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STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

REBECCA A. HUMPHRIES
DIRECTOR

April 15, 2010

CERTIFIED MAIL

Mr. James Joseph Sullivan
23100 Jefferson Avenue
St. Clair Shores, Michigan 48080

Waste & Hazardous
Materials Division

APR 19 2010

Dear Mr. Sullivan:

SUBJECT: Consent Order; Electro-Plating Services, Inc. (EPS), 945 East Ten Mile Road, Madison Heights, Michigan, EPA ID No. MID 042 444 687, and 5900 Commonwealth, Detroit, Michigan, EPA ID No. MID 072 782 857

Enclosed please find a fully executed original of the Consent Order between EPS and the Department of Natural Resources and Environment (DNRE). The Consent Order became effective on April 13, 2010, the date of the Acting Chief of the Waste and Hazardous Materials Division's signature. Please be advised that the first penalty payment and all costs addressed in Paragraphs 8.1 and 8.2 are due on September 30, 2010. Subsequent penalty payments are due thereafter on or before the 30th of the last month of each successive quarter until the entire sum is paid on or before June 30, 2012.

In accordance with Paragraph 8.5 of the Consent Order, EPS shall pay the above civil fine and costs by certified or cashier's check made payable to the "State of Michigan" and mailed to the DNRE, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DNRE, Revenue Control Unit, 5th Floor, South Tower, 525 West Allegan Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include Payment Identification Number WHM 3033.

Sincerely,

John Craig, Chief
Enforcement Section
Waste and Hazardous Materials Division
517-373-7923

Enclosure

cc/enc: Mr. Paul J. Little, U.S. Environmental Protection Agency, Region 5
Ms. Danielle Allison-Yokom, Department of Attorney General
Mr. Lawrence AuBuchon, DNRE
Ms. Jennifer Sarka, DNRE
Mr. Gary Tuma, DNRE

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT
WASTE AND HAZARDOUS MATERIALS DIVISION

In the matter of the administrative proceedings
against Electro-Plating Services, Inc., a corporation
organized under the laws of the State of Michigan,
doing business at 945 East Ten Mile Road,
City of Madison Heights, County of Oakland,
State of Michigan, and formerly doing business at
5900 Commonwealth, City of Detroit,
County of Wayne, State of Michigan

WHMD Order No. 111-03-10

Site ID Nos. MID 042 444 687 and MID 072 782 857

CONSENT ORDER

This proceeding results from allegations specified in the Enforcement Notice dated July 2, 2009, and the Violation Notices ("VNs"), formerly called Letters of Warning ("LOWs"), issued on October 25, 2004, January 24, 2005, June 7, 2005, June 30, 2005, January 26, 2006, August 20, 2007, and June 6, 2008, by the staff of the Department of Environmental Quality, now the Department of Natural Resources and Environment ("DNRE"). The DNRE alleges that Electro-Plating Services, Inc. ("EPS"), a Michigan corporation, doing business at 945 East Ten Mile Road, Madison Heights, Oakland County, Michigan, and formerly at 5900 Commonwealth, Detroit, Wayne County, Michigan, is in violation of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), Michigan Compiled Laws ("MCL") 324.101 et seq.; Part 121, Liquid Industrial Wastes, of the NREPA; and the administrative rules promulgated under Part 111. EPS and the DNRE agree to resolve the alleged violations set forth in the VNs by entry of this Consent Order.

I. STIPULATIONS

EPS and the DNRE stipulate as follows:

- 1.1 Pursuant to its authority under MCL 324.105 and Part 111, the DNRE has promulgated administrative rules pertinent to the identification, generation, treatment, storage,

disposal, and transportation of hazardous wastes in Michigan. These rules are set forth in the 2008 *Michigan Register* 5, R 299.9101 et seq.

