



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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April 18, 2008

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (RAA)  
One Congress Street  
Boston, Massachusetts 02114

Re: In the Matter of Nuchrome, Inc., Nu-Chrome Restoration Corp., and Custom Chrome, LLC  
Docket No. RCRA-1-2008-0055

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Complaint. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Andrea Simpson".

Andrea Simpson  
Senior Enforcement Counsel

cc: Donald Kemp  
Charles Sturtevant, III, Esq.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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Docket No. RCRA-01-2008-0055

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, the original and one copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing were hand-delivered to the Regional Hearing Clerk and copies were sent to Respondent and Counsel for Respondent, as set forth below:

Original and one copy  
by hand delivery to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (RAA)  
One Congress Street, Suite 1100  
Boston, MA 02114

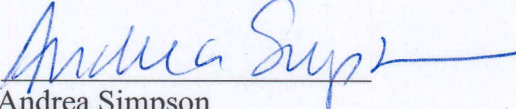
One copy by certified mail to:

Donald Kemp, President  
Nuchrome Inc., Nu-Chrome Restoration Corp.,  
Custom Chrome, LLC  
101 Graham Road  
Fall River, MA 02720

One copy by first class mail to:

Charles N. Sturtevant, III, Esq.  
86 Cochato Road  
Braintree, MA 02184

Dated: 4/18/08

  
Andrea Simpson  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
One Congress Street (SEL)  
Boston, MA 02114



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

IN THE MATTER OF )  
)  
)  
NUCHROME, INC. )  
NU-CHROME RESTORATION, CORP. )  
and )  
CUSTOM CHROME, LLC. )  
101 Graham Road )  
Fall River, Massachusetts )  
Respondents. )  
)  
Proceeding under Section 3008(a) of the )  
Resource Conservation Recovery )  
Act, 142 U.S.C. § 6928(a) )

RCRA-01-2008-0055

**COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY  
FOR HEARING**

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**I. INTRODUCTION**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (“Order”) is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22”). Respondents, NuChrome, Inc., Nu-Chrome Restoration, Corp., and Custom Chrome, LLC., (collectively “Respondents”), are hereby notified of United States Environmental Protection Agency (“EPA”), Region 1’s, determination that Respondents have violated Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, Massachusetts General Laws (“M.G.L.”) c. 21C, and the Massachusetts hazardous waste management regulations set forth at 310 C.M.R.

§ 30.000 *et seq.*, for failing to properly manage hazardous wastes. EPA also provides notice of Respondents' opportunity to request a hearing.

## **II. NATURE OF ACTION**

2. This is an action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), ordering Respondents to come into compliance with the hazardous waste regulations promulgated pursuant to RCRA.

3. Notice of commencement of this action has been given to the Commonwealth of Massachusetts ("Massachusetts") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **III. STATUTORY AND REGULATORY FRAMEWORK**

4. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities ("TSDFs"). EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270.

5. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA has promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are regulated as "hazardous wastes." These regulations are set forth at 40 C.F.R. Part 261.

6. Section 3002 of RCRA, 42 U.S.C. § 6922, required EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and relate to such matters as determining whether a waste is hazardous, container management,



labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.

7. Section 3004 of RCRA, 42 U.S.C. § 6924, required EPA to establish standards applicable to owners and operators of facilities that treat, store, or dispose of hazardous waste, and Section 3005 of RCRA, 42 U.S.C. § 6925, established permit requirements for such facilities. These standards are codified at 40 C.F.R. Parts 264 and 265. These standards also apply to hazardous waste generators if they store hazardous wastes for more than ninety days.

8. In 1984, Congress substantially amended RCRA with the Hazardous and Solid Waste Amendments (“HSWA”) to, among other things: (a) restrict the disposal of hazardous wastes on the land or in landfills; and (b) change the method for determining whether wastes are toxic (and therefore hazardous). RCRA Section 3004(c)-(p), 42 U.S.C. § 6924(c)-(p).

