



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 24 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

Jeffrey J. Toeppe, CEF
Vice President
Wisconsin Plating Works of Racine, Inc.
Post Office Box 1813
Racine, Wisconsin 53401-1813

Re: Administrative Complaint and Compliance Order
Wisconsin Plating Division
EPA ID No.: WID006115646

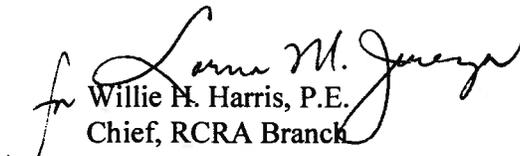
Dear Mr. Toeppe:

Enclosed, please find an Administrative Complaint and Compliance Order (Complaint), which specifies the U.S. Environmental Protection Agency's determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 *et seq.*, committed by Wisconsin Plating Works of Racine, Inc. EPA based its determination on the March 27, 2008, inspection of the Wisconsin Plating Division located at 931 Carroll Street in Racine, Wisconsin, and your EPA files. The general allegations in the Complaint state the reasons for EPA's determination.

Section IV of this Complaint outlines your opportunity to request a hearing. Should you desire to contest the Complaint, you must file a written request for a hearing 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 Reginald Pallesen, Office of Regional Counsel (C-14J), at the above address.

If you have any questions, please contact Brenda Whitney, United States Environmental Protection Agency, RCRA Branch (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604. She may also be reached at (312) 353-4796.

Sincerely,


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

Enclosure

cc: Steven Sisbach, WDNR - Madison (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Wisconsin Plating Works of Racine)
Wisconsin Plating Division)
Racine, Wisconsin)
)
EPA ID: WID006115646)
)
Respondent)
_____)

DOCKET NO. RCRA-05-2009-0009
Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

RECEIVED
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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement

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).
2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. 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.
4. Respondent is Wisconsin Plating Works of Racine – Wisconsin Plating Division (herein referred to as “WPWW”), a corporation incorporated and doing business in the State of Wisconsin.

5. U.S. EPA has provided notice of commencement of this action to the State of Wisconsin, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
6. This action is governed by the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* (“Consolidated Rules”), 40 C.F.R. Part 22. A copy of the Consolidated Rules is enclosed with the Complaint served on Respondent.

Statutory and Regulatory Background

7. 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.
8. 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.
9. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program on

January 31, 1986. 51 Fed. Reg. 3783. The Administrator granted final authorization to administer additional RCRA and certain HSWA requirements on June 6, 1989 (54 Fed. Reg. 22278); January 22, 1990 (54 Fed. Reg. 48243); April 24, 1992 (57 Fed. Reg. 15029); August 2, 1993 (58 Fed. Reg. 31344); and October 4, 1994 (59 Fed. Reg. 39971).

The U.S. EPA-authorized Wisconsin regulations are codified at Wisconsin Administrative Code (WAC) Chapter NR 600-690. See also 40 C.F.R. § 272.2500 *et seq.*

10. 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, published at 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 a civil penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.

General Allegations

11. Wisconsin Plating Works of Racine – Wisconsin Plating Division is and was at all times relevant to this Complaint the owner and operator, as defined by WAC NR 600.03(166) and (167) [40 C.F.R. § 260.10], of an electroplating installation located at 931 Carroll Street in Racine, Wisconsin 53403.
12. Respondent is a “person” as defined by WAC NR 600.03(170) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. At all times relevant to this Complaint, Respondent generated wastes at the facility, which were “solid wastes,” as defined in WAC NR 600.03(206); 289.01(33) [40 C.F.R. § 261.2].
14. At all times relevant to this Complaint, Respondent generated “hazardous waste,” as that term is defined in WAC NR 605.04 [40 C.F.R. § 261.3].
15. At all times relevant to this complaint, Respondent was an “individual generation site,” as that term is defined in WAC NR 600.03(117) [40 C.F.R. § 260.10].
16. At all times relevant to this Complaint, Respondent was a “generator,” as that term is defined in WAC NR 600.03(94) [40 C.F.R. § 260.10].
17. At all times relevant to this Complaint, Respondent accumulated hazardous waste in containers, as that term is defined in WAC NR 600.03(44) [40 C.F.R. § 260.10]
18. On March 27, 2008, U.S. EPA conducted an inspection (“Inspection”) of WPWW to evaluate Respondent’s compliance with the applicable requirements of RCRA.
19. On April 24, 2008, U.S. EPA issued a Notice of Violation (“NOV”) to Respondent outlining the violations alleged in this Complaint.
20. On September 24, 2008, U.S. EPA issued a Pre-Filing Notice to Respondent, which informed Respondent of its right to confer with U.S. EPA regarding the allegations outlined in the NOV, and of the U.S. EPA policy regarding inability to pay a penalty.

