



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

FEB 06 2008

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7001 0320 0006 1559 2425

Daniel W. Stauner, Esq.
Hanlon & Stauner PLLP
PO Box 41907
Plymouth, MN 55441-0907

Re: Consent Agreement and Final Order
In the Matter of: Ken's Metal Finishing and Kenneth LaCroix
Docket No.: **RCRA-05-2007-0007**

Dear Mr. Stauner:

Enclosed please find an original fully-executed Consent Agreement and Final Order (CAFO) in resolution of the case cited above. The other original was filed on FEB 06 2008, 2008, with the Regional Hearing Clerk (RHC).

Please instruct your clients to pay the civil penalty in the amount of \$1,000 in the manner prescribed in paragraph(s) 23 through 26 of the CAFO, and reference all checks with the number **BD 2750842R002** and docket number **RCRA-05-2007-0007**. Your payment is due within 60 days of the effective date of the CAFO. 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,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

1. Respondents were served with a copy of the Complaint and Compliance Order (Docket No. RCRA-05-2007-0007) (the Complaint) in this matter. The Complaint is incorporated herein by reference. Respondents through their attorney have each filed an Answer to the Complaint.
2. Respondent KMF, a Minnesota corporation incorporated in the State of Minnesota in or about 1978, operates a facility located at 2333 Emerson Avenue North, Minneapolis, Minnesota (Facility).
3. Respondent Kenneth LaCroix is the owner of the Facility. The Complaint also alleges that Mr. LaCroix was an operator of the Facility.
4. Respondents admit the jurisdictional allegations of the Complaint. Respondents agree not to contest such jurisdiction in any proceeding to enforce the provisions of this Consent Agreement and Final Order (CAFO).
5. Except as otherwise stipulated in this CAFO or in Respondents' Answers, Respondents neither admit nor deny the specific factual allegations contained in the Complaint.
6. Respondents withdraw their request for a hearing and waive any and all rights under any provisions of law to a hearing on the allegations contained in the Complaint or to challenge the proposed Final Order accompanying this Consent Agreement.
7. If the Respondents fail to comply with any provision contained in this CAFO, Respondents waive any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or to seek an additional penalty for the noncompliance.
8. Pursuant to Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6928(g), the nature of the violations and other relevant factors, Complainant has determined that

an appropriate civil penalty to settle this action is ONE THOUSAND DOLLARS (\$1,000). Respondents consent to the issuance of this CAFO with the terms and conditions described herein, and to the assessment of a civil penalty of One Thousand dollars. Respondents agree not to claim or attempt to claim a Federal income tax deduction or credit covering all or any part of the cash civil penalty paid to the U.S. Treasury.

9. Respondents shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Facility. This CAFO is binding on Respondents and any successors in interest.
10. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective on February 11, 1985. 50 Fed. Reg. 3756 (January 28, 1985). The Administrator of U.S. EPA granted the State of Minnesota final authorization to administer additional RCRA and certain HSWA requirements effective September 18, 1987, 52 Fed. Reg. 27199 (July 20, 1987); June 23, 1989, 54 Fed. Reg. 16361 (April 24, 1989) (corrected effective June 23, 1989, 54 Fed. Reg. 27169 (June 28, 1989)); August 14, 1990, 55 Fed. Reg. 24232 (June 15, 1990); August 23, 1991, 56 Fed. Reg. 28709 (June 24, 1991); May 18, 1992, 57 Fed. Reg. 9501 (March 19, 1992); May 17, 1993, 58 Fed. Reg. 14321 (March 17, 1993); March 21, 1994, 59 Fed. Reg. 2998 (January 20, 1994) and May 25, 2000, 65 Fed. Reg. 33774 (August 23, 2000). The U.S. EPA-authorized Minnesota regulations are codified in Minnesota Rules Chapter 7001, and at Minn. R. 7045.0010 *et seq.*¹ See also 40 C.F.R. § 272.1200 *et seq.*

¹ All references to Minnesota Rules are to the federally authorized version of such regulations.

11. 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.
12. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.
13. Nothing in this CAFO shall be construed to relieve Respondent from its obligation to comply with all applicable Federal, State and local statutes and regulations, including the RCRA Subtitle C requirements at 40 C.F.R. Parts 260 through 270.
14. This CAFO shall become effective on the date the Final Order is signed by the Regional Administrator, U.S. EPA Region 5.

