UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
WISCONSIN PLATING WORKS OF RACINE, INC.,	)	**Docket No. CAA-05-2008-0037**
	)	
Respondent.	)	

ORDER ON COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION ON PENALTY

I. Background

Respondent Wisconsin Plating Works of Racine, Inc., a corporation doing business in Racine, Wisconsin, owns and operates a solvent cleaning machine which is a vapor degreaser at its facility in Racine, Wisconsin. The vapor degreaser uses trichloroethylene in a concentration greater than 5 percent by weight as a solvent, and therefore is subject to the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Halogenated Solvent Cleaning, codified at 40 C.F.R. Part 63 Subpart T, Sections 63.460-63.470, which are regulations promulgated under Section 112(d), 42 U.S.C. § 7412(d) of the Clean Air Act. Subpart T requires the owner and operator of a batch vapor cleaning machine to employ a combination of control devices unless it can demonstrate that the machine can maintain an idling emission limit of 0.22 kilograms per hour per square meter. 40 C.F.R. §§ 63.463(b)(1)(i), 63.463(b)(2)(i). One of the control devices is a freeboard refrigeration device ("FRD"), defined as "a set of secondary coils mounted in the freeboard area that carries a refrigerant or other chilled substance to provide a chilled air blanket above the solvent vapor." 40 C.F.R. § 63.461.

On July 18, 2007, Respondent submitted its Semi-Annual Exceedance Report pursuant to the NESHAP, and the Report indicated six occurrences in which the temperature of the FRD in its vapor degreaser was not recorded. Consequently, on March 7, 2008, the United States Environmental Protection Agency Region 5 ("Complainant") issued a Finding of Violation ("FOV") to Respondent for failure to monitor and record the temperature of the FRD, and thereafter, Complainant and Respondent engaged in a conference to discuss the FOV.

On September 22, 2008, the Complainant filed a one-count Complaint against Respondent for violating the NESHAP for halogenated solvents, by its failure to monitor and record the temperature of a freeboard refrigeration device in its vapor degreaser on six occasions between the week of February 26, 2007 and the week of June 25, 2007, in violation of 40 C.F.R. § 63.463(e)(1) and 63.466(a). For the alleged violations, Complainant proposes a penalty of

$72,683. Respondent filed an Answer to the Complaint, denying the alleged violations, and subsequently, the parties filed prehearing exchanges.

On March 23, 2009, Complainant filed a Motion for Accelerated Decision on Liability, which was granted by Order dated April 30, 2009, finding Respondent to have violated 40 C.F.R. § 63.463(e)(1) by failing to "[c]onduct monitoring of each control device used to comply with § 63.463 of this subpart as provided in § 63.466" and in turn to have violated 40 C.F.R. § 63.466(a) by failing to "conduct monitoring and record the results on a weekly basis" for the FRD "us[ing] a thermometer or thermocouple to measure the temperature at the center of the air blanket during the idling mode." On March 30, Complainant filed a Motion for Partial Accelerated Decision on the Issue of Ability to Pay, which was denied, and Alternative Motion to Compel Discovery Related to Respondent's Ability to Pay, which was granted. The hearing in this matter is set to commence on July 21, 2009, on issues as to the amount of penalty to assess for the violations.

On June 11, 2009, Complainant filed a Motion for Partial Accelerated Decision on Penalty ("Motion"). Respondent filed motions to supplement its Prehearing Exchange with financial documents, but to date, Respondent has not responded to Complainant's Motion nor requested additional time to file a response.

II. Penalty Assessment Provisions

The assessment of civil administrative penalties for violations of the Clean Air Act is authorized by Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), under which penalties for violations cannot exceed $25,000 per day, per violation. 42 U.S.C. § 7413(d)(1).[1] Moreover, Section 113(e)(1) provides that in determining the amount of any penalty –

> the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence . . ., payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

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[1] Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note), each Federal agency is required to issue regulations adjusting for inflation the civil monetary penalties that can be imposed pursuant to such agency's statutes. EPA issued final regulations modifying the statutory maximum recoverable per day for violations under CAA §113(d)(1) from $25,000 to $32,500, applicable to all violations occurring after March 15, 2004, codified at 40 C.F.R. Part 19.