- 1.2 The DNRE also regulates the identification, generation, treatment, storage, disposal, and transportation of liquid industrial wastes pursuant to Part 121.
- 1.3 On October 30, 1986, the State of Michigan was granted final authorization by the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 3006(b) of the federal Resource Conservation and Recovery Act of 1976 ("RCRA"), Title 42 of the United States Code ("U.S.C."), Section 6926(b), to administer a hazardous waste program in Michigan in lieu of the federal program, Title 40 of the Code of Federal Regulations ("CFR"), Part 272, Subpart X, 51 *Federal Register* 36804 (October 16, 1986). This authorization is periodically updated to maintain authorization. Section 3008 of the RCRA, 42 U.S.C., Section 6928, provides that the U.S. EPA may enforce state regulations in those states authorized to administer a hazardous waste program.
- 1.4 EPS is a person as defined by MCL 324.301(h) and R 299.9106(i). EPS owns and operates a facility at 945 East Ten Mile Road, Madison Heights, Michigan, that generates hazardous waste (the "Madison Heights Facility"). EPS also owns and operates a warehouse at 5900 Commonwealth, Detroit, Michigan (the "Detroit Facility"). EPS is a Michigan corporation.
- 1.5 On August 18, 1980, an initial notification of hazardous waste activity was filed for both the Madison Heights Facility and Detroit Facility with the U.S. EPA pursuant to Section 3010 of the RCRA for hazardous waste management activities. The Madison Heights Facility Site ID No. is MID 042 444 687, and the Detroit Facility Site ID No. is MID 072 782 857.
- 1.6 The Director of the DNRE is authorized by MCL 324.11151(1) to issue orders to comply. Accordingly, the Director has authority to issue and enter into this Consent Order to comply by consent with EPS.

- 1.7 EPS stipulates that the issuance and entry of this Consent Order is proper and acceptable. This Consent Order shall be considered a final order of the DNRE and shall become effective on the date it is signed by the Chief of the Waste and Hazardous Materials Division ("Division Chief"), designee of the Director, pursuant to Section 301(b) of the NREPA.
- 1.8 EPS agrees to fully and strictly comply with all provisions of Part 111 and Part 121 of the NREPA, the administrative rules promulgated pursuant to Part 111, and all other applicable state and federal statutes.
- 1.9 EPS and the DNRE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by EPS of the allegations contained in the VNs or that the law has been violated.

II. DNRE APPROVAL OF SUBMITTALS

- 2.1 EPS shall ensure that any work plan, proposal, or other document ("Work Plan") required to be submitted by this Consent Order will be complete and technically adequate such that the Work Plan meets any applicable statutory and regulatory requirements and the specific terms of this Consent Order when initially submitted. For any Work Plan that is required to be submitted by EPS to the DNRE by this Consent Order, the following process and terms of approval shall apply. The DNRE may approve, disapprove, or approve with specified modifications, any required Work Plan. Upon DNRE approval, or approval with modifications, of a Work Plan, such Work Plan shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order. In the event that the DNRE approves a Work Plan with modifications, the DNRE will state each specific modification and the basis for each modification, in writing. In the event that the DNRE disapproves a Work Plan, the DNRE will notify EPS of the specific reasons for the disapproval, in writing. Within ten (10) business days of receipt of the DNRE's disapproval letter, EPS shall amend and submit a revised Work Plan that addresses the reasons for the DNRE's disapproval unless the notice of disapproval specifies a longer period. Failure by EPS to submit an approvable Work Plan within the ten (10) business day schedule shall subject EPS to the stipulated penalty provisions of this Consent Order commencing on the date

the approvable, revised Work Plan was due and accumulating until an approvable Work Plan is submitted. Any delays caused by EPS's failure to submit an approvable Work Plan shall in no way affect EPS's responsibility to comply with any deadlines specified in this Consent Order.

- 2.2 No informal advice, guidance, suggestions, or comments by the DNRE regarding reports, Work Plans, plans, specifications, schedules, or any other writing submitted by EPS will be construed as relieving EPS of its obligation to obtain written approval, if and when required by this Consent Order.