COUNT 1:

Failure to Apply for and Obtain a Hazardous Waste Operator’s License

21. Complainant incorporates paragraphs 1 through 20 of this Complaint as though set forth in this paragraph.

22. At all times relevant to this Complaint, Respondent was a generator of wastewater treatment sludge from electroplating operations. This sludge carries the F006 hazardous waste number as defined in WAC NR 605.09(2) [40 C.F.R. § 261.31].
23. Respondent generates F006 sludge during each operating business day.
24. At the time of the Inspection, Respondent had accumulated F006 waste in a 55-gallon container located beneath the wastewater treatment sludge press.
25. The container identified in paragraph 24 was neither closed nor labeled either with the words "Hazardous Waste" or with other words that identified the material therein.
26. At a time prior to the Inspection, Respondent had accumulated F006 waste in a 15y³ container.
27. According to manifest tracking records, an off-site shipment of F006 waste was made on May 10, 2007. The following shipment of F006 waste was made on December 19, 2007. The amount of time between these two dates is 223 days.
28. Because the average weight of the F006 sludge that accumulates in the 15y³ container at WPWW is less than 20,000 kilograms, and because the sludge is sent off-site for high-temperature metals recovery, the Respondent is allowed 180 days to accumulate the F006 waste. See, 40 C.F.R. § 262.34(g) and (i) and WDNR Enforcement Discretion Memorandum – Generator Accumulation Time Limit for F006 Hazardous Waste (December 19, 2002).
29. On December 19, 2007, Respondent had stored its F006 waste on site for 43 days past the 180 days allowed in the regulations.

30. At the time of the Inspection, Respondent had accumulated, in a 30-gallon container, approximately two gallons of spill absorbent contaminated with cyanide waste.
31. The container identified in paragraph 30 was sent off-site as reactive hazardous waste with the hazardous waste number D003, on April 29, 2008.
32. The container identified in paragraph 30 was neither labeled as "Hazardous Waste" nor marked with the start date of accumulation.
33. As stated in paragraphs 25, 29 and 32, Respondent failed to comply with conditions for a hazardous waste license exemption.
34. Neither U.S. EPA nor the State of Wisconsin had issued an operating license or a permit to Respondent to treat, store, or dispose of hazardous waste at WPWW.
35. Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at WPWW at the time of the Inspection.
36. Respondent violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 680 [40 C.F.R. part 270], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

COUNT 2:

Failure to Conduct Weekly Inspections

37. Complainant reincorporates paragraphs 1 through 20 of this Complaint as though set forth in this paragraph.
38. Pursuant to WAC NR 615.05(4)(a)2.b.; 640.12(1); 680.22(21) [40 C.F.R. §§ 262.34(a)(1)(i); 265.174], an owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored.

39. At all times relevant to this Complaint, Respondent stored containers of hazardous waste at WPWW.
40. At the time of the Inspection, Respondent had accumulated, in a 30-gallon container, approximately two gallons of spill absorbent contaminated with cyanide waste.
41. Respondent had not performed inspections for this 30-gallon container.
42. Respondent's failure to conduct weekly container inspections violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 640.12(1); 680.22(21) [40 C.F.R. § 264.174], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

COUNT 3:

Failure to Close a Hazardous Waste Satellite Accumulation Container

43. Complainant reincorporates paragraphs 1 through 20 of this Complaint as though set forth in this paragraph.
44. Pursuant to WAC NR 615.05(6)(a); 615.05(4)(c)2. [40 C.F.R. §§ 262.34(a)(1)(i); 265.173(a)], owners and operators must keep satellite containers of hazardous waste closed unless adding or removing waste.
45. At all times relevant to the complaint, Respondent stored hazardous waste in a 55-gallon satellite container at WPWW.
46. At the time of the Inspection, Respondent had failed to close a 55-gallon container that was used to collect wastewater treatment sludge from a filter press.
47. Waste was neither being added nor removed from the 55-gallon container at the time of the Inspection.

