

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of:	)	Docket No. CAA-05-2008-0037
	)	
Wisconsin Plating Works of Racine, Inc.	)	Proceeding to Assess a Civil Penalty
Racine, Wisconsin	)	Under Section 113(d) of the Clean Air
	)	Act, 42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

**COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

Padmavati Bending, Counsel for Complainant, Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, in accordance with this Court's Prehearing Order of December 4, 2008 submits the following Initial Prehearing Exchange pursuant to Section 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits codified at 40 C.F.R. Part 22.

Complainant's Prehearing Exchange is set forth in the order outlined by this Court's December 4, 2008 Prehearing Order.

**By Complainant and Respondent**

1. The names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called.

U.S. EPA may call any or all of the following individuals as witnesses in the hearing in this matter:

1. Constantinos Loukeris, Environmental Engineer, Air and Radiation Division, U.S. EPA, Region 5, Chicago, Illinois. (Fact Witness)

Mr. Loukeris's duties include serving as an enforcement officer and a case developer in the investigation of violations under the Clean Air Act (CAA). Mr. Loukeris will testify regarding his enforcement of the CAA at the Respondent, Wisconsin Plating Works of Racine, Inc. facility (the Facility), including records he reviewed. Mr. Loukeris will testify as to his review of the evidence and the factual basis for his determination that Respondent was in violation of the CAA and the regulations promulgated thereunder, including the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning at 40 C.F.R. Part 63, Subpart T. Mr. Loukeris may also testify regarding the potential effects of the alleged violations on the environment. Mr. Loukeris will testify as to how the penalty proposed in the Complaint was calculated applying the statutory penalty factors set forth within Section 113(e) of the CAA, 42 U.S.C. 7413(e), and the Clean Air Act Stationary Source Civil Penalty policy, dated October 25, 1991. Mr. Loukeris will offer Complainant's assessment of the appropriateness of the penalty proposed in the Complaint. If necessary, Mr. Loukeris will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

Complainant respectfully reserves the right to not call any of the above-listed witnesses at hearing. Complainant further respectfully reserves its right to amend, supplement, and modify its witness list and to call additional witnesses on its behalf. In addition, Complainant respectfully reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange,

provide the Presiding Officer and the Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**2. Copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vita or resume for each identified expert witness. The documents and exhibits shall be identified as Complainant's or Respondent's exhibit, as appropriate, and numbered with Arabic numerals (e.g, CX 1 or RX 2).**

Complainant expects to offer the following documents into evidence:

1. COMPLAINANT'S EXHIBIT 1  
July 18, 2007 Semi-Annual Compliance Certification and Halogenated Solvent Cleaner NESHAP's Semi-Annual Exceedance Report prepared by Scientific Control Laboratories on behalf of Wisconsin Plating Works of Racine, Inc.
2. COMPLAINANT'S EXHIBIT 2  
March 7, 2008 Finding of Violation from U.S. EPA, Region 5 to Wisconsin Plating Works of Racine, Inc.
3. COMPLAINANT'S EXHIBIT 3  
June 10, 2008 letter from Adam M. Kushner, Director, Air Enforcement Division, U.S. EPA, Headquarters to Ronald J. Tenpas, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice. RE: Section 113(d) of the Clean Air Act waiver request of the twelve-month limitation on EPA's authority to initiate an administrative case (Region 5, Wisconsin Plating Works of Racine, Inc., Racine, Wisconsin)

4. COMPLAINANT'S EXHIBIT 4  
July 3, 2008 letter from William D. Brighton, Assistant Chief, Environmental Enforcement Section, U.S. Department of Justice to Cheryl L. Newton, Acting Director, Air and Radiation Division, U.S. EPA Region 5. RE: Request to Waive Clean Air Act Section 113(d) Limitation of EPA's Authority to Initiate Administrative Case Against Wisconsin Plating Works of Racine, Inc.
5. COMPLAINANT'S EXHIBIT 5  
Federal Register, Vol. 58, No. 227 Pages 62566-62598, National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning, Proposed Rule, November 29, 1993
6. COMPLAINANT'S EXHIBIT 6  
Federal Register, Vol. 59, No. 231, Pages 61801-61820, National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning, Final Rule, December 2, 1994.
7. COMPLAINANT'S EXHIBIT 7  
U.S. EPA Policy, dated October 25, 1991, "Clean Air Act Stationary Source Civil Penalty Policy."
8. COMPLAINANT'S EXHIBIT 8  
U.S. EPA Policy, dated January 17, 1992, "Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy."
9. COMPLAINANT'S EXHIBIT 9  
U.S. EPA Policy, dated May 9, 1997, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)."
10. COMPLAINANT'S EXHIBIT 10  
U.S. EPA Policy, dated September 21, 2004, "Modifications to EPA

Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).”

- |                              |  |
|------------------------------|--|
| 11. COMPLAINANT’S EXHIBIT 11 | Declaration of Constantinos Loukeris concerning Wisconsin Plating’s use of the vapor degreaser during the period of violation.                           |
| 12. COMPLAINANT’S EXHIBIT 12 | Dun and Bradstreet report dated February 29, 2008 for Wisconsin Plating.   |
| 13. COMPLAINANT’S EXHIBIT 13 | Photographs of vapor degreaser provided by Wisconsin Plating Works of Racine, Inc. to EPA with March 27, 2008 transmittal electronic mail.               |
| 14. COMPLAINANT’S EXHIBIT 14 | Region 5 Delegation 7-6-A, Clean Air Act, Administrative Enforcement Actions: Issuance of Complaints and Orders, and Signing of Consent Agreements, etc. |

Copies of these exhibits are attached to this Prehearing Exchange.

Complainant hereby requests the Presiding Officer to take judicial notice of the following:

1. The Clean Air Act, 42 U.S.C. § 7401 et seq.;
2. The National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning at 40 C.F.R. §§ 63.460 et seq., including the proposed and final rules and their preambles;
3. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, as amended, including 61 Fed. Reg. 9064, March 6, 1996; and

4. 40 C.F.R. Part 9.

Complainant respectfully reserves the right to elect to not introduce any of the foregoing exhibits at the hearing and/or, to supplement its prehearing exchange with additional exhibits not listed above and will provide reasonable notice to the Presiding Officer and Respondent concerning any modifications to the above exhibit list.

**3. A statement as to its views as to the appropriate place of hearing and estimate of the time needed to present its direct case. Also state if translation services are necessary in regard to the testimony of any anticipated witnesses, and, if so, state the language to be translated.**

Complainant requests that the hearing in this matter be held at a suitable location in or near Racine, Wisconsin. Respondent's Facility is in Racine, and is relatively accessible to U.S. EPA personnel and prospective witnesses. Complainant estimates only one day is needed to present its case.

**By Complainant:**

**1. A copy of the determination of the Administrator and Attorney General referenced in Paragraph 13 of the Complaint.**

**Complainant's Response:** Complainant has provided a copy of these determinations as Complainant's Exhibits 3 and 4, described above.

**2. A copy of the semi-annual report referenced in Paragraph 15 of the Complaint, or portions thereof relevant to the allegations in the Complaint.**

**Complainant's Response:** Complainant has provided a copy of this report as Complainant's Exhibit 1, described above.

**3. A copy of the Finding of Violation referenced in Paragraph 19 of the Complaint.**

**Complainant's Response:** Complainant has provided a copy of the Finding of Violation as Complainant's Exhibit 2, described above.

**4. A narrative statement explaining in detail the calculation of the proposed penalty, addressing each penalty assessment factor in Section 113(e) of the Clean Air Act.**

**Complainant's Response:** Section 113(e) of the Clean Air Act requires that the Administrator take into consideration the following factors when determining the amount of a penalty to be assessed under Section 113 of the Clean Air Act: the size of the 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, the seriousness of the violation and such other factors as justice may require.

The Clean Air Act Stationary Source Civil Penalty policy, dated October 25, 1991, updated by the January 17, 1992, May 9, 1997 and September 21, 2004 memoranda reflects the factors enumerated in Section 113(e) of the Clean Air Act. Page 2, Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991. U.S. EPA used this