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

US EPA RECORDS CENTER REGION 5
436269

DEC 31 1996

REPLY TO THE ATTENTION OF:

SE-5J

CERTIFIED MAIL
RETURN RECEIPT R[illegible]

Re: Dayton Electroplate, Inc.
Unilateral Administrative Order

Dear Sir:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Mr. Jose C. de Leon, Assistant Regional Counsel, at (312)353-7456 or Mr. Steve Renninger, On-Scene Coordinator, at (513)569-7539.

Sincerely yours,

Wm. E. Muno

William E. Muno, Director
Superfund Division

Enclosure

cc: OEPA Agency Superfund Coordinator

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF:	)	Docket No. V-W-'97-C-382
	)	
Dayton Electroplate, Inc.	)	ADMINISTRATIVE ORDER
1030 Valley St.	)	PURSUANT TO SECTION 106(a)
Dayton, Ohio 45404	)	OF THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
	)	AS AMENDED, 42 U.S.C.
Gordon H. Savage	)	SECTION 9606(a)
Registered Agent		
Charles J. Borum		

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 1030 Valley Street, Dayton, Ohio 45404 (the "Dayton Electroplate, Inc. Site" or the "Site"). This Order requires the Respondents to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

EPA has notified the State of Ohio of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. Dayton Electroplate (DE) was formed in 1984 when it acquired the assets including plating operations from the Dayton Rust Proof Company. From 1984 until April 1996, DE conducted electroplating operations including nickel, chrome, zinc and clear coatings. Dayton Rust Proof operated at 1030 Valley Street, Dayton, Ohio, 45404 (the "site"), from 1980 until 1984 and generated similar F006, F007, F008, and F009 wastes. In 1985, DE plating lines included a total of 43,905 gallons of cyanide zinc plating solutions. Also, DE had nickel plating solutions totaling 10,945 gallons and 2,930 gallons of chrome electroplating solutions.

2. On August 8, 1991, the Ohio Environmental Protection Agency (OEPA) filed a complaint against Dayton Electroplate for violations of Ohio's hazardous waste laws which occurred at the Dayton Electroplate site.

3. On April 16, 1993, the OEPA conducted a follow-up hazardous waste inspection at the Dayton Electroplate site. OEPA inspectors noted that Dayton Electroplate, Inc. did not initiate a closure

plan for illegal storage units including drum storage and roll-off box areas.

4. On February 14, 1994, the OEPA, through the Ohio Attorney General, filed a complaint for injunctive relief and civil penalties against Dayton Electroplate and Charles Borum (president), and Paul Borum (vice president) for hazardous waste violations. The complaint included eleven counts including hazardous waste storage violations and failure to submit a closure plan.

5. On March 1, 1994, DE submitted an Ohio State Emergency Response Commission (SERC) facility identification form. The facility hazardous chemical inventory form identified the following chemicals utilized daily at the DE facility: hydrofluoric acid, hydrogen chloride, nitric acid, sodium cyanide, and concentrated sulfuric acid.

6. On July 6, 1994, U.S. EPA Region V Norman R. Niedergang, Associate Division Director for RCRA, issued a Complaint, Findings of Violations, and Compliance Order to DE for RCRA violations. On March 14, 1995, the U.S.EPA finalized a Consent Agreement and Final Order which required DE to provide proper LDR notification on all future hazardous waste shipments, and pay a civil penalty of $5,400.

7. On May 4, 1995, the Ohio Assistant Attorney General (OAAG) Lori Massey and DE president Charles Borum signed a Consent Order for DE to perform closure of all hazardous waste management units at the DE facility.

8. On November 15, 1995, the OEPA Division of Hazardous Waste Management conducted an inspection of the DE facility. The purpose of the inspection was to investigate a complaint that alleged that DE was storing hazardous waste on-site. During the inspection, OEPA noted uncharacterized drums that contained waste from the nickel plating tanks. Also noted were unlabeled drums containing cyanide filter pads. OEPA noted that in addition to the drum violations, DE failed to comply with the terms and conditions of the May 4, 1995 Consent Order.

9. On August 27, 1996, OAAG Lori Massey informed DE and DE president Charles Borum of violation of the May 4, 1995, Consent Order to perform closure activities, and a February 29, 1996

Contempt Order. OAAG indicated that the State of Ohio was aware that DE was engaged in Chapter 7 Bankruptcy since April 12, 1996.

10. On September 12, 1996, OEPA Division of Hazardous Waste Management Michael Savage requested assistance from U.S. EPA Region V, Emergency Response Branch, to conduct an emergency removal action at the abandoned DE site due to substantial endangerment to both the local population and the environment. OEPA noted that DE filed for Chapter 7 bankruptcy on April 12, 1996, and soon thereafter ceased operations at the site. On August 28, 1996, OEPA inspected the abandoned site and observed acid vapor collecting near the ceiling of plating area #1 and a strong acidic odor permeating the building. OEPA noted that plating line #1 was large and the process tanks appeared full and in poor condition.

