

FILED

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U.S. EPA REGION 5
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. CAA-05-2024-0008**
)
)
Abraham Chavez) **Proceeding to Assess a Civil Penalty**
d/b/a A & R Custom Chrome) **Under Section 113(d) of the Clean Air Act,**
Plating) **42 U.S.C. § 7413(d)**
Chicago, Illinois)
)
Respondent.)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Abraham Chavez, a sole proprietor doing business as A & R Custom Chrome Plating in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks at 40 C.F.R. §§ 63.340 through 63.348, (Subpart N). Subpart N applies to new and existing affected sources, which include each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing. 40 C.F.R. § 63.340(a).
10. Subpart N, at 40 C.F.R. § 63.341(a), defines, in relevant part, an “existing affected source” as a decorative chromium electroplating tank, the construction or reconstruction of which commenced on or before February 8, 2012.
11. Subpart N, at 40 C.F.R. § 63.341(a), defines “decorative chromium electroplating” as the process by which a thin layer of chromium (typically 0.003 to 2.5 microns) is electrodeposited on a base metal, plastic, or undercoating to provide a bright surface with wear and tarnish resistance.
12. Subpart N, at 40 C.F.R. § 63.341(a), defines “facility” as the major or area source at which chromium electroplating or chromium anodizing is performed.

13. 40 C.F.R. § 63.2 defines “area source” as any stationary source of hazardous air pollutants that is not a major source.
14. 40 C.F.R. § 63.2 defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
15. Subpart N, at 40 C.F.R. § 63.343(a), provides that the owner or operator of an existing affected source shall comply with the emission limitations in 40 C.F.R. § 63.342 no later than September 19, 2014.
16. Subpart N, at 40 C.F.R. § 63.342(d)(3), specifies that for all existing, new, or reconstructed decorative chromium electroplating tanks using a chromic acid bath and all existing, new, or reconstructed chromium anodizing tanks, during tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source, and if a chemical fume suppressant containing a wetting agent is used, the wetting agent must control emissions discharges by not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 40 dynes/cm (2.8×10^{-3} lbf/ft), as measured by a stalagmometer or 33 dynes/cm (2.3×10^{-3} lbf/ft), as measured by a tensiometer at any time during tank operation.
17. Subpart N, at 40 C.F.R. § 63.341(a), defines "tank operation," in pertinent part, as the time in which current and/or voltage is being applied to a chromium electroplating tank.

18. Subpart N, at 40 C.F.R. § 63.341(a), defines “wetting agent” as the type of commercially available chemical fume suppressant that materially reduces surface tension of a liquid.
19. Subpart N, at 40 C.F.R. § 63.341(a), defines “chemical fume suppressant” as any chemical agent that reduces or suppresses fumes or mists at the surface of an electroplating or anodizing bath; another term for fume suppressant is mist suppressant.
20. Subpart N, at 40 C.F.R. § 63.342(d)(4), specifies that after September 21, 2015, the owner or operator of an affected decorative chromium electroplating tank or an affected chromium anodizing tank shall not add perfluorooctane sulfonic acid (PFOS)-based fume suppressants to any affected decorative chromium electroplating tank or chromium anodizing tank.
21. Subpart N, at 40 C.F.R. § 63.341(a), defines “PFOS-based fume suppressant” as a fume suppressant that contains one (1) percent or greater PFOS by weight.
22. Subpart N, at 40 C.F.R. § 63.342(a)(8), provides that after March 19, 2013, the owner or operator of an affected source that is subject to the standards for decorative chromium electroplating tanks using a chromic acid bath and chromium anodizing tanks codified at 40 C.F.R. § 63.342(d), shall implement the housekeeping procedures specified in Table 2 of 40 C.F.R. § 63.342.
23. Subpart N, at Table 2 of 40 C.F.R. § 63.342, in pertinent part, provides for the following housekeeping procedure: Prior to beginning the buffing, grinding, or polishing operations, the owner/operator must separate all buffing, grinding, or polishing operations that are located in the same room as chromium electroplating or chromium anodizing operations from any affected electroplating or anodizing operation by installing a physical barrier; the barrier may take the form of plastic strip curtains.