9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

10. On February 25, 1981, EPA granted Phase I interim authorization to Massachusetts to administer its hazardous waste program in lieu of the federal program. The regulations implementing Massachusetts’ hazardous waste program, promulgated pursuant to Massachusetts General Laws, Chapter 21C §§ 4 and 6, became effective on July 1, 1982. The implementing regulations are set out in 310 Code of Massachusetts Regulations (“C.M.R.”) § 30.000 *et seq.* On January 24, 1985, EPA granted final authorization to Massachusetts to administer its hazardous waste program in lieu of the federal program. See 50 Fed. Reg. 3344 (January 24, 1985). That authorization became effective on February 7, 1985.

11. Effective November 30, 1998, October 12, 1999, January 1, 2003 and February 13, 2004, the Commonwealth received final authorization for additional hazardous waste rules. The federally-authorized Massachusetts regulations, together with other state hazardous waste regulations, are codified at 310 C.M.R. § 30.000 *et seq.*

12. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), EPA may enforce the federally-approved Massachusetts hazardous waste program by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e.

13. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

#### **IV. GENERAL ALLEGATIONS**

##### **A. Factual Allegations Regarding the Respondents**

14. NuChrome, Inc. (“NuChrome”) is a corporation organized on July 11, 1996, and existing under the laws of the Commonwealth of Massachusetts. Its principal place of business is located at 101 Graham Road, Fall River, Massachusetts (“Facility”). NuChrome owns the Facility, including the building and equipment. Donald Kemp (“Kemp”) is the President of NuChrome. G.A. Rogers Company is a tenant at the Facility. It formerly conducted plating operations, and currently conducts electrostatic painting.



15. Nu-Chrome Restoration, Corp. (“Nu-Chrome Restoration”) was a corporation organized on March 24, 2004, and existing under the laws of the Commonwealth of Massachusetts. Its principal place of business was located at 101 Graham Road, Fall River, Massachusetts. During the times relevant hereto, Nu-Chrome Restoration operated the business at the Facility. Kemp was the President of Nu-Chrome Restoration. Nu-Chrome Restoration was involuntarily dissolved on May 31, 2007.

16. Custom Chrome, LLC. (“Custom Chrome”) is a corporation organized on January 10, 2008, and existing under the laws of the Commonwealth of Massachusetts. Custom Chrome is a successor corporation to Nu-Chrome Restoration. Kemp is the President of Custom Chrome.

17. NuChrome is a “person” as that term is defined by 310 C.M.R. § 30.010 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and an “owner,” as that term is defined by 310 C.M.R. § 30.010 and 40 C.F.R. § 260.10.

18. Nu-Chrome Restoration is/was a “person” as that term is defined by 310 C.M.R. § 30.010 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and an “operator,” as that term is defined by 310 C.M.R. § 30.010 and 40 C.F.R. § 260.10.

19. Custom Chrome is a “person” as that term is defined by 310 C.M.R. § 30.010 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and an “operator,” as that term is defined by 310 C.M.R. § 30.010 and 40 C.F.R. § 260.10.

20. During the course of normal operations, Respondents Nu-Chrome Restoration and Custom Chrome re-plate automobile parts such as bumpers and headlight rims, using a triple electroplating process (copper, nickel and chromium). The electroplating process generates

hazardous metal sludges and hazardous wastewaters which, until recently, Respondents evaporated on-site in one of three wastewater evaporators.

21. The Facility consists of an approximately 40,000 square-foot building located in an industrial park in Fall River, Massachusetts.

22. At all times relevant to this Complaint, Respondents generated “hazardous wastes” as that term is defined by 310 C.M.R. § 30.010, Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. § 261.3. The hazardous wastes generated by Respondents included, but were not limited to: chromium, nickel and copper sludges; corrosive wastewaters, and cyanide process wastewaters. G.A. Rogers also has generated hazardous waste at the Facility.

23. Pursuant to 310 C.M.R. § 30.351(1)(a) and (b), a Small Quantity Generator (“SQG”) is a facility that generates less than 1,000 kilograms (2,200 pounds) of hazardous wastes during a calendar month and does not accumulate, at any one time, more than 6,000 kilograms (13,200 pounds) of hazardous waste.