42 U.S.C. § 7413(e)(1).

Section 22.27(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Rules"), provides with regard to determining civil penalties that the Administrative Law Judge shall determine the amount of the penalty "based on the evidence in the record and in accordance with any penalty criteria set forth in the Act" and "shall consider any civil penalty guidelines issued under the Act." 40 C.F.R. § 22.27(b).

The Rules state that "the complainant has the burdens of presentation and persuasion that the . . . relief sought is appropriate." 40 C.F.R. § 22.24(a). The standard of proof under the Rules of Practice is a preponderance of the evidence. 40 C.F.R. § 22.24(b).

On October 25, 1991, EPA issued a Clean Air Act Stationary Source Civil Penalty Policy to provide a methodology for calculating a penalty under the CAA ("Penalty Policy"), which reflect the factors listed in Section 113(e) of the CAA.[2] The Penalty Policy sets out a penalty calculation method consisting of two primary components: (1) determining the alleged "economic benefit" from noncompliance with the CAA, and (2) computing the "gravity"of the violation, which purportedly reflects the seriousness of the violation. These two components combined yield for the Agency the "preliminary deterrence amount." The gravity component consists of: (1) actual or possible harm, considering the level of violation (amount of pollutant emitted), toxicity of the pollutant, sensitivity of the environment, and length of time of violation; (2) importance to the regulatory scheme; and (3) size of the violator. After this preliminary deterrence amount is calculated, the gravity component may be adjusted upward or downward to account for factors such as degree of willfulness or negligence (upward adjustment), degree of cooperation (downward adjustment), history of noncompliance (upward adjustment) and environmental damage (upward adjustment). The Penalty Policy provides that adjustments to the preliminary deterrence amount can be made for such factors as litigation risks, ability to pay, payments made to other governmental authorities for the same violation, multiple violations, and multiple defendants.

III. Standard for Accelerated Decision

Section 22.20(a) of the Rules states that –

> The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

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[2] The Penalty Policy has been updated by memoranda issued in 1992, 1997 and 2004.

A motion for accelerated decision is analogous to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure ("FRCP") and thus federal court rulings on motions under FRCP 56 provide guidance in ruling on a motion for accelerated decision. *See Mayaguez Reg'l Sewage Treatment Plant*, 4 E.A.D. 772, 781-82, 1993 EPA App. LEXIS 32, *24-26 (EAB 1993), *aff'd sub nom., Puerto Rico Sewer Authority v. U.S. EPA*, 35 F.3d 600, 606 (1st Cir. 1994), *cert. denied*, 513 U.S. 1148 (1995). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law." FRCP 56(c).

The moving party has the burden of showing there is no genuine issue of material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). A "material" issue is one which "affects the outcome of the suit," *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1985), or "needs to be resolved before the related legal issues can be decided." *Mack v. Great Atlantic and Pacific Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989). The party opposing the motion must demonstrate that the issue is "genuine" by referring to probative evidence in the record, or by producing such evidence. *Clarksburg Casket Co.*, 8 E.A.D. 496, 502 (EAB 1999). The record must be viewed in a light most favorable to the party opposing the motion, indulging all reasonable inferences in that party's favor. *Griggs-Ryan v. Smith,* 904 F.2d 112, 115 (1st Cir. 1990); *Cone v. Longmont United Hospital Ass'n*, 14 F.3d 526, 528 (10th Cir. 1994) (citing *Boren v. Southwest Bell Tel. Co.*, 933 F.2d 891, 892 (10th Cir. 1991)).

