

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violation of  
Articles 19 and 27 of the New York State  
Environmental Conservation Law and Parts  
200, 372 and 373 of Title 6 the Official  
Compilation of Codes, Rules and Regulations  
of the State of New York by

ORDER  
ON  
CONSENT

West Falls Machine Company, Inc.

Respondent

File# B9-0542-98-10

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is a Department of the State of New York with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
2. The Department is charged with jurisdiction to regulate the generation and disposal of solid and hazardous waste in the State of New York pursuant to Article 27, Title 9 of the ECL and 6 NYCRR Part 370, et seq., to develop and implement remedial programs for inactive hazardous waste disposal sites pursuant to Article 27, Title 13 of the ECL and 6 NYCRR Part 375, et seq. and to prevent, control or prohibit air pollution pursuant to Article 19 and 6 NYCRR Part 200, et seq.
3. The Department is authorized to seek penalties and other appropriate sanctions for any violations of Articles 19 and 27 of the ECL or the regulations promulgated thereunder, pursuant to Articles 19, 27 and 71 of the ECL.

4. West Falls Machine Company, Inc. (the "Respondent") is a New York corporation with its corporate office located at 11692 East Main Street, East Aurora, New York 14052-0297. Respondent manufactures machine parts for various industrial customers and re-manufactures antique car and truck engines. This manufacturing generates chromium sludge from its grinding operations and spent solvents from its parts cleaning operations. These wastes may have the following EPA hazardous waste numbers: D007 and D001 respectively. Respondent also operates two hard chromium electroplating tanks which emit its air contaminants through Emission Point #00001.

5. 6 NYCRR Part 372.2(a)(2) requires persons who generate solid waste to make a determination whether such waste is a hazardous waste.

6. 6 NYCRR Part 372.2(a)(3) prohibits generators of hazardous waste to treat or store hazardous waste without first receiving an EPA identification number.

7. 6 NYCRR Part 372.2(a)(8)(iii)(a) prohibits small quantity generators of hazardous waste to accumulate more than 6000 kilograms of such waste.

8. 6 NYCRR Part 372.2(a)(8)(iv) prohibits small quantity generators of hazardous waste to store such wastes for a period exceeding 180 days, or for a period exceeding 270 days if the waste must be transported more than 200 miles to a treatment, storage or disposal facility.

9. 6 NYCRR Part 372.2(a)(8)(iii)(e) requires small quantity generators of hazardous waste to implement certain emergency response measures.

10. 6 NYCRR Part 373-3.9(d)(1) requires small quantity generators of hazardous waste to keep all containers of hazardous waste closed during storage.

11. 6 NYCRR Part 372.2(a)(8)(i)(b) requires small quantity generators of hazardous waste to mark hazardous waste containers holding excess accumulations located at the point of generation with the date such waste began accumulating.
12. 6 NYCRR Part 372.2(a)(8)(iii)(d) requires small quantity generators of hazardous waste to mark hazardous waste containers with the date each period of accumulation begins.
13. 6 NYCRR Part 373-3.9(d) requires small quantity generators of hazardous waste to mark hazardous waste containers with the words "Hazardous Waste" and other words identifying their contents.
14. 6 NYCRR Part 373-3.10(l)(3)(iv) requires small quantity generators of hazardous waste to inspect weekly for corrosion or leaking of fixtures or seams in tanks where hazardous wastes are stored.
15. 6 NYCRR Part 373-3.3(b) requires facilities to be maintained and operated to minimize the possibility of releases of hazardous wastes to the air, soil or surface water which could threaten human health and the environment.
16. 6 NYCRR Part 200.10 and Title 40 of the Code of Federal Regulations (CFR) Part 63 Subpart N which has been incorporated into 6 NYCRR requires owners and operators of hard chromium electroplating operations to bring the emissions from such sources into compliance with the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing tanks.
17. 40 CFR 63.342(c)(1) requires the owner or operator of an affected source to not allow the concentration of total chromium in the exhaust gas stream discharged to the

atmosphere to exceed 0.015 milligrams of total chromium per dry standard cubic meter of ventilation air.

18. 40 CFR 63.347(c)(1) requires the owner or operator of an affected source that is already operating to notify prior to July 24, 1995 the Department and the EPA that such source is subject to the Subpart N standards.

19. 40 CFR 63.342(f)(3) requires the owner or operator of an affected source to prepare an operation and maintenance plan for such source by January 25, 1997.

20. 40 CFR 63.343(b)(1) requires the owner or operator of an affected source to conduct an initial performance test using the procedures and test methods listed in 40 CFR 63.7 and 40 CFR 63.344.