III. MODIFICATIONS AND EXTENSIONS

- 3.1 EPS and the DNRE agree that the Division Chief may grant EPS an extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a timely written request, received by the DNRE no later than five (5) business days prior to the pertinent deadline, which shall include:

3.1.1 An identification of the specific deadline(s) of this Consent Order that will not be met.

3.1.2 A detailed description of what will prevent EPS from meeting the deadline(s).

3.1.3 A description of the measures EPS has taken and/or intends to take to meet the required deadline(s).

3.1.4 The length of the extension requested and the specific date on which the obligation will be met.

The Division Chief will respond promptly to such requests and will not unreasonably withhold approval for such requests.

- 3.2 Any extension of the specified deadlines or other modifications and amendments of this Consent Order shall require a formal written amendment of this Consent Order, shall be signed by EPS and the DNRE ("Parties"), shall have as their effective date the date on

which they are signed by the Division Chief, and shall be incorporated into and become an enforceable part of this Consent Order.

IV. COMPLIANCE PROGRAM

- 4.1 EPS shall achieve compliance with the requirements specified below in accordance with the following schedule:

Permitting/Licensing/Storage

- 4.2 On and after the effective date of this Consent Order, EPS shall not store hazardous waste at the Detroit Facility without first obtaining a construction permit and operating license as required by MCL 324.11118(1), MCL 324.11123(1), R 299.9501, and R 299.9502.
- 4.3 On and after the effective date of this Consent Order, EPS shall not accumulate hazardous waste at the Madison Heights Facility for more than ninety (90) days if the site generates 1,000 kilograms of hazardous waste or more in a month, nor more than one hundred eighty (180) days if the site generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a month, as required by R 299.9306(1), R 299.9306(3), and R 299.9306(4), unless otherwise specifically authorized under R 299.9306 or by a license issued pursuant to MCL 324.11123 and R 299.9502.

Characterization and Land Disposal Restrictions

- 4.4 On and after the effective date of this Consent Order, EPS shall evaluate all wastes generated at the Madison Heights Facility in accordance with R 299.9302 to determine if the wastes are hazardous waste or liquid industrial waste as required by MCL 324.11138(1)(a), MCL 324.12103(1)(a), and R 299.9302(1).
- 4.5 On and after entry of this Consent Order, EPS shall evaluate all hazardous wastes generated at the Madison Heights Facility in accordance with 40 CFR, Section 268.7(a)(1), to determine if the hazardous wastes meet the treatment standards

in Section 268.40, Section 268.45, or Section 268.49 as required by R 299.9311 and the corresponding federal regulations under 40 CFR, Section 268.7(a)(1).

- 4.6 On and after the effective date of this Consent Order, EPS shall maintain all waste characterization documentation generated pursuant to Paragraphs 4.4 and 4.5 for at least three (3) years from the date that each hazardous waste or liquid industrial waste was generated or last sent to on-site or off-site treatment, storage, or disposal as required by MCL 324.11138(1)(g), MCL 324.12103(3), R 299.9307(1), R 299.9311(1), and the corresponding federal regulations under 40 CFR, Sections 268.7(a)(6), (7), and (8).
- 4.7 On and after the effective date of this Consent Order, EPS shall, with the initial shipment of hazardous waste to each treatment, storage, or disposal facility, send a one-time written notice to the facility receiving the waste certifying whether the waste complies with the land disposal restriction standards as required under R 299.9311(1) and the corresponding federal regulations under 40 CFR, Sections 268.7(a)(2), (3), (4), and (9).
- 4.8 On and after the effective date of this Consent Order, EPS shall maintain a copy of all land disposal restriction notices generated pursuant to Paragraph 4.7 and required pursuant to R 299.9311(1) and the corresponding federal regulations under 40 CFR, Sections 268.7(a)(2), (3), (4), and (9).