"Summary disposition may not be avoided by merely alleging that a factual dispute may exist, or that future proceedings may turn something up." *Green Thumb Nursery, Inc.,* 6 E.A.D. 782, 793 n. 24 (EAB 1997); *Radobenko v. Automated Equipment Corp.,* 520 F.2d 540, 543 (9th Cir. 1978). "In countering a motion for summary judgment, more is required than mere assertions of counsel. The non-movant . . . must set out, usually in an affidavit by one with knowledge of specific facts, what specific evidence could be offered at trial." *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.,* 739 F.2d 624, 627 (Fed. Cir. 1984). It has been held that an issue of fact may not be raised by merely referring to proposed testimony of witnesses. *King v. National Industries, Inc.,* 512 F.2d 29, 33-34 (6th Cir. 1975)(affidavit saying what the attorney believes or intends to prove at trial is insufficient to comply with the burden placed on a party opposing a motion for summary judgment under FRCP 56); *Ricker v. American Zinser Corp.,* 506 F. Supp. 1, 2 (E.D. Tenn. 1978)(affidavit of counsel containing ultimate facts and conclusions, referring to proposed testimony and stating what the attorney intends to prove at trial, is insufficient to show there is a genuine issue for trial), *aff'd, sub nom. Ricker v. Zinser Testilmaschinen GmbH*, 633 F.2d 218 (6th Cir. 1980).

On the other hand, summary judgment is inappropriate where contradictory inferences may be drawn from the evidence or where there are unexplained gaps in materials submitted by the moving party, if pertinent to material issues of fact. *O'Donnell v. United States*, 891 F.2d 1079, 1082 (3rd Cir. 1989). Even where it is technically proper to grant a motion for summary judgment, "sound judicial policy and the proper exercise of judicial discretion" may permit

denial of the motion and full development of the case at hearing. *Roberts v. Browning*, 610 F.2d 528, 536 (8th Cir. 1979).

IV. Complainant's Arguments

In its Motion for Partial Accelerated Decision on Penalty, Complainant requests issuance of an order finding that it followed the Agency's own Clean Air Act Stationary Source Penalty Policy when calculating the preliminary deterrence amount of the proposed penalty in this matter and that the preliminary deterrence amount is reasonable under the Penalty Policy. Motion at 7. Complainant asserts that it has demonstrated that no genuine issue of material fact exists as to such proposed findings, as a result of the pleadings, prehearing exchanges, and rulings in this case, and based on the penalty calculation of Constantinos Loukeris, the environmental engineer assigned to this matter. The Motion states that an email was sent to Respondent's counsel on June 8 regarding whether Respondent opposes the relief requested in the Motion, but no response was received. Attached to Complainant's Motion is a Declaration of Constantinos Loukeris ("Declaration"), describing his participation in and review of this matter, and his calculation of the preliminary deterrence amount of $73,502. Complainant asserts that due to a calculation error, it requested a proposed penalty of $72,683, and that the latter amount is the penalty it is requesting in this matter.

The Declaration states as follows. The "Level of Violation" factor cannot be determined due to lack of monitoring data, so $0 is assigned for that factor. An amount of $15,000 for the "Toxicity of Pollutant" factor is assigned on the basis that there is one hazardous air pollutant ("HAP") at issue, namely trichloroethylene, and the Penalty Policy provides for $15,000 per HAP. The "Sensitivity of the Environment" factor is not applicable to NESHAP cases. The Penalty Policy provides for an assessment of $12,000 for the "Length of Violation" factor where the violation occurs over four to six months, and in this case, the violation occurred for five months. As to the factor "Importance to the Regulatory Scheme," $15,000 is assessed for failure to keep required records and another $15,000 is assessed for failure to perform monitoring. The Penalty Policy sets out an assessment of $5,000 for the "Size of Violator" factor where the company has a net worth between $100,001 and $1,000,000, and Respondent's net worth for 2007, 2008 and first quarter of 2009 is within that range. The sum of these figures is $62,000, which must then be adjusted for inflation by multiplying it by 1.2895, yielding a preliminary deterrence figure of $73,502. The Declaration does not refer to any gravity adjustment factors, *i.e.*, degree of willfulness or negligence, degree of cooperation, history of noncompliance or environmental damage, or any other penalty adjustment factors.

