under OAC 3745-50-10(32) and 40 CFR § 260.10.
23. Respondent uses hydrofluoric and nitric acid (HF/HNO<sub>3</sub>) in a pickling/finishing process.
24. Respondent generates HF/HNO<sub>3</sub> waste which is collected in 330-gallon totes and stored in the 90-day storage area.
25. Respondent holds HF/HNO<sub>3</sub>, a discarded material, for temporary periods in 330-gallon totes before the material is shipped from the Facility for treatment, storage, or disposal elsewhere.
26. Respondent's 330-gallon totes, which store, transport, dispose of, or otherwise handle HF/HNO<sub>3</sub>, are "containers" as that term is defined under OAC 3745-50-10(17) and 40 CFR § 260.10.
27. Respondent's HF/HNO<sub>3</sub> is a "solid waste" as that term is defined under OAC 3745-51-

02 and 40 CFR § 261.2.

28. Respondent's HF/HNO<sub>3</sub> is a "hazardous waste" as that term is defined under OAC 3745-51-03 [40 CFR § 261.3].

29. Respondent's acts or processes produce HF/HNO<sub>3</sub> waste.

30. Respondent characterized its HF/HNO<sub>3</sub> waste as hazardous waste codes D002, D005, D007, D008.

31. Respondent's holding of HF/HNO<sub>3</sub> waste in 330-gallon totes constitutes "storage" of hazardous waste as that term is defined under OAC 3745-50-10(102) and 40 CFR § 260.10.

32. Respondent uses an ethyl alcohol solution to produce shell molds.

33. At all time relevant to this CAFO, Respondent generated ethyl alcohol solution waste which was collected in a 55-gallon drum and stored in the 90-day storage area.

34. Respondent holds ethyl alcohol solution waste in a 55-gallon drum for temporary periods before the material is shipped from the Facility for treatment, storage, or disposal elsewhere.

35. Respondent's 55-gallon drum which, stores, transports, disposes of, or otherwise handles, ethyl alcohol solution waste is a "container" as that term is defined under OAC 3745-50-10(17) and 40 CFR § 260.10.

36. Respondent's ethyl alcohol solution waste is a "solid waste" as that term is defined under OAC 3745-51-02 and 40 CFR § 261.2.

37. Respondent's ethyl alcohol solution waste is a "hazardous waste" as that term is defined under OAC 3745-51-03 [40 CFR § 261.3].

38. Respondent's acts or processes produce ethyl alcohol solution waste .

39. Respondent characterized its ethyl alcohol solution waste as hazardous waste code D001.



40. Respondent's holding of ethyl alcohol solution waste in a 55-gallon drum constitutes "storage" of hazardous waste as that term is defined under OAC 3745-50-10(102) and 40 CFR § 260.10.
41. Respondent is a "generator" as that term is defined under OAC 3745-50-10(38) and 40 CFR § 260.10.
42. The Facility was generating and managing hazardous waste on or before November 19, 1980.
43. On August 18, 2004, representatives of U.S. EPA and the Ohio Environmental Protection Agency (OEPA) conducted a RCRA compliance evaluation inspection and records review (the inspection) at the Facility and, on October 5, 2004, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.
44. On November 5, 2004, Respondent submitted to U.S. EPA a written response to the Notice of Violations.
45. At all times relevant to this CAFO, the State of Ohio did not issue a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.
46. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.
47. On or about March 21, 1993, a Hazardous Waste Notification, dated March 21, 1993, was submitted to U.S. EPA for the Facility indicating that Respondent is a Large Quantity Generator.
48. At all times relevant to this CAFO, the Respondent generated during each calendar month more than 1000 kilograms of hazardous waste.

**COUNT 1**  
**Storage of Hazardous Waste Without a Permit or Interim Status**

49. Incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

50. At the time of the inspection, Respondent had not marked three 330-gallon partially-filled totes containing HF/HNO<sub>3</sub> with the date upon which the period of accumulation began.

51. At the time of the inspection, Respondent had not marked a 55-gallon drum containing ethyl alcohol solution waste with the date upon which the period of accumulation began.

