

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 29, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Attention: Docket Clerk, MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 OCT 29 PM 4: 11  
CHIEF CLERKS OFFICE

Re: Enforcement Action  
Kaspar Electroplating Corporation  
TCEQ Docket No. 2006-1470-IHW-E  
TCEQ ID No. 30856; RN101995686  
The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision

Dear Ms. Castañuela:

On behalf of the Executive Director, please find enclosed the original and eleven (11) copies of "The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision." Additionally, please find a twelfth copy for Kari L. Gilbreth, MC 175, which I would like to have date-stamped and returned to me.

Please contact me at (512) 239-1320 with any questions you may have. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari L. Gilbreth".

Kari L. Gilbreth  
Attorney  
Litigation Division

cc: Mr. Harvey Neubauer, Safety/Environmental Compliance Manager, Kaspar Electroplating Corporation, Via Facsimile No. (361) 594-3311 and Via Certified Mail, CM/RRR No. 7004 2510 0003 9117 9164  
Honorable Roy G. Scudday, State Office of Administrative Hearings  
Audra Ruble, Enforcement Division, TCEQ, MC R-14  
Brad Genzer, Waste Section Manager, TCEQ, MC R-14  
Blas J. Coy, Jr., Attorney, Office of Public Interest Counsel, TCEQ, MC 103  
TCEQ Office of General Counsel (original and 11 copies of enclosure)

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 29, 2007

Via Facsimile to (512) 475-4994 and Via Hand Delivery

The Honorable Roy G. Scudday  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 504  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: Kaspar Electroplating Corporation  
TCEQ Docket No. 2006-1470-IHW-E  
TCEQ ID No. 30856; RN101995686  
The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision

Dear Judge Scudday:

Enclosed please find "The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision" regarding the above-referenced matter. If you have any questions, please do not hesitate to call me at (512) 239-1320. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Kari L. Gilbreth".

Kari L. Gilbreth  
Attorney  
Litigation Division

Enclosure

cc: Mr. Harvey Neubauer, Safety/Environmental Compliance Manager, Kaspar Electroplating Corporation, Via Facsimile No. (361) 594-3311 and Via Certified Mail, CM/RRR No. 7004 2510 0003 9117 9164  
TCEQ Chief Clerk, MC 105  
Audra Ruble, Enforcement Division, TCEQ, MC R-14  
Brad Genzer, Waste Section Manager, TCEQ, MC R-14  
Blas J. Coy, Jr., Attorney, Office of Public Interest Counsel, TCEQ, MC 103  
TCEQ Office of General Counsel (original and 11 copies of enclosure)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2007 OCT 29 PM 4:11  
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-07-2334  
TCEQ DOCKET NO. 2006-1470-IHW-E

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
2007 OCT 29 PM 4:11  
CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE

TEXAS COMMISSION ON

VS.

KASPAR ELECTROPLATING  
CORPORATION,  
RESPONDENT

ENVIRONMENTAL QUALITY

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION**

NOW COMES the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") and hereby files these Exceptions and Proposed Modifications to the Administrative Law Judge's Proposal for Decision, pursuant to 30 TEX. ADMIN. CODE § 80.257.

The Executive Director agrees with and supports the adoption of all of the Administrative Law Judge's ("ALJ") Findings of Fact and Conclusions of Law, with suggested Modifications to the proposed Order as outlined below.

1. The Executive Director recommends removing "in Shiner, Texas" on page 2, I. Findings of Fact, paragraph 1, line two, and replacing it with "located at State Highway 95 North, Bldg. 2, 0.25 miles north of Shiner, Texas" as the complete address of the Facility.
2. The Executive Director recommends that "August 8" be removed and replaced with "August 1" on page 2, I. Findings of Fact, paragraph 5, line one as the date on which TCEQ issued a Notice of Enforcement.
3. The Executive Director recommends that "335.574" be removed and replaced with "335.474" in the proposed Order as the proper citation in the following three locations: (1) Page 2, I. Findings of Fact, paragraph 5, line three; (2) Page 5, II. Conclusions of Law, paragraph 6, line one; and (3) page 6, paragraph 1, line two.