V. Discussion

Prior to addressing the substance of Complainant's Motion, there are certain procedural matters to which this Tribunal must respond. Firstly, it is noted that the Motion was filed after

the deadlines for dispositive and other prehearing motions, which were April 6, 2009 and June 5, 2009 respectively, and Complainant did not file a motion for leave to file out of time. However, in this instance, this procedural omission will not be considered fatal to the Motion in the circumstances of this case, and considering that the Motion pertains only to the penalty and apparently is intended to make the hearing more efficient.

Secondly, the Rules provide at 40 C.F.R. § 22.16(b) that a "response to any written motion must be filed within 15 days after service of such motion," and that "[a]ny party who fails to respond within the designated period waives any objection to the granting of the motion." The Rules allow five additional days to file a response to motions served by mail. 40 C.F.R. § 22.7(c). The Motion having been served on June 11, 2009, a response was due on July 1, 2009. Because no response was filed within the time provided under the Rules, Respondent has waived any objection to the granting of the Motion, and on that basis, the Motion could be granted. However, it is preferable to address motions on their merits.

As to the merits, the first question presented by any motion for accelerated decision is whether the movant has shown that there is no genuine issue of material fact as to the subject upon which accelerated decision is requested. In addition to the Declaration, Complainant presents in its Prehearing Exchange, *inter alia:* a copy of Respondent's Semi-Annual Exceedence Report, marked as Exhibit 1; the Penalty Policy and clarifications and modifications thereto, marked as Exhibits 7 through 10; a narrative explanation of the calculation of the proposed penalty (Complainant's Prehearing Exchange at 7); a declaration of Mr. Loukeris which reflects the duration of the violations, marked as Exhibit 11; a Dun & Bradstreet report which reflects the size of Respondent's business, marked as Exhibit 12; and a Toxicological Profile for Trichloroethylene, marked as Exhibit 18. The preliminary deterrence amount calculated by Complainant is based on the Economic Benefit component, the Actual or Possible Harm factors of Level of Violation, Toxicity of Pollutant, Sensitivity of Environment, and Length of Violation, the Importance to the Regulatory Scheme factor, the Size of Violator factor, and inflation adjustment. It does not include consideration of the gravity adjustment factors or any other adjustment factors, which are thus beyond the scope of the Motion and reserved for hearing.

Respondent in its Answer states that it contests the proposed penalty, and in its Prehearing Exchange statement (at 6) asserts that the proposed penalty should be reduced due to the "dire financial condition of the company" and "also because the proposed penalty must have some reasonable, and proportionate nexus to the violation and the violators." In support, Respondent presents as exhibits in its Prehearing Exchange copies of a court decision and two Administrative Law Judges' decisions, and financial documents in support of its claim of inability to pay the penalty. Respondent's summaries of expert testimony include the subjects of "potential harm to the environment caused by the alleged paperwork violations," how the Exceedence Report resulted from a recordkeeping gap and not equipment malfunction or exceedence of emissions, and the improbability of the refrigeration system failing during the time of the recordkeeping gaps. Respondent's summary of a fact witness includes the subjects of Respondent's methods and practices for recording/monitoring FRD temperatures for its vapor

degreaser, and its recordkeeping gap. Respondent's Initial Prehearing Exchange statement at 1-2.

While these subjects of testimony may be generally relevant to the gravity of the violation, they would not affect Complainant's preliminary deterrence calculation under the Penalty Policy, which provides for a flat $15,000 assessment for each hazardous air pollutant, a flat $12,000 assessment for four to six months of violation, and flat $15,000 assessments under the "importance to the regulatory scheme" for a failure to keep required records and for a failure to operate and maintain required monitoring equipment or failure to conduct required performance testing. Penalty Policy at 11-13. Moreover, mere assertions of counsel as to expected testimony are not sufficient to defeat a motion for summary judgment or accelerated decision. *Pure Gold, supra*; *King v. National Industries, supra*; *Ricker v. American Zinser Corp., supra.* Respondent does not set forth any defense or argument as to the preliminary deterrence amount, and does not refer to or produce any documentary evidence that could raise a genuine issue of fact material to the preliminary deterrence amount, despite the fact that it was requested to provide in its prehearing exchange a copy of any documents it intends to rely upon in support of any position that the penalty should be reduced or eliminated, and despite its legal burden in opposing a motion for accelerated decision. Therefore, Respondent has not raised any genuine issue of material fact as to the Complainant's calculation of the preliminary deterrence amount.

