



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this review in response to a complaint alleging that the U.S. Environmental Protection Agency's (EPA's) Region 5 Regional Counsel arbitrarily reduced a civil penalty against Minnesota Metal Finishing, Inc. (MMF), without justification.

Background

MMF is a plating and anodizing company in Minneapolis, Minnesota. Based on a May 2001 inspection, EPA determined that MMF was in noncompliance with the Resource Conservation and Recovery Act (RCRA) and designated it a significant noncomplier. In August 2005, the Region filed a complaint to fine MMF \$300,000 for its noncompliance. After negotiating with EPA, in April 2007 MMF agreed and signed a settlement agreement to pay a \$110,000 civil penalty. However, Regional Counsel subsequently reduced the fine to \$85,000.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2008/20080929-08-P-0291.pdf

A Region 5 Penalty Reduction Was Unjustified and Undocumented

What We Found

EPA Region 5 Regional Counsel's decision to reduce the \$110,000 penalty MMF had already agreed to pay to \$85,000 was unjustified. Further, the Regional Counsel's basis for the reduction was not documented. Regional Counsel relied on information in an internal Office of Regional Counsel memorandum. He did not have current reliable financial information to justify the decision nor a complete understanding of the owner's prior relationship with the company. In addition, Regional Counsel believed that when the Administrative Law Judge terminated and closed the case on May 14, 2007, after an agreement between MMF and EPA had been reached, EPA could be left with no agreement. However, in its correspondence to MMF on May 17, 2007, the Region noted it would process the earlier agreement if the company turned down the Region's offer to settle for a reduced penalty amount.

As a result of the Regional Counsel's actions, the government received \$25,000 less than it could have. In addition, Region 5 may have sent a signal to other violators that they may have their civil penalties reduced regardless of the evidence supporting EPA's decision.

What We Recommend

We recommend that Region 5's Regional Administrator direct the Regional Counsel and the Land and Chemicals Division Director to document their rationale for reducing the amount of MMF's penalty, and properly determine and document all future penalty decisions. We also recommend that the Regional Administrator direct Regional Counsel and the Director to follow through on hiring staff who can provide the necessary financial and accounting expertise to understand and assess a violator's financial health. Region 5 has already directed staff to properly document in the future, and has begun the process to hire a civil investigator and attorney to ensure future penalties are properly calculated and documented. However, we do not consider Region 5's plans for documenting the MMF penalty rationale to be sufficient. Further, Region 5 needs to clearly define the difference between an ability-to-pay memorandum and a bottom-line settlement amount.