



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

REPLY TO THE ATTENTION OF:

APR 26 2007

DE-9J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth LaCroix
13880 Sunnyslope Dr.
Maple Grove, MN 55311

Ken's Metal Finishing, Inc.
c/o Jeffery LaCroix, Vice President
2333 Emerson Avenue North
Minneapolis, MN 55411

Re: Administrative Complaint and Compliance Order
Ken's Metal Finishing **RCRA-05-2007-0007**
EPA ID No.: MND006258164

Dear Sirs:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the United States Environmental Protection Agency's (U.S. EPA's) determination of violations of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6901 *et seq.*, by Ken's Metal Finishing (KMF) and Mr. Kenneth LaCroix. U.S. EPA based its determination on the failure of KMF to respond to a 3007 Information Request in accordance with Section 3007 of RCRA, 42 U.S.C. § 6927; on KMF's responses to subsequent 3007 Information Requests; on facility inspections by U.S. EPA, MPCA and Hennepin County; and on files maintained by environmental agencies. The general allegations in the Complaint state the reasons for U.S. EPA's determination.

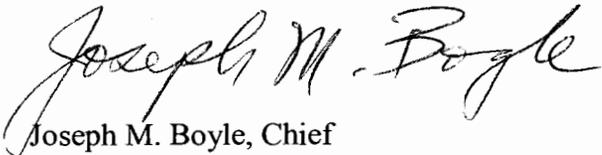
Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for hearing with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Terence Branigan, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following

the filing of this Complaint, U.S. EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with U.S. EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with U.S. EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with Waste, Pesticides and Toxics Division staff, please contact Daniel F. Chachakis, United States Environmental Protection Agency, Enforcement and Compliance Assurance Branch (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-9871.

Sincerely yours,



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

Enclosure

cc: Joseph Henderson, Minnesota Pollution Control Agency (w/enclosure)

05 13 98 11 50
REGIONAL
OFFICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	DOCKET NO. RCRA-05-2007-0007
Ken's Metal Finishing, Inc.)	
2333 Emerson Avenue North)	
Minneapolis, MN 55411)	
)	
U.S. EPA ID #: MND 006 258 164)	
)	
and)	
)	
Kenneth LaCroix)	
13880 Sunnyslope Dr.)	
Maple Grove, MN 55311)	
)	
Respondents)	
)	

05 06 11 98 007 0007
RCRA-05-2007-0007

COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to Sections 22.1(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation / Termination or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22.
2. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b),

and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

3. The Complainant is, by lawful delegation, the Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
4. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.
5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.
6. 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.*

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

At all times relevant to this Complaint, unless otherwise indicated:

General Allegations

8. The Respondents are Ken's Metal Finishing, Inc. (KMF) and Mr. Kenneth LaCroix.
9. KMF is a Minnesota corporation incorporated in the State of Minnesota in or about 1978.
10. KMF and Mr. Kenneth LaCroix are both "persons" as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Minn. R. 7045.0020, Subp. 66.
11. KMF conducts electroplating and polishing and associated processes at and in a building and land located at 2333 Emerson Avenue North, Minneapolis, Hennepin County, Minnesota (hereinafter the "Facility"). KMF began operating and generating hazardous wastes at this location in 1978.
12. Mr. Kenneth LaCroix is the "owner" of the Facility as that term is defined in Minn. R. 7045.0020, Subp. 64, and in 40 C.F.R. § 260.10.
13. At all times relevant to this Complaint, Mr. Kenneth LaCroix was one of three shareholders in KMF, along with his brothers, Jeff LaCroix and Brad LaCroix.

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

14. At all times relevant to this Complaint, Mr. Kenneth LaCroix was the President of KMF.
15. Throughout the period that is relevant to this Complaint, at least until the spring of 2006, Mr. Kenneth LaCroix made decisions regarding the management of wastes produced at the Facility and exercised primary decision-making authority about the Facility's compliance with environmental laws.
16. On or about April 3, 1989, KMF submitted a Hazardous Waste Notification to U.S. EPA or MPCA for the Facility.
17. KMF has been assigned the EPA identification number MND006258164.
18. KMF's activities at the Facility produce a variety of waste materials, including but not limited to waste pictax, alkaline electric cleaner, hydrochloric acid pickle, nitric acid, cyanide soak nickel strip, alkaline soap cleaner, HCL plate room, mild phosphate solution, plating/pretreatment sludge, fluorescent lamps, nickel plating filters, electric strip, pretreatment sludge, pretreatment sludge with tank 9, rinse used filter tubes, and nickel strip.
19. For each of the types of hazardous waste described in paragraph 18 above, Respondents have characterized the waste as a hazardous waste with one or more of the following EPA waste codes: D002, D003, D006, D007, D008, D009, F006 and F008.
20. The hazardous wastes described in paragraphs 18 and 19 above are of a type or types of hazardous waste that is or are identified in Minn. R. 7045.0131 [40 C.F.R. Part 261, subpart C] and/or 7045.0135 [40 C.F.R. Part 261, Subpart D].
21. KMF is a generator of hazardous waste as defined by Minn. R. 7045.0020, Subp. 31 [40 C.F.R. § 260.10].
22. KMF's activities at the Facility generate greater than 100 kg and less than 1000 kg of

hazardous waste in a month.