The next question is whether Complainant is entitled to "judgment as a matter of law" that it followed the Penalty Policy when calculating the preliminary deterrence amount of the proposed penalty and that the preliminary deterrence amount is reasonable under the Penalty Policy. The determination of a penalty amount, or a portion thereof, is a mixed application of fact, law and discretion. The assessment of a penalty by the Administrative Law Judge ("ALJ") consists of finding facts and exercising discretion in applying the facts to the statutory penalty criteria, considering as required by the Rules the methodology set out in the applicable penalty policy, and calculating the penalty either using such methodology or deviating from it wholly or in part. The ALJ has "the discretion either to adopt the rationale of an applicable penalty policy where appropriate or to deviate from it where the circumstances warrant." *DIC Americas, Inc.*, 6 E.A.D. 184, 189 (EAB 1995). The ALJ cannot apply the penalty policy unquestionably as if it were a rule with binding effect, because the penalty policy has not been issued in accordance with the Administrative Procedure Act ("APA") requirements for rulemaking. *Employer's Insurance of Wausau and Group Eight Technology, Inc.*, 6 E.A.D. 735, 761 (EAB 1997). Moreover, in any case in which the basic propositions of the penalty policy is based are genuinely placed at issue, the ALJ "must be prepared 'to re-examine those [basic] propositions.'" *Id.* (quoting *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1321 (D.C. Cir. 1988)). The purpose of a penalty policy is merely to supply "a framework whereby the decisionmaker can apply his discretion to the statutorily-prescribed penalty factors, thus facilitating the uniform application of these factors." *Great Lakes Division of National Steel Corp.*, 5 E.A.D. 355, 374 (EAB 1994). The language of Section 22.27(b) makes this non-binding aspect clear by only requiring the ALJ to *consider* any applicable civil penalty policy. After the ALJ considers the penalty policy, the ALJ has full discretion to assess a penalty different from any proposed penalty

calculated pursuant to a penalty policy, provided the reasons for departure are explained adequately. *A.Y. McDonald Industries, Inc.*, 2 E.A.D. 402, 424 (CJO 1987).

Nevertheless, ALJs have granted accelerated decision on the penalty where it is clear that no genuine issues of material fact exist as to the penalty, particularly where the proposed penalty was comparatively low. *See, e.g., Sam Emani*, EPA Docket No. CAA-IV-93-007, 1994 EPA ALJ LEXIS 69 (ALJ, Nov. 30, 1994)(Order Granting "Accelerated Decision" as to Penalty, assessing the proposed penalty of $3,105 where EPA's evidence was unrebutted and respondent's assertions as to the only issue raised, inability to pay, were unsupported, and thus oral hearing, confronting EPA's witnesses, would be unproductive); *Spitzer Great Lakes, Ltd. Co.*, EPA Docket No. TSCA-V-C-082-92, 1997 EPA ALJ LEXIS 13 (ALJ, Jan. 24, 1997)(Order Granting Motion for Accelerated Decision on Penalty Issue and Initial Decision, assessing penalty of $165,000 where parties agreed that no genuine issue of material fact exists as to the penalty); *Lyons Fuel, Inc.*, EPA Docket No. CAA-I-97-1001, 1998 EPA ALJ LEXIS 101 (ALJ, Jan. 21, 1998)(Order Granting Complainant's Motion for Accelerated Decision on Penalty Issues, assessing penalty of $4,500 where respondent did not submit any documents in its prehearing exchange and failed to respond to motion for accelerated decision or opportunity to file motion for leave to present evidence); *Bonanza Valley Aviation, Inc.*, EPA Docket No. I F & R VII-1309C-97P, 1998 EPA ALJ LEXIS 70 (ALJ, Nov. 20, 1998)(Order Granting Motion for Accelerated Decision as to Liability and Penalty, assessing penalty of $4,000 where respondent provided no evidence or explanation in support of its arguments); *Davko, Inc.*, EPA Docket No. TSCA-I-92-1058, 1997 EPA ALJ LEXIS 29 (ALJ, May 13, 1997)(Decision and Order, assessing penalty of $0 where parties stipulated to facts regarding the penalty and respondent demonstrated inability to pay a penalty).

