

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)	
DEPARTMENT,)	
Complainant,)	
)	NO. HWB-20-37 (ACO)
v.)	
)	
BROTHERS PLATING Co.,)	
INC.,)	
EPA ID #: NMD035677244)	
Respondent.)	
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ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to NMSA 1978, Section 74-4-10, of the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14, the Hazardous Waste Bureau (“HWB”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED”) issues this Administrative Compliance Order (“Order”) to Brothers Plating Co., Inc. (“Brothers” or “Respondent”). This Order requires that Brothers, located at 6817 4th St. NW, Los Ranchos de Albuquerque, New Mexico, comply with the HWA and the Hazardous Waste Management Rules (“HWMR”), 20.4.1 NMAC, and assesses civil penalties for violations of the HWA and the HWMR.

I. FINDINGS

A. PARTIES

1. Pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New Mexico.
2. NMED, through its HWB, is charged with administration and enforcement of

the HWA and HWMR.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k, within the state. The HWMR incorporate portions of 40 Code of Federal Regulation (“CFR”) §§ 260 through 270, 40 CFR § 279 and related federal regulations by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the HWMR on March 1, 2009 and on December 1, 2018, to adopt changes to the federal hazardous waste regulations.

5. Respondent is a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the HWA.

6. Respondent is a New Mexico for-profit corporation.

7. Respondent is a Small Quantity Generator (“SQG”) of hazardous waste, as defined by 20.4.3.7(S) NMAC, under EPA I.D. Number NMD035677244.

8. Respondent’s facility is located at 6817 4th St. NW, Ranchos de Albuquerque, New Mexico (“Facility”).

B. HWA INVESTIGATION – July 30, 2019

9. On July 30, 2019, the HWB conducted a routine Compliance Evaluation Inspection (“Inspection”) at the Facility.

10. The Inspection included a physical review of the Facility and the records required to be maintained at the Facility according to 40 CFR § 262.16.

11. During the Inspection, HWB identified seventeen potential violations.

12. The HWMR provide that SQGs are subject to regulation under 40 CFR § 262.11; therefore, the owner and operator of a SQG must make a hazardous waste determination on all waste streams generated by the Facility, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.

13. During the Inspection on July 30, 2019, HWB inspectors observed three (3) containers located on the Respondent's property containing unknown wastes. Specifically, one 100-gallon tank of sludge near the bright acid tin bath, one 100-gallon tank of sludge located outside the garage door in the backyard, and one 55-gallon drum of sludge located inside the building in the northwest corner.

14. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.11(f); therefore, the owner and operator of a SQG must maintain hazardous waste determination records for three years, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.11(f).

15. During the Inspection on July 30, 2019, the Respondent could not produce any waste determination records.

16. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.15(a)(4); therefore, SQGs must keep containers of hazardous waste closed in a Satellite Accumulation Area ("SAA"), as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4).

17. During the Inspection on July 30, 2019, HWB inspectors observed three (3) 5-gallon containers storing plating wastes and debris which were open. The containers were located in the central aisle near the Hot Water Seal. Also, one open cubic yard box storing hazardous waste filter cake was observed near the filter cake press.

18. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.15(a)(5)(i); therefore, SQGs must label all SAA containers with the words “Hazardous Waste” as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i).

19. During the Inspection on July 30, 2019, HWB inspectors observed three (3) unlabeled 5-gallon containers storing plating wastes and debris. The containers were located in the central aisle near the Hot Water Seal tank.

20. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b); therefore, SQGs may only accumulate hazardous waste for less than 180 days, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b).

21. During the Inspection on July 30, 2019, HWB inspectors observed a 55-gallon drum of hazardous waste which had accumulated for greater than 180 days. The 55-gallon drum of waste paint was located in the Paint Booth and was observed with an accumulation start date of May 26, 2017 and should have been disposed by November 23, 2017.

22. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(2)(iv); therefore, SQGs must conduct weekly inspections of the container storage area as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iv).