23. KMF is a small quantity generator as defined in Minn. R. 7045.0206, Subp. 3 [40 C.F.R. §§ 260.10 and 262.34(d)].
24. Inspectors from the Hennepin County (Minnesota) Department of Environmental Services (Hennepin County inspectors) conducted hazardous waste generator inspections of the Facility on or about June 21, 2001, and August 9, 2001. On September 27, 2001, Hennepin County Department of Environmental Services issued a Notice of Violation (NOV) to KMF alleging violations of hazardous waste laws observed during the inspections on June 21 and August 9, 2001. The NOV required a response to the corrective action section of the NOV within 30 days after receipt of the NOV.
25. A Hennepin County inspector conducted a follow-up inspection of the Facility on or about October 25, 2002. The Inspection Report Compliance Orders prepared by the Hennepin County inspector for this inspection stated that, "You need to comply + respond to the NOV dated 9/27/01." This document also noted several specific activities that KMF needed to take.
26. The Hennepin County Department of Environmental Services received a response from KMF dated June 28, 2002, to the NOV that was issued by Hennepin County in September 2001. This response bears the stamped legend, "Hennepin County Environmental Services Received Oct 31 2002".
27. On November 12, 2002, the Minnesota Pollution Control Agency (MPCA) issued a Ten Day Letter to Respondent KMF that alleged multiple violations at the Facility of the hazardous waste regulations at Minn. R. Ch. 7045 [40 C.F.R. Part 260 et seq.], as documented by Hennepin County inspectors during their inspections of June 21, 2001,

and August 9, 2001. The Ten Day Letter directed KMF to implement corrective measures immediately and to submit specified documentation within 30 days.

28. KMF has not responded to the Ten Day Letter.
29. On May 7, 2003, MPCA and Hennepin County inspectors conducted another hazardous waste inspection of the Facility to determine what, if any, corrective actions had been taken as a result of the Ten Day Letter. The site visit report documents conditions that constitute violations of hazardous waste laws.
30. On June 25, 2003, the Hennepin County Department of Environmental Services sent to Respondents Administrative Orders pursuant to Hennepin County Ordinance Seven § 4.03, which outlined corrective measures that were necessary to correct violations discovered in previous investigations and stated in part:

On November 12, 2002, a Ten Day Letter was issued to you as co-owner of Ken's Metal Finishing, Inc. You failed to respond to the Ten Day Letter. This letter incorporates the corrective actions listed in the Ten Day Letter and also contains additional corrective actions to address violations observed during the inspection on May 7, 2003.

31. By letter dated September 12, 2003, MPCA sent Respondents a draft Stipulation Agreement to resolve the previously observed violations of the Minnesota hazardous waste rules.
32. On or about October 16, 2003, and January 12, 2004, MPCA and Hennepin County inspectors conducted follow-up hazardous waste inspections to evaluate KMF's progress in complying with the outstanding enforcement orders. The site visit report prepared by the inspector for the inspection on October 14, 2003, indicates that while a few corrective actions had been taken, "[n]othing else had been shipped or corrected in the rest of the facility, to include the basement." The site visit report prepared by the inspector for the

- inspection on January 12, 2004, documents numerous conditions that constitute violations of hazardous waste laws.
33. The draft Stipulation Agreement has never been executed or effective. By letter dated April 8, 2004, which was sent to the Respondents, MPCA retracted the proposed Stipulation Agreement.
 34. On or about January 12, 2005, a Hennepin County inspector conducted another hazardous waste inspection of the Facility. The site visit report prepared by the inspector for this inspection documented that little had been done to improve KMF's waste management practices since the previous inspection.
 35. On or about March 24, 2005, MPCA requested the assistance of U.S. EPA pertaining to KMF's hazardous waste management practices.
 36. On or about June 16, 2006, inspectors from U.S. EPA and Hennepin County conducted a hazardous waste inspection of the Facility.

COUNT 1: Failure to Respond to a 3007 Information Request

37. Complainant incorporates paragraphs 1 through 36 of this Complaint as though set forth in full in this paragraph.
38. On or about July 14, 2005, U.S. EPA issued an Information Request to KMF pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. The Information Request required KMF to submit detailed information about the generation, treatment, storage or disposal of hazardous wastes at the Facility.
39. The Information Request was sent via Certified Mail with a return receipt number 7001 0320 0006 1448 4905.