24. Pursuant to 310 C.M.R. § 30.340(1), a generator who is not a SQG pursuant to 310 C.M.R. § 30.351(1), or a Very Small Quantity Generator pursuant to 310 C.M.R. § 30.353(1), is a Large Quantity Generator (“LQG”).

25. NuChrome notified the Massachusetts Department of Environmental Protection (“MA DEP”) that it was a SQG of hazardous wastes on June 30, 1997.

26. On July 5, 2006, Respondents notified MA DEP that Nu-Chrome Restoration had become a LQG of hazardous waste, in accordance with 310 C.M.R. § 30.061(1). A LQG is subject to the waste management standards promulgated at 310 C.M.R. § 30.341 *et seq.*



27. NuChrome, Nu-Chrome Restoration, and Custom Chrome were and/or are each subject to RCRA as owners or operators of a facility where hazardous waste was and is generated, stored, and treated.

**B. Factual Allegations Regarding EPA's Compliance Evaluation Inspections**

28. EPA representatives first conducted a compliance evaluation inspection ("CEI") at the Facility on March 30, 1998 ("1998 CEI"), and found it to be in violation of numerous regulations pertaining to the storage and handling of hazardous waste. EPA filed an administrative Complaint on June 25, 1999, against NuChrome based on the RCRA violations ("First Administrative Action"), including: (a) failure to inspect hazardous waste storage areas; (b) storing hazardous waste on-site for greater than 180 days without a permit; (c) failure to keep hazardous waste containers closed during storage; (d) failure to ensure that containers holding hazardous waste were in good condition; (e) failure to label or mark clearly each container of hazardous waste with required information; (f) failure to mark containers of hazardous waste with the beginning date of accumulation; (g) failure to maintain adequate aisle space; and (h) failure to determine if a solid waste is a hazardous waste. NuChrome agreed to resolve the action by entering into a Consent Agreement and Final Order on November 11, 2000 ("CAFO"). The CAFO provided that NuChrome would pay a \$25,000 penalty and that it would perform a Supplemental Environmental Project ("SEP") valued at \$74,000 to eliminate the Facility's evaporation of hazardous wastewater. In addition, at the time of signing the CAFO, NuChrome affirmed that it was in compliance with RCRA regulations.

29. NuChrome has paid approximately \$3,000 of the \$25,000 penalty described above. In addition, NuChrome failed to perform the SEP.

30. EPA inspectors subsequently returned to the Facility on August 26, September 2, and September 22, 2004 (“2004 CEI”), and October 2, 2006 (“2006 CEI”). At the time of the 2004 and 2006 CEIs, the EPA inspectors determined that Respondents NuChrome and Nu-Chrome Restoration continued to be out of compliance with RCRA and the Massachusetts hazardous waste management regulations, as described in Paragraph 33 below.

31. During the 2004 and 2006 CEIs, Respondents NuChrome and Nu-Chrome Restoration stored in excess of 32,000 pounds of hazardous wastes at the Facility and were, therefore, operating as a LQG.

32. During the 2004 and 2006 CEIs, the majority of the Respondents NuChrome and Nu-Chrome Restoration’s hazardous wastes were stored throughout the Facility in 55-gallon drums, tanks and other miscellaneous containers. Most of the Respondents’ hazardous waste drums were stored in a posted hazardous waste storage area. Respondents also used several tanks (ranging from 500 to 1800 gallons in capacity) to hold chrome-contaminated sludge, acidic and alkaline wastes, and undetermined wastes. These tanks were located throughout the Facility.

