

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: L. Ramalho 6/14/10
Name of Contact person Date

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Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
 Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Company making payment: ERRE Plating Company

The Total Dollar Amount of Receivable: \$53,491.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-02-0210-0300

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone-number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | |

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
Erie Plating Company	:	
656 West 12th Street	:	U.S. EPA Docket Number
Erie, PA 16501	:	RCRA-03-2010-0300
Respondent,	:	
Erie Plating Company	:	
656 West 12th Street	:	
Erie, PA 16501	:	
EPA ID. No. PAD005031448	:	
Facility.	:	

CONSENT AGREEMENT

I. Preliminary Statement

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA", "Agency" or "Complainant") and Erie Plating Company ("Erie" or "Respondent") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement ("CA") and the accompanying Final Order ("FO") address alleged violations by Respondent of Subtitle C of RCRA and the Pennsylvania Hazardous Waste Management Regulations ("PaHWMR"), 25 Pa. Code, Chapters 260a - 270a, which were authorized by EPA on January 30, 1986, and reauthorized by EPA on September 26, 2000 (effective on November 27, 2000), January 20, 2004 (effective on March 22, 2004), and April 29, 2009 (effective June 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See* 25 Pa. Code § 260a.3(e).

2. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached FO (hereinafter jointly referred to as this "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA at Respondent's facility located at 656 West 12th Street, Erie, Pennsylvania (the "Facility").
3. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
4. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 3, above.
5. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
8. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

9. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. Findings of Facts and Conclusions of Law

In accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

10. The United States Environmental Protection Agency's Office of Administrative Law Judges has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), and 40 C.F.R. § 22.1(a)(4) and .4(c).

11. Respondent, Erie, is a Pennsylvania corporation and is a "person" as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.
12. Respondent is and, at all times relevant to this CAFO, has been the "owner" and/or "operator" of the Facility identified in Paragraph 2, above, as these terms are defined at 25 Pa Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10.
13. At all times relevant to the violations alleged in this CAFO, and as described below, Respondent has engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]" at the Facility, as these terms are defined in 25 PA Code Section 260a.10 or defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
14. At all times relevant to the violations alleged in this CAFO, Respondent was a large quantity "generator", as that term is defined in 25 PA Code Section 260a.1, which incorporates by reference 40 C.F.R. § 260.10, of hazardous waste who generates greater than 1,000 kilograms of non-acute hazardous waste per month.
15. On June 12, 2008, a duly authorized EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility.
16. Pursuant to RCRA Section 3007(a), 42 U.S.C. § 6927(a), on April 8, 2009, and October 5, 2009, EPA issued a Information Request Letters to Respondent concerning hazardous wastes generated, stored, transported from and/or otherwise handled by Respondent at the Facility.

COUNT I

(Owning and/or operating a hazardous waste storage facility without a permit or interim status)

17. The allegations of Paragraphs 1 through 16 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
18. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide in pertinent part that a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility.
19. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), provides, in pertinent part, that a generator who generates greater than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status provided that, among other things:

- (1) The waste is placed in containers and the generator complies with the requirements of 40 C.F.R. Part 265, Subpart I, AA, BB and CC (relating to use and management of containers);
 - (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - (3) While being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste";
 - (4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 C.F.R. Part 265, and with the requirements of 40 C.F.R. § 265.16 and 40 C.F.R. § 268.7(a)(5)..
20. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c)(1), provides, in pertinent part, with exceptions not relevant to this proceeding, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(a), provided he: (i) complies with §§ 265.171, 265.172, and 265.173(a) of 40 C.F.R. Part 265, Subpart I; and (ii) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
21. 40 C.F.R. Part 265, Subparts C, D, I, J, AA, BB, and CC, are incorporated by reference into 25 Pa. Code Chapter 265a, with exceptions not relevant to this proceeding.
22. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.173(a), provides that the owner or operator of a hazardous waste facility must always keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
23. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.16(a), requires, in pertinent part:
- (1) Facility personnel must successfully complete a program of classroom training or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. § 265.16].
 - (2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility

personnel hazardous waste management procedures (including contingency plan implementation) relevant to the position in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems....

24. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.16(b), requires, in pertinent part, that facility personnel successfully complete the training program referred to in 40 C.F.R. § 265.16(a)(1), (2) and (3) within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later.
25. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.16(c), requires, in pertinent part, that facility personnel take part in an annual review of the initial training referred to in 40 C.F.R. § 265.16(a)(1), (2) and (3).
26. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.16(d), requires the owner or operator of a facility to maintain the following records at the facility:
 1. Job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job;
 2. Written job descriptions for each position at the facility related to hazardous waste management;
 3. Written description of the type and amount of both introductory and continuing training given to each employee in a position related to hazardous waste management; and
 4. Records that document that the training or job experience required under 40 C.F.R. § 265.16(d)(1), (2), and (3), has been given to and completed by facility personnel.
27. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.16(e), provides that the training records on current personnel must be kept until closure of the facility, and training records on former employees must be kept for at least three years from the date the employee last worked at the facility.
28. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.31, provides that facilities must be maintained and operated 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.

29. 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.52, provides that owners and operators of hazardous waste facilities must prepare a contingency plan in accordance with the requirements provided therein.
30. 25 Pa Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.53(b), provides, in pertinent part, that the owner or operator must submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
31. 25 Pa Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.54(d), provides, in pertinent part, that the owner or operator must review the contingency plan and immediately amend it whenever the list of emergency coordinators changes.
32. From at least March 3, 2008 through June 17, 2008, Respondent had in storage at the Facility for greater than 90 days a roll-off container of hazardous waste (EPA Hazardous Waste Codes F006, D006, and D007), labeled with the words “Hazardous Waste.”
33. From at least March 14, 2008 through October 14, 2008, Respondent had in storage at the Facility for greater than 90 days 3 containers of hazardous waste (EPA Hazardous Waste Code F008) that were not labeled with the words “Hazardous Waste” and not marked with an accumulation start date.
34. From at least May 18, 2006 through December 19, 2008, Respondent had in storage at the Facility for greater than 90 days a container of hazardous waste (EPA Hazardous Waste Code F008 and D006) that was not labeled with the words “Hazardous Waste” and not marked with an accumulation start date. The container was not closed at a time when it was not necessary to add waste to or remove waste from such bucket.
35. At the time of EPA’s CEI on June 12, 2008, Respondent had in storage greater than 55 gallons of hazardous waste in containers at or near a point of generation where wastes initially accumulate at the Facility, which was under the control of the operator of the process generating the hazardous waste. Such satellite hazardous waste containers did not meet the generator exemption requirements of 40 C.F.R. § 262.34(a).
36. At the time of EPA’s CEI on June 12, 2008, Respondent failed to maintain and operate the Facility 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 by not cleaning up

spilled hazardous waste (EPA Hazardous Waste Code F006) on the concrete floor surrounding the perimeter of the roll-off container used to accumulate such hazardous waste.

37. From at least April 1, 2004 through March 31, 2009, Respondent failed to provide hazardous waste classroom training or on-the-job training to facility personnel within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever was later, and failed to provide an annual review of the initial hazardous waste training to facility personnel responsible for the management of hazardous wastes at the Facility.
38. At the time of EPA's CEI on June 12, 2008, Respondent failed to maintain a documented job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job; the written job descriptions for each position at the facility related to hazardous waste management; and a written description of the type and amount of both introductory and continuing training given to each employee in a position related to hazardous waste management at the Facility.
39. As of the time of EPA's CEI on June 12, 2008, Respondent had failed to review the contingency plan and immediately amend it when the emergency coordinators at the Facility changed.
40. As of the time of EPA's CEI on June 12, 2008, Respondent had failed to submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
41. From at least May 18, 2006 through December 19, 2008, "hazardous wastes" referred to in Paragraphs 32 through 35 above, generated by Respondent were in "storage" in "containers" at the Facility as those terms are defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, and, with respect to "storage," as that term is defined by 25 Pa. Code § 260a.10.
42. From at least May 18, 2006 through December 19, 2008, Respondent failed to qualify for the "less than 90 day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), for the activities and/or units described in Paragraphs 32 through 40, above, by failing to satisfy the conditions for such exemption as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a).
43. From at least May 18, 2006 through December 19, 2008, Respondent owned and operated a hazardous waste treatment, storage or disposal "facility", as the term is defined by 25

Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, with respect to the activities and units described in Paragraphs 32 through 40, above.

44. Respondent has never had a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of hazardous waste at the Facility as described in Paragraphs 32 through 40, above.
45. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the activities and/or units described in Paragraphs 32 through 40, above.
46. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

COUNT II

(Failure to perform hazardous waste determinations)

47. The allegations of Paragraphs 1 through 46 of this CAFO are incorporated herein by reference as though fully set forth at length.
48. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person or municipality who generates a solid waste shall determine if that waste is a hazardous waste using the following procedures:
 - (i) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4 .
 - (ii) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261.
 - (iii) If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:
 - (A) testing the waste, or
 - (B) applying knowledge of the hazardous characteristic of the waste in light of the material or processes used.
49. At some time prior to EPA's CEI on June 12, 2008, Respondent generated and stored at the Facility several containers of waste aerosol cans, and shipped the containers of waste

aerosol cans (EPA Hazardous Waste Code D001) to a municipal waste landfill for disposal.