Recyclable Materials

- 4.9 On and after the effective date of this Consent Order, if making a claim that a waste is a recyclable material not subject to regulation under Part 111 or Part 121 due to the recyclable material's use in production at an off-site recycling facility, EPS shall generate the following records consistent with R 299.9202(5) and R 299.9302 and maintain them for at least three (3) years from the date that the recyclable material was last sent to on-site or off-site treatment, storage, or disposal as required by R 299.9307:
- 4.9.1 for each waste stream, a record demonstrating the material has sufficient value to provide for safe storage, transport, and reuse;

- 4.9.2 for each batch of a recyclable material generated for reuse, records demonstrating that the material was evaluated prior to removal from production and confirmed to have met material reuse specifications found in a reuse contract effective at the time the material was generated;
- 4.9.3 records showing transport and delivery of materials to a contracted recycling facility;
- 4.9.4 for each waste stream, a copy of the contract, signed by both EPS and the recycling facility effective for the period of time the material is recycled that includes recyclable material specifications and a statement that the recyclable material is directly used in production without treatment or reclamation prior to use in production at the recycling facility;
- 4.9.5 records generally describing the manufacturing process in which the recyclable material is used; and
- 4.9.6 records showing that each contracted recycling facility claiming to use the recyclable material in manufacture has the necessary equipment to use the recyclable materials to manufacture a product.
- 4.10 On and after the effective date of this Consent Order, if making a claim that a waste is a recyclable material as defined by R 299.9107(e) and is not subject to regulation under Part 111 or Part 121 due to the recyclable material's use in production on-site at the Madison Heights Facility, EPS shall generate the following records consistent with R 299.9202(5), R 299.9302, and R 299.9107(z) and maintain them for at least three (3) years from the date that each batch of a recyclable material was last sent to on-site treatment, storage, or disposal as required by R 299.9307:
- 4.10.1 records demonstrating that the material was evaluated prior to removal from production and confirmed to have met material reuse specifications found in a past or present contract in order to demonstrate that the material is potentially recyclable and has a feasible means of being recycled;

4.10.2 records identifying the specific on-site equipment in which the recyclable material may be reused and the specific products the recyclable material is appropriate for use in manufacturing a product without reclamation in order to demonstrate that the material is potentially recyclable and has a feasible means of being recycled; and

4.10.3 records demonstrating that during the calendar year commencing on January 1, the amount of recyclable material that is recycled equals not less than 75 percent by weight or volume of the amount of that recyclable material accumulated at the beginning of the period.

Hazardous Waste Management

- 4.11 On and after the effective date of this Consent Order, EPS shall maintain and operate the Madison Heights Facility such that EPS minimizes the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste in accordance with 40 CFR, Section 265.31, and as required by R 299.9306(4)(e).
- 4.12 On and after the effective date of this Consent Order, EPS shall clearly label all containers used to accumulate hazardous waste with the words "Hazardous Waste" as required by R 299.9306(1)(c).
- 4.13 On and after the effective date of this Consent Order, EPS shall clearly label all containers used to accumulate hazardous waste with all applicable hazardous waste number(s) for the waste and the date upon which each period of accumulation began as required by R 299.9306(1)(b).
- 4.14 On and after the effective date of this Consent Order, EPS shall keep all containers of hazardous waste and liquid industrial waste closed except when it is necessary to add or remove waste as required by R 299.9306(1)(a)(i), MCL 324.12113(1), and the corresponding federal regulations under 40 CFR, Section 265.173(a).
- 4.15 On and after the effective date of this Consent Order, if a container located at the Madison Heights Facility holding hazardous waste is found to not be in good condition,

or if it begins to leak, EPS shall transfer the hazardous waste from the container in poor condition to a container that is in good condition or manage the waste in some other way that complies with the requirements of 40 CFR, Part 265, as required by R 299.9306(1)(a)(i).

- 4.16 On and after the effective date of this Consent Order, if using a container to accumulate hazardous waste, EPS shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored so that the ability of the container to contain the waste is not impaired as required under R 299.9306(4)(b) and the corresponding federal regulations under 40 CFR, Section 265.172.
- 4.17 On and after the effective date of this Consent Order, EPS shall inspect containers of hazardous waste at least weekly for leaks and deterioration in accordance with 40 CFR, Section 265.174; respond to detected leak(s) in accordance with 40 CFR, Section 265.171; document the inspections and any correction(s); and maintain the documentation for at least three (3) years as required by R 299.9306(1)(a)(i).

