

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

M&K Plating Company Inc.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0933

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, M&K Plating Company Inc. ("Respondent" or "M&K Plating") and concerns the facility located at 2621 Finley Street, Fort Worth, TX 76111 ("the M&K Plating Facility" or "Facility").
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. The Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO and waives all defenses which have been raised or could have been raised to the claims in the CAFO.

5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation and authorized to do business in the State of Texas.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 TEX.ADMIN. CODE § 3.2(25)¹, [40 C.F.R. § 260.10].

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

11. Respondent owns or operates the M&K Plating Facility.
12. The M&K Plating Facility is an electroplating, plating, polishing, anodizing, and coloring company.
13. On July 29, 2019, EPA conducted a RCRA compliance evaluation inspection of the M&K Plating Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
14. During the Inspection, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the characteristic of corrosivity (D002), characteristics for toxicity (D006/Cadmium) and (D007/Chromium), and a listed waste having the F006 listing.
15. The M&K Plating Facility is a "facility" within the meaning of 30 TEX.ADMIN. CODE § 335.1(60), [40 C.F.R. § 260.10].
16. The waste streams identified in Paragraph 14 are "hazardous waste" as defined in 30 TEX.ADMIN. CODE § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
17. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 1,000 kg per month under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained on-site.
18. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(66) & (70), [40 C.F.R. § 260.10].
19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 TEX.ADMIN.CODE Chapter 335, Subchapter C, [40 C.F.R Part 262].

Claims i. Notification Requirements

20. The allegations in Paragraphs 1-19 are re-alleged and incorporated herein by reference.
21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with EPA or the authorized state, a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
22. Respondent did not file with EPA or Texas, an authorized state, an adequate and timely notification of its hazardous waste activities at the M&K Plating facility during the period from 2015 through 2020 dates in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claims ii. Failure to Operate within Its Stated Generator Status

23. The allegations in Paragraphs 1-22 are realleged and incorporated by reference.
24. During the Investigation, EPA determined that the M&K Plating Facility declared its generator status as a small quantity generator ("SQG").
25. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b), [40 C.F.R. § 261.5(b)], as long as a SQG complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(e), (f), (g) and (j) and 40 C.F.R. §§ 261.5 (e), (f), (g) and (j), the generator's hazardous waste is not subject to regulation under 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C-H and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.

26. During portions of the period 2015 through 2020, the M&K Facility exceeded its declared SQG status and operated in some instances as a large quantity generator and did not meet one or more of the requirements for a large quantity generator under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

Claims iii. Failure to Make Adequate Hazardous Waste Determinations

27. The allegations in Paragraphs 1-26 are realleged and incorporated by reference.
28. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2] must determine if the solid waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
29. EPA reviewed Respondent's records for the period from 2015-2018 and determined that Respondent failed to make adequate hazardous waste determinations on several of Respondent's solid waste streams at the Facility.
30. Respondent violated the requirements of RCRA, and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11] by failing to make the requisite hazardous waste determination on all solid waste streams generated by Respondent at the M&K Plating Facility during the period from 2015-2018.

Claims iv. Failure to Maintain and Operate to Minimize Releases

31. The allegations in Paragraphs 1-30 are realleged and incorporated herein by reference.
32. Pursuant to 30 TEX.ADMIN.CODE § 335.112(a)(2), [40 C.F.R. § 265.31], 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.

33. During the Inspection, Respondent failed to clean up multiple hazardous waste spills throughout the facility, including in the Chemical Product Storage Area and Wastewater Treatment System Area.
34. Therefore, Respondent is in violation of 30 TEX.ADMIN.CODE § 335.112, [40 C.F.R. § 265.31].

Claims v. Storage of Hazardous Waste Without a Permit

35. The allegations in Paragraphs 1-34 are realleged and incorporated herein by reference.
36. Pursuant to 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34(a)], a generator of hazardous waste who accumulates its hazardous waste on site is exempted from the permit or interim status requirements of RCRA, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34].
37. Pursuant to 30 TEX.ADMIN.CODE § 335.69(b), [40 C.F.R. § 262.34(b)], a generator of 1,000 kilogram or greater of hazardous waste in a calendar month, who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265, 267, and the Permit requirements of 270 unless the generator has been granted an extension to the 90-day period.
38. During the period of 2015 through 2020, the M&K Plating Facility accumulated untreated/treated hazardous wastewater and wastewater sludge on site, having the waste codes D006, D007 and F006. Respondent was not granted an extension to the 90-day period, for the hazardous waste described in Paragraph 14, pursuant to 30 TEX.ADMIN.CODE § 335.69(b), [40 C.F.R. § 262.34(b)].

