



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Hypar Machine Company
John Slevin, President
#1 Commercial Avenue
Richwood, WV 26261

DATE: December 7, 2015

ORDER NO.: MM-16-07

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to Hypar Machine Company (hereinafter "Hypar").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Hypar operates a chrome plating shop located in Richwood, Nicholas County, West Virginia under EPA ID No. WVD981940588.
2. In 1989 and 1990, sub-surface chromium soil contamination resulting from operation without an air scrubber and a release from one of the facility's two plating tanks was documented.
3. From 1990 to 1991, an un-lined, un-permitted waste pile of chromium-contaminated soil and gravel from remedial activities was created and operated on-site.
4. In 1991, the chromium-contaminated waste pile was sent for disposal as hazardous waste; however, no confirmation samples were collected to document that remediation of the release areas or the waste pile was complete.

Promoting a healthy environment.

5. In 1991, samples from groundwater monitoring wells documented that hazardous waste chromium had been disposed onto the ground and into the groundwater without a permit.
6. In September 1992 and February 1994, West Virginia Department of Environmental Protection (WVDEP) personnel inspected the facility and found multiple violations of the State and Federal Hazardous Waste Management Regulations including, but not limited to, failure to have a contingency plan, train personnel who manage hazardous waste, maintain an operating record, and test/inspect emergency equipment.
7. On November 17, 1994, as a result of the aforementioned violations, WVDEP and Hypar Machine Company entered into Consent Order No. HW-403-94.
8. From January 1992 through July 2002, groundwater monitoring was conducted periodically at the site, but no remediation was conducted.
9. On June 18, 2004, Consent Order No. HW-403-94 was closed by WVDEP when Hypar Machine Company enrolled in WVDEP's Voluntary Remediation Program (VRP).
10. From June 2004 through March 2015, Hypar Machine Company was enrolled in the VRP. During that time, subsurface borings, surface samples, and a single round of groundwater monitoring in 2006 documented additional chromium contamination at the site. No remediation was conducted.
11. On March 10, 2015, WVDEP withdrew from its VRP Agreement with Hypar Machine Company, because it failed to submit reports required by the Agreement.
12. On August 11, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the Code of Federal Regulations, WV State Code, and WV Legislative Rules were observed and documented:
 - a. 40CFR262.11 as referenced by WV Legislative Rule 33CSR20 Section 5.1 - Hypar Machine Company failed to complete a hazardous waste determination for liquid waste accumulating in the evaporator tank.
 - b. 22-18-8(a) - Hypar Machine Company disposed of hazardous waste without a permit.
 - c. 47CSR58 Section 7.1 – Hypar Machine Company allowed chromium contamination to flow onto and under the land surface in a manner that has impacted groundwater quality.

As a result of these violations, Notice of Violation (NOV) No. 1509-167 was issued to Hypar.

13. On October 22, 2015, WVDEP issued Order No. MM-16-05 to Hypar in response to the aforementioned violations. The Order required Hypar to submit a plan of corrective action.
14. On December 3, 2015, WVDEP personnel and representatives of Hypar met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Hypar shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Hypar's violations of West Virginia Code Hypar shall be assessed a civil administrative penalty of seventeen thousand thirty dollars (\$17,030) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Hypar hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Hypar agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Hypar does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Hypar other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Hypar shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Hypar becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Hypar shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures

taken and/or to be taken to prevent or minimize the delay, and a timetable by which Hypar intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Hypar (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Hypar of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Hypar to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Hypar, its successors and assigns.
7. This Order shall terminate upon Hypar's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



John Slevin, President
Hypar Machine Company

12-14-15

Date

Public Notice begin:

RECEIVED Date

Public Notice end:

DEC 15 2015
ENVIRONMENTAL
ENFORCEMENT

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party:

Hypar Machine Company

EPA ID Number:

WVD981940588

Generator Classification: Episodic LQG

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			12b											
a)	Harm to RCRA Program	1 to 3	3											
b)	Probability of Exposure	0 to 3	3											
c)	Potential Seriousness of Contamination	1 to 3	3											
Average Potential for Harm Factor			3	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3											

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -
based upon review of last three (3) years - Warning = maximum of 5% each,
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease			\$0
6.2.b.2 - Willfulness and/or negligence	30		\$3,000
6.2.b.3 - Cooperation with the Secretary		10	(\$1,000)
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$5,000		\$5,000
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			\$7,030
Penalty =			\$17,030

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$5,000
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$5,000
Comments:	Avoided costs of revising the risk assessment, creating a final report, and review of the report.