24. Subpart N, at 40 C.F.R. § 63.343(b)(1), provides that an owner or operator of an affected source subject to the requirements of Subpart N is required to conduct an initial performance test as required under 40 C.F.R. § 63.7, except if the owner or operator meets all of the requirements under 40 C.F.R. § 63.343(b)(2).
25. 40 C.F.R. § 63.7(2) provides, in relevant part, that the owner or operator of the affected source must perform the initial performance test within 180 days of the compliance date for such source.
26. Subpart N, at 40 C.F.R. § 63.343(b)(2), provides that if the owner or operator of an affected source meets all of the following criteria, an initial performance test is not required to be conducted under Subpart N:
 - a. The affected source is a hard chromium electroplating tank, a decorative chromium electroplating tank or a chromium anodizing tank; and
 - b. A wetting agent is used in the plating or anodizing bath to inhibit chromium emissions from the affected source; and
 - c. The owner or operator complies with the applicable surface tension limit of 40 C.F.R. § 63.342(c)(1)(iii), (c)(2)(iii), or (d)(2) as demonstrated through the continuous compliance monitoring required by 40 C.F.R. § 63.343 (c)(5)(ii).
27. Subpart N, at 40 C.F.R. § 63.343(c)(5)(i), provides, in part, that during the initial performance test, the owner or operator of an affected source complying with the emission limitations in 40 C.F.R. § 63.342 through the use of a wetting agent . . . shall determine the outlet chromium concentration . . . [and] establish as the site-specific operating parameter the surface tension of the bath using Method 306B, appendix A of Part 63, setting the maximum value that corresponds to compliance with the applicable emission limitation. In

lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, as the maximum surface tension value that corresponds to compliance with the applicable emission limitation.

28. Subpart N, at 40 C.F.R. § 63.343(c)(5)(ii) provides, in part, that operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, if the owner or operator is using this value in accordance with 40 C.F.R. § 63.343(c)(5)(i), shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

- a. The surface tension shall 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. 40 C.F.R. § 63.343(c)(5)(ii)(A).
- b. The time between monitoring can be increased if there have been no exceedances. The surface tension shall be measured once every 4 hours of tank operation for the first 40 hours of tank operation after the compliance date. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 8 hours of tank operation. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 40 hours of tank operation on an ongoing basis, until an exceedance occurs. The minimum frequency of monitoring allowed by this subpart is once every 40 hours of tank operation. 40 C.F.R. § 63.343(c)(5)(ii)(B).

- c. Once an exceedance occurs as indicated through surface tension monitoring, the original monitoring schedule of once every 4 hours must be resumed. A subsequent decrease in frequency shall follow the schedule laid out in 40 C.F.R. § 63.343(c)(5)(ii)(B). For example, if an owner or operator had been monitoring an affected source once every 40 hours and an exceedance occurs, subsequent monitoring would take place once every 4 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation, monitoring can occur once every 8 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation on this schedule, monitoring can occur once every 40 hours of tank operation. 40 C.F.R. § 63.343(c)(5)(ii)(C).
29. Subpart N, at 40 C.F.R. § 63.346(b)(8), provides that the owner or operator of an affected source shall maintain the records of monitoring data required by 40 C.F.R § 63.343(c) that are used to demonstrate compliance with the standard including the date and time the data are collected.
30. Subpart N, at 40 C.F.R. § 63.347(e)(4), provides that the owner or operator of an affected source, not required to complete a performance test, shall submit a notification of compliance status to the Administrator no later than 30 days after the compliance date specified at 40 C.F.R § 63.343(a).
31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.
32. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the

administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

Facts

34. Respondent owns and operates an electroplating facility at 4556 W 62nd St., Chicago, Illinois 60629 (Facility).
35. From 2018 to 2021, Respondent reported emitting less than 10 tons of hazardous air pollutants (HAP) per year from the Facility, making the Facility an “area source of HAP emissions,” as that term is defined at 40 C.F.R. §§ 63.2 and 63.11504(a)(2).
36. At the Facility, Respondent operates one decorative hexavalent chromium electroplating tank with a startup date of February 1, 2006, making the tank an “existing affected source” pursuant to 40 C.F.R. § 63.341.
37. Respondent is subject to Subpart N at 40 C.F.R. §§ 63.340 through 63.348.
38. On June 25, 2021, EPA staff conducted an inspection of the Facility to evaluate compliance with the CAA (Inspection).
39. On July 6, 2021, EPA staff requested the following information from Respondent via email: permits; decorative chrome plating emission factors used for annual emission report calculations; 2018, 2019, and 2020 annual emissions reports; Subpart N ongoing compliance

status reports for years 2017–2020; and records of surface tension measurements for 2017–present.

40. On July 20, 2021, Respondent provided EPA staff with the requested information.
41. During the Inspection, EPA staff observed two sandblasters and two polishers in the same room as the chromium electroplating tanks, without a physical barrier between them.
42. The Facility’s wetting agent, Fumetrol ® 140 Fume and Spray Suppressant, contains 5–10 percentage concentration of PFOS.
43. At the time of the Inspection, Respondent had not conducted an initial performance test for the decorative chromium electroplating tank.
44. In lieu of establishing a maximum surface tension by conducting an initial performance test for the decorative chromium electroplating tank, Respondent has accepted 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, as the maximum surface tension value that corresponds to compliance with the applicable emission limitation, as provided under 40 C.F.R. § 63.343(c)(5)(i).
45. Respondent reported the following surface tension measurements of the bath in the decorative chromium electroplating tank at the Facility: 37 dynes/cm in June 2018; 35 dynes/cm in November 2018; 35 dynes/cm in January 2019; 40 dynes/cm in June 2019; 37 dynes/cm in December 2019; 40 dynes/cm in January 2020; 37 dynes/cm in December 2020, and 41 dynes/cm on July 9, 2021.
46. The surface tension measurements described in Paragraph 45 were performed by Scientific Control Laboratories, Inc (SCL).
47. Respondent’s records did not specify the instrument used by SCL to take surface tension measurements of the bath in the decorative chromium electroplating tank at the Facility.

48. On August 19, 2022, SLC informed EPA staff via email that any measurements taken by SCL and identified on SCL reports dated before April 1, 2022 were taken with a tensiometer.
49. Respondent reported operating the decorative chromium electroplating tank 30 hours in 2018, 35 hours in 2019, and 8 hours in 2020.
50. On January 3, 2022, Complainant issued to Respondent a Request to Provide Information Pursuant to the Clean Air Act (Information Request), which included a request for a copy of Subpart N Notification of Compliance Status required by 40 C.F.R. § 63.347(e).
51. Respondent did not provide a copy of the Subpart N Notification of Compliance Status in response to the Information Request.
52. On August 12, 2022, EPA staff requested a copy of the Subpart N Notification of Compliance Status required by 40 C.F.R. § 63.347(e) from Respondent via email.
53. On September 1, 2022, in response to EPA staff's August 12, 2022 email, Respondent provided EPA with a 2022 Subpart N ongoing compliance status report but did not provide a copy of the Subpart N Notification of Compliance Status.
54. On September 1, 2022, EPA staff searched the Air Enforcement and Compliance Assurance Branch's Electronic Document Management System (EDMS) and was unable to locate a copy of Respondent's Subpart N Notification of Compliance Status.
55. On September 26, 2022, Complainant issued to Respondent a Finding of Violation (FOV) alleging that it violated Subpart N.
56. On November 8, 2022, Respondent and EPA discussed the September 26, 2022 FOV.
57. Since October 31, 2022, Respondent has switched to a non-PFOS-based fume suppressant, to address requirements at 40 C.F.R. § 63.342(d)(4).

58. Since November 8, 2022, Respondent has installed a curtain between the polishing operation and chromium electroplating, to address requirements at 40 C.F.R. § 63.343(a)(8).