40. KMF received the Information Request on or about July 26, 2005.
41. The Information Request required a response by KMF within 30 days after receiving the Information Request, i.e., on or before August 25, 2005.
42. On or about September 1, 2005, a representative of the Complainant called KMF by telephone to verify that KMF had received the Information Request and to inquire about the status of KMF's response. Complainant's representative spoke by telephone to a man who identified himself as Kenneth LaCroix.
43. During the conversation referenced in paragraph 42, Mr. Kenneth LaCroix verified KMF's receipt of the Information Request.
44. During the conversation referenced in paragraph 42, Mr. Kenneth LaCroix requested a week's extension to submit the reply to the Information Request.
45. On or about September 1, 2005, Complainant agreed to a week's extension, with a new response date of on or before September 9, 2005.
46. KMF failed to meet the September 9, 2005 response date.
47. On or about December 29, 2005, U.S.EPA issued a Notice of Violation (NOV) to KMF for the failure to respond to the Information Request. The NOV required a written response from KMF, including a response to the Information Request, within ten days of KMF's receipt of the NOV. The terms of the Request made clear that failure to comply with its requirements may result in enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
48. The NOV was sent via Certified Mail with a return receipt number 7001 0320 0006 1448 3557.
49. KMF received the NOV on or about January 3, 2006.

50. As of the date of this Complaint, KMF has failed to respond to the NOV.
51. As of the date of this Complaint, KMF has failed to respond to the Information Request.
52. KMF's failure to respond to the Information Request constitutes a violation of Section 3007 of RCRA, 42 U.S.C. § 6927, and renders KMF liable for an order of compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 2: Failure to Perform Hazardous Waste Evaluations and Failure to Maintain Records of Hazardous Waste Evaluations

53. Complainant incorporates paragraphs 1 through 52 of this Complaint as though set forth in full in this paragraph.
54. Minn. R. 7045.0214 [40 C.F.R. § 262.11] requires that any person who produces a waste within the State of Minnesota must evaluate the waste to determine if it is hazardous.
55. Minn. R. 7045.0294, Subp. 3 [40 C.F.R. § 262.40(c)] provides that “[a] generator must keep records of any test results, waste analyses, or other determinations made in accordance with parts 7045.0214 to 7045.0217 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.”
56. The following wastes were generated as a result of Respondent KMF's operations at the Facility:
 - (a) Waste in pail without a cover;
 - (b) Waste in two glass containers, one in a wooden box, the other encased in a metal cage;
 - (c) Waste in metal pail with a grainy/solid material;
 - (d) Two wastes, each in a 5-gallon pail, Metex Add Agent S-1;
 - (e) Waste in 5-gallon pail Metex Copper Addition Agent S-3;

- (f) Waste in 5-gallon drum labeled Bufleen cleaner, Wyandotte;
- (g) Waste in drum inside secondary containment wooden tank with plastic lining;
- (h) Used fluorescent tubes in open container.

57. As of August 15, 2006, KMF had not performed an evaluation of any of the wastes described in paragraph 56, as required by Minn. R. 7045.0214 [40 C.F.R. § 262.11] to determine whether they were hazardous wastes. In addition, as of August 15, 2006, KMF did not have records documenting that an evaluation had been performed for any of the wastes described in paragraph 56, as required by Minn. R. 7045.0294, Subp.3 [40 C.F.R. 262.40(c)].

58. The following hazardous wastes were generated as a result of KMF's operations at the Facility:

- (a) Two 55 gallon drums labeled "Hazardous Waste";
- (b) Open hydrochloric acid tank;
- (c) Two 55-gallon drums with methylene chloride wastes;
- (d) 125-gallon tank with nickel strip sludge;
- (e) 5-gallon pail containing brown fluid with flakes;
- (f) 5-gallon pail, partially open, whose contents partially escaped and formed white crystals;
- (g) 25 lb cardboard box, Geo T Walker & Company, Mpls;
- (h) 5-gallon drum, Rottco [or ROHCO] Zinc Purifier;
- (i) 7-gallon container, Lea Ronal;
- (j) Container, Freemont Compound 780;
- (k) 5-gallon pail with purplish brown material;

- (l) Wastes deposited on old floor planks that were stored in an open drum;
- (m) Waste deposited on the floor of the plating room and the black oxide room;
- (n) Waste from drips from the plating process deposited on flooring in crawl space under the main plating room.

59. As of August 15, 2006, KMF did not have records documenting that an evaluation had been performed for any of the wastes described in paragraph 58, as required under Minn. R. 7045.0294, Subp.3 [40 C.F.R. § 262.40(c)].

60. For each waste described in paragraph 56, KMF's failure to perform the evaluation to determine whether the waste is a hazardous waste constitutes a violation of Minn. R. 7045.0214 [40 C.F.R. § 262.11], and renders KMF liable for an order of compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

61. For each waste described in paragraphs 56 and 58, KMF's failure to maintain records that document the hazardous waste evaluation constitutes a violation of Minn. R. 7045.0294, Subp. 3 [40 C.F.R. § 262.40(c)], and renders KMF liable for an order of compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 3: Failure to Have a Permit

62. Complainant incorporates paragraphs 1 through 61 of this Complaint as though set forth in full in this paragraph.

63. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires owners and operators of facilities for the treatment, storage or disposal of hazardous waste to have a permit.