Training and Emergency Preparedness

- 4.18 On November 21, 2008, EPS performed an initial training that trained the EPS employees at the Madison Heights Facility to perform their duties in a way that ensures compliance with Part 111 and familiarized the EPS employees with the hazardous waste management procedures relevant to their position. On November 4, 2008, EPS performed an initial training that familiarized the EPS employees on contingency plan implementation. On and after the effective date of this Consent Order, the EPS employees at the Madison Heights Facility shall take part in an annual review of the initial training as required by R 299.9306(1)(d) and the corresponding federal regulations under 40 CFR, Section 264.16.
- 4.19 On and after the effective date of this Consent Order, EPS shall maintain the following documents and records as required by R 299.9306(1)(d) and the corresponding federal regulations under 40 CFR, Section 264.16:

- 4.19.1 the job title for each position at the Madison Heights Facility related to hazardous waste management and the name of the employee filling each job;
- 4.19.2 a written job description for each position documented pursuant to Paragraph 4.19.1 of this Consent Order that includes the requisite skill, education, other qualifications, and duties of employee(s) assigned to each position;
- 4.19.3 a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Paragraph 4.19.1 of this Consent Order; and
- 4.19.4 records that document that the training or job experience required under Paragraphs 4.19.1, 4.19.2, and 4.19.3 of this Consent Order has been given to and completed by the Madison Heights Facility employees.
- 4.20 On and after the effective date of this Consent Order, EPS shall maintain a copy of the effective contingency plan at the Madison Heights Facility that includes the content specified under 40 CFR, Section 265.52, including a description of the signal(s) to be used to begin an evacuation, evacuation routes, alternate evacuation routes, a list of emergency equipment, including the location and a physical description of each item listed and a brief outline of its capabilities, as required by R 299.9306(1)(d) and the corresponding regulations under 40 CFR, Section 265.52.
- 4.21 On and after the effective date of this Consent Order, EPS shall review and immediately amend the contingency plan whenever:
- 4.21.1 applicable regulations are revised;
- 4.21.2 the plan fails in an emergency;
- 4.21.3 the facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires,

explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

4.21.4 the list of emergency coordinators changes; or

4.21.5 the list of emergency equipment changes.

Transporter Permitting/Registration and Manifesting

- 4.22 On and after the effective date of this Consent Order, EPS shall not transport hazardous waste in the state of Michigan unless a uniform application for a registration and permit to transport hazardous waste that meets the requirements of MCL 29.473(3), (4), and (5) has been submitted and approved by the DNRE and all transportation is performed under an approved permit and registration issued by the DNRE as required by R 299.9304(1)(c) and R 299.9403(1).
- 4.23 On and after the effective date of this Consent Order, EPS shall not offer hazardous waste and/or liquid industrial waste for transportation to a transporter unless the transporter is registered and permitted pursuant to the Hazardous Materials Transportation Act, 1998 PA 138, to transport the waste offered for transport as required by R 299.9304(1)(c), MCL 324.12103(1)(c), and MCL 29.473.
- 4.24 On and after the effective date of this Consent Order, EPS shall package, label, and mark hazardous waste prior to transporting hazardous waste or prior to offering hazardous waste for off-site transportation, in accordance with the U.S. Department of Transportation ("U.S. DOT") requirements specified in 49 CFR, Part 172, as required by R 299.9305.
- 4.25 On and after the effective date of this Consent Order, EPS shall, before offering hazardous waste for off-site transportation, prepare a manifest that contains the information specified under R 299.9304(1)(a)-(b), (2), and (4) as required under R 299.9304(1)(a)-(b), (2), and (4).

4.26 On and after the effective date of this Consent Order, EPS shall prepare a manifest for each shipment of liquid industrial waste before offering liquid industrial waste for transportation to a designated facility, certify that at the time of transporter pickup that the information contained on the manifest is factual by signing the manifest, provide to the transporter the signed copies of the manifest to accompany the liquid industrial waste to the designated facility, retain a copy of the manifest at the Madison Heights Facility for a period of at least three (3) years, and make those records readily available for review and inspection by DNRE staff as required under MCL 324.12103.