50. The wastes referred to in Paragraph 49, above, were "solid wastes" as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. 261.2, with an exception not relevant hereto.
51. Respondent failed to determine whether its "solid wastes" were hazardous waste by applying knowledge of the hazardous characteristics of the waste or by testing the waste as provided in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11.
52. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform a hazardous waste determination for the solid wastes generated by the Respondent at the Facility.

COUNT III

(Failure to keep containers closed)

53. The allegations of Paragraphs 1 through 52 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
54. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides that the owner or operator must always keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
55. Based on the activities described in Paragraph 34 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep a hazardous waste container closed during storage at the Facility while it was not necessary to add or remove waste from the hazardous waste container.

COUNT IV

(Failure to Maintain Facility)

56. The allegations of Paragraphs 1 through 55 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
57. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.31, provides that facilities must be maintained and operated 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.

58. Based on the activities described in Paragraph 36 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.31, by failing to maintain and operate the Facility 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.

COUNT V

(Failure to Provide Hazardous Waste Training)

59. The allegations of Paragraphs 1 through 58 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
60. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(a), requires, in pertinent part:
- (1) Facility personnel must successfully complete a program of classroom training or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. § 264.16].
 - (2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the position in which they are employed.
 - (3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems....
61. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(b), requires, in pertinent part, that facility personnel successfully complete the training program referred to in 40 C.F.R. § 264.16(a)(1), (2) and (3) within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later.
62. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), requires, in pertinent part, that facility personnel take part in an annual review of the initial training referred to in 40 C.F.R. § 264.16(a)(1), (2) and (3).
63. Based on the activities described in Paragraph 37 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(b)

and (c), by failing to provide hazardous waste classroom training or on-the-job training to facility personnel within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever was later, and by failing to provide an annual review of the initial hazardous waste training to facility personnel responsible for the management of hazardous wastes at the Facility.

COUNT VI

(Failure to Maintain Records of Hazardous Waste Training)

64. The allegations of Paragraphs 1 through 63 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
65. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), requires the owner or operator of a facility to maintain the following records at the facility:
1. Job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job;
 2. Written job descriptions for each position at the facility related to hazardous waste management;
 3. Written description of the type and amount of both introductory and continuing training given to each employee in a position related to hazardous waste management; and
 4. Records that document that the training or job experience required under 40 C.F.R. § 264.16(d)(1), (2), and (3), has been given to and completed by facility personnel.
66. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(e), provides that the training records on current personnel must be kept until closure of the facility, and training records on former employees must be kept for at least three years from the date the employee last worked at the facility.
67. Based on the activities described in Paragraph 38 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d) and (e), by failing to maintain a documented job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job; the written job descriptions for each position at the facility related to hazardous waste management; and a written description of the type and amount of both introductory and continuing training given to each employee in a position related to hazardous waste management at the Facility.

COUNT VII

(Failure to Amend Contingency Plan)

68. The allegations of Paragraphs 1 through 67 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
69. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52, provides that owners and operators of hazardous waste facilities must prepare a contingency plan in accordance with the requirements provided therein.
70. 25 Pa Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.54(d), provides, in pertinent part, that the owner or operator must review the contingency plan and immediately amend it whenever the list of emergency coordinators changes.
71. Based on the activities described in Paragraph 39 of this CAFO, above, Respondent violated 25 Pa Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.54(d), by failing to review the contingency plan and immediately amend it when the list of emergency coordinators at the Facility changed.

COUNT VIII

(Failure to Submit Copies of the Contingency Plan)

72. The allegations of Paragraphs 1 through 71 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
73. 25 Pa Code § 265a.1, which incorporates by reference 40 C.F.R. § 264.53(b), provides, in pertinent part, that the owner or operator must submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
74. Based on the activities described in Paragraph 40 of this CAFO, above, Respondent violated 25 Pa Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.53(b), by failing to submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

COUNT IX

(Improper management of universal waste)

75. The allegations of Paragraphs 1 through 74 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
76. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), provides, in pertinent part, that a small quantity handler of universal waste batteries must label or mark clearly each battery or a container or package in which such batteries are contained with the words "Universal Waste-Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)."
77. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), provides that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
78. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), provides, in pertinent part, that each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste –Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".
79. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(a), provides that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, with certain exception not relevant hereto.
80. At the time of EPA's CEI on June 12, 2008, Respondent was storing at the Facility used batteries in containers that were not labeled or marked clearly with the words "Universal Waste-Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)".
81. At the time of EPA's CEI on June 12, 2008, Respondent was storing at the Facility used lamps in containers that were not be labeled or marked clearly with one of the following phrases: "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".
82. At the time of EPA's CEI on June 12, 2008, Respondent was storing at the Facility four used lamps without containing such used lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