23. During the Inspection on July 30, 2019, the Respondent could not provide any inspection records for the required weekly inspections.

24. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(6)(i)(B); therefore, SQGs must mark hazardous waste containers with an indication of the hazards of the contents as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

25. During the Inspection on July 30, 2019, HWB inspectors observed one 55-gallon

drum of waste paint located in the Paint Booth and one cubic yard box located near the filter cake press were without a label with the hazards of the wastes.

26. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(8)(i); therefore, SQGs must maintain and operate the facility in order to minimize the potential for fire, explosion and releases of hazardous waste to the environment, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(i).

27. During the Inspection on July 30, 2019, HWB inspectors observed a release of plating waste inside the building that flowed outside the garage door and across the alley towards residential property.

28. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(8)(vi)(A); therefore, SQGs must attempt to make arrangements with the local police department, fire department other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(vi)(A).

29. During the Inspection on July 30, 2019, the Respondent could not produce copies of arrangement letters sent to the local police, fire, emergency response teams and local hospital.

30. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(9)(i); therefore, owners and operators of SQGs must designate an Emergency Response Coordinator (“ERC”), as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(i).

31. During the Inspection on July 30, 2019, the Respondent could not produce documentation to demonstrate the ERC.

32. The HWMR provide that SQGs are subject to regulations under 40 CFR §

262.16(b)(9)(ii)(A); therefore, owners and operators of SQGs must post the ERC's name and number by the phone or in areas directly involved in the generation and accumulation of hazardous waste, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(A).

33. During the Inspection on July 30, 2019, HWB inspectors observed that the Respondent did not have the phone number of the ERC posted by the phone or in areas directly involved in the generation and accumulation of hazardous waste.

34. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(9)(ii)(B); therefore, owners and operators of SQGs must post by the phone or in areas directly involved in the generation and accumulation of hazardous waste the locations of fire extinguishers, spill control material and fire alarms, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(B).

35. During the Inspection on July 30, 2019, HWB inspectors observed that the Respondent had an evacuation map that shows the locations of the fire extinguishers, spill equipment and the fire alarms but did not post the map by the phone or in areas directly involved in the generation and accumulation of hazardous waste.

36. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(9)(ii)(C); therefore, owners and operators of SQGs must post the fire department's phone number by the phone or in areas directly involved in the generation and accumulation of hazardous waste, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(C).

37. During the Inspection on July 30, 2019, HWB inspectors did not observe the fire department's phone number near the phones or in areas directly involved in the generation and accumulation of hazardous waste in the facility.

38. The HWMR provide that SQGs are subject to regulations under 40 CFR §

262.16(b)(9)(iii); therefore, owners and operators of SQGs must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iii).

39. During the Inspection on July 30, 2019, the Respondent could not produce documentation to demonstrate that the employees have been trained on waste handling and emergency procedures.

40. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(9)(iv)(B); therefore, owners and operators of SQGs must provide for the facility to have an ERC who must respond to any emergencies that arise at the facility, including containment and cleanup of a spill as soon as is practicable, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iv)(B).

41. During the Inspection on July 30, 2019, HWB observed a release (spill) to the environment and no containment or cleanup response was occurring during the release at the time of the Inspection.

42. The HWMR provide that SQGs are subject to regulations under 40 CFR § 270.1(c); therefore, owners and operators of SQGs must obtain a permit for storage and disposal of hazardous waste, as required by 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

43. During the Inspection on July 30, 2019, NMED inspectors observed one 55-gallon drum of waste paint located in the Paint Booth was stored for greater than 180 days and the improper disposal of hazardous waste from the release to the environment.

44. The HWMR provide that generators of used oil are subject to regulations under 40 CFR § 279.22(c)(1); therefore, generators of used oil must label containers storing used oil

with the words “Used Oil” or with similar wording to identify the contents, as required by 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(c)(1) and 20.4.1.1003(A) NMAC.