64. Pursuant to Minn. R. 7001.0520, Subp. 1.A [40 C.F.R. § 270.1], no person may treat, store or dispose of hazardous waste without obtaining a hazardous waste facility permit

from the MPCA (or without qualifying for interim status under Minn. R. 7001.0650 [40 C.F.R. §270.70]).

65. Pursuant to Minn. R. 7001.0520, Subp. 1.B [40 C.F.R. § 270.1], no person may establish, construct, operate, close or provide post-closure care at a hazardous waste facility without obtaining a hazardous waste facility permit from the MPCA (or without qualifying for interim status under Minn. R. 7001.0650 Subp. 1 [40 C.F.R. § 270.70]).
66. Pursuant to Minn. R. 7001.0030 [40 C.F.R. § 270.1], no person required by statute or rule to obtain a permit may – among other things – operate the facility to be permitted, nor commence an activity for which a permit is required by statute or rule until the MPCA has issued a written permit for the facility or activity.
67. Numerous hazardous wastes generated at the Facility as a consequence of the Facility's operations have been stored and are still being stored at the Facility, including the following:
 - (a) Two 55 gallon drums labeled "Hazardous Waste";
 - (b) Open hydrochloric acid tank;
 - (c) Two 55-gallon drums with methylene chloride wastes;
 - (d) 125-gallon tank with nickel strip sludge;
 - (e) 5-gallon pail containing brown fluid with flakes;
 - (f) 5-gallon pail, partially open, whose contents partially escaped and formed white crystals;
 - (g) 25 lb cardboard box, Geo T Walker & Company, Mpls;
 - (h) 5-gallon drum, Rottco [or ROHCO] Zinc Purifier;
 - (i) 7-gallon container Lea Ronal;
 - (j) Container, Freemont Compound 780;

- (k) 5-gallon pail with purplish brown material;
- (l) Wastes deposited on old floor planks that were stored in an open drum;
- (m) Waste deposited on the floor of the plating room and the black oxide room;
- (n) Waste from drips from the plating process deposited on flooring in crawl space under the main plating room.

68. At all times relevant to this Complaint, the Facility is and was a “facility” as defined in Minn. R. Part 7045.0020, Subp. 24 [40 C.F.R. § 260.10], a facility within the meaning of Minn. R. 7001.0030, and a “hazardous waste facility” within the meaning of Minn. R. 7001.0520 [40 C.F.R. § 270.1].

69. At all times relevant to this Complaint, KMF was an “operator,” as defined in Minn. R. Part 7045.0020, Subp. 62 [40 CFR § 260.10], of the Facility. At all times relevant to this Complaint, and at least until the spring of 2006, Mr. Kenneth LaCroix was an “operator” of the Facility, as defined in Minn. R. Part 7045.0020, Subp. 62 [40 C.F.R. § 260.10], of the Facility.

70. At all times relevant to this Complaint, KMF and Mr. Kenneth LaCroix had neither a permit, as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Minn. R. Parts 7001.0030, 7001.0520, Subps. 1.A and 1.B [40 C.F.R. § 270.1], nor interim status as provided under Minn. R. 7001.0650 [40 C.F.R. §270.70], that would allow hazardous waste to be stored at the Facility.

71. Pursuant to Minn. R. 7045.0292, Subp. 5 [40 C.F.R. §§ 262.34(d)], a small quantity generator of hazardous waste may accumulate limited amounts of hazardous waste without obtaining a permit or without having interim status if all hazardous waste accumulated is, within 180 days of the accumulation start date, treated on-site in

compliance with Minn. R. 7045.0211 or shipped off-site in compliance with Minn. R. 7045.0208 and if the small quantity generator complies with the other conditions for a hazardous waste storage permit exemption set forth in Minn. R. 7045.0292, Subps. 5 and 8 [40 C.F.R. § 262.34(d) and (c)].

72. Any assertion by Respondents that the storage of hazardous waste at the Facility was covered by the exemption described in paragraph 71 must be asserted as an affirmative defense to this action, as to which the Respondents bear the initial burden of production and the burden of persuasion to demonstrate that the conditions of the exemption have been met.

73. The storage of hazardous waste at the Facility, however, failed to meet the conditions of the exemption described in paragraphs 71 and 72, as follows:

(a) Hazardous waste sludge has been stored in two 55-gallon drums at the Facility since before September 23, 1999; a failure to meet a condition established in Minn. R.7045.0292, Subp. 5.A [40 C.F.R.§ 262.34(d)]. In addition:

(1) One or both of the drums were observed on one or more occasions to have a damaged bung, to be rusty, to be developing holes; each such occasion being a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp. 2 [40 C.F.R. §262.34(d)(2) and 40 C.F.R. § 265.171].

(2) Both drums were observed on more than one occasion to have been stored in an open, or not fully closed, condition; each such occasion being a failure to meet a condition established in Minn. R.7045.0292, Subp. 5.B and 7045.0626, Subp. 4 [40 C.F.R. §262.34(d)(2) and 40 C.F.R. §

265.173].