83. From October 16, 2006 until July 30, 2008, Respondent accumulated universal waste for longer than one year from the date the universal waste is generated at the Facility.
84. Respondent is the "generator" of the used "batteries" and "lamps" described above, and such batteries and lamps are and were, at the time of the June 12, 2008 CEI, "universal waste" as these terms are defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9.
85. Respondent is and was, at the time of the June 12, 2008 CEI, a "small quantity handler of universal waste" as this term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9.
86. Based on the activities described in Paragraphs 80 through 83, above, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.14(a), 273.13(d)(1), 273.14(e), 273.15(a).

COUNT X

(Unlawful storage of land disposal restricted wastes)

87. The allegations of Paragraphs 1 through 86 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
88. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50, provides that storage of hazardous waste restricted from land disposal under 40 C.F.R. Part 268 or RCRA § 3004 is prohibited unless the following conditions, inter alia, are met:
 - (1) A generator stores such wastes in tanks or containers for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in 40 C.F.R. § 262.34 and 40 C.F.R. Parts 264 and 265.
 - (2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks or containers for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:
 - (i) Each container is clearly marked to identify its contents and the date each period of accumulation begins;
 - (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of

accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in 40 C.F.R. § 264.73 or § 265.73.

89. The hazardous wastes referred to in Paragraphs 32 through 36, above, are “land disposal restricted wastes” within the meaning of 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.34 and 268.40.
90. Respondent stored land disposal restricted waste in containers at the Facility as described in Paragraphs 32 through 36, above, as further described in Count 1, without complying with the requirements of 40 C.F.R. § 262.34(a), as required by 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50(a)(1) and/or (2).
91. The land disposal restricted wastes stored in containers as described in Paragraphs 32 through 36, above, did not meet applicable treatment standards or prohibition levels, as described in 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.40 and 268.50(e), and were not otherwise exempt or excluded from regulation under 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. Part 268, with exceptions not relevant to this CAFO.
92. Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50(a)(1) and/or (2), by storing hazardous waste restricted from land disposal in containers without meeting the conditions for such storage set forth therein.

IV. COMPLIANCE ORDER

93. Respondent shall perform each of the following Compliance Tasks within the time periods specified. “Days” as used herein shall mean calendar days unless specified otherwise.
 - a. Immediately cease the storage of hazardous wastes (in containers, tanks or in any other type of unit or at any location) at the Facility except in accordance with: a valid permit issued pursuant to 25 Pa. Code § 270a.1. and/or EPA's hazardous waste management regulations, 40 C.F.R. Part 270, as applicable, or a valid exemption or exclusion allowed by RCRA, EPA’s regulations thereunder, and/or the federally-authorized PaHWR, as applicable.
 - b. Immediately manage universal waste batteries and lamps at the Facility in accordance with 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.14(a), 273.15(a), 273.13(d)(1), 273.14(e), and 273.15(a).

c. Cease the storage of land disposal restricted wastes at the Facility except as provided in 40 C.F.R. § 268.50

94. Within thirty (30) days after the Effective Date of the CA, Respondent shall certify to Complainant, in writing, that Respondent currently is in compliance with all relevant provisions of the authorized Pennsylvania Hazardous Waste Management Program and RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for the compliance tasks set forth in Paragraph 93.a., b., and c., above. Such certification, and any other notice, certification, data presentation, or document submitted by Respondent pursuant to this Section IV ("Compliance Order") which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
95. Any certification submitted by Respondent pursuant to this Section IV ("Compliance Order") shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

96. Any certification, notice, data presentation, or document submitted by Respondent pursuant to this Section IV ("Compliance Order") shall be sent to the attention of:

Jeanna R. Henry
Environmental Scientist
U.S. EPA, Region III
Land and Chemicals Division (3LC70)
1650 Arch Street
Philadelphia, PA 19103-2029.