Universal Waste Management

4.27 On and after the effective date of this Consent Order, EPS shall manage unbroken waste electric lamps as a universal waste in accordance with R 299.9228(4), including R 299.9228(4)(e)(ii), to prevent any breaking and/or crushing of waste electric lamps that may exhibit one (1) or more of the hazardous characteristics identified in R 299.9212.

4.28 On and after the effective date of this Consent Order, EPS shall:

4.28.1 place all unbroken, electric lamps that may exhibit one (1) or more of the hazardous characteristics identified in R 299.9212 at the Madison Heights Facility in structurally sound, closed packages adequate to prevent breakage that are compatible with the waste and do not exhibit evidence of leaks or damage that may result in leaks as required under R 299.9228(4)(a) and (c) and the corresponding federal regulations under 40 CFR, Section 273.13(d);

4.28.2 manage all unbroken, electric lamps that may exhibit one (1) or more of the hazardous characteristics identified in R 299.9212 as universal waste electric lamps and label the waste packages described in Paragraph 4.28.1 with the words "Universal Waste Electric Lamps," "Waste Electric Lamps," or "Used Electric Lamps";

4.28.3 maintain an agreement with a universal waste handler, a destination facility, and/or a foreign destination to accept the universal waste from the Madison

Heights Facility prior to shipment as required by R 299.9228(4)(a) and the corresponding federal regulations under 40 CFR, Section 273.18(d);

4.28.4 comply with all U.S. DOT requirements under 49 CFR, Parts 171 through 180, prior to shipping universal waste off-site as required by R 299.9228(4)(a) and the corresponding federal regulations under 40 CFR, Section 273.18(c); and

4.28.5 comply with the universal waste transporter regulations pertaining to self-transportation as required under R 299.9228(4)(b) and the corresponding federal regulations under 40 CFR, Section 273.18(b), or make arrangements with a licensed transporter.

4.29 On and after the effective date of this Consent Order, EPS shall accumulate, transport, and dispose of all broken and/or crushed electric lamps managed at the Madison Heights Facility as hazardous waste in compliance with Part 111 and the administrative rules promulgated thereunder.

Liquid Industrial Waste Management

4.30 On and after the effective date of this Consent Order, EPS shall store all liquid industrial waste protected from weather, fire, physical damage, and vandals in containers and tanks that are closed or covered, except when necessary to add or remove waste, to prevent the escape of liquid industrial waste to the environment.

4.31 On and after the effective date of this Consent Order, EPS shall keep records of all liquid industrial waste produced and reclaimed, treated, or disposed of at the Madison Heights Facility for at least three (3) years and make those records readily available for review and inspection by DNRE staff as required by MCL 324.12103.

V. REPORTING

5.1 EPS shall submit all items required in Section III to the Waste and Hazardous Materials Division District Supervisor. The cover letter with each submittal shall identify the

specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

- 5.2 EPS shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Waste and Hazardous Materials Division District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s) as well as a description of any actions proposed or taken to correct the violation(s). EPS shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines, whenever possible.

VI. RETENTION OF RECORDS

- 6.1 Upon request by an authorized representative of the DNRE, EPS shall make available to the DNRE all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 111, its administrative rules, or Part 121. All such documents shall be retained at the Madison Heights Facility for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by Part 111, the RCRA, or their administrative rules.

VII. RIGHT OF ENTRY

- 7.1 EPS shall allow any authorized representative or contractor of the DNRE, upon presentation of proper credentials, to enter upon the premises of the Madison Heights Facility and the Detroit Facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DNRE to conduct tests and inspections pursuant to the NREPA and its administrative rules or any other applicable statutory provision.

VIII. FINES, COSTS, AND PENALTIES

- 8.1 EPS shall pay the sum of \$4,000 to the State of Michigan in settlement of the DNRE's claim for civil fines arising from the violations alleged in the referenced VNs. The

payment shall be made in eight equal installments of \$500 each beginning on or before September 30, 2010, and due thereafter on or before the 30th of the last month of each successive quarter until the entire sum is paid on or before June 30, 2012.