21. 40 CFR 63.347(d)(1) requires the owner or operator of an affected source to notify the Department and EPA in writing of his or her intention to conduct a performance test at least 60 calendar days before the test is scheduled to begin to allow the Department and EPA to have an observer present during the test.

22. 40 CFR 63.347(f) requires the owner or operator of an affected source to report to the Department and the EPA the results of the performance test no later than 90 days following the completion of the performance test.

23. 40 CFR 63.347(e)(2) requires the owner or operator of an affected source that is already operating to notify the Department and the EPA whether such source is in compliance with the Subpart N standards.

24. 40 CFR 63.347(h) requires the owner or operator of an affected source to document the ongoing compliance status. The report shall be completed annually and retained on site, and made available fo the Department and EPA upon request.

25. 40 CFR 63.346(b) requires the owner or operator of an affected source to maintain certain records concerning the maintenance, performance and operation of such source.

26. 40 CFR 63.343(c)(5)(ii) requires the owner or operator of an affected source to monitor the surface tension of such source.

27. 6 NYCRR Part 201-1.2 prohibits the operation of an emission source without a Part 201 permit.

28. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulations noted in Paragraphs 5, 6 and 9 in that Respondent had not made a hazardous waste determination for the waste it generated, had not received an EPA identification number and had not implemented any emergency response procedures.

29. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulations noted in Paragraphs 7 and 8 in that Respondent had stored hazardous waste for periods as long as three years in four 55 gallon containers.

30. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulation noted in Paragraph 10 in that Respondent had failed to close during storage ten hazardous waste containers.

31. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulation noted in Paragraph 11 in that Respondent had failed to mark three hazardous waste containers located at the point of generation with the date such waste began accumulating.

32. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulation noted in Paragraph 12 in that Respondent had failed to mark four hazardous waste containers with the date each period of accumulation begins and to inspect them weekly.

33. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulations noted in Paragraphs 13 and 14 in that Respondent had failed to mark two tanks containing hazardous waste with the words "Hazardous Waste" and to inspect the tanks weekly for signs of corrosion or leaking.

34. On April 8, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulation noted in Paragraph and 15 in that Respondent failed to minimize the possibility of releases of hazardous wastes to the air, soil or surface water which could threaten human health and the environment.

35. On February 26, 1998 Department personnel conducted an inspection of Respondent's facility and observed it in violation of the regulations noted in Paragraphs 18 through 27 in that Respondent was operating a stationary source without having prepared an initial notification report, an operation and maintenance plan, a notification of compliance status, without doing performance testing, and without maintaining records concerning the maintenance, performance and operation of such source, without monitoring the surface tension

of such source and operating a second plating tank without having first obtained a Part 201 permit.

Respondent affirmatively waives the rights to a hearing in this matter, consents to the issuance of this Order, and agrees to be bound by the provisions, terms and conditions of this Order.

NOW, being duly advised and having considered the matter, IT IS ORDERED THAT:

I. Civil Penalty

Relative to the violations described above, Respondent is hereby assessed a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00) which amount shall be reduced by any criminal penalty imposed by the Erie County Court as a result of Respondent's guilty plea relating to the violations noted above. The civil penalty shall be paid in two equal installments. The first installment shall be sent within twenty-one days after criminal sentencing to the attention of James Charles, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 270 Michigan Avenue, Buffalo, New York 14203. The second installment shall be paid by no later than May 27, 2003. This second installment payment may be deferred in the event that groundwater monitoring wells are required by Schedule B of this Order. The deferred installment's payment schedule shall be established at the time it is determined that the installation of the groundwater monitoring wells is necessary.

II. Remediation

Respondent shall comply with the terms of Schedules A, B and C attached to and made a part of this Order. The documentation and plans noted in Schedule A shall be sent to the attention of James Strickland P.E., Division of Solid and Hazardous Materials, Schedule B to

Greg Sutton P.E., Division of Environmental Remediation, and Schedule C to Connie La Port P.E. Division of Air Resources, all located at New York State Department of Environmental Conservation, 270 Michigan Avenue, Buffalo, New York 14203-2999.

III. Standard Provisions

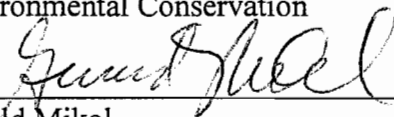
Respondent shall further comply with the Standard Provisions recited below which constitute material and integral terms and conditions of this Consent Order and are hereby incorporated into this Consent Order by reference.

DATED: 11/20/02

Buffalo, New York

Erin M. Crotty, Commissioner  
New York State Department of  
Environmental Conservation

By:

  
Gerald Mikol,  
Regional Director



CONSENT BY RESPONDENT

Respondent hereby consents to the issuance of the foregoing Order, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

West Falls Machine Company, Inc.