45. During the Inspection on July 30, 2019, HWB inspectors observed three (3) unlabeled 55-gallon drums storing used oil, located behind the facility.

C. HWA INVESTIGATION – September 10, 2019

46. On September 10, 2019, HWB conducted sampling at the Facility of two (2) 100-gallon tanks of unknown sludge; solids that had accumulated next to an electroplating rinse tank; and soils from the alley on the west side of the property where the release was observed during the Inspection on July 30, 2019 as discussed in Paragraph 13.. The sampling results indicate a release of cadmium in the alley behind the facility, as well as hazardous waste levels of cadmium 1.1 mg/L in the soil located outside the garage door; the 100-gallon tank located behind the facility contained hazardous waste levels of cadmium at 5.5 mg/L ; and the 100-gallon tank located near the central aisle near the sulfuric acid anodize tank contained hazardous waste levels of cadmium at 42 mg/L and chromium at 14 mg/L.

47. The HWMR provide that SQGs are subject to regulations under 40 CFR § 268.7(a)(1); therefore, owners and operators of SQGs must determine if a waste must be treated prior to land disposal, as required by 20.4.1.800 NMAC, incorporating 40 CFR § 268.7(a)(1).

48. During the Inspection on July 30, 2019, HWB inspectors observed a release originating inside the facility flowing out the garage door to the land. Prior to land disposal, SQGs must determine if the waste must be treated. Sampling results from the September 10, 2019 Inspection of the soil indicate hazardous waste levels of cadmium near the garage door.

49. The HWMR provide that SQGs are subject to regulations under 40 CFR § 268.9(c); therefore, owners and operators of SQGs cannot land dispose of characteristic

hazardous waste unless the waste complies with Treatment Standards under Subpart D of 40 CFR Part 268, as required by 20.4.1.800 NMAC, incorporating 40 CFR § 268.9(c).

50. During the Inspection on September 10, 2019, HWB inspectors sampled the soil in the back alley. The sample results indicated that characteristic hazardous wastes were land disposed without complying with the applicable treatment standards under Subpart D of 40 CFR Part 268.

51. The Respondent was provided a copy of the sampling results on October 24, 2019 via email. At that time the Respondent was also notified that the release to the alley and the two (2) 100-gallon tanks were characteristic hazardous wastes and must be managed as such.

D. HWA INVESTIGATION – November 18, 2019

52. On November 18, 2019, NMED conducted an Inspection to locate a ground water monitoring well at the Facility.

53. During the Inspection, HWB inspectors observed the two (2) 100-gallon tanks sampled on September 10, 2019 as referenced in Paragraph 13, were not being managed in accordance with the HWMR as directed in the October 24, 2019 email and as follows.

54. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(2)(iii)(A); therefore, SQGs must keep containers of hazardous waste closed, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iii)(A).

55. During the Inspection on November 18, 2019, HWB inspectors observed the two (2) 100-gallon tanks sampled on September 10, 2019, storing characteristic hazardous wastes, were open.

56. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(6)(i)(A); therefore, SQGs must label all containers with the words “Hazardous Waste”

as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(A).

57. During the Inspection on November 18, 2019, HWB inspectors observed the two (2) 100-gallon tanks, sampled on September 10, 2019, as referenced in Paragraph 13, storing characteristic hazardous wastes, were not labeled as “Hazardous Waste.”

58. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(6)(i)(C); therefore, SQGs must mark or label all containers with the date upon which each period of accumulation begins, as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(C).

59. During the Inspection on November 18, 2019, HWB inspectors observed the two (2) 100-gallon tanks, as referenced in Paragraph 13, sampled on September 10, 2019, storing characteristic hazardous wastes, were not marked or labeled with a date indicating when accumulation was initiated.

60. The HWMR provide that SQGs are subject to regulations under 40 CFR § 262.16(b)(6)(i)(B); therefore, SQGs must mark hazardous waste containers with an indication of the hazards of the contents as required by 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

61. During the Inspection on November 18, 2019, HWB inspectors observed the two (2) 100-gallon tanks, sampled on September 10, 2019, storing characteristic hazardous wastes, were not marked or labeled with the hazards of the contents.

