



Water Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Pacific Southwest Region
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San Francisco, California 94105-3901

Mail Code: WTR-7

September 26, 2000

Ms. Anja K. Wendel
Attorney
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2712 North Seventh Street
Phoenix, Arizona 85006-1090

Dear Ms. Wendel:

This is in response to your August 4, 2000, letter in which you asked whether Coastal Instruments, Inc. in the Town of Gilbert, Arizona is performing metal finishing operations under 40 CFR Part 433 and, therefore, subject to the categorical pretreatment standards at 40 CFR 433.17. We find that Coastal is performing passivation, which is regulated as a coating operation under the metal finishing requirements at 40 CFR Part 433. Consequently, Coastal is subject to the metal finishing requirements at 40 CFR Part 433. We understand that Coastal has discharged process wastewater in the past, but it is currently not discharging process wastewater to the Town.

Since earlier this year, Mr. Keith Silva of this office has had several conversations regarding this matter with Mr. John Trujillo of the Town and Mr. Jerry Worsham who represents Coastal. Mr. Silva met with Mr. Worsham on April 4, 2000, and conveyed our view that Coastal is performing passivation that is subject to the metal finishing requirements at 40 CFR Part 433. In addition, Mr. Silva explained our position to Mr. Trujillo during a telephone conversation on April 11, 2000.

The provisions at 40 CFR 433.10(a) describe the facilities that are subject to the metal finishing requirements in pertinent part as follows:

Except as noted in paragraphs (b) and (c), of this section, the provisions of this subpart apply to plants which perform any of the following six metal finishing operations on any basis material: Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture. ...

In addition, the metal finishing regulations are supported by the U.S. Environmental Protection Agency's (EPA's) technical conclusions detailed in the Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category (EPA 440/1-83/091, June, 1983) (See 48 FR 32462 (July 15, 1983)). Page III-24 of the Development Document describes coating in pertinent part as follows:

Coating – This manufacturing operation includes chromating, phosphating, metal coloring and passivating. ... Passivation refers to forming a protective film on metals, particularly stainless steel and copper, by immersion in an acid solution. Stainless steel is passivated in order to dissolve any imbedded iron particles and to form a thin oxide film on the surface of the metal. Typical solutions for passivating stainless steel include nitric acid and nitric acid with sodium dichromate. ...

A metal finishing guidance manual prepared by EPA titled: Guidance Manual for Electroplating and Metal Finishing Pretreatment Standards (February, 1984) contains a description of coating and passivation that is consistent with the Development Document. The Guidance Manual states in pertinent part:

Coatings: Any operation that includes chromating, phosphating, metal coloring and passivating. ... Passivating is the process of forming a protective film on metals by immersion in an acid solution, usually nitric acid or nitric acid with sodium dichromate.

Coastal's process in question involves soaking stainless steel parts in a solution of 8% nitric acid and 2% hydrofluoric acid with a subsequent rinse. This operation clearly falls under EPA's description of coating and passivation and, consequently, Coastal is performing a metal finishing operation under 40 CFR 433.10(a).

The balance of this letter addresses each of Coastal's primary and secondary arguments as presented in your letter.

1. That its cleaning process does not constitute "chemical milling and etching."

We do not view Coastal's operation as chemical milling or etching. Very early in our consideration of this matter, and before we had complete information from Coastal, we held open the possibility that these operations may be present. Subsequent information from Coastal, however, clearly indicates that it is performing passivation.

2. That its cleaning process does not constitute "coating" or "passivation."

Please refer to our analysis earlier in this letter, which finds that Coastal is performing passivation and, consequently, the Company is performing a metal finishing operation under 40 CFR 433.10(a).

3. That categorical pretreatment regulations for metal finishing only apply to companies that engage in manufacturing with basis (or raw) materials.

Coastal explains that it performs process operations on old, used, or malfunctioning parts (mass flow controllers) rather than beginning with raw stock or basis materials such as rods, bars, sheet, castings, or forgings. Under these circumstances, Coastal asserts that the metal finishing requirements at 40 CFR Part 433 do not apply to its operations.