By Michael R George

Title Pres.

Date 11-13-02

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

On the 13 day of Nov., in the year 2002, before me, the undersigned, personally appeared Michael George, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



NOTARY PUBLIC

*County of Erie, State of New York  
Expires 1/30/06*

## STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 9 office of the Department, located at 270 Michigan Avenue, New York 14203-2999.

Duration. This Order shall take effect when it is signed by the Regional Director, as the authorized representative of the Commissioner of Environmental Conservation, and shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.

### Schedule A

Respondent shall by no later than the dates indicated:

1. Submit an approvable hazardous waste management plan for the entire facility; December 13, 2002
2. Submit an approvable plan for the operation of the evaporator unit to be used in the treatment of chromium contaminated groundwater and a modify such plan to include groundwater monitoring if the collected data indicates the need to do so. December 13, 2002
3. Operate the evaporator in accordance with the approved plan. Ongoing

## Schedule B

Respondent shall submit by no later than December 13, 2002 an approvable site investigation work plan which will include a site description, work plan objectives, description of work, quality control/assurance requirements, a health & safety plan and the following items:

- a review Green Environmental's field notes to confirm the location of sample point #12 noted in the Green Environmental Specialists, Inc. Groundwater Sampling Survey Final Report;
- installation of a minimum of six soil boring around the area of sample point #12 to determine the horizontal and vertical extent of chromium contamination;
- If the location of sample point #12 is not within the septic field area, additional soil borings shall be installed in the septic field area to determine the horizontal and vertical extent of contamination within the leach field;
- Samples shall be analyzed for Priority Pollutant Metals (13 parameters) and screened with a PID meter and if the PID meter reading exceeds 5 ppm, a sample of soil and groundwater should be collected and analyzed for TCL VOA's;
- At least one soil sample from the leach field shall be analyzed for TCLP metals;
- Drill a sufficient number of soil borings and collect a sufficient number samples so that certain samples can be selected for analysis based on field conditions and others retained for later analysis, if necessary;
- All samples shall be analyzed by an ELAP/DOH certified Laboratory using ASP methods including all necessary quality control procedures producing a Category B report;
- A geophysical description of all soil borings including the borings already made for the final report shall be performed and a geologic profile provided;
- Provide inside sump sampling data;
- Install groundwater monitoring well(s) if the need for such is indicated by the gathered data.

**Schedule C  
West Falls Machine  
Chromium MACT Standard Compliance Schedule**

<u>Action</u>	<u>Compliance Date</u>
1. Comply with the National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40CFR63 Subpart N) by completing the following:	
a. Submit an Initial Notification Report to the Department and the USEPA that contains the information specified in 40CFR63.347(c)(1)(i) through 63.347(c)(1)(ix).	December 13, 2002
b. Complete proposed revisions to the plating tanks and the small tank, installation of a new tank inside the existing large tank, and changes to the capture system to achieve a minimum control velocity of 150 fpm. In addition, provide the Department with supporting documentation of the proper exhaust volumes for the revised tank and ventilation configuration.	December 13, 2002
c. Install and operate a permanent nonresettable ampere-hour meter on the rectifier.	December 13, 2002
d. Complete a physical inspection of the mist eliminator to determine the integrity and functionality of the control equipment. Submit a report of the findings to the Department, as well as, a description and details of the mist eliminator.	December 13, 2002
e. Install a Magnahelic to measure the pressure drop across the mist eliminator.	December 13, 2002
f. Submit copies of the records for the surface tension measurements. Submit manufacturer specifications of the equipment used to obtain the measurements. In addition, submit the manufacturer procedures for obtaining the measurements and the cleaning procedures for the equipment.	December 13, 2002
g. Prepare and implement an Operation and Maintenance Plan to include the elements specified in 40CFR63.342 (f)(3).	December 13, 2002

- h. Submit Notification of Performance Test and the performance test protocol to the Department, as specified in 40CFR63.347(d). December 13, 2002
- i. Complete initial performance test to demonstrate compliance with the applicable emission standard. The performance test shall be conducted using test Method 306 or Method 306A. February 13, 2003
- j. Submit a Notification of Compliance Status report to the Department that contains the information specified in 40CFR63.347(e)(2)(i) through 63.347(e)(2)(ix). March 31, 2003
- k. Submit a Report of the Performance Test Results to the Department. The performance test results shall be documented in complete test reports that contain information required by 40 CFR 63.344(a)(1) through 63.344(a)(9). March 31, 2003
- l. Submit a complete State Facility Permit Application for the entire facility including the evaporator unit. April 30, 2003