52. Accordingly, Respondent failed to satisfy one of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status when it failed to place the date of accumulation on each container of hazardous waste as provided in OAC 3745-52-34(A)(2) [40 CFR § 262.34(a)(2)].

53. At the time of the inspection, Respondent had not labeled or marked clearly a 330-gallon tote containing HF/HNO<sub>3</sub> with the words "Hazardous Waste".

54. Accordingly, Respondent failed to satisfy one of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status when it failed to label or clearly mark each container or tank with the words "Hazardous Waste" while being accumulated on site as provided in OAC 3745-52-34(A)(3) [40 CFR § 262.34(a)(3)].

55. At the time of the inspection, Respondent was storing one 330-gallon tote of HF/HNO<sub>3</sub> dated May 13, 2004, for greater than 90 days.

56. The 330-gallon tote referenced in paragraph 55 above was shipped off-site for disposal on August 23, 2004, five days after the inspection, as indicated by Respondent's November 5, 2004 written response to U.S. EPA's Notice of Violations.

57. The Respondent stored the 330-gallon tote referenced in paragraph 55 above twelve (12)

days over the 90-day limit for generators without obtaining or applying for a permit.

58. At the time of the inspection, Respondent was storing one partially-filled 55-gallon drum of ethyl alcohol solution waste dated February 2, 2004, for greater than 90 days.

59. The 55-gallon drum referenced in paragraph 58 above was shipped off-site for disposal on August 31, 2004, thirteen (13) days after the inspection, as indicated by Respondent's November 5, 2004, written response to U.S. EPA's Notice of Violations.

60. The Respondent stored the 55-gallon drum referenced in paragraph 58 above one hundred and twenty one (121) days over the 90-day limit for generators without obtaining or applying for a permit.

61. Accordingly, Respondent failed to satisfy one of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status when it stored hazardous waste for more than 90 days as provided in OAC 3745-52-34(A) [40 CFR § 262.34(a)].

62. From at least May 2, 2004 to August 31, 2004, Respondent's Facility accumulated hazardous waste for more than 90 days as described in paragraphs 55 - 60 above. Respondent failed to place the date upon which each period of accumulation begins on each container of hazardous waste as described in paragraphs 50 - 52 above, and failed to mark each container of hazardous waste clearly with the words "Hazardous Waste" as described in paragraph 53 above and set forth in OAC 3745-52-34(A) and 40 CFR § 262.34(a). Therefore, Respondent did not qualify for the generator exemption from regulation as a storage facility, and became an operator of a hazardous waste storage facility subject to the requirements of OAC 3745-50-40 to 3745-50-62 and Chapters 3745-54 to 3745-57 and 3745-65 to 3745-69 40 of the OAC and 40 CFR Part 265 and 270.

63. Respondent's operation of a storage facility storing hazardous waste without a permit or interim status is storing hazardous waste in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), OAC 3745-50-40 to 3745-50-62 and Chapters 3745-54 to 3745-57 and 3745-65 to 3745-69 40 of the OAC and 40 CFR Part 265 and 270 and subjects it to civil penalties in accordance with section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**COUNT 2**  
**Failure to Provide Adequate Training and Records**

64. Incorporates paragraphs 1 through 63 of this CAFO as though set forth in this paragraph.

65. On July 25, 2005, U.S. EPA issued a request for information to Respondent under authority of Section 3007 of RCRA, as amended, 42 U.S.C. § 6927 seeking information related to personnel training as required by 40 CFR § 262.34.

66. On August 16, 2005, and December 7, 2005, Respondent provided U.S. EPA with information responsive to the information request referenced in paragraph 65.

67. Respondent did not provide initial training until October 2004 to two of its employees who were given new positions effective July 2002 involving hazardous waste management duties as indicated by Respondent's August 16, 2005, and December 7, 2005 written responses to U.S. EPA's information request.

68. Respondent did not provide annual review of the initial training in 2003 to its employees whose positions involve hazardous waste management duties as indicated by Respondent's August 16, 2005, and December 7, 2005 written responses to U.S. EPA's information request.

69. Respondent did not maintain training records that document that training or job experience has been given to its employees that manage hazardous waste in 2003.