In the present case, Respondent has raised the issue of inability to pay the penalty and has presented documents in support, and Complainant has not requested accelerated decision on the entiré penalty. The question is whether to grant accelerated decision as to a portion of Complainant's penalty calculation under the Penalty Policy in these circumstances. Accelerated decision has been granted on an aspect of a penalty assessment, where the issue was whether certain penalty factors are required to be taken into account in determining a penalty against a federal facility. *U.S. Army, Ft. Wainwright Central Heating and Power Plant*, EPA Docket No. CAA-10-99-0121, 2002 EPA ALJ LEXIS 24 (ALJ, April 30, 2002)(Accelerated Decision as to Application of Economic Benefit and Size of Business Penalty Factors). Accelerated decision has also been granted on the penalty factor of ability to pay where respondent failed to adequately support a claim of inability to pay. *Zaclon, Inc.*, EPA Docket No. RCA-05-2004-0019, 2006 EPA ALJ LEXIS 23 (ALJ, May 23, 2006)(Order on Complainant's Motion for Accelerated Decision on the Issue of Ability to Pay). While in some situations it may be appropriate to grant accelerated decision as to a portion of the penalty where it is clear that there are no genuine issues of material fact as to that portion, in other situations there may be no significant benefit in granting it.

Here, where Complainant merely requests an accelerated decision as to its calculation of

the preliminary deterrence amount under the Penalty Policy, there appears to be little or no significant benefit in granting it, and moreover, it is not clear that such a ruling would constitute "judgment as a matter of law."

However, by Respondent's failure to respond to the Motion, and by its failure to present any documentation in mitigation of the penalty other than that regarding inability to pay, such that Respondent has essentially acquiesced in the preliminary deterrent amount calculated by Complainant, there is no need to expend time at a hearing on testimony and evidence which Respondent has chosen not to contest or to otherwise respond. Complainant calculated the preliminary deterrence amount based on the Economic Benefit factor, Actual or Possible Harm factors of Level of Violation, Toxicity of Pollutant, Sensitivity of Environment, and Length of Violation, Importance to the Regulatory Scheme factor, Size of Violator factor, and inflation adjustment, and has submitted documents in its Prehearing Exchange that support the amounts it assessed under these factors. Respondent has not provided any facts, argument or explanation that would support Complainant submitting a different calculation under the Penalty Policy. Respondent neither challenges the validity of the factual assertions underlying Complainant's calculation of the preliminary deterrence amount, nor the Complainant's calculation of the preliminary deterrence amount as being consistent with the Penalty Policy. Therefore, an undisputed finding of fact can be made at this point that Complainant has calculated this preliminary deterrence amount consistent with the Penalty Policy.

Accordingly, Complainant's Motion for Partial Accelerated Decision on the Penalty is **DENIED.** If the parties have not settled this matter and filed a Consent Agreement and Final Order beforehand, the hearing will commence as scheduled on the issue of the penalty to be assessed for the violations.

Susan L. Biro
Chief Administrative Law Judge

Dated: July 2, 2009
Washington, D.C.

In the Matter of Wisconsin Plating Works of Racine, Inc., Respondent
Docket No. CAA-05-2008-0037

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Order on Complainant's Motion for Partial Accelerated Decision on Penalty,** dated July 2, 2009 was sent this day in the following manner to the addressees listed below:

Original and One Copy by Pouch Mail to:

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M. Lisa Knight
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Dated: June 2, 2009