11. On October 11, 1996, U.S. EPA On Scene Coordinator, Steve Renninger, OEPA, and the Region V START contractor conducted a site investigation at the Dayton Electroplate site. During the U.S. EPA investigation, the OSC noted the presence of approximately 110 full to partially full plating vats, roll-off boxes, and miscellaneous waste tanks containing spent electroplating solutions totaling approximately 105,000 gallons. The 90 vats represent four intact plating lines in two separate buildings. Much of the waste in the vats and tanks is highly concentrated solutions of cyanide, chromium, zinc, nickel, chromic acid and wastewater treatment sludge, contaminated with heavy metals. Many of the vats and tanks were observed to be in a deteriorating state with potential to, and/or continuing to leak.

12. Approximately 250 55-gallon drums and numerous smaller containers of plating solutions, plating wastes, oxidizers, corrosives, flammables, reactives, and unknowns were observed throughout the site with some stacked 2 to 3 high.

13. During the October 11, 1996, U.S. EPA site investigation, the Region V START contractor collected drum and plating vat samples (see Table 1). Drum and vat samples were documented to contain acids (pH<1) including sulfuric acid and hydrochloric acid. Incompatible drums in close proximity to the above referenced acid drums, were documented to contain sodium hydroxide (pH>13). Vats were documented to contain acids (pH<1) in close proximity to drums and vats containing cyanide (6,500 ppm and 53,000 ppm).

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Dayton Electroplate, Inc. Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Highly concentrated caustics, acids, heavy metals, cyanide, and solvents are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Each Respondent is a "person" as defined by Section 101(21)of CERCLA, 42 U.S.C. § 9601(21).

4. Respondents Charles J. Borum, and Gordon H. Savage, are the present "owners" and "operators" of the Dayton Electroplate, Inc. Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondents Charles J. Borum, and Gordon H. Savage are either (a) persons who at the time of disposal of any hazardous substances owned or operated the Dayton Electroplate, Inc. Site, or who arranged for disposal or transport for disposal of hazardous substances at the Dayton Electroplate, Inc. Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. These factors include, but are not limited to, the following:

1) Actual or potential exposure to nearby populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

U.S. EPA site investigation, during the week of October 11, 1996, identified open drums, plating vats, tanks, and roll-off boxes containing hazardous wastes. The drums, containers, vats, and tanks contain a vast quantity of highly concentrated caustics, acids, heavy metals, cyanide, and solvents. The plating bath solutions and residues are listed as F007 and F008 hazardous wastes by 40 CFR 261.31. Sampling during the site investigation documented drum and plating vats to contain acids (pH<1), caustics (pH>13), and cyanide (53,000 ppm)

The cyanide and acid solutions are extremely toxic to human and on animal life. During the week of October 11, 1996, the OSC and START identified numerous plating vats that were in a deteriorated state and elevated ambient air monitoring readings near plating area #1. During the week of the August 28, 1996, OEPA investigation, investigators noted an acid vapor collecting near the ceiling of plating area #1. If these solutions were released and mixed inadvertently or intentionally, a toxic cloud of cyanide gas could become airborne and may affect the nearby population.

2) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release;

During the October 11, 1996, the OSC observed abandoned drums, tanks, vats, and roll-off boxes containing corrosive and cyanide waste which were open and in varying stages of deterioration. Plating vats were noted to be in poor, rusted condition, many having spilled contents to the surrounding area. U.S. EPA START samples documented drums and vats to contain cyanide (53,000 ppm), caustics (pH>13) and acids (pH=<1).

The uncontrolled and deteriorating nature of approximately 105,000 gallons of plating solutions including 250 drums of hazardous waste poses a real threat of release. If a major release were to occur, waste acid may come in contact with incompatible materials such as the cyanide-bearing electroplating solutions and raw sodium cyanide product material contained in vats and drums. Should a release of acid occur and react with a cyanide source, toxic hydrogen cyanide gas could be generated and emitted. If such an event occurs, contaminants could become airborne and may affect the nearby population.

3) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

During the October 11, 1996, the OSC observed deteriorated drums and containers located within the abandoned site buildings. The drums and containers will be exposed to varying seasonal temperatures (freeze/thaw) which over time could promote further deterioration and ultimate failure and release.