- 8.2 On or before September 30, 2010, EPS shall pay to the State of Michigan the sum of \$6,623 in settlement of claims for the costs of surveillance and enforcement arising from the violations alleged in the referenced VNs.
- 8.3 For each failure to comply with the provisions of Sections II and IV of this Consent Order, EPS shall pay stipulated penalties of \$1,500 per violation per day for one (1) to seven (7) days of violation, \$2,000 per violation per day for eight (8) to fourteen (14) days of violation, and \$2,500 per violation per day for each day of violation thereafter. For each failure to comply with any other provisions of this Consent Order, EPS shall pay stipulated penalties of \$500 per violation per day for each day of violation. Stipulated penalties shall be paid within thirty (30) days after written demand made by the DNRE.
- 8.4 To ensure timely payment of the above civil fine, penalties, and costs, EPS shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 8.5 EPS shall pay the above civil fine, costs, stipulated penalties, and interest penalties by certified or cashier's check made payable to the "State of Michigan" and mailed to the DNRE, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DNRE, Revenue Control Unit, 5th Floor, South Tower, 525 West Allegan Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include Payment Identification Number WHM 3033.
- 8.6 EPS agrees not to contest the legality of the civil fine or costs for surveillance and enforcement paid pursuant to Paragraphs 8.1 and 8.2, above. EPS further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to

Paragraphs 8.3 and 8.4, above, but reserves the right to dispute the factual basis upon which a demand by the DNRE for stipulated penalties or interest penalties is made.

IX. DISPUTE RESOLUTION

- 9.1 Unless otherwise provided in this Consent Order, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order and shall apply to all provisions of this Consent Order. However, the procedures set forth in this section shall not apply to actions by the State to enforce obligations of EPS that have not been disputed in accordance with this section. Engagement of a dispute resolution between the Parties shall not be cause for EPS to delay the performance of any compliance requirements or response activity.
- 9.2 Any dispute that arises under this Consent Order shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed twenty (20) days from the date of written notice by any Party that a dispute has arisen, unless the time period for negotiations is modified by written agreement between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. If agreement cannot be reached on any issue within this twenty- (20-) day period, the DNRE shall provide a written statement of its decision to EPS and, in the absence of initiation of formal dispute resolution by EPS under Paragraph 9.3, the DNRE position, as outlined in its written statement of decision, shall be binding on the Parties.
- 9.3 If EPS and the DNRE cannot informally resolve a dispute under Paragraph 9.2, EPS may initiate formal dispute resolution by requesting review of the disputed issues by the Division Chief. This written request must be filed with the Division Chief within fifteen (15) days of EPS's receipt of the DNRE's statement of decision that is issued at the conclusion of the informal dispute resolution procedure set forth in Paragraph 9.2. EPS's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which EPS bases its position. Within fourteen (14) days of the Division Chief's receipt of EPS's request for a review of disputed issues, the Division Chief will provide a written statement of decision to EPS, which will include a statement

of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation relied upon by the Division Chief's review of the disputed issues. The Division Chief's review of the disputed issues may be extended by written agreement of the Parties.

- 9.4 The written statement of the Division Chief issued under Paragraph 9.3 shall be binding on the Parties unless, within fifteen (15) days after receipt of the DNRE's written statement of decision, EPS files a petition for judicial review in a court of competent jurisdiction that shall set forth a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Order. Nothing in this Consent Order affects the limitations on the timing of judicial review of the DNRE decision regarding the selection, extent, or adequacy of any response activity as provided for in Part 201, Environmental Remediation, of the NREPA.
- 9.5 An administrative record of the dispute shall be maintained by the DNRE. The administrative record shall include all of the information provided by EPS pursuant to Paragraph 9.3, as well as any other documents relied upon by the DNRE in making its final decision pursuant to Paragraph 9.3. Where appropriate, the DNRE shall allow submission of supplemental statements of position by the Parties to the dispute.
- 9.6 In proceeding on any dispute, EPS shall have the burden of demonstrating on the administrative record that the position of the DNRE is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by EPS, EPS shall bear the burden of persuasion on factual issues.
- 9.7 Notwithstanding the invocation of dispute resolution proceedings, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Order, but payment shall be stayed pending resolution of the dispute. Stipulated penalties shall be paid within thirty (30) days after the resolution of the dispute. EPS shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section VIII, Fines, Costs, and Penalties.