48. Respondent's failure to keep a satellite container of hazardous waste closed violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 640.11(2); 680.22(23) [40 C.F.R. § 264.173(a)], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

II. CIVIL PENALTY

49. Complainant proposes to assess Respondent a civil penalty in the amount of \$60,200 for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheet."
50. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider "the seriousness of the violation and any good faith efforts to comply with applicable requirements." Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request.

III. COMPLIANCE ORDER

51. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b), to comply with the following requirements immediately upon the effective date of this Order:
52. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraphs 53 through 55 of this Order.

53. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by WAC Chapter NR 600-690 (40 C.F.R. Part 262).
54. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order within 15 calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent shall notify U.S. EPA of the failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.
55. Respondent shall submit all reports, submissions, and notifications required by this Order to U.S. EPA, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Brenda Whitney (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

IV. OPPORTUNITY TO REQUEST A HEARING

56. Respondent has 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.
57. To request a hearing, Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within 30 days after service of this Complaint. Consolidated Rules at 40 C.F.R. § 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.

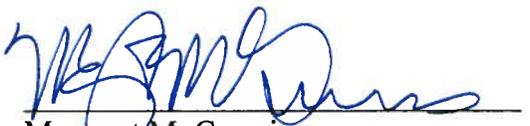
Consolidated Rules at 40 C.F.R. § 22.7(a).

58. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:
 - a. the circumstances or arguments alleged to constitute the grounds of defense;
 - b. the facts Respondent intends to place at issue;
 - c. the basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.
59. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny or explain any material fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at 40 C.F.R. § 22.15.
60. Respondent must file its 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 Reginald A. Pallesen, Office of Regional Counsel (C-14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Pallesen may be telephoned at (312) 886-0555.
61. If Respondent fails 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 Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts

purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's 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 Respondent without further proceedings 30 days after issuance of a final order upon default under Section 22.27(c) of the Consolidated Rules, 40 C.F.R. § 22.27(c). In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

62. A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of the 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 Section 22.21(d) of the Consolidated Rules, 40 C.F.R. § 22.21(d).

Dated this 23rd day of April, 2009


Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

Complaint Docket Number RCRA-05-2009-0009

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PENALTY TABLE
Wisconsin Plating Works of Racine - Wisconsin Plating Division
Racine, Wisconsin
WID006115646
RCRA CEI - March 27, 2008

NATURE OF VIOLATION	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY-BASED PENALTY	MULTI-DAY/ MULTI - PENALTY	ECONOMIC BENEFIT	TOTAL PENALTY
COUNT 1: Failure to apply for and obtain a permit.	WAC ss. NR 615.05(6)(a) and (b); 680.30; 680.31(2); and 680.32(2) [40 CFR §§ 262.34(a)-(c) and (g); 270.1(c); 270.10(a), (d); 270.13]	Moderate / Moderate	\$8,382	\$50,106	\$0	\$58,488
COUNT 2: Inspections at indoor HW area	WAC ss. NR 615.05(6)(a) and 615.05(4)(a)2.b.; [40 CFR §§ 262.34(a)(1)(i); 265.174]	Minor / Moderate	\$1,289	\$0	\$0	\$1,289
COUNT 3: Failure to close satellite container	WAC ss. NR 615.05(6)(a); 615.05(4)(c)2. [40 CFR §§ 262.34(a)(1)(i); 265.173(a)]	Minor / Minor	\$387	\$0	\$0	\$387
TOTAL			\$10,058	\$50,106	\$0	\$60,164
ROUNDED TOTAL						\$60,200

Note: 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. 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.

CASE NAME: Wisconsin Plating Division

DOCKET NO: RCRA-05-2009-0009

CERTIFICATE OF SERVICE

I hereby certify that today, I filed the original of this **Administrative Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), 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:

Jeffrey J. Toeppe, Vice President
Wisconsin Plating Works of Racine, Inc.
Post Office Box 1813
Racine, Wisconsin 53401-1813

Return Receipt # 7001 0320 0005 8915 6890

Dated: 4/24/09



Katrina D. Jones
Administrative Program Assistant
U.S. Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard – LR-8J
Chicago, IL 60604-3590
(312) 886-2871

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