33. During the 2004 and 2006 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of numerous RCRA regulations, including but not limited to:

- a. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of Section 3005 of RCRA and 310 C.M.R. § 30.801 by operating a treatment facility without a licence due to Respondents’ practice of evaporating the Facility’s hazardous wastewaters in order to reduce the volume of hazardous waste generated at the Facility;



- b. At the time of the 2004 and 2006 CEIs, Respondents NuChrome and Nu-Chrome Restoration were in violation of Section 3005 of RCRA and 310 C.M.R. § 30.801 by operating a storage facility without a license, due to Respondents' practice of storing drums and other containers of hazardous waste in excess of 90 days;
- c. At the time of the 2004 and 2006 CEIs, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.302, by failing to conduct complete and accurate hazardous waste determinations on the majority of the waste streams generated as part of their operations;
- d. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. §§ 30.342(1)(d), which references 310 C.M.R. § 30.686, and 310 C.M.R. § 30.343(1)(f), which references 310 C.M.R. § 30.696, by failing to conduct and document weekly inspections of containers where hazardous wastes were being stored and daily inspections of tanks holding hazardous wastes;
- e. At the time of the 2004 and 2006 CEIs, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(2)(a), (b), and (c) and 310 C.M.R. § 30.343(1)(e), which references 310 C.M.R. § 30.695(3), by failing to clearly mark containers and tanks storing hazardous waste with the words "hazardous waste," words identifying the type of hazardous waste being stored, and the type of hazard(s) associated with the waste(s) indicated in words (e.g., toxic, ignitable...);

- f. At the time of the 2004 and 2006 CEIs, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(2)(d), by failing to mark each container of hazardous waste with the date upon which each period of accumulation begins;
- g. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(1)(e)(6), which references 310 C.M.R. § 30.524(5), by maintaining the Facility without sufficient aisle space for containers storing hazardous waste to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment;
- h. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.342(1)(a), which references 310 C.M.R. § 30.683, by storing at an area adjacent to a marked hazardous waste storage area, three approximately 20-gallon containers containing hazardous waste that were rusted and dented;
- i. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(1), by failing to give hazardous waste management training to employees responsible for hazardous waste management;
- j. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(1)(a), which



references 310 C.M.R. § 30.516(2), by failing to have a written personnel training plan designed to ensure compliance with 310 C.M.R. § 30.516(1);

- k. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(1)(b), which references 310 C.M.R. § 30.521, by failing to maintain an emergency contingency plan for the Facility;
- l. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.341(1)(e)(4), which references 310 C.M.R. § 30.524(2)(a)-(d), by failing to have proper emergency equipment, information or communication equipment near points of accumulation at the Facility; and
- m. At the time of the 2004 CEI, Respondents NuChrome and Nu-Chrome Restoration were in violation of 310 C.M.R. § 30.342(1)(f), which references 310 C.M.R. § 30.688(4), by failing to keep incompatible wastes separated by a dike, berm, wall or other device.

## **V. CURRENT VIOLATIONS**

34. An EPA representative returned to the Facility on March 6, 2008 (“2008 CEI”). At the time of the 2008 CEI, Scott Webster (“Webster”), Kemp’s step-son, told the EPA inspector that he was in charge of the plant because Kemp was in Florida for the winter. During the 2008 CEI, the EPA inspector identified the following violations of RCRA and the Massachusetts hazardous waste management regulations:

a. **Failure to conduct hazardous waste determinations**

- (i). Pursuant to 310 C.M.R. § 30.302, a generator of waste shall determine if that waste is a hazardous waste, as follows: (1) determine whether the waste is excluded from 310 C.M.R. § 30.104; (2) determine if the waste is listed as hazardous in 310 C.M.R. §§ 30.130 through 30.136; (3) for purposes of compliance with land disposal restrictions set forth in 40 C.F.R. Part 268 or if the waste is not listed in 310 C.M.R. §§ 30.130 through 30.136, determine whether the waste is hazardous pursuant to 310 C.M.R. § 30.120 through 30.125, by either testing the waste or applying knowledge of the hazardous characteristics of the waste in light of the materials or the process used.
- (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome had failed to conduct hazardous waste determinations on any of the wastewaters stored on-site. In addition, Respondents failed to conduct hazardous waste determinations on wastewaters that Respondents had treated by adjusting acidity and alkaline content and was intending to send off-site as non-hazardous waste. Moreover, at the time of the 2008 CEI, Respondents NuChrome and Custom Chrome were storing approximately 40 55-gallon containers that were unlabeled and contained substances that none of the Respondents' employees could identify.