39. For the time periods described in Paragraph 37, Respondent stored hazardous waste at the facility in violation of 30 TEX.ADMIN.CODE Subchapters C and F, [40 C.F.R: Parts 264, 265, 267, and 270].

IV. COMPLIANCE ORDER

40. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 30 days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams at the M&K Plating Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the M&K Plating Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements.
 - B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the M&K Plating Facility and within the prescribed time period.
 - C. Respondent shall ensure all tanks, containers, supersacks, and all other containers used to store hazardous waste are labeled with the words "Hazardous Waste" and an accumulation date.
 - D. Respondent shall provide EPA with a removal schedule for disposal of hazardous waste stored in the Chemical Product Storage Area, Wastewater Treatment System Area, Plating Lines Area, and Storage Yard Area. The removal schedule should result in all stored hazardous waste at the site being removed from the site and sent to a permitted, hazardous

waste disposal facility within 6 months of the effective date of this CAFO. Priority should be given to any liquid wastes prior to disposal of solid wastes to minimize the potential for release. Upon disposal, Respondent shall provide a copy of hazardous waste manifests along with the Land Disposal Restriction documentation.

- E. Respondent shall take the necessary steps to ensure that hazardous waste is stored in containers in good condition.
 - F. Respondent shall conduct daily and weekly inspections of the Facility.
 - G. Respondent shall provide documentation that containers are closed at all times except while adding or removing waste.
 - H. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
 - I. Respondent shall estimate the cost of implementation of the injunctive relief required by this Compliance Order.
 - J. Respondent shall estimate the environmental benefit (reduction of waste or reduction in the toxicity of waste) of the injunctive relief required by this Compliance Order.
41. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Adolphus Talton
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email to Enforcement Officer
Adolphus Talton at talton.adolphus@epa.gov.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

42. Complainant reviewed the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, considered the entire record, including the above referenced Findings of Fact and Conclusions of Law, and took statutory factors relating to penalty, including the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, into account when determining an appropriate penalty. During the initial penalty discussions between Complainant and the Respondent, the Respondent alerted Complainant that it would have financial difficulty paying the proposed penalty (i.e. an ability to pay). Respondent supplied appropriate financial information for complainant's review. After reviewing the submitted financial information the parties agreed that \$1,000 was an appropriate amount to resolve the alleged violation along with the costs associated with a return to compliance pursuant to the Compliance Order.
43. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
44. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

M&K Plating Company Inc.
RCRA-06-2020-0933

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

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of M&K Plating Company Inc. (Docket No. RCRA-06-2020-0933) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

45. The Respondent shall send a simultaneous notice of such payment to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Adolphus Talton
Dallas, Texas 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest

on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and 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).

47. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent.³¹ C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

48. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

49. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

M&K Plating Company Inc.
RCRA-06-2020-0933

To EPA:

Jeffrey Clay
clay.jeffrey@epa.gov

To Respondent:

Jim Connor
tcstexas1@gmail.com

50. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in the Compliance Order. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

51. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

M&K Plating Company Inc.
RCRA-06-2020-0933

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: _____

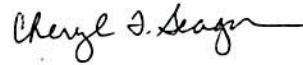
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M&K Plating Company Inc.

M&K Plating Company Inc.
RCRA-06-2020-0933

FOR THE COMPLAINANT:

Date: _____



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 7/31/2020

**Rucki,
Thomas**

Digitally signed by Rucki,
Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2020.07.31 12:30:42
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Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via electronic mail to Complainant:

clay.jeffrey@epa.gov

Copy via electronic mail to Respondent:

tcstexas1@gmail.com

Copy via electronic mail to the Regional Hearing Clerk (EPA, Region 6):

vaughn.lorena@epa.gov

**JEFFREY
CLAY**

Digitally signed by JEFFREY CLAY
DN: c=US, o=U.S. Government,
ou=Environmental Protection
Agency, cn=JEFFREY CLAY,
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Jeffrey M. Clay
U.S. EPA Region 6
Dallas, Texas