- (3) Both drums were observed without a label with the accumulation start dates; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.C [40 C.F.R. § 262.34(d)(4)], and one drum was observed without a legible description of the drum contents; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.H.
- (b) Hazardous waste (including methyl chloride and sludge) was stored in two 55-gallon drums from before August 9, 2001, until October 15, 2003; a failure to meet a condition established in Minn. R.7045.0292, Subp.5.A [40 C.F.R. § 262.34(d)]. In addition:
- (1) The drums were rusting, a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp. 2 [40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.171].
 - (2) One drum was leaking; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp.2 [40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.171].
 - (3) The drums were open or not completely closed at a time or times when waste was not being added or removed; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B, and 7045.0626, Subp. 4 [40 C.F.R. §262.34(d)(2) and 40 C.F.R. § 265.173].
 - (4) The drums did not have a label with the accumulation start date; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.C [40 C.F.R. § 262.34(d)(4)].

- (c) Hazardous waste (hydrochloric acid waste) has been stored in an open tank in the plating room since 1999 or before; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (d) Hazardous waste (nickel strip sludge) has been stored in a 125-gallon tank in the black oxide room since 1998 or before; a failure to meet a condition established in Minn. R. 7046.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (e) Hazardous waste (brown fluid with flakes) has been stored in a 5-gallon pail since 1987; a failure to meet a condition established in Minn. R. 7046.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (f) Hazardous waste has been stored in a 5-gallon pail, partially open, whose contents partially escaped and formed white crystals, since 1989; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.A. In addition:
 - (1) The pail had leaked; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp. 2 [40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.171].
 - (2) The pail was open or not completely closed at a time when waste was not being added or removed; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp. 4 [40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.173].
- (g) Hazardous waste has been stored in a 25 lb cardboard box, Geo T Walker & Company, Mpls, since 1989; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (h) Hazardous waste has been stored in a 5-gallon drum, Rottco [or ROHCO] Zinc

Purifier, since 1980; a failure to meet a condition established in Minn. R.

7045.0292, Subp.5.A [40 C.F.R. § 262.34(d)]. In addition:

- (1) Drum was observed to be corroded; a failure to meet a condition established in Minn. R. 7045.0292, Subp. 5.B and 7045.0626, Subp. 2 [40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.171].
- (i) Hazardous waste has been stored in a 7-gallon container, Lea Ronal, since 1986; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (j) Hazardous waste has been stored in a container, Freemont Compound 780, since 1987; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (k) Hazardous waste (purplish brown material) has been stored in a 5-gallon pail since 2000; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (l) Old floor planks with accumulations of hazardous waste were stored in an open drum, from January 12, 2004, through the present; a failure to meet a condition established by Minn. R. 7045.0292, Subp.5.A [40 C.F.R. § 262.34(d)].
- (m) None of the containers in paragraphs 73(e) through 73(l) above had a label with an accumulation start date; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.C [40 C.F.R. § 262.34(d)(4)].
- (n) None of the tanks or containers in paragraphs 73(c) through 73(l) had a label with the words, "Hazardous Waste," a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.H [40 C.F.R. § 262.34(d)(4)] or a label that included a

description of the contents of the tank or container; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.H.

- (o) Hazardous waste from the plating process has been accumulating [i.e., stored] on the floor of the plating room and the black oxide room for up to 30 years; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (p) Hazardous waste from the plating process has been accumulating on flooring in crawl space under the main plating room [i.e., stored] for more than 180 days; a failure to meet a condition established by Minn. R. 7045.0292, Subp. 5.A [40 C.F.R. § 262.34(d)].
- (q) The Facility was not “maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release to the air, land, or water of hazardous waste or hazardous waste constituents which could threaten human health or the environment;” a violation of a condition established in Minn. R. 7045.0292, Subp. 5.I and Minn. R. 7045.0566, Subp. 2 [40 C.F.R. § 262.34(d)(4) and 40 C.F.R. § 265.31]. The Facility failed to meet this condition in the following ways:
 - 1) There is a significant build-up of hazardous waste deposits from plating operations on the floor of the plating room in the Facility. Hazardous wastes have been released from the plating room, leaking through the floor and into the basement. The concrete floor in the basement has several holes, at least one of which extended through the concrete to the soil. There was evidence that hazardous waste from the first floor plating room

had reached the holes in the basement floor.