II. VIOLATIONS

A. HWA INVESTIGATION – July 30, 2019

62. Respondent’s failure to make a hazardous waste determination is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.

63. Respondent’s failure to maintain hazardous waste determination records for the

past three (3) years is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11(f).

64. Respondent's failure to keep containers of hazardous waste closed in a SAA is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4).

65. Respondent's failure to label an SAA container with the words "Hazardous Waste" is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i).

66. Respondent's failure to accumulate hazardous waste for less than 180 days is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b).

67. Respondent's failure to conduct weekly inspections is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iv).

68. Respondent's failure to mark containers with an indication of the hazards of the contents is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

69. Respondent's failure to maintain and operate the facility in order to minimize the potential for fire, explosion and releases of hazardous waste to the environment is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(i).

70. Respondent's failure to make arrangements with the local authorities is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(vi)(A).

71. Respondent's failure to designate an ERC is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(i).

72. Respondent's failure to post the ERC's name and number by the phone or in areas directly involved in the generation and accumulation of hazardous waste is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(A).

73. Respondent's failure to post by the phone or in areas directly involved in the generation and accumulation of hazardous waste the locations of fire extinguishers, spill control

material and fire alarms is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(B).

74. Respondent's failure to post the fire department phone number by the phone or in areas directly involved in the generation and accumulation of hazardous waste is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(C).

75. Respondent's failure to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iii).

76. Respondent's failure to provide for the facility to have an ERC who must respond to any emergencies that arise at the facility is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iv)(B).

77. Respondent's failure to obtain a permit for storage and disposal of hazardous waste is a violation of 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

78. Respondent's failure to label containers storing used oil with the words "Used Oil" or with similar wording to identify the contents is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(c)(1) and 20.4.1.1003(A) NMAC.

B. HWA INVESTIGATION – September 10, 2019

79. Respondent's failure to determine if a waste must be treated prior to land disposal is a violation of 20.4.1.800 NMAC, incorporating 40 CFR § 268.7(a)(1).

80. Respondent's failure to properly dispose of characteristic hazardous waste is a violation of 20.4.1.800 NMAC, incorporating 40 CFR § 268.9(c).

C. HWA INVESTIGATION – November 18, 2019

81. Respondent’s failure to keep containers of hazardous waste closed is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iii)(A).

82. Respondent’s failure to label containers of hazardous waste with the words “Hazardous Waste” is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(A).

83. Respondent’s failure to mark or label containers of hazardous waste with the date that initial accumulation began is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(C).

84. Respondent’s failure to identify and mark hazardous waste containers with an indication of the hazards of the contents is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

III. SCHEDULE OF COMPLIANCE

85. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA and the HWMR.

86. No later than 30 days after this Order becomes final, the Respondent shall submit a written response describing all actions taken by the Respondent in response to the violations identified herein. The response shall include photos, procedures documents, disposal records and any other relevant records, that document the actions taken by the Respondent to remedy any compliance deficiencies related to the July 30, 2019, September 10, 2019 and November 18, 2019 Inspections. Any written response must include appropriate evidence and a certification from a responsible official designated to act on behalf of Brothers. The certification of the responsible official shall state: “I certify under penalty of law that this information in this letter

and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

a. The Respondent’s written response shall contain a description of the corrective actions to ensure that a hazardous waste determination is made for all waste streams generated by the Respondent consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.

b. The Respondent’s written response shall contain a description of the corrective actions to ensure that documentation of hazardous waste determinations is maintained on site consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.11(f).

c. The Respondent’s written response shall contain a description of the corrective actions to ensure that hazardous waste containers in SAAs are kept closed consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4).

d. The Respondent’s written response shall contain a description of the corrective actions to ensure that all SAA containers are labeled consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i).

