UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

OCT 0 5 2006

Via Facsimile and Regular Mail

Thomas Grever, Esq.
Shook Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, Missouri 64108

Re: C&R Plating, RCRA Pre-Filing Negotiations

CONFIDENTIAL SETTLEMENT COMMUNICATION
INADMISSIBLE AS EVIDENCE

Dear Mr. Grever:

On behalf of the United States Environmental Protection Agency ("EPA"), I am responding to your September 14, 2006 letter written on behalf of C&R Plating. In your letter you requested that EPA consider a penalty reduction with respect to Count I. You also provided information on two proposed supplemental environmental projects ("SEP"). The EPA is interested in continuing negotiations with C&R Plating, and needs additional information related to this case.

1. Reduction of Penalty Calculation

The EPA identified two violations of the Resource Conservation and Recovery Act ("RCRA") during the February 7, 2006 inspection of C&R Plating's facilities. The first violation is failure to conduct hazardous waste determinations on three waste streams and the second violation is failure to manifest hazardous waste shipments. Based on the RCRA Civil Penalty Policy, EPA has determined that the gravity based penalty for the first count is major for potential for harm and moderate for extent of deviation. The gravity based penalty for the second count is moderate potential for harm and moderate extent of deviation.

In your letter you indicated that C&R Plating is reviewing its records and available information to determine the frequency of any disposal of caustic sludge and muriatic acid sludge. The EPA is interested in any information C&R Plating can provide that would shed light on the frequency with which those disposals were made, and the quantity of sludge disposed.

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Regarding the waste water treatment filter cake sludge, EPA is also interested in any additional information C&R Plating can provide that would counter EPA's position that 400-500 pounds of toxic wastewater treatment sludge sent to the municipal land fill per month does not pose a substantial potential for harm. Chromium has been linked to health problems ranging from lung cancer to skin ulcers. It can also affect children who live near waste sites where chromium is found. As was explained during the settlement conference, EPA based the penalty calculation on the RCRA penalty policy, so any response should address the factors set forth in that policy. Any additional information C&R Plating can provide regarding the 1999 Kansas Department of Health and Environment ("KDHE") inspection will also be considered.

2. Good Faith Efforts to Comply

The EPA has noted the efforts of C&R Plating to comply with the RCRA regulations, and its quick response to the Notice of Violation and EPA's requests for additional information. As mentioned in the settlement conference, EPA will continue to consider a 30% reduction off the final penalty amount when a settlement in principal has been reached. The three factors EPA will consider are described in the penalty policy, and EPA reserves the right to deny that reduction if those factors are not satisfactory met. At this time, EPA has no reason to believe that reduction is in jeopardy.

Prior to entering into any settlement agreement, C&R Plating will need to provide evidence that it is in compliance with the RCRA requirements. The EPA will request copies of any hazardous waste manifests prepared since the inspection, evidence of trainings attended by employees of C&R Plating (including a description of the training, the names of attendees and the dates of the training), and evidence of inspections (i.e., copies of inspection logs). The EPA may require additional information as negotiations proceed.

3. Supplemental Environmental Projects

The EPA supports Supplemental Environmental Projects in settlement of enforcement actions. C&R Plating should be aware that regardless of the quality of the proposed SEP, a penalty will have to be paid to the U.S. Treasury. According to the SEP policy, the final settlement penalty must equal or exceed either: 1) the economic benefit of noncompliance plus 10 percent of the gravity component; or 2) 25 percent of the gravity component only; whichever is greater. In order to approve a SEP, EPA needs verification that the proposal meets the requirements set forth in the SEP Policy provided to you at the September 7, 2006 settlement conference. Please provide complete answers to the following questions regarding each SEP.

Each SEP EPA approves must follow a five step process. The process includes: 1) ensuring that the project meets the basic definition of a SEP; 2) ensuring that all legal guidelines are satisfied; 3) ensuring that the project fits within one of the designated categories of a SEP; 4) determining the appropriate amount of penalty mitigation; and 5) ensuring that the project satisfies all of the implementation requirements. At this time,

EPA has insufficient information to verify whether the two proposed projects qualify as a SEP. Please review steps 1-3, described in more detail in the SEP Policy, with respect to each proposed SEP and provide EPA with ample information attesting to these requirements. Also provide any annual costs associated with these projects.

Additionally, EPA has specific questions regarding each SEP. C&R Plating indicated at the EPA inspection that a new facility was being constructed to house a new plating line. Please estimate when plating activities will commence in the new facility, and whether the current facility will continue to be in operation after the new facility is completed. Also verify whether the new facility will be connected to the current waste water treatment unit and benefit from the proposed sludge dryer. The EPA additionally needs a complete description of how the sludge dryer and fume scrubber will operate, and a diagram of where the dryer and scrubber will be located with respect to the current waste water treatment unit at the C&R Plating facility. In your letter you assert that the sludge dryer will reduce the volume of hazardous waste generated at the facility by approximately 75%. Explain what constituent will be reduced and how.

Regarding the reverse osmosis unit or deionization unit, provide a complete description of how these units will operate. Also, describe and provide a diagram of where the unit will be located with respect to the current waste water treatment unit at the C&R Plating facility.

In conclusion, EPA remains willing to continue negotiations with C&R Plating in this matter. The EPA is interested in any information C&R Plating can provide that EPA is otherwise unaware of at this time. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kelley Hickman

Kelley Hickman
Assistant Regional Counsel

cc: Kevin Cline
Kori Kuehl