The provisions at 40 CFR 433.10(a) describe the facilities that are subject to the metal finishing requirements in pertinent part as follows:

Except as noted in paragraphs (b) and (c), of this section, the provisions of this subpart apply to plants which perform any of the following six metal finishing operations on any basis material: Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture. ...

Under this provision, facilities performing one of the listed operations are subject to the metal finishing requirements. Coastal is straining to narrow the application of the metal finishing requirements to operations only on basis (or raw) materials. This is clearly inconsistent with the plain meaning of the rule.

To support its view, Coastal cites the following language in the preamble of the final metal finishing regulations (48 FR 32464 (July 15, 1983)):

These plants manufacture a variety of products that are constructed primarily of metals. The operations, which involve materials that begin as raw stock (rods, bars, sheet, castings, forgings, etc.), can include the most sophisticated surface finishing technologies.

This passage is derived from page III-19 of the metal finishing Development Document, which states in part:

These plants are engaged in the manufacturing of a variety of products that are constructed primarily by using metals. The operations performed (Table 3-1) usually (emphasis added) begin with materials in the form of raw stock (rods, bars, sheet, castings, forgings, etc.) and can progress to the most sophisticated surface finishing operations.

This preamble and Development Document language addresses one aspect of the metal finishing regulations, but they cannot be expanded to create a limitation in the applicability of the metal finishing standards, particularly when such a limitation is not contained in the final regulation. Immediately following the passage cited by Coastal, the preamble continues with:

These facilities include both captives and job shops. They vary greatly in size, age, number of employees, and number and type of operations performed. They range from very small job shops with less than 10 employees to large facilities employing thousands of production workers. Because of differences in size and processes, production facilities are custom tailored to the individual plant. Some complex products may require the use of nearly all of the 46 unit operations mentioned above; a simple product may require only one.

The purpose of this discussion in the preamble is to describe the metal finishing industry as varied and broad. The metal finishing applicability requirements at 40 CFR 433.10(a) reflect these industry characteristics and include Coastal's operations.

4. That it does not engage in manufacturing with basis (or raw) materials.

Coastal characterizes itself as a service company and asserts that the metal finishing requirements at 40 CFR Part 433 do not apply to service companies. Rather, Coastal maintains that the metal finishing requirements only apply to manufacturers.

The metal finishing requirements apply to both service companies and manufacturers. Facilities that perform metal finishing as a service are defined as "job shops" under the metal finishing requirements at 40 CFR 433.11(c) which states:

The term "job shop" shall mean a facility which owns not more than 50% (annual area basis) of the materials undergoing metal finishing.

The preamble to the metal finishing proposed rule (47 FR 38463 (August 31, 1982)) discusses the characteristics of the metal finishing industry including service companies as follows:

These facilities are either "captives" (those which own the material they process); or "job shops" (those which treat metal as service and do not own the material they process).

Page 38464 of the metal finishing proposed rule also states:

These facilities include both "captives" (which own the goods they process) and "job shops" (which process others' goods, as a service).

Finally, Table 3 titled "Applicability" in the preamble to the final metal finishing regulations (48 FR 32475 (July 15, 1983)) clearly indicates that job shops are regulated under the metal finishing requirements. Regardless of whether Coastal is a service company or a manufacturer, it is performing a metal finishing operation that is covered under the metal finishing applicability requirements at 40 CFR 433.10(a).

5. That the EPA must follow or rely on standard industrial classifications ("SIC") codes in determining whether a company is engaging in "metal finishing."

SIC codes do not serve as a basis for determining the applicability of the metal finishing requirements. The applicability of the metal finishing requirements is controlled by 40 CFR 433.10(a). Under that provision, facilities performing one of the listed operations are subject to the metal finishing requirements. Coastal's operation clearly falls under one of the listed operations; coating and passivation and, consequently, Coastal is performing a metal finishing operation that is subject to the metal finishing regulations.

Page III-16 of the metal finishing Development Document characterizes the standing of SIC codes under the metal finishing regulations as follows:

The industries covered by the Metal Finishing Category are generally (emphasis added) included in Standard Industrial Classification (SIC) Major Groups 34 through 39 and are those that perform some combination of the 46 manufacturing unit operations listed in Table 3-1.