Violations

59. Respondent failed to control emissions discharges with the use of a wetting agent by allowing the surface tension of the electroplating bath at the Facility to exceed 33 dynes/cm, as measured by a tensiometer, in November 2018, January 2019, June 2019, December 2019, January 2020, December 2020, and on July 9, 2019, in violation of 40 C.F.R. § 63.342(d)(3).
60. Respondent added PFOS-based fume suppressants after September 21, 2015 to its decorative chromium electroplating tank at the Facility from September 2018 to October 31, 2022, in violation of 40 C.F.R. § 63.342(d)(4).
61. Respondent failed to physically separate buffing, grinding, and/or polishing operations from chromium electroplating tanks in the same room prior to beginning the buffing, grinding, or polishing operations from June 25, 2021 to November 8, 2022, in violation of 40 C.F.R. § 63.343(a)(8).
62. Respondent did not conduct an initial performance test for the chromium electroplating tank prior to March 18, 2015, 180 days after the compliance date, has continued to fail to conduct an initial performance test for the chromium electroplating tank, and has not met all the requirements under 40 C.F.R. § 63.343(b)(2), in violation of 40 C.F.R. § 63.343(b)(1).
63. On at least one occasion in 2018 and five occasions in 2019, Respondent failed to measure surface tension once every four hours following an exceedance for at least 40 hours in accordance with the schedule at 40 C.F.R. § 63.343(c)(5)(ii), from September 2018 to December 31, 2019, in violation of 40 C.F.R. § 63.343(c)(5)(ii).

64. By failing to identify the type of equipment used to measure surface tension, Respondent failed to maintain records of monitoring data required by 40 C.F.R. § 63.343(c) that are used to demonstrate compliance with the standard, in violation of 40 C.F.R. § 63.346(b)(8).
65. Respondent failed to submit a notification of compliance status to the Administrator no later than October 14, 2014, 30 days after the compliance date, and has continued to fail to submit a notification of compliance status, in violation of 40 C.F.R. § 63.347(e)(4).

Civil Penalty

66. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the economic impact of the penalty on Respondent, and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$500.

67. Penalty Payment. Respondent agrees to:
- a. Pay the civil penalty of \$500 within 30 days after the effective date of this CAFO.
 - b. Pay the civil penalty using any method provided in the table below:

| .Payment Method | Payment Instructions |
|--|---|
| Automated Clearinghouse (ACH) payments made through the US Treasury | <p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p> |
| Wire transfers made through Fedwire | <p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p> |
| <p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p> | <ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field |
| <p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p> | <p>For standard delivery: U.S. Environmental Protection Agency P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 3180 Rider Trail S. Earth City, Missouri 63045</p> |

68. Within 24 hours of the payment of the civil penalty respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Elyse Voyer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
voyer.elyse@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

69. This civil penalty is not deductible for federal tax purposes.

70. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

71. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

72. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Voyen.elyse@epa.gov (for Complainant), and Abechavez@me.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

73. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

74. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

75. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 73, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

76. Respondent certifies that it is complying fully with Subpart N.

77. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

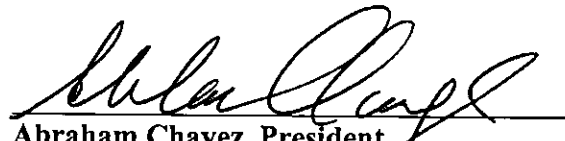
78. The terms of this CAFO bind Respondent, its successors and assigns.

79. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

80. Each party agrees to bear its own costs and attorney's fees in this action.
81. This CAFO constitutes the entire agreement between the parties.

Abraham Chavez (d/b/a A & R Custom Chrome Plating), Respondent

10-31-23
Date


Abraham Chavez, President
Abraham Chavez (d/b/a A & R Custom Chrome
Plating)

336-68-4332
Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Abraham Chavez (d/b/a A & R Custom Chrome Plating)
Docket No. CAA-05-2024-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5