

Minnesota Enforcement Spotlight: Renewed Focus On Platers and Metal Finishers

Regulators are continuing to pay very close attention to the compliance status of Minnesota's metal finishing and plating companies. Regulators are focusing on compliance with hazardous waste and wastewater pretreatment regulations. Because of the relative small size of metal finishing and plating job shop operations, maintaining compliance with these complex environmental regulations poses unique challenges.

Within the past month inspectors from the U.S. Environmental Protection Agency (EPA) have accompanied state and county inspectors on a new round of compliance checks of Minnesota metal finishing operations. This latest round of inspections follows a steady ramp-up of inspections and investigations conducted over the past few years.

In several cases when alleged violations at metal finishing operations were detected, federal, state and county authorities have sought felony level criminal sanctions and/or six figure civil penalties. The U.S. Attorney's Office in Minneapolis has been particularly aggressive, filing five separate criminal prosecutions where metal finishing companies and responsible corporate officers have been named as defendants. The Minnesota Pollution Control Agency (MPCA), the Metropolitan Council Environmental Services (MCES) and metropolitan county inspectors, especially staff from the Hennepin County Department of Environmental Management, are working closely with the U.S. Attorneys Office and have referred cases to the EPA for inspection and review.

The federal, state and local regulators have applied high scrutiny to two operational areas in the metal finishing and plating operations.

The first area of interest relates to wet floors and the accumulation of spilled materials, including pooled sludges, on the plating shop floors that allegedly constitute violations of the preparedness and prevention requirements contained within federal, state and local hazardous waste regulations. In certain cases, the authorities have alleged that accumulated sludges and debris constitutes unpermitted storage and/or disposal of hazardous wastes. Hennepin County inspectors and inspectors from the other six metropolitan counties, who conduct annual licensing inspections of hazardous waste generators, have made referrals of these metal finishing operations with alleged violations to the EPA and the MPCA.

The second area that has received attention relates to alleged discharges in excess of wastewater pretreatment standards that apply to metal finishers and that are contained in sewage discharge permits issued by the MCES. The MCES issues permits to metal finishing operations and other businesses that discharge treated wastewaters to sewers that flow toward publicly owned treatment works (POTW). Slight variations in plating line operations may change the chemical composition of wastewater flows that may result in short term unpermitted discharges which, in turn, may trigger reporting

requirements under MCES permits. Federal, state and local hazardous waste regulations contain an exemption that permit the discharge of liquids that would otherwise be considered hazardous wastes. However, the exemption applies only if the discharge is within permitted limits.

In most cases the inspections of metal finishing operations are unannounced. The conditions that are observed by inspectors in the plating area together with discharges from plating processes flowing through on-site pretreatment systems may trigger a Letter of Warning (LOW), Notice of Violation (NOV), a Request for Information (RFI), a Pre-Filing Notice, a Stipulation Agreement or an Administrative Penalty Order (APO) from federal, state and/or local authorities.

Great care should be taken in preparing and submitting responses to any notices received from federal, state or local authorities. If you receive notice from a governmental authority relating to environmental matters, we recommend that you immediately seek the advice of qualified counsel. The EPA, MPCA and other state and local authorities often use these administrative notices as discovery tools where they seek admissions.

The EPA has taken administrative action against metal finishing and plating operations in Minnesota and surrounding states. The EPA's administrative process permits regulated parties to seek review through a hearing before an Administrative Law Judge (ALJ). The ALJ's decisions on contested matters can be found at <http://www.epa.gov/oalj/orders-2006.htm>. Reports on enforcement actions in EPA's Region 5 which includes the states of Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio and 35 Tribes can be found at: <http://www.epa.gov/reg5oorc/sumintro.htm>.

The MPCA has taken enforcement action against at least 20 metal finishing and plating operations. The MPCA seeks civil penalties through a Stipulation Agreement or an APO. A list of MPCA enforcement actions is prepared on a quarterly basis and can be found at: <http://www.pca.state.mn.us/newscenter/enforcement.html>.

Moss & Barnett's Environmental Law Practice Group has extensive experience in responding to notices and defending enforcement actions brought by federal and state authorities, such as the EPA and the MPCA. We have represented metal finishing and plating operations in enforcement matters. We have helped clients prepare for inspections by assisting with environmental and health and safety audits and the development of environmental management systems that are designed to detect and prevent violations.

Moss & Barnett attorneys handle the full spectrum of environmental issues encountered by manufacturers, businesses, developers and individuals who have been named in an administrative, civil or criminal enforcement actions. We are regularly involved in negotiations on behalf of our clients with state and federal authorities.

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