This discussion in the Development Document does not limit the applicability of the metal finishing requirements to a specific set of SIC codes as Coastal suggests. Coastal is attempting to narrow the application of the metal finishing requirements in a manner that is clearly inconsistent with the plain meaning of 40 CFR 433.10(a) and its supporting information.

6. That it should be classified solely as an Electrical and Electric Repair Shop (SIC Code 7529) or as a Business Services Not Elsewhere Classified (SIC Code 7389).

As discussed in response to argument No. 5, SIC codes do not serve as a basis for determining the applicability of the metal finishing requirements. The applicability of the metal finishing requirements is controlled by 40 CFR 433.10(a), and under that provision, facilities performing one of the listed operations are subject to the metal finishing requirements. Coastal's operation clearly falls under one of the listed operations; coating and passivation and, consequently, Coastal is performing a metal finishing operation that is subject to the metal finishing regulations.

7. That U.S. Military Specification QQ-P-35C, SAE International AMS-QQ-P-35, American National Standards Institute ("ANSI"), and/or other industry specifications for "passivation" or "coating" must be used in determining whether a business is engaged in "metal finishing" as defined in federal pretreatment regulations.

In developing the metal finishing standards, EPA considered many sources of information including industry data and practices. Please see the list of references included in the metal finishing Development Document beginning on page XV-1. The final metal finishing regulations reflect EPA's consideration of industry information, along with many other factors the Agency must consider in developing pretreatment standards under the Clean Water Act. The Agency's rulemaking includes substantial public notice and opportunity to comment on EPA's actions. The result is the final metal finishing regulations, including the applicability requirements at 40 CFR 433.10(a), that are appropriate for the varied and broad metal finishing industry.

Coastal's assertion that the applicability of the metal finishing standards to its facility be based on industry technical standards is unworkable and illegal. EPA does not, and cannot, have control over the content of those documents. If EPA were to use those documents as Coastal suggests, industry changes and updates to those documents could have the effect of changing the applicability and stringency of the metal finishing standards in ways that are contrary to the Act and without proper public notice and comment. Consequently, the applicability of the metal finishing requirements to Coastal must be based on the existing metal finishing regulations and

supporting information. Coastal's operation clearly falls under one of the operations listed under 40 CFR 433.10(a); coating and passivation and, consequently, Coastal is performing a metal finishing operation that is subject to the metal finishing regulations.

8. That industry specifications for "chemical milling and etching" must be used in determining whether a business is engaged in "metal finishing" as defined in federal pretreatment regulations.

As discussed in our response to argument No. 7, industry technical standards do not serve as a basis for determining the applicability of the metal finishing requirements. The applicability of the metal finishing requirements is controlled by 40 CFR 433.10(a), and under that provision, facilities performing one of the listed operations are subject to the metal finishing requirements. Coastal's operation clearly falls under one of the listed operations; coating and passivation and, consequently, Coastal is performing a metal finishing operation that is subject to the metal finishing regulations.

9. That so long as no discharge to the wastewater system occurs from its processing, it is not engaged in "metal finishing."

Coastal's view is incorrect. Coastal is engaged in metal finishing, and subject to the metal finishing regulations, because it is performing coating and passivation which are metal finishing operations under 40 CFR 433.10(a).

10. That issuance of a wastewater discharge permit to Coastal pursuant to the Town pretreatment ordinance (codified in 1984 and amended in 1993) is an "enforcement" action that may not be undertaken unless the Town follows the public participation requirements of 40 C.F.R. Part 25, particularly 40 C.F.R. § 25.4(b)(2).

This argument appears to be primarily based on administrative provisions in the Town ordinance and, consequently, we believe that the Town could best address this issue. We do not regard permit issuance to be an enforcement action. In addition, the Town's action of issuing a Zero Categorical Discharge Permit is an appropriate and useful procedure for notifying Coastal that it is performing a categorical operation that is subject to certain additional requirements if a discharge of process wastewater occurs.

Thank you for your letter. If you have any questions regarding this matter, please contact Keith Silva at 415.744.1907 or silva.keith@epa.gov.

Sincerely yours,

Original Signed By:

Alexis Strauss
Director, Water Division