- (iii). By failing to conduct hazardous waste determinations, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.302.

b. **Operation of a Treatment and Storage Facility Without a License**

- (i). Pursuant to Section 3005 of RCRA and 310 C.M.R. § 30.801, no “person shall...collect, store, treat, or dispose of hazardous waste or construct, operate or maintain any facility for the use, storage, treatment or disposal of hazardous waste, unless said person has applied for and obtained, and has in effect, a valid license.” In addition, pursuant to 310 C.M.R. § 30.801(1), a generator may accumulate hazardous waste generated on-site without a license only if the wastes are shipped off-site within ninety (90) days of the date when accumulation of the waste first began.
- (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome were treating the hazardous wastewaters generated at the Facility by neutralizing the acidic wastewaters with basic wastewaters. Respondents have not obtained a license to treat hazardous wastes at the Facility. Respondents NuChrome and Custom Chrome’s treatment of hazardous wastewaters is not subject to any of the RCRA exceptions allowing such treatment.
- (iii). On March 6, 2008, the date of the 2008 CEI, Respondents NuChrome and Custom Chrome were storing hazardous wastewaters in two tanks (approximately 500-gallon and 1,000 gallon tanks, respectively). A review of shipping manifests showed that Respondents had made no shipments of

hazardous waste since January 30, 2007, despite the Respondents' accumulation of corrosive hazardous wastes in tanks in excess of 90 days. Respondents did not have a permit or license to store hazardous waste in excess of 90 days.

- (iv). By operating a treatment and storage facility without a license or permit, Respondents NuChrome and Custom Chrome violated Section 3005 of RCRA and 310 C.M.R. § 30.801.

c. **Failure to inspect hazardous waste storage areas**

- (i). Pursuant to 310 C.M.R. § 30.342(1)(d), which references 310 C.M.R. § 30.686, and 310 C.M.R. § 30.343(1)(f), which references 310 C.M.R. § 30.696, a generator of hazardous waste must conduct weekly inspections of containers where hazardous wastes are stored and conduct daily inspections of tanks containing hazardous waste.
- (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome were not conducting any inspections of the containers where hazardous wastes were being stored. In addition, Respondents were not conducting daily inspections of tanks that held corrosive hazardous wastes (D002).
- (iii). By failing to conduct inspections of hazardous waste storage areas and tanks holding hazardous waste, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.342(1)(d), which references 310 C.M.R. § 30.686, and 310 C.M.R. § 30.343(1)(f), which references 310 C.M.R. § 30.696.



- d. **Failure to perform tank integrity assessments**
- (i). Pursuant to 310 C.M.R. § 30.343(1)(b), which references 310 C.M.R. § 30.692(1)-(4), tanks holding hazardous waste must be assessed for integrity and leaks by a registered professional engineer.
  - (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome had not had the Facility's two tanks holding corrosive hazardous wastewaters assessed for integrity by a registered professional engineer.
  - (iii). By failing to assess the integrity of their tanks, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.343(1)(b), which references 310 C.M.R. § 30.692(1)-(4).
- e. **Failure to label containers and tanks of hazardous waste with the words "hazardous waste," words identifying the contents of the container, and the type of hazard(s) associated with the waste(s)**
- (i). Pursuant to 310 C.M.R. § 30.341(2)(a), (b), and (c) and 310 C.M.R. § 30.343(1)(e), which references 310 C.M.R. § 30.695(3), a generator of hazardous waste must clearly mark tanks storing hazardous waste with the words "hazardous waste," the type of hazardous waste being stored and the type of hazard(s) associated with the waste(s) indicated in words (e.g., toxic, ignitable...).
  - (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome were using at least two tanks to accumulate corrosive hazardous wastewaters generated from the electroplating process. These two tanks were not labeled in any manner.