e. The Respondent’s written response shall contain a description of the corrective actions to ensure that the Respondent’s accumulation times for hazardous

wastes are less than 180 days and are consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b).

f. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent is conducting weekly inspections consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iv).

g. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent's hazardous waste containers are marked with an indication of the hazards of the contents on site and are consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

h. The Respondent's written response shall contain a description of the corrective actions taken to ensure that the Respondent is operating the facility in order to minimize the potential for fire, explosion and releases to the environment consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(i).

i. The Respondent's written response shall contain documentation demonstrating that arrangements with the local authorities are consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(vi)(A).

j. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent's has designated an ERC consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(i).

k. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent's ERC's name and phone number are posted by the phone or in areas directly involved in the generation and accumulation of hazardous waste consistent with 20.4.1.300 NMAC, incorporating 40 CFR §

262.16(b)(9)(ii)(A).

l. The Respondent's written response shall contain a description of the corrective actions to ensure that the locations of all fire extinguishers, spill control material and fire alarms are posted by the phone or in areas directly involved in the generation and accumulation of hazardous waste consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(B).

m. The Respondent's written response shall contain a description of the corrective actions to ensure that the phone number for the Fire Department is posted by the phone or in areas directly involved in the generation and accumulation of hazardous waste consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii)(C).

n. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent's employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies is consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iii).

o. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent provides an ERC or designee who will respond to any emergencies and/or releases consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iv)(B).

p. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent does not store hazardous waste for greater than 180 days or land dispose of hazardous waste consistent with 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

q. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent labels their used oil containers consistent with 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(c)(1) and 20.4.1.1003(A) NMAC.

r. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent makes a waste determination prior to land disposal consistent with 20.4.1.800 NMAC, incorporating 40 CFR § 268.7(a)(1).

s. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent properly dispose of hazardous waste consistent with 20.4.1.800 NMAC, incorporating 40 CFR § 268.9(c).

t. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent does not store hazardous waste for greater than 180 days or land dispose of hazardous waste consistent with 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

u. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent labels hazardous waste containers with the proper labeling consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(A).

v. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent marks or labels hazardous waste containers with the date the waste began accumulating consistent with 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(C).

w. Respondent's failure to identify and mark hazardous waste containers with

an indication of the hazards of the contents is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(6)(i)(B).

87. Within 30 days after the effective date of this Order, the Respondent shall submit to the Department for review and approval a work plan, including a schedule, for remediation of the hazardous waste release, and other contaminants that have been released into soil at the Facility. Upon approval by the Department, the work plan shall be incorporated herein by reference and become an enforceable part of this Order. The work plan should include the following:

- a. A description of the site, including a map of the site.
- b. A summary of any previous investigations.
- c. A detailed plan to investigate the nature and extent of soil contamination at the Facility.
- d. A detailed plan to remove contaminated soil and debris.
- e. A schedule for implementation of the plan.
- f. A schedule for submitting progress reports to the Department.
- g. A plan to properly manage the remediation waste.
- h. Any additional information that may be required to investigate and clean up soil contamination.

88. Within 60 days after the Department approves the final work plan, the Respondent shall commence implementation of the approved plan.

89. All work plans, abatement plans, progress reports, other reports, or other documents or information to be submitted to the Department under the terms of this Order shall be sent to:

Janine Kraemer, Manager
Compliance & Technical Assistance Program

Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505.

The Department may change the name or address for such submittals at any time by providing notice to Respondent.

IV. CIVIL PENALTY

90. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the HWA, the Respondent is liable for a civil penalty of up to \$10,000.00 per day of noncompliance for each violation of the HWMR. The Department hereby assesses a civil penalty of \$250,273.00 against the Respondent for the HWA violations described above.