70. For at least calendar year 2003, Respondent did not meet the training requirements of OAC 3745-65-16(A), (B), (C) and (D) [40 CFR § 265.16(a), (b), (c) and (d)] which subjects Respondent to civil penalties in accordance with section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**COUNT 3**  
**Failure to Maintain Written Job Descriptions**

71. Incorporates paragraphs 1 through 70 of this CAFO as though set forth in this paragraph.

72. At the time of the inspection, Respondent did not maintain complete written job description records.

73. From at least August 18, 2004, Respondent did not meet the requirements of OAC 3745-65-16(D)(2) [40 CFR § 265.16(d)(2)] which subjects it to civil penalties in accordance with section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**COUNT 4**  
**Failure to Complete Contingency Plan**

74. Incorporates paragraphs 1 through 71 of this CAFO as though set forth in this paragraph.

75. At the time of inspection, Respondent's contingency plan did not contain a complete list of emergency equipment that included the locations, physical descriptions, and capabilities of the equipment.

76. In correspondence dated November 5, 2004, Respondent stated that it had revised its contingency plan to include a complete list of emergency equipment that included the locations, physical descriptions, and capabilities of the equipment and provided a copy of the list to U.S. EPA.

77. From August 18, 2004 to approximately November 4, 2004, Respondent did not meet the

requirements of OAC 3745-65-52(E) [40 CFR § 265.52(e)] which subjects Respondent to civil penalties in accordance with section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

#### **IV. Procedural Matters**

78. On June 30, 2005, U.S. EPA issued a pre-filing notice and opportunity to confer letter to Respondent notifying Respondent of U.S. EPA's intent to file an administrative complaint seeking civil penalties for Respondent's failure to timely comply with the above-cited regulatory provisions under RCRA.

79. Respondent submitted financial information to U.S. EPA in support of its inability to pay the proposed penalty.

80. After reviewing all the information Respondent submitted to support its inability to pay the proposed penalty, a financial analyst at U.S. EPA determined that Respondent has an ability to pay the proposed penalty and recommended a three year installment plan.

81. On December 22, 2005, U.S. EPA and Respondent held a telephone conference to discuss the pre-filing letter, results of the ability to pay analysis and settlement of the matter.

82. Subsequent to December 22, 2005, U.S. EPA and Respondent reached agreement on the settlement documented in this CAFO.

#### **V. Terms of Settlement**

83. Complainant and Respondent agree that the settlement of this matter pursuant to 22.13(b) of the Consolidated Rules, 40 CFR § 22.13(b), without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

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

85. Respondent consents to the issuance of this CAFO and the assessment of the civil penalty

as outlined in Section VI of this CAFO.

86. Respondent has demonstrated and certifies that it came into compliance with the requirements that formed the basis of the allegations in Section III of this CAFO.

87. Respondent consents to the issuance of this CAFO and payment of a civil penalty, as set forth below in this CAFO.

#### **VI. Civil Penalty**

88. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after March 15, 2004.

89. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy. This policy provides a consistent method of applying the statutory penalty factors to this case.

90. Based on an analysis of the applicable statutory penalty factors, as well as the penalty policy, and based on the foregoing, the nature and seriousness of the violations alleged in Counts

1 through 4 of the CAFO, the potential harm to human health and the environment, Respondent's willfulness/negligence or lack thereof, Respondent's compliance history, the ability of Respondent to pay penalties, information exchanged by the parties, consideration of the steps Respondent has taken and has agreed to take to achieve and maintain compliance, Respondent's good faith efforts to comply, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle Counts 1 through 4 of this CAFO is in the amount of **\$59,500**, and the parties have agreed to a civil penalty in that amount, to be paid as specified below.

91. Respondent shall pay the \$59,500 civil penalty in three installments, plus interest at a rate of 2% per annum, on the dates and in the amounts shown on the payment schedule attached as Exhibit A. Respondent may prepay the \$59,500 civil penalty plus accrued interest to date of such payment without being subject to a prepayment penalty. Each payment shall be by cashier's or certified check payable to the "Treasurer, United States of America," and mailed to the following address:

U.S. EPA - Region 5  
P. O. Box 371531  
Pittsburgh, PA 15251-7531

92. The check must note the case title of this matter: Precision Metalsmiths Inc., the docket number of this CAFO and the billing document number: **2750662R001**.