X. FORCE MAJEURE

- 10.1 EPS shall perform the requirements of this Consent Order within the time limits established herein unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of EPS's obligations under this Consent Order in accordance with this section.
- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of EPS, such as: an Act of God, untimely review of permit applications or submissions by the DNRE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by EPS's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of EPS's actions or omissions.
- 10.3 EPS shall notify the DNRE, by telephone, within forty-eight (48) hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by EPS to prevent or minimize the delay, and the timetable by which those measures shall be implemented. EPS shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of EPS to comply with the notice requirements of Paragraph 10.3, above, shall render this Section X void and of no force and effect as to the particular incident involved. The DNRE may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3.
- 10.5 If the Parties agree that the delay or anticipated delay was beyond the control of EPS, this may be so stipulated and the Parties to this Consent Order may agree upon an appropriate modification of this Consent Order. If the Parties to this Consent Order are

unable to reach such agreement, the dispute shall be resolved in accordance with Section IX, Dispute Resolution, of this Consent Order. The burden of proving that any delay was beyond the reasonable control of EPS, and that all the requirements of this Section X have been met by EPS, is on EPS.

- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that EPS qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. GENERAL PROVISIONS

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DNRE reserves the right to pursue any other remedies to which they are entitled for any failure on the part of EPS to comply with the requirements of the NREPA and its administrative rules.
- 11.2 Notwithstanding any other provision of this Consent Order, an enforcement action may be brought by the DNRE pursuant to Part 111 or other statutory authority where the generation, storage, transportation, treatment, or disposal of hazardous waste at the Madison Heights Facility or the Detroit Facility may present an imminent and substantial hazard to the health of persons or to the natural resources or is endangering or causing damage to public health or the environment.
- 11.3 The DNRE and EPS consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 111.
- 11.4 This Consent Order in no way affects EPS's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action or similar requirements applicable to the Madison Heights Facility or the Detroit Facility pursuant to Part 111, Part 121, the RCRA, and their administrative rules.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability EPS may have for natural resource damages caused by EPS's ownership and/or operation of the

Madison Heights Facility or the Detroit Facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 11.6 The provisions of this Consent Order shall apply to and be binding upon EPS, the DNRE, and their successors and assigns. EPS shall give notice of this Consent Order to any prospective successor in interest prior to transfer of ownership and shall notify the DNRE of such proposed sale or transfer.

XII. TERMINATION

- 12.1 This Consent Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the Division Chief. EPS may request that the Division Chief issue a written Notice of Termination at any time after achieving compliance with this Consent Order. Such a request shall consist of a written certification that EPS has fully complied with all of the requirements of this Consent Order and payment of any fines and penalties required in this Consent Order. Specifically, this certification shall include:

12.1.1 the date of compliance with each provision of the Compliance Program in Section IV and the date any fines or penalties were paid;

12.1.2 a statement that all required information has been reported to the District Supervisor; and

12.1.3 confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

Additional relevant information may also be requested by the Division Chief.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

Electro-Plating Services, Inc.

By: Gary A. Sayers
Gary A. Sayers
President

Date: 4/1/10

Department of Natural Resources and
Environment

Rebecca A. Humphries
Director

By: Liane J. Shekter Smith

Liane J. Shekter Smith, P.E., Acting Chief
Waste and Hazardous Materials Division

Date: 4-13-2010

Approved as to Form:

Michael A. Cox
Attorney General

Kathleen L. Cavanaugh

Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48909

Date: 4-12-10