4) Threat of Fire and/or Explosion;

During the October 11, 1996 U.S. EPA site investigation, the OSC observed a flammable storage area in building #2 with containers which have been documented to contain ignitable waste. Label information from flammable storage area drums and containers indicated that the contents were isopropanol. Waste samples obtained during the site investigation revealed a flashpoint of 74 degrees F. Therefore, the potential for a fire/explosion exists and, if such an event occurs, contaminants could become airborne and affect off-site locations.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions themselves or retain contractors to implement the removal actions. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of such contractors, whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor within 2 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 3 business days of EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within 4 business days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

The EPA has designated Steve Renninger of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at U.S. EPA, B-2, 26 W. Martin Luther King Drive, Cincinnati, Ohio, 45268, by certified or express mail. Respondents shall also send a copy of all submissions to Jose C. de Leon, Assistant Regional Counsel, 77 West Jackson Boulevard, C-29, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to

U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

1) Develop and implement a site Health and Safety plan including an air monitoring plan;

2) Develop and implement a site security plan;

3) Characterize, remove and properly dispose of hazardous substances and wastes at the site in drums, containers, vats, tanks, roll-off boxes, and equipment;

4) Decontaminate and decommission all plating vats and containers at the site. Decontaminate the entire concrete floor and associated building structures;

5) Properly dispose of all contaminated plating vats, containers, debris, and building structures which cannot be decontaminated;

6) Identify the extent to which site soils have been impacted by the hazardous substances utilizing soil samples.

3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of notification. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully

enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved work plan.

Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondents shall submit a plan for EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify EPA not less than 3 business days in advance of any sample

collection activity. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondents shall submit a monthly written progress report to EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which EPA determines to be necessary. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed,

Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondents to civil penalties of up to $25,000 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

VIII. REIMBURSEMENT OF COSTS

Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary, or such other summary as certified by EPA, shall serve as the basis for payment.

Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Dayton Electroplate, Inc. Site" and shall reference the payors' names and addresses, the EPA site identification number (A562), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of

this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondents may request that EPA provide a Notice of Completion of the work required by this Order. If EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), EPA will provide written notice to the Respondents. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Jose C. de Leon, Assistant Regional Counsel, at (312) 353-7456 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held

pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Jose C. de Leon, Assistant Regional Counsel, at (312) 353-7456. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY: Wm. E. Muno DATE: 12/31/96

William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

ATTACHMENT A

INDEX TO ADMINISTRATIVE RECORD
DAYTON ELECTROPLATE SITE
DAYTON, MONTGOMERY COUNTY, OHIO
November 1996

DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
02/14/94	Montgomery Co Court	Dayton Electroplate	Complaint for Injunctive Relief And Civil Penalty	10
03/01/94	Dayton Electro-Plate	Ohio State Emergency Response Commission	Emergency & Hazardous Chemical Inventory	7
03/17/95	Niedergang, N., USEPA	Biagioli,M	Consent Complaint & Final Order	9
05/04/95	Montgomery Co. Court	Dayton Electroplate	Consent Order	9
12/06/95	OEPA	Dayton Electroplate	Inspection	1
08/27/96	Ohio AG	Biagioli,M	Correspondence	1
09/12/96	OEPA	El-Zein, USEPA	Correspondence	2
00/00/96	Ecology & Environment Ohio EPA	U.S.EPA	Site Investigation (Pending)	
00/00/96	Renninger,S U.S.EPA	Muno,W U.S.EPA	Action Memorandum (Pending)	

PRP's receiving the Order

Mr. Gordon H. Savage
Registered Agent for
Dayton Electroplate, Inc.
2700 Kettering Tower
40 North Main Street
Dayton, Ohio 45423

Charles J. Borum
1030 Valley Street
P.O. Box 277
Dayton, Ohio 45404

P 140 674 557

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Charles J. Borum
1030 Valley Street
P.O. Box 277
Dayton, OH 45404

Postage	$ .55
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.75
Postmark or Date	

PS Form 3800, April 1995

Lilly 8E5J

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Mr Charles Borum
4712 Harbertson Lane
Fort Myers, FL 33919

4a. Article Number
P 140 391 758

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1/18/97

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

P 140 674 556

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Paul Borum
106 Del Park Avenue
Oakwood, OH 45419

Postage	.55
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.75
Postmark or Date	

PS Form 3800, April 1995

Lilly 8E5J

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Mr. Gordon H. Savage
Registered Agent for
Dayton Electroplate, Inc.
2700 Kettering Tower
40 North Main Street
Dayton, Ohio 45423

4a. Article Number
P 140 674 856

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1-2-97

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

P 140 674 555

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Mr. Gordon H. Savage
Dayton Electroplate, Inc.
2700 Kettering Tower
40 North Main Street
Dayton, OH 45423

Postage	.55
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.75
Postmark or Date	

PS Form 3800, April 1995

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Mr. Gordon H. Savage
Dayton Electroplate, Inc.
2700 Kettering Tower
40 North Main Street
Dayton, OH 45423

4a. Article Number
P 140 674 555

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1-4-97

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?