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

Regional Hearing Clerk  
U.S. EPA Region 5  
77 West Jackson Boulevard (E-13J)  
Chicago, Illinois 60604



Ms. Tamara Carnovsky  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604

Ms. Brenda Oswald  
RCRA Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
U.S. EPA Region 5  
77 West Jackson Boulevard (DE-9J)  
Chicago, Illinois 60604

94. This civil penalty is not deductible for federal tax purposes.
95. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
96. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty for failure to pay any part of a debt more than 90 days past due.

#### **VII. General Provisions**

97. This CAFO only resolves liability for federal civil penalties for the violations and facts alleged in this CAFO.
98. Respondent waives its right to request a hearing as provided at 40 CFR § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

99. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO.

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

101. U.S. EPA expressly reserves the right to enforce compliance with this CAFO, including through a referral to the Department of Justice.

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

103. This CAFO is a "final order" for purposes of U.S. EPA's RCRA Civil Penalty Policy.

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

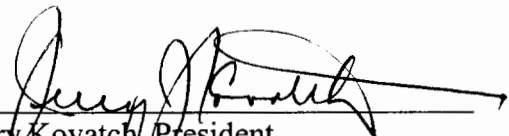
105. Each person signing this CAFO certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

106. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

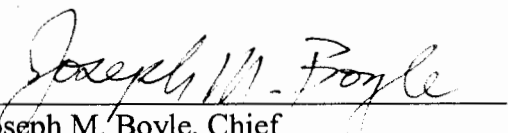
107. This CAFO shall terminate upon payment by Respondent of the civil penalty as required under Section VI of this CAFO.

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

Agreed to on this 2<sup>nd</sup> day of May, 2006.

  
Jerry Kovatch, President  
Precision Metalsmiths, Incorporated  
1081 East 200<sup>th</sup> Street  
Cleveland, Ohio 44117

Agreed to on this 15<sup>th</sup> day of May, 2006.

  
Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
U.S. EPA, Region 5

**RCRA-05-2006-0010**

US  
PROTECTION  
REGION V

6 MAY 22 AM 11:15

REG

**Exhibit A**

Principal Sum = \$59,500.00

Interest 2% per annum

<u>Payment</u>	<u>Principal</u>	<u>Remaining</u>	<u>Interest</u>	<u>Total</u>
6/12/06	\$25,000.00	\$34,500.00	0	\$25,000.00
6/12/07	\$25,000.00	\$9,500.00	\$690.00	\$25,690.00
6/12/08	\$9,500.00	0	\$190.00	\$9,690.00


**IN THE MATTER OF:**  
Precision Metalsmiths, Inc.  
1081 East 200<sup>th</sup> Street  
Cleveland, Ohio 44117

**Docket Number: RCRA-05-2006-0010**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Ordered on this 18<sup>th</sup> day of May, 2006

By:   
Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division  
U.S. EPA, Region 5

US  
DEPARTMENT OF  
PROTECTION  
REGION 5

6 MAY 22 AM 1:15

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CASE NAME: Precision Metalsmiths, Inc.  
DOCKET NO: RCRA-05-2006-0010

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

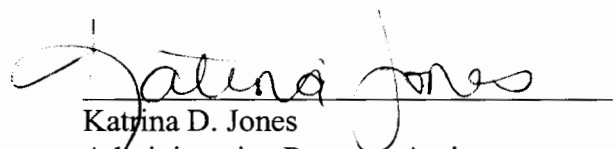
I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Jerry Kovatch  
President  
Precision Metalsmiths, Inc.  
1081 East 200<sup>th</sup> Street  
Cleveland, OH 44117

US  
ENVIRONMENTAL  
PROTECTION  
AGENCY  
REGION V  
MAY 22 AM 10:16  
RECEIVED

Certified Mail Receipt # 7001 0320 0006 1449 0456

Dated: MAY 22 2006



Katrina D. Jones  
Administrative Program Assistant  
Waste, Pesticides and Toxics Division - DE-9J  
Enforcement, Compliance and Assurance Branch  
77 W. Jackson Blvd, Chicago, IL 60604-3590