(iii). By failing to properly label tanks holding hazardous waste with the words “hazardous waste,” the type of hazardous waste being stored and the type of hazard(s) associated with the waste(s) indicated in words (e.g., toxic, ignitable...), Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.341(2)(a), (b), and (c) and 310 C.M.R. § 30.343(1)(e), which references 310 C.M.R. § 30.695(3).

f. **Failure to mark accumulation dates on hazardous waste storage containers**

- (i) Pursuant to 310 C.M.R. § 30.341(2)(d), a generator of hazardous waste must mark each tank containing hazardous waste with the date upon which each period of accumulation begins.
- (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome were using at least two tanks to accumulate corrosive hazardous wastewaters generated from the electroplating process but did not label these tanks with the date of accumulation.
- (iii). By failing to properly label tanks holding hazardous with the date of accumulation, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.341(2)(d).

g. **Failure to train personnel with hazardous waste management responsibilities**

- (i) Pursuant to 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(1)(a), personnel responsible for hazardous waste management must “...successfully complete a program of instruction or on-the-job training that teaches them to perform their duties in a way that ensures the



facility's compliance with 310 C.M.R. § 30.000 and the conditions of the facility's license." Pursuant to 310 C.M.R. § 30.516(1)(d), facility personnel shall take part in an annual review of the initial training required by 310 C.M.R. § 30.516(1)(a).

(ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome had failed to provide hazardous waste management training to its employees since August 26, 2006. Several of Respondents' employees with hazardous waste management responsibility had never, as of the 2008 CEI, received any hazardous waste training. Moreover, an employee that had received hazardous waste management training in 2006 had not received an annual review.

(iii). By failing to provide training to personnel with hazardous waste management responsibilities, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(1)(a) through (d).

h. **Failure to maintain an adequate training plan for personnel with hazardous waste management responsibilities**

(i). Pursuant to 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(2), each owner or operator of a facility that generates hazardous waste is required to have a written personnel training plan designed to ensure compliance with 310 C.M.R. § 30.516(1).

- (ii.) At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome did not have an adequate training plan. The existing plan contained no information regarding specific emergency procedures or emergency equipment at the Facility. The existing plan also failed to delineate Facility personnel with hazardous waste management responsibilities. Moreover, the existing plan failed to provide a written description of the type and amount of introductory and continuing training to be given to each individual with hazardous waste management responsibilities.
- (iii.) By failing to maintain an adequate training plan for Facility personnel with hazardous waste management responsibilities, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(2).

i. **Failure to maintain an adequate facility contingency plan**

- (i.) Pursuant to 310 C.M.R. § 30.341(1)(b), which references 310 C.M.R. § 30.521, each owner or operator of a facility that generates hazardous wastes must maintain an emergency contingency plan for the facility. The contingency plan must be designed to prevent and minimize hazards to public health, safety, or welfare and to protect the environment from fires, explosions, spills or any other unplanned sudden or non-sudden release of hazardous waste to air, soil, surface water, or ground water. The plan shall be written in accordance with the requirements set forth in 310 C.M.R. § 30.521.



- (ii). At the time of the 2008 CEI, Respondents NuChrome and Custom Chrome's facility contingency plan failed to designate a current primary or alternate emergency coordinator. Kemp, who had been listed as the primary emergency coordinator, was out of state for the winter. The plan failed to designate any alternate emergency coordinators.
- (iii). By failing to maintain an adequate contingency plan, Respondents NuChrome and Custom Chrome violated 310 C.M.R. § 30.341(1)(b), which references 310 C.M.R. § 30.521.

**V. COMPLIANCE ORDER**

36. Based on the foregoing findings, Respondents NuChrome and Custom Chrome are hereby ordered to immediately achieve and maintain compliance with all applicable requirements of RCRA and 310 C.M.R. § 30.000 *et seq.* Specifically:

- a. Within 7 days of receipt of this Order, Respondents shall have a third party consultant conduct, in accordance with 310 C.M.R. § 30.302, proper, timely and accurate hazardous waste determinations of each and every waste stream generated at the Facility, including any wastewaters and sludges accumulated in drums and tanks, historic wastes (including wastes from G.A. Rogers Company), drums containing unknown contents, liquids collecting on the floor and unwanted chemicals. Any wastes determined to be hazardous shall be shipped off-site within 30 days to a licensed hazardous waste facility. To further ensure compliance with hazardous waste regulations, Respondents shall manage all

wastewaters and sludges determined to be hazardous wastes in accordance with 310 C.M.R. § 30.341, *et seq.* Such management of hazardous wastes shall include but not be limited to: (1) maintaining sufficient aisle space between containers of hazardous waste to allow for the unobstructed movement of personnel and safety equipment; (2) ensuring that all hazardous wastes are stored in areas properly posted and that appropriate emergency information and communication equipment is maintained at all hazardous waste storage areas; (3) ensuring that all containers and tanks of hazardous waste are kept closed and in good condition; and (4) ensuring that all containers and tanks of hazardous waste are properly labeled and dated.

