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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

A&W Custom Chrome, Inc.)
East Pointe, Michigan)

Respondent)

'99 AUG 13 P2:59

DOCKET No. **CAA-5-99-024**

PRO

Region 5

ADMINISTRATIVE COMPLAINT

1. This is an Administrative Complaint for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is A&W Custom Chrome, Inc., a corporation doing business in the State of Michigan.

REGULATORY BACKGROUND

4. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), on January 25, 1995 the U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 C.F.R. Part 63, Subpart N. 60 Fed. Reg. 4963.

5. The Chrome Plating NESHAP applies to each "affected source," as defined in 40 C.F.R. § 63.340(a), including decorative chromium

electroplating tanks.

6. Pursuant to 40 C.F.R. § 63.7(a)(2)(iii), the owner or operator of an affected existing source must complete performance testing within 180 days after the compliance date specified at 40 C.F.R. § 63.343. The compliance date specified in that section is January 25, 1996, and performance testing must therefore be completed by July 25, 1996.

7. 40 C.F.R. § 63.343(c)(5)(i) provides that in lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 45 dynes/cm as the maximum surface tension value that corresponds to compliance with the applicable emission limitation, if the criteria of 40 C.F.R. § 63.343 (b)(2) are met.

8. 40 C.F.R. § 63.343(b)(2)(iii) requires the owner or operator to demonstrate compliance with the applicable surface tension limit of 45 dynes/cm through the continuous compliance monitoring required by 40 C.F.R. § 63.343 (c)(5)(ii).

9. 40 C.F.R. § 63.343(c)(5)(ii) states that on and after the date on which the initial performance test is required to be completed under Section 63.7 (July 25, 1996), the owner or operator of an affected source choosing to comply with the 45 dynes/cm standard must monitor the surface tension according to 40 C.F.R. § 63.343 (c)(5)(ii)(A) through (C).

10. 40 C.F.R. §63.343(c)(5)(ii)(A) states that the surface tension of the electroplating or anodizing bath must be measured once every 4 hours during operation of the tank with a stalagmometer or a tensiometer as specified in Method 306B, Appendix A, of 40 C.F.R. Part 63.

11. Method 306B, Section 3.1, states that if an affected source uses a stalagmometer to measure the surface tension of the tank bath, then the instructions of the measuring device must be followed.

GENERAL ALLEGATIONS

12. A&W is a "person" as defined at 42 U.S.C. §7602.

13. A&W owns and operates a decorative chrome plating facility, which includes a decorative chrome electroplating tank, located at 17726 East Nine Mile Road, East Pointe, Michigan.

14. A&W's decorative chrome electroplating tank is an "affected source" under 40 C.F.R. §63.340(a).

15. U.S. EPA conducted an inspection of A&W's facility on July 29, 1998, and during the course of the inspection spoke with Mr. Brian Box, owner of A&W.

16. During the July 29, 1998 inspection, U.S EPA inspectors asked Mr. Box to explain A&W's monitoring procedures and schedule.

17. A&W accepted the 45 dynes/cm limit as the maximum surface tension value that corresponds to compliance with the applicable emission limitation in lieu of establishing the maximum surface tension during a performance test, pursuant to 40 C.F.R. § 63.343(c)(5)(i).

18. Beginning in January 1988, A&W used a capillary tube mechanism to monitor the surface tension of the chrome tank. U.S. EPA has not approved this method of measuring surface tension.

19. In March 1998, A&W purchased a stalagmometer (a U.S. EPA approved device) and began using it to take surface tension readings of its chrome tank

on March 18, 1998.

20. During the July 29, 1998 inspection, U.S. EPA reviewed the operating plan of the stalagmometer, which included a formula for calculating surface tension.

21. From the time it began measuring surface tension with the stalagmometer, A&W calculated the surface tension of its tank bath according to a formula that is different from the formula specified in the operating plan of the stalagmometer.

22. On April 21, 1999, Richard C. Karl, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation pursuant to Section 113 of the Act to A&W, alleging violations of the federal regulations set forth at 40 C.F.R. § 63.343.

23. U.S. EPA offered A&W an opportunity to discuss the Finding of Violation. The parties held a telephone conference on June 8, 1999.

24. The Attorney General of the United States and the Administrator of U.S. EPA have jointly determined, each through their respective delegates, that an administrative penalty action is appropriate for the violations alleged in this Complaint.

COUNT I

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. According to 40 C.F.R. § 63.343(c)(5)(ii), A&W was required to begin monitoring the surface tension of the electroplating bath of its decorative chromium electroplating tank by July 25, 1996.

27. A&W failed to monitor the surface tension of the electroplating

bath of its decorative chromium electroplating tank until March 18, 1998 in violation of 40 C.F.R. § 63.343(c)(5)(ii).

COUNT II

28. Paragraphs 1 through 24 are incorporated herein by reference.

29. 40 C.F.R. § 63.343 (c)(5)(ii)(A) requires that the surface tension be measured as specified in Method 306B, Appendix A.