91. No later than 30 days after this Order becomes final, the Respondent shall make payment to the State of New Mexico-Hazardous Waste Emergency Fund by certified check, bank draft or other guaranteed negotiable instrument, and mailed to or hand delivered to:

Kevin Pierard, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505.

A copy of the transmittal letter shall be sent to counsel for the Department.

92. If the Respondent is unable or has limited ability to pay, the Respondent must demonstrate this with auditable financial documents.

V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES

93. If the Respondent fails to comply in a timely manner with the Schedule of Compliance, the Secretary may assess additional civil penalties of up to \$25,000 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the HWA.

VI. RIGHT TO ANSWER AND REQUEST A HEARING

94. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and NMED's

Adjudicatory Procedures, 20.1.5.200 NMAC, the Respondent may file a written request for a public hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

a. Clearly and directly admit, deny, or explain each of the factual assertions contained in this Order with regard to which the Respondent has any knowledge.

Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state, and the Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

20.1.5.200(A)(2)(a) NMAC.

b. Indicate any affirmative defenses upon which the Respondent intends to rely. Any affirmative defense not asserted in the Request for Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

20.1.5.200(A)(2)(b) NMAC.

c. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct.

20.1.5.200(A)(2)(c) NMAC.

d. Include a copy of this Order attached. 20.1.5.200(A)(2)(d) NMAC.

The Answer and Request for Hearing shall be filed with the Hearing Clerk at the following address:

Hearing Clerk
New Mexico Environment Department
1190 Saint Francis Drive, S-2103
P.O. Box 5469
Santa Fe, New Mexico 87502

Respondent must also serve a copy of the Request for Hearing on counsel for the HWB, pursuant

to 20.1.5.200(A)(1) NMAC.

VII. FINALITY OF ORDER

95. This Order shall become final unless the Respondent files a Request for Hearing and Answer with the Hearing Clerk within 30 days after the date of receipt of this Order pursuant to NMSA 1978, Section 74-4-10(H).

VIII. SETTLEMENT CONFERENCE

96. Whether or not the Respondent requests a hearing and files an Answer, the Respondent may confer with the HWB concerning settlement, pursuant to 20.1.5.600(B) NMAC. Settlement is encouraged at any time if the settlement is consistent with the provisions and objectives of the HWA and regulations. Settlement discussions do not extend the 30-day deadline for filing the Respondent's Answer and Request for Hearing or alter the deadlines for compliance with this Order. 20.1.5.600(B)(1) NMAC. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

97. Any settlement reached by the Parties shall be finalized by written settlement agreement and stipulated final order. A settlement agreement must serve to resolve all issues raised in the Order, shall be final and binding on all Parties to the Order, and shall not be appealable.

98. To explore the possibility of settlement in this matter, the Respondent may contact Christal Weatherly, Assistant General Counsel, Office of General Counsel, New Mexico Environment Department, 121 Tijeras Ave. NE, Suite 1000, Albuquerque, New Mexico 87102, (505) 222-9524, christal.weatherly@state.nm.us.

IX. TERMINATION

99. This Order shall terminate when the Respondent certifies that all requirements of

this Order have been met and the Department has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

X. COMPLIANCE WITH OTHER LAWS

100. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

101. Pursuant to the NMED Delegation Order dated January 15, 2020, the Cabinet Secretary has delegated the authority to sign Hazardous Waste Act Compliance Orders to the Director of the Resource Protection Division.

Stephanie Stringer  Digitally signed by Stephanie Stringer
Date: 2020.06.30 11:13:27 -06'00'

**STEPHANIE STRINGER, DIRECTOR
RESOURCE PROTECTION DIVISION**

DATE: _____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this 30th day of June 2020, via Certified Mail, Return Receipt Requested, to the following:

Brother's Plating
6817 4th St. NW
Los Ranchos de Albuquerque
New Mexico 87107

Christal
Weatherly

 Digitally signed by Christal
Weatherly
Date: 2020.06.30 13:54:58 -06'00'

Christal Weatherly, Assistant General Counsel
New Mexico Environment Department