- b. Immediately upon receipt of this Order, Respondents shall cease any and all treatment of hazardous waste at the Facility until Respondents have obtained a permit pursuant to Section 3005 or RCRA and 310 C.M.R. § 30.801. This Order explicitly includes, but is not limited to, treatment by evaporation, chemical means, and the mixing of basic and acidic wastewaters;
- c. Immediately upon receipt of this Order, Respondents shall cease the storage of hazardous waste for more than 90 days until Respondents have obtained a permit pursuant to Section 3005 of RCRA and 310 C.M.R. § 30.801. Within 30 days of receiving this Order, Respondents shall ship, in accordance with 310 C.M.R. § 30.801, 310 C.M.R. § 30.305, and 310 C.M.R. § 30.340(4), all hazardous wastes stored for longer than 90 days to licensed treatment, storage or disposal facilities;



- d. Immediately upon receipt of this Order, in accordance with 310 C.M.R. § 30.342(1)(d), which references 310 C.M.R. § 30.686, and 310 C.M.R. § 30.343(1)(f), which references 310 C.M.R. § 30.696, Respondents shall commence conducting weekly inspections of all areas where containers holding hazardous waste are stored, looking for leaks and for deterioration caused by corrosion or other factors, and daily inspections of tanks holding hazardous wastes. The inspections must be conducted by individuals who have been properly trained in hazardous waste management. Respondents shall document, in accordance with the above regulations, the daily tank and weekly container inspections;
- e. Within 30 days of receipt of this Order, Respondents shall obtain, in accordance with 310 C.M.R. § 30.343(1)(b), which references 310 C.M.R. § 30.692(1), tank assessments for integrity and leaks, conducted by a registered professional engineer. The tank assessments shall be conducted for each and every tank holding hazardous wastewaters and sludges. Respondents shall, within 30 days of receipt of this Order, cease its practice of storing hazardous wastes and wastewaters in tanks that have not received proper tank assessments in accordance with 310 C.M.R. § 30.343(1)(b);
- f. Immediately upon receipt of this Order, Respondents shall ensure, in accordance with 310 C.M.R. § 30.341(2)(a), (b) and (c), and 310 C.M.R. § 30.343(1)(e), which references 310 C.M.R. § 30.695(3), that all containers and tanks holding hazardous waste are labeled and marked with the words "Hazardous Waste," the

hazardous waste(s) identified in words, and the type of hazard(s) associated with the waste(s) indicated in words;

- g. Immediately upon receipt of this Order, in accordance with 310 C.M.R. § 30.341(2)(d), Respondents shall ensure that all containers and tanks holding hazardous waste are marked with the beginning date of accumulation. In addition, Respondents shall ensure that the beginning date of accumulation is visible for inspection;

- h. Training of Personnel and Training Plan

- (i.) Within 30 days of receipt of this Order, Respondents shall ensure, in accordance with 310 C.M.R. § 30.341(1)(a), which references 310 C.M.R. § 30.516(1), that the facility personnel assigned to the management of hazardous waste successfully complete a program of instruction or on-the-job training that teaches them to perform their duties in a way that ensures the Facility's compliance with 310 C.M.R. § 30.000 and the conditions of the Facility's license. Further, Respondents shall ensure that facility personnel shall not work in unsupervised positions until they have successfully complete these training requirements. Respondents shall also ensure that their personnel with hazardous waste management responsibilities receive annual hazardous waste management training. Respondents shall maintain training records of all current personnel until closure of the Facility and training records of former personnel for at least three years from the date such personnel last worked at the Facility.