4. The Executive Director recommends that "00." be added immediately following "\$17,500." for purposes of consistency throughout the proposed Agreed Order on page 2, I. Findings of Fact, paragraph 6, line three, and on page 6, II. Conclusions of Law, paragraph 10, line four.
5. The Executive Director recommends removing the extra space between "II. Conclusions of Law" and paragraph 1 on page 4 of the proposed Order for purposes of consistency throughout the proposed Order.
6. The Executive Director recommends Conclusions of Law No. 4 be revised to reflect an additional notice provision in the Texas Administrative Code. Currently, the sentence on page 5, paragraph 4 reads, "Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TAC § 155.27, and 30 TAC §§ 39.25 and 80.6." The paragraph should be changed to include the underlined provision, "... as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TAC § 155.27 and 30 TAC §§ 1.12, 39.25 and 80.6."
7. The Executive Director recommends removing "2006-1470-E to" and replacing it with "2006-1470-IHW-E to:" on page 6, Ordering Provisions, paragraph 1, last line on the double-spaced paragraph to fully identify TCEQ's docket number.

The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision  
Kaspar Electroplating Corporation  
SOAH Docket No. 582-07-2334  
TCEQ Docket No. 2006-1470-IHW-E  
Page 3

WHEREFORE, the Executive Director suggests the incorporation of these modifications into the Proposed Order before its consideration by the Commission. To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is hereby included as Attachment "A".

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Mary R. Risner, Director  
Litigation Division

By   
Karl L. Gilbreth  
State Bar of Texas No. 24040969  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-1320  
(512) 239-3434 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of October, 2007, an original and eleven (11) copies of the foregoing "Suggested Modifications to Administrative Judge's Proposal for Decision" ("Modification") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Modification was mailed via inter agency mail, to Mr. Blas Coy, Jr., Attorney, Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

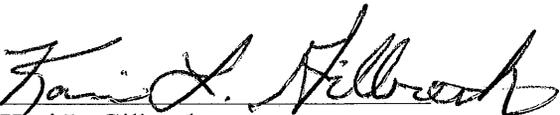
I further certify that on this day a true and correct copy of the foregoing Modification was mailed via certified mail, return receipt requested and via facsimile, to:

Mr. Harvey Neubauer  
Safety/Environmental Compliance Manager  
Kaspar Electroplating Corporation  
202 Dallas St.  
Yoakum, Texas 77995

CM/RRR No. 70042510000391179164  
Facsimile No. (361) 594-3311

I further certify that on this day a true and correct copy of the foregoing Modification was mailed via Interoffice Mail and via Facsimile Transmission (512) 475-4994:

The Honorable Roy G. Scudday  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Room 504  
Austin, Texas 78701

  
Kari L. Gilbreth  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

**ATTACHMENT "A"**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Assessing Administrative Penalties Against  
KASPAR ELECTROPLATING CORPORATION  
SOAH DOCKET NO. 582-07-2334  
TCEQ DOCKET NO. 2006-1470-IHW-E

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Kaspar Electroplating Corporation (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on October 4, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent represented by Harvey Neubauer, Safety/Environmental Compliance Manager, and the Commission's Executive Director (ED), represented by Kari Gilbreth and Tracy Chandler, attorneys in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law:

## I. FINDINGS OF FACT

1. In 2006, Kaspar Electroplating Corporation (Respondent) owned and operated an electroplating plant located at State Highway 95 North, Bldg. 2, 0.25 miles north of Shiner, Texas, and held Solid Waste Registration No. 35002 issued by TCEQ.
2. On July 6, 2006, Suzanne Parr, Environmental Investigator for TCEQ, conducted an investigation of Respondent's electroplating plant. During the investigation Ms. Parr observed that Respondent did not have a current Source Reduction and Waste Minimization Plan, otherwise known as a five-year pollution-prevention plan (Plan).
3. While touring the facility with Harvey Neubauer, Safety/Environmental Compliance Manager for Respondent, Ms. Parr observed six uncovered, open-topped 55-gallon drums of material that she identified as F006 filter cake, a hazardous waste.
4. In an inspection of Respondent's plant in June 2003, Ms. Parr had observed in the plating shop 52, open, 55-gallon drums that contained wastewater treatment sludge categorized as F006.
5. On August 1, 2006, TCEQ issued a Notice of Enforcement to Respondent that stated that Respondent's failure to have an updated Plan was a violation of 30 TEX. ADMIN. CODE (TAC) § 335.474, and that storing the open drums of hazardous waste was a violation of 30 TAC §§ 335.69(a)(1)(A) and 335.112(a)(8) and 40 CODE OF FEDERAL REGULATIONS (CFR) § 265.173(a).
6. On February 8, 2007, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that was served on Respondent alleging the two violations. The ED recommended the imposition of an administrative penalty in the amount of \$17,500.00.

7. After initially stating that the drums contained an oily coolant, on September 20, 2006, Mr. Neubauer agreed with Ms. Parr that the drums contained F006 waste that was in the process of being dumped in cubic yard bags for shipment to a recycling station, and supported his agreement by subsequently providing a copy of a State Hazardous Waste Manifest showing that seven bags of F006 waste were sent on July 7, 2006, by Kaspar Wire Works to World Resources Company in Tolleson, Arizona.
8. Respondent did not perform any tests on the contents of the drums or provide any other documentation to demonstrate that those contents were not F006 as Mr. Neubauer first asserted shortly before the oral hearing.
9. The proposed penalty of \$17,500.00 comprised a base penalty of \$2,500.00 for the lack-of-an-updated-plan violation and a base penalty of \$2,500.00 for each of the six open 55-gallon drums, for a total base penalty of \$15,000. There was an adjustment upward of the penalty for the second violation for compliance history based on two previous Notices of Violation for the same or similar violations in the past five years, which was offset by an equal adjustment downward for good faith efforts to comply (the updating of the Plan and the removal of the drums).
10. The total penalty for the two violations would be \$17,500.00.
11. An administrative penalty of \$17,500.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.
12. On February 20, 2007, Respondent requested a contested case hearing on allegations in the EDPRP.

13. On March 23, 2007, the case was referred to SOAH for a hearing.
14. On April 9, 2007, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
15. At the preliminary hearing that was held on May 3, 2007, the ED established jurisdiction to proceed.
16. The hearing on the merits was conducted on October 4, 2007, in Austin, Texas, by ALJ Roy G. Scudday and the record closed on that date.
17. Respondent was represented at the hearing by Mr. Neubauer.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. § 7.002.

4. Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TAC § 155.27, and 30 TAC §§ 1.12, 39.25 and 80.6.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
6. Respondent violated 30 TAC § 335.474 by failing to have an updated Source Reduction and Waste Minimization Plan, otherwise known as a five-year-pollution-prevention-plan (Plan).
7. Respondent violated 30 TAC §§ 335.69(a)(1)(A) and 335.112(a)(8) and 40 CODE OF FEDERAL REGULATIONS (CFR) § 265.173(a) by failing to close hazardous waste containers.
8. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
  - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
  - The nature, circumstances, extent, duration, and gravity of the prohibited act;
  - The history and extent of previous violations by the violator;
  - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
  - The amount necessary to deter future violations; and
  - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$17,500.00 is justified and should be assessed against Respondent.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Kaspar Electroplating Corporation is assessed an administrative penalty in the amount of \$17,500.00 for violations of 30 TEX. ADMIN. CODE (TAC) § 335.474, 30 TAC §§ 335.69(a)(1)(A) and 335.112(a)(8) and 40 CODE OF FEDERAL REGULATIONS (CFR) § 265.173(a). The payment of this administrative penalty and Kaspar Electroplating Corporation's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Kaspar Electroplating Corporation, Docket No. 2006-1470-IHW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088, Austin, Texas 78711-3088

2. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
5. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

Buddy Garcia, Chairman  
For the Commission