30. Method 306B, Appendix A, Section 3.1, states that if an affected source uses a stalagmometer to measure the surface tension of the tank bath, it must follow the instructions of the measuring device.

31. A&W failed to monitor the surface tension of its chrome plating tank bath according to the operating plan of the stalagmometer in violation of 40 C.F.R. § 63.343(c)(5)(ii)(A).

PROPOSED CIVIL PENALTY

32. The Administrator of U.S. EPA may assess a civil penalty not to exceed \$27,500 per day of violation up to a total of \$220,000 for violations of requirements under the Act that occurred on or after January 31, 1997 and \$25,000 per day of violation up to a total of \$200,000 for violations of requirements under the Act that occurred before January 31, 1997, according to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

33. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):

- a. the size of Respondent's business;
- b. the economic impact of the proposed penalty on Respondent's business;

- c. Respondent's full compliance history and good faith efforts to comply;
- d. the duration of the violations alleged in the Complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

34. Based upon the facts alleged in this Complaint and the factors in paragraph 33, above, Complainant proposes to assess a civil penalty of \$2,500 against Respondent. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991, (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

35. In evaluating the seriousness of the violation, Complainant considered the importance of the monitoring requirements to achieving the goals of the Act and its implementing regulations. These regulations are very important to the regulatory scheme of the Act because they are intended to limit the release of chromium, an extremely hazardous air pollutant. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

36. In determining the proposed penalty, Complainant considered the economic benefit that the Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining monetary benefit from avoiding or delaying the expenditures that are necessary to

comply. Because the subject violations involved only nominal economic benefit to the Respondent, Complainant did not include an economic benefit component in the proposed penalty.

37. In assessing the proposed penalty, U.S. EPA considered the actual or possible harm resulting from the alleged violations. Chromium, the pollutant of concern, is listed as a toxic air pollutant in Section 112(b)(1) of the Act. However, the Complaint does not allege that A&W violated an emission standard for chromium. Accordingly, this proposed penalty does not include a component corresponding to the potential harm from emitting chromium.

38. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced in July, 1996, and continued through March, 1998. Thus, Complainant based the penalty on a 19 month duration of violations.

39. In calculating the proposed penalty, Complainant considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth is less than \$100,000, as determined from a report prepared by the Dun and Bradstreet financial information service on August 17, 1998. Accordingly, the proposed penalty does not include a component based on the size of Respondent's business.

40. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant does not know of any prior citations against Respondent for violating environmental laws, Complainant has not increased the proposed penalty based on this factor.

41. Complainant considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the August 17, 1998, Dun & Bradstreet report, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

42. Complainant developed the penalty proposed in this Complaint based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

43. Respondent may pay the penalty by certified or cashier's check, payable to "Treasurer, the United States of America", by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and the docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and the transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Susan Tennenbaum, (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

44. The Administrator of U.S. EPA must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing to contest any material fact alleged in the Complaint and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 45 through 48, below. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

ANSWER

45. To avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the actual date of receipt is not included; Saturdays, Sundays and Federal legal holidays are included. If the 30-day time period expires on a Saturday, Sunday or Federal legal holiday, the time period extends to the next

business day.

46. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

47. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

48. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent intends to place at issue; and
- c. whether Respondent requests a hearing as discussed in paragraph 44, above.

49. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Susan Tennenbaum, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Tennenbaum at (312) 886-0273.

50. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Administrator of U.S. EPA may issue a default order, after motion, under 40 C.F.R. § 22.17(a). Default by Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of the right to a hearing. The proposed penalty will be due without further proceedings 60 days after a default order becomes the final order of the Administrator under 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

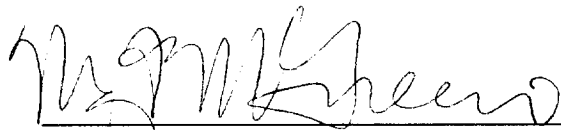
51. Whether or not Respondent requests a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Spiros Bourgikos, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Bourgikos at (312) 886-6862.

52. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written Answer to this Complaint. Respondent may pursue simultaneously the settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

CONTINUING OBLIGATION TO COMPLY

53. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

8/12/99
Date



Margaret M. Guerriero,
Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5-99-024

CERTIFICATE OF SERVICE

AUG 13 1999

I certify that on _____, I deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the foregoing Administrative Complaint, the Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) addressed to the following Respondent:

Brian Box, President
A&W Custom Chrome, Inc.
17726 East Nine Mile Road
East Pointe, Michigan 48021

Certified Mail Number: P140777084

I certify that copies of the foregoing Administrative Complaint was sent by first-class mail to:

Barbara Rosenbaum, Supervisor
Compliance and Enforcement Section
Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760

and

Fred Rieth, District Supervisor
Southeast Michigan District Headquarters
Michigan Department of Environmental Quality
38980 Seven Mile Road
Livonia, Michigan 48152

RECEIVED
AUG 13 1999
P2:59
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

I certify that a copy of the foregoing Administrative Complaint was hand-delivered to:

Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604

 8-13-99
Date

 Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)