III. GENERAL TERMS OF AGREEMENT

Based on the foregoing stipulations, the Parties agree as follows:

15. Respondents shall immediately upon the effective date of this CAFO, halt plating and related manufacturing operations at the Facility.
16. Within 60 days of the effective date of this CAFO, for each waste described in paragraph 56 of the Complaint, KMF shall evaluate whether the waste is a hazardous waste in accordance with Minn. R. 7045.0214 and shall prepare a written record of the evaluation. KMF shall maintain each such record in accordance with Minn. R. 7045.0294, Subp. 3 [40 C.F.R. § 262.40(c)].
17. Within 60 days of the effective date of this CAFO, materials used in plating and related manufacturing operations at the Facility prior to the effective date of this CAFO, including but not limited to plating baths, rinses, oil, sand blasting materials, materials used in gunsmithing or weapon repair, and chemical products, shall be considered wastes

under the terms of the this CAFO. For each such waste, KMF shall, within 60 days of the effective date of this CAFO, evaluate whether the waste is a hazardous waste in accordance with Minn. R. 7045.0214 and shall prepare a written record of the evaluation.

KMF shall maintain each such record in accordance with Minn. R. 7045.0294, Subp. 3 [40 C.F.R. § 262.40(c)].

18. Within 60 days after the effective date of this CAFO, Respondents will ensure that all hazardous wastes identified in paragraphs 16 and 17 of this CAFO and all wastes identified under paragraph 67 of the Complaint are transported for off-site treatment, storage or disposal in accordance with all applicable requirements of the Minnesota Rules, including using a hazardous waste manifest(s) and transportation by a licensed hazardous waste transporter to a permitted treatment, storage or disposal facility. Within 75 days of the effective date of this CAFO, Respondents shall submit a report to U.S. EPA, MPCA and Hennepin County, describing the actions taken to comply with the requirements of this paragraph, and stating in detail the nature and amount of waste transported for off-site treatment, storage or disposal, and the facilities to which such waste were transported. The report shall specify which requirements set forth in paragraphs 16, 17, and 18, if any, that Respondents have failed to meet fully. Copies of all manifests for the transportation of such wastes shall be included with this report.
19. Respondents shall prepare a closure plan for all areas of the Facility (including all wood flooring, floor joists and other structures in and on which plating wastes have accumulated) where hazardous wastes have been stored, in accordance with the requirements of Minn. R. 7045.0594 and 7045.0596 [40 C.F.R. Part 265, Subpart G] and shall submit the plan within 60 days of the effective date of this CAFO to MPCA for approval, modification and approval, or denial with instructions to modify and resubmit

the plan. The closure plan shall also (i) identify and address areas of deteriorated flooring in the black oxide room and in the basement where wastes could have been released into the soil below; and (ii) identify and address areas where soil samples are necessary to determine whether the soil has been impacted by releases of hazardous wastes or hazardous waste constituents, as well as the extent of such impact.

Respondents shall also submit a copy of the plan to U.S. EPA at the same time it submits the plan to the MPCA. Following approval of the plan by MPCA, Respondents shall implement the plan in accordance with the requirements of the approved closure plan and schedules. Respondents will notify U.S. EPA if a closure plan has not been approved by MPCA within 6 months of the effective date of this CAFO.

20. Respondents will notify U.S. EPA in writing upon achieving compliance with this CAFO within 15 calendar days after the date Respondents achieve compliance. For each requirement of this CAFO, the notification shall include a description of the manner and the date on which compliance with the requirement was achieved. If any required action has not been taken or completed in accordance with any requirement of this CAFO, Respondents shall notify U.S. EPA of the failure, the reasons for the failure, and the proposed date for compliance within ten (10) calendar days of the due date set forth in this CAFO.
21. Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to U.S. EPA pursuant to this CAFO until ten (10) years after the later of: (i) the date that the document or report is required to be submitted to U.S. EPA under this CAFO, or (ii) the date that the document or report is actually submitted to U.S. EPA. Respondents shall provide documentation of any such underlying research and data to U.S. EPA within seven (7) calendar days of a

request for such information. In all documents or reports submitted to U.S. EPA pursuant to this CAFO, Respondent KMF, by its officers, and Respondent LaCroix shall sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

22. Whenever, under the terms of this CAFO, notice is required to be given or a document sent by one Party to another, it shall be directed to the individuals at the addresses specified below:

As to U.S. EPA:

Terence Branigan
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Daniel F. Chachakis
Land and Chemicals Division (LR-8J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to Respondents:

Ken's Metal Finishing, Inc.
c/o/ Daniel W. Stauner
Attorney for Respondent
PO Box 41907
Plymouth, MN 55441-0907

and

Kenneth LaCroix
13880 Sunnyslope Dr.
Maple Grove, MN 55311

As to MPCA and Hennepin County:

Tanya Maurice
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155-3898

23. Within 60 days following the effective date of this CAFO, Respondents shall pay a civil penalty of ONE THOUSAND DOLLARS (\$1,000). Payment shall be made by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference the name of the Respondents and the Docket Number of this CAFO. Interest and late charges shall be paid as specified below.

24. Upon payment of the civil penalty, Respondents shall send to each of the person listed below a copy of the check and a transmittal letter referencing the name of each Respondent and the docket number of this CAFO:

Regional Hearing Clerk
U.S. EPA Region 5
77 West Jackson Blvd. (E-13J)
Chicago, Illinois 60604-3590

Terence Branigan
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Daniel F. Chachakis
Land and Chemicals Division (LR-8J)

U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

25. Pursuant to 31 U.S.C. § 3717, Respondents shall pay the following amounts on any amount overdue under this CAFO:
- (a) **Interest.** Any unpaid portion of a civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - (b) **Monthly Handling Charge.** Respondents shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
 - (c) **Non-Payment Penalty.** On any portion of a civil penalty more than 90 calendar days past due, Respondents shall pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b) above.
26. The penalty specified in this CAFO shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.
27. Full payment of the civil penalty assessed pursuant to this CAFO shall not in any case 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. Full payment of the penalty assessed under this CAFO shall only resolve the Respondents' liability for Federal civil penalties for the violations and facts alleged in the complaint.
28. This CAFO constitutes the entire settlement between the parties, and constitutes final disposition of the Complaint filed in this case.
29. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.
30. This CAFO shall terminate after U.S. EPA's review of Respondents' notification(s)

submitted pursuant to Section III, when U.S. EPA determines that Respondents have fully complied with all terms and conditions of this CAFO, including payment, in full, of all penalties due and owing, and U.S. EPA provides written notice to Respondents of such termination.

31. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.
32. Notwithstanding any other provision of this CAFO, U.S. EPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right: (a) for any matters other than violations alleged in the Complaint, to take any action authorized under Section 3008 of RCRA; (b) to enforce compliance with the applicable provisions of Minn. Reg. 70001, 7045 and 7046; (c) to take any action under 40 C.F.R. Parts 124 and 270; and (d) to enforce compliance with this CAFO.

IV. SIGNATORIES

Each undersigned representative of a Party to this Consent Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such party to this document.

Agreed to this 15 day of Jan, 2008:



Kenneth LaCroix

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2008 FEB -6 AM 11:56

Agreed to this 18 day of Jan, 2008:

Ken's Metal Finishing, Inc.

By: Kenneth LaCroix

Print Name: Kenneth LaCroix

Title: Pres

Agreed to this 4th day of February, 2008:

Margaret M. Guerriero

Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. EPA Region 5

V. FINAL ORDER

The above being agreed and consented to, it is so ordered this 5th day of February, 2008:

Mary A. Gade

Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

IN THE MATTER OF:
Ken's Metal Finishing, Inc.
2333 Emerson Avenue North
Minneapolis, MN 55411

And

Kenneth LaCroix
13880 Sunnyside Dr.
Maple Grove, MN 55311

2008 FEB -6 AM 11:56
RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5

DOCKET NO. RCRA - 05 - 2007 - 0007

CASE NAME: Ken's Metal Finishing, Inc. and Kenneth LaCroix
DOCKET NO: RCRA-05-2007-0007

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order (CAFO)** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

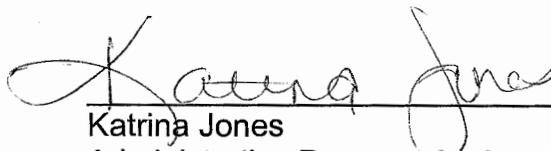
Daniel W. Stauner, Esq.
Hanlon & Stauner PLLP
P.O. Box 41907
Plymouth, MN 55441-0907

Return Receipt # 7001 0320 0006 1559 2425

And via Federal Express to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th Street, NW
Washington, DC 20005

Dated: 2/6/08



Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5882

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