- (ii.) Within 30 days of receipt of this Order, Respondents shall prepare a personnel training plan in accordance with 310 C.M.R. § 30.341(l)(a), which references 310 C.M.R. § 30.516(2); and
- i. Immediately upon receipt of this Order, Respondents shall ensure, in accordance with 310 C.M.R. § 30.341(1)(b), which references 310 C.M.R. § 30.521, that the Facility has an adequate contingency plan. Respondents shall ensure that there is a qualified alternate emergency coordinator designated for the Facility during Kemp's absence.

37. To further ensure compliance with the requirements cited in Paragraph 36 above, Respondents NuChrome and Custom Chrome shall submit the following reports to EPA within 35 days of receipt of this Order:

- a. A written confirmation of compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraph 36 above. Any notice of noncompliance with the requirements of Paragraph 36 shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance. This statement shall specify all actions taken by Respondents to comply with Paragraph 36 of this Order and include:
  - (i.) the cost of returning to compliance. This estimate shall, at a minimum, include capital expenditures, equipment purchases, consulting fees, and shipment and testing costs;
  - (ii.) improved environmental performance or improved environmental management practices as a result of this action; and

(iii.) pounds of pollution estimated to be reduced, treated, or eliminated as a result of this action (including any tanks removed).

b. In addition, within 35 days of receipt of this Order, Respondents NuChrome and Custom Chrome shall submit the following to EPA:

- (i.) Documentation of waste determinations for each waste stream generated at the Facility. The waste determination documentation shall include a list of the chemical constituents of the materials held in each tank and container, with supporting material safety data sheets (“MSDS”) and analytical testing results;
- (ii.) Copies of all hazardous waste shipping manifests and land disposal restrictions (“LDR”) forms;
- (iii.) Copies of all documentation evidencing Respondents’ weekly inspections of containers where hazardous wastes are stored and daily inspections of tanks containing hazardous waste;
- (iv.) Copies of all of Respondents’ tank assessments performed by a registered professional engineer;
- (v.) A copy of Respondents’ employee training plan and personnel training records; and
- (vi.) A copy of Respondents’ contingency plan for EPA for review and approval.

38. The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.



39. Respondents shall submit the copies of any information, reports, and/or notices required by this Order to:

Andrew Meyer  
U.S. Environmental Protection Agency  
Region 1  
1 Congress Street, Suite 1100  
Mail code SER  
Boston, MA 02114  
Telephone: (617) 918-1854  
Fax: (617) 918-0854

and

Steven Schlang, Esq.  
United States Environmental Protection Agency  
Region 1  
1 Congress Street, Suite 1100  
Mail code SEL  
Boston, MA 02114  
Telephone: (617) 918-1773  
Fax: (617) 918-0773

40. If Respondents fail to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA and the DCIA provide for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$32,500 for each day of continued noncompliance.

41. This Order shall become effective immediately upon receipt by Respondents.

## **VI. ASSESSMENT OF PENALTIES**

42. EPA reserves its right to assess penalties and/or seek other injunctive relief for violations of the requirements cited above, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

## **VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

43. As provided by Section 3008(b) of RCRA, and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with Part 22. **A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Order.** In their answer, Respondents may contest any material fact contained in the Order. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Order and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondents intend to place at issue; and, (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Order constitutes an admission of that allegation.

## **VIII. DEFAULT ORDER**

44. If Respondents fail to file a timely answer to the Order, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Order and a waiver of Respondents' right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondents from thereafter obtaining adjudicative review of any of the provisions contained in the Order.

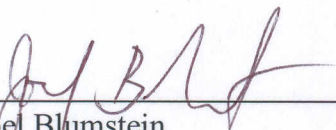


**IX. SETTLEMENT CONFERENCE**

45. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the signing of the Order by the Regional Judicial Officer, EPA Region I. The signing of the Order shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Steven Schlang, Senior Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, who is also designated to receive service for CO at the above address, at (617) 918-1773.

For Complainant:

  
\_\_\_\_\_  
Joel Blumstein  
Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1

4/18/08  
\_\_\_\_\_  
Date