V. CIVIL PENALTIES

97. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of Fifty-Three Thousand Four Hundred Eighty-One Dollars (\$53,481.00), which Respondent agrees to pay in accordance with the terms set forth below.
98. The civil penalty of Fifty-Three Thousand Four Hundred Eighty-One Dollars (\$53,481.00) set forth in Paragraph 97, above, shall be paid in four (4) installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of Thirteen Thousand Three Hundred Seventy Dollars and Twenty-Five Cents (\$13,370.25), consisting of a principal payment of \$13,370.25 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - b. 2nd Payment: The second payment in the amount of Thirteen Thousand Four Hundred Sixty-Nine Dollars and Fifteen Cents (\$13,469.15), consisting of a principal payment of \$13,370.25 and an interest payment of \$98.90, shall be paid within one hundred twenty (120) days on which this CAFO is mailed or hand-delivered to Respondent;
 - c. 3rd Payment: The third payment in the amount of Thirteen Thousand Four Hundred Thirty-Six Dollars and Nineteen Cents (\$13,436.19), consisting of a principal payment of \$13,370.25 and an interest payment of \$65.94, shall be paid within two hundred ten (210) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and

- d. 4th Payment: The fourth and final payment in the amount of Thirteen Thousand Four Hundred Three Dollars and Twenty-Two Cents (\$13,403.22), consisting of a principal payment of \$13,370.25 and an interest payment of \$32.97, shall be paid within three hundred (300) days of the date on which this CAFO is mailed or hand-delivered to Respondent.
99. Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of Fifty-Three Thousand Four Hundred Eighty-One Dollars (\$53,481.00) and total interest payments in the amount of One Hundred Ninety-Seven Dollars and Eighty-One Cents (\$197.81), for a total payment in the amount of Fifty-Three Thousand Six Hundred Seventy-Eight Dollars and Eighty-One Cents (\$53,678.81).
100. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in paragraph 98, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
101. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in Paragraph 98, above, Respondent may pay the entire civil penalty of Fifty-Three Thousand Four Hundred Eighty-One Dollars (\$53,481.00) within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as calculated in Paragraph 98, above, and as described in Paragraph 99. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
102. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), and EPA's *RCRA Civil Penalty Policy* (June 2003) ("*Penalty Policy*").
103. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to Paragraph 98, above, and/or the full penalty pursuant to Paragraph 101, above, and/or any administrative fees and late payment penalties, in accordance with Paragraphs 105 through 108, below, by electronic funds transfer ("EFT"), as described below, or by sending a corporate check or certified check, in the following manner:

- a. All payments by the Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2010-0300).
- b. All checks shall be made payable to **"United States Treasury"**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

PO Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

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

Contact 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004

Account No. 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"

- g. All payments made through the automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA No. 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact, Jesse White. 301-887-6548 or REX, 1-866-234-5681

- h. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter "sfo 1.1" in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- 104. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check or EFT authorization, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III

1650 Arch Street
Philadelphia, PA 19103-2029;

and

Louis F. Ramalho
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

105. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
106. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
107. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
108. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
109. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VI. OTHER APPLICABLE LAWS

110. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

111. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this Consent Agreement. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

112. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a), 42 U.S.C. § 6928(a), for the violations alleged in this Consent Agreement. The violations in this Consent Agreement for which civil penalties are being assessed constitute all of the RCRA violations discovered by and/or known to EPA as a result of the CEI on June 12, 2008, and the information collected by EPA pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), on April 8, 2009 and October 5, 2009.

IX. PARTIES BOUND

113. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

X. EFFECTIVE DATE

114. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XI. ENTIRE AGREEMENT

115. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For: Eric Plating Company

Date: 6-10-10

By: David T. Briggs
David T. Briggs
President

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 6/14/10

By: [Signature]
Louis F. Ramalho
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6/21/10

By: Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
Erie Plating Company	:	
656 West 12th Street	:	U.S. EPA Docket Number
Erie, PA 16501	:	RCRA-03-2010-0300
Respondent,	:	
Erie Plating Company	:	
656 West 12th Street	:	
Erie, PA 16501	:	
EPA ID. No. PAD005031448	:	
Facility.	:	
	:	

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 REGION III
 PHILADELPHIA, PA
 10/10/10

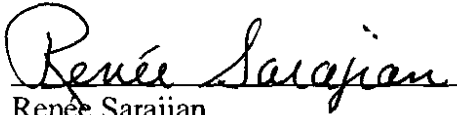
FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Erie Plating Company, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Fifty-Three Thousand Four Hundred Eighty-One Dollars (\$53,481.00) in accordance with the terms and conditions of the Consent Agreement, perform the tasks set forth in the Compliance Order, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 6/22/10

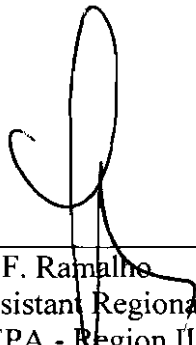

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2010-0300, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Mr. David T. Briggs
President
Erie Plating Company
656 West 12th Street
Erie, PA 16501

6/22/10
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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U.S. EPA - REGION III