- 2) There is a significant build-up of hazardous waste deposits from operations in the black oxide room in the Facility. The water rinse tank and the hydrochloric acid process tank have, or have had, leaks onto the floor of the black oxide room. The concrete floor of the black oxide room, which is placed in the soil, was degraded along the western edge of the room with substantial pitting that could allow hazardous wastes or constituents to leach into the soil below.
- 3) The roof of the Facility is leaking and there is heavy water damage in the ceiling in the plating room, the black oxide room, and in the storage area of the first floor polishing area. Although plastic sheets have been hung from the walls and the ceilings in several places to catch the rain, heavy rains (i) could cause overflows of the process tanks in both the plating room and the black oxide room or the open tank of waste hydrochloric acid, (ii) could short out the large generator in the plating room or the Facility's electrical box in the polishing area, (iii) could damage and cause releases of materials and waste improperly stored in the storage area at the back of the polishing area or elsewhere in the Facility, and (iv) could cause precipitation to accumulate on the floors in the plating room and black oxide room carrying hazardous wastes and/or hazardous constituents into the basement or into pits and cracks in the floor of the black oxide room.
- 4) Inspectors have observed materials leaking from containers (including

cyanide compounds and other) and evidence of process materials and wastes having leaked from containers (i) in the storage area at the back of the polishing room, (ii) in the plating room, and (iii) in the basement near the breaches in the concrete floor.

- 5) Inspectors have observed a makeshift structure in the basement made of black plastic draped over a wooden frame that is intended to provide secondary containment for floor drain overflow from drains in the plating room. A white drip pail is positioned inside the makeshift containment structure. The makeshift secondary containment is near the breaches in the concrete floor of the basement. A major spill in the plating room or a major storm that caused a large amount of precipitation to collect on the floor and in the drains could overflow the small white pail. Any breach in the black plastic could allow hazardous waste or hazardous waste constituents to be released in the basement near the breaches in the concrete floor. A dry-wet vac placed inside the black plastic has been used to collect wastes from the drip pail and the plastic. Such equipment could cause tears in the plastic.

74. The accumulation of hazardous waste at the Facility: (i) constitutes storage of hazardous waste at a facility for the treatment, storage or disposal of hazardous waste within the meaning of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a); (ii) constitutes operation of a facility for which a permit is required within the meaning of Minn. R. Part 7001.0030 [40 C.F.R. § 270.1]; (iii) constitutes storage of hazardous waste within the meaning of Minn. Rule 7001.0520, Subp. 1.A [40 C.F.R. § 270.1]; and (iv) constitutes operation of a

hazardous waste facility within the meaning of Minn. R. 7001.0520, Subp. 1.B [40 C.F.R. § 270.1].

75. The storage of hazardous waste at the Facility without a permit and without interim status constitutes a violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and of Minn. R. 7001.0030 and 7001.0520 Subp. 1.A and 1.B [40 C.F.R. § 270.1], and renders KMF and Mr. Kenneth LaCroix, as operators of the Facility, jointly and severally liable for an order of compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.
76. Mr. Kenneth LaCroix's ownership of the Facility, without a permit and without interim status, constitutes a violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and Minn. R. 7001.0030, and renders Mr. Kenneth LaCroix jointly and severally liable for an order of compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

II. PROPOSED CIVIL PENALTY

The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, *see* 61 Fed. Reg. 69360 (December 31, 1996) and 69 Fed. Reg. 7121 (February 13, 2004) (amending 40 C.F.R. Part 19), U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997, and on or before March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after March 16, 2004.

Initially, the Complainant determined the amount of the proposed civil penalty for the violations alleged in this Complaint based upon an analysis of relevant evidence known to the Complainant, in consideration of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), by which the Administrator of U.S. EPA, in assessing a civil penalty, must take into account “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” In making the determination, the Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA’s “RCRA Civil Penalty Policy” (June 2003) (the Policy), interpreting the RCRA penalty criteria. A copy of the Policy is available upon request. The Policy provides a consistent method of applying the statutory penalty factors to this case

The penalty amounts initially determined appropriate for the violations alleged in this Complaint were, for Count I \$95,619 for KMF; for Count II \$16,187 for KMF; and for Count III \$252,382 jointly and severally for KMF and Mr. Kenneth LaCroix.

In the course of pre-filing communications with the Complainant’s representatives, KMF raised as an issue its “ability to pay” a penalty, and submitted records relevant to its financial status. Complainant proposes, based on Complainant’s analysis of this information, to assess KMF a reduced civil penalty based on ability to pay of \$18,000 for the violations alleged in Counts 1 through 3 of this Complaint.

Complainant further proposes, subject to the receipt and evaluation of relevant financial information, to assess Mr. Kenneth LaCroix a civil penalty of \$252,382 for the violation alleged in Count 3 of this Complaint, reduced by the amount of any penalty paid by KMF that is attributable to Count 3. By letter dated December 28, 2006, Mr. Kenneth LaCroix was given the opportunity to provide information regarding his ability to pay a penalty, but as of the date of this Complaint, he has not done so.

The proposal for the assessment of civil penalties in this Complaint is explained further in Attachment A, Penalty Summary Sheet.

Respondents may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

A copy of the check shall be sent to:

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

and

Daniel Chachakis
Waste, Pesticides and Toxics Division (DE-9J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. COMPLIANCE ORDER

Based on the foregoing, KMF and Mr. Kenneth LaCroix are hereby ordered-- pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules-- to comply with the following requirements:

a. KMF shall immediately upon the effective date of this Order, halt the accumulation of hazardous waste it generates at the Facility, and shall not resume the accumulation of hazardous waste at the Facility, except as specified in this Order.

b. This Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to amend or modify any federal, state or local permit.

c. KMF may resume accumulation of hazardous waste at the Facility only after the conditions in either (1) or (2) below have been satisfied:

(1) KMF and Mr. Kenneth LaCroix have applied for, and MPCA has issued, a hazardous waste storage permit for the Facility pursuant to Minn. R. 7001.0010 through 7001.0730 [40 C.F.R. Part 270], and such permit is in effect; OR

(2) Both (i) and (ii):

(i) KMF and Mr. Kenneth LaCroix have implemented the requirements in paragraphs (c) through (n) below; AND

(ii) KMF and Mr. Kenneth LaCroix have achieved compliance at the Facility with all applicable conditions in Minn. R. 7045.0292 [40 C.F.R. § 262.34], including but not limited to repairing the Facility to meet the requirements of Minn. R. 7045.0292, Subp. 5.I [40 C.F.R. § 262.34(d)(4)] and Minn. R. 7045.0566, Subp. 2 [40 C.F.R. § 265.31] to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release to the air, land, or water which could threaten human health or the environment.

KMF shall notify U.S. EPA, MPCA and Hennepin County Environmental Services within 15 days after resuming the accumulation of hazardous waste it generates at the Facility.

d. With respect to (c)(2)(ii) above, repairing the Facility shall at a minimum include:

(i) roof repairs adequate to prevent infiltration of precipitation into the Facility, (ii) assessment and repair of concrete floors in the basement and in the black oxide room to prevent release of waste materials to the soils beneath the Facility, and (iii) assessment of and alterations to the floor in plating room to assure floor integrity and to prevent releases of plating or other materials in the plating room from migrating to the basement or elsewhere in the Facility. Respondents shall prepare and maintain records of such repairs sufficient to document the repairs that are made, including the certification of an independent professional engineer that such repairs have been made in accordance with the standards in (d)(i) – (d)(iii) of this paragraph. KMF shall maintain the records at the Facility for a period of not less than three years and shall make them available to U.S. EPA, MPCA and Hennepin County Department of Environmental Services upon request.

e. Within 30 days of the effective date of this Order, KMF shall provide a comprehensive written response to the information request described in Count 1 above, to the extent the information requested by the information request has not already been supplied by KMF.

f. Within 30 days of the effective date of this Order, for each waste described in paragraph 56 above, 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)].

g. Within 30 days after receipt of the effective date of this Order, KMF and Mr. Kenneth LaCroix will ensure that all hazardous waste that is currently stored or otherwise present at the Facility is 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 60 days of the effective date of this Order, KMF and Mr. Kenneth LaCroix 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 the requirements, if any, which Respondents have failed to fully meet. Copies of all manifests for the transportation of such wastes shall be included with this report.

h. Within 45 days of the effective date of this Order, KMF and Mr. Kenneth LaCroix 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 to MPCA for approval, modification and approval, or denial with direction 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 from below the soil 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 Order.

i. KMF shall, within 30 days of the effective date of this Order, achieve and maintain compliance with all requirements and prohibitions applicable to generators, including requirements and prohibitions governing the storage of hazardous waste, codified at or incorporated by Minn. R. 7045.0205 et seq. [40 C.F.R. Part 262].

j. Respondents will notify U.S. EPA in writing upon achieving compliance with this Order within 15 calendar days after the date Respondents achieve compliance. For each requirement of this Order, the notification shall include a description of the manner and the date on which compliance with the requirement was achieved.

k. All reports, submissions, and notifications required by this Order to be sent to U.S. EPA shall be sent to the following address: United States Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division, Enforcement and Compliance Assurance Branch, Attention: Daniel F. Chachakis (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

l. All reports, submissions, and notifications required by this Order to be sent to the MPCA shall be sent to the following address: Minnesota Pollution Control Agency, Attention: Joseph Henderson, 520 Lafayette Road, St. Paul, MN 55155-3898.

m. All reports, submissions, and notifications required by this Order to be sent to Hennepin County Environmental Services shall be sent to the following address: Hennepin County, Department of Environmental Services, Attention: Tanya Maurice, 417 North 5th Street, Minneapolis, MN 55401-1309.

IV. OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," to be codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint. **To request a hearing, you must specifically make the request in a written Answer to this Complaint. You must file a written Answer with the Regional Hearing Clerk within 30 days after service of this Complaint.** Consolidated Rules at § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. Consolidated Rules at § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which you have any knowledge, or clearly state that you have no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. The facts you intend to place at issue; and
3. **Whether you request a hearing.**

Where you state that you have no knowledge of a particular factual allegation, the allegation is deemed denied. Your failure to admit, to deny, or explain any material fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at § 22.15.

You must file your Answer with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent to Terence Branigan, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Terence Branigan may be telephoned at (312) 353-4737.

If you fail to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order pursuant to § 22.17 of the Consolidated Rules. For purposes of this action only, your default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default will also result in the penalty proposed in the Complaint becoming due and payable by you without further proceedings 30 days after issuance of a final order upon default under § 22.27(c) of the Consolidated Rules. In addition, default will preclude you from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint. A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. § § 551 *et seq.* The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

V. SETTLEMENT CONFERENCE

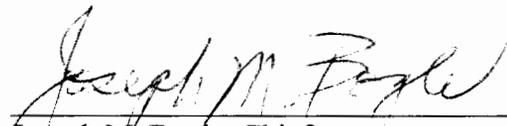
Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, you should write to Daniel F. Chachakis, Enforcement and Compliance Assurance

Branch (DE-9J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-9871.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of your right to request a hearing on any stipulated matter in the CAFO.

Dated this 26th day of April, 2007.



Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5
Complaint

Complaint Docket No. RCRA-05-2007-0007

05 APR 2007 10:00 AM

RECEIVED
WASTE, PESTICIDES AND TOXICS DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
CHICAGO, ILLINOIS

ATTACHMENT A

PENALTY SUMMARY SHEET
Ability to Pay

Ken's Metal Finishing, Inc.

NATURE OF VIOLATION DATE OF VIOLATION	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY- BASED PENALTY	MULTI- DAY / MULTIPLE PENALTY	POLICY ADJUSTMENTS	INFLATION ADJUST- MENT	BEN	TOTAL PENALTY
COUNT 1: Failure to respond to a 3007 Information Request (NOTE 1)	Section 3007 of RCRA, 42 U.S.C. § 6927	Moderate/ Moderate	\$6,835 (10% of cell)	\$88,784 [179 x \$496] Multi-day	-\$91,265 (Ability to Pay = \$4,354 or 26% of \$16,748)	NA	NA	\$4,354
COUNT 2: Failure to document waste analysis (NOTE 2)	Minn. R. 7045.0214 [40 CFR 263.11]	Moderate/ Moderate	\$5,830 (10% of Cell)	\$9,752 [23 x \$424] Multiple	-\$14,912 (Ability to Pay = \$670, or 4% of \$16,748)	10% Included	\$605	\$1,275
COUNT 3: Storage of hazardous waste without a permit or interim status. Calculation of penalty considered among other things the extent to which Respondents failed to qualify for the permit exemption. (NOTE 2)	Minn. R. 7045.0292 Subpart 1 [40 CFR 262.34]	Major/ Major	\$22,000 (Bottom of cell)	\$196,900 [179 x \$1,100] Multi-day	+\$32,835 (Willfulness / Negligence) ----- KMF - Allowed Share is \$11,724 (Ability to pay = \$11,724, or 70% of \$16,748) ----- Kenneth LaCroix: No information	10% Included	KMF: \$647 Kenneth LaCroix: \$0	\$252,382 KMF: \$12,371 Kenneth LaCroix: \$240,011
Totals			\$34,665	\$295,436	-\$73,342	10% Included	\$1,252	\$258,011 [KMF: \$18,000; Kenneth LaCroix: \$240,011]

Note 1: The gravity-based penalty amount is determined using the penalty assessment matrix found at page 18 of the RCRA Civil Penalty Policy, issued on October 26, 2003, as this violation occurred after March 15, 2004. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix found at page 26 of the RCRA Civil Penalty Policy. Policy adjustments and economic benefit (BEN) are as explained in the Penalty Policy. Finally, the gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996.

Note 2: The gravity-based penalty amount is determined using the penalty assessment matrix found at page 19 of the RCRA Civil Penalty Policy, issued on October 26, 1990, as this violation occurred prior to March 15, 2004. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix found at page 24 of the RCRA Civil Penalty Policy. Policy adjustments and economic benefit (BEN) are as explained in the Penalty Policy. Finally, the gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996.

Note 3: U.S. EPA prioritizes the recovery of economic benefit. At this time, the total for economic benefit is \$1,252. Therefore, of the \$18,000 of penalty recommend for Respondent KMF, \$16,748 is available for the gravity and multi/multi-day portions of the penalty for all counts.

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

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Complaint and Compliance Order** 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:

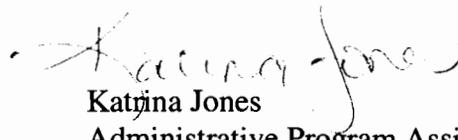
Kenneth LaCroix
13880 Sunnyslope Dr.
Maple Grove, MN 55311

Ken's Metal Finishing, Inc.
c/o Jeffrey LaCroix, Vice President
2333 Emerson Avenue North
Minneapolis, MN 55411

and via First Class Mail to:

Joseph Henderson, Supervisor
Hazardous Waste Compliance & Enforcement Unit
Compliance & Enforcement Section - Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155-3898

Dated: 4/26/07



Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Waste, Pesticides and Toxics Division
Enforcement and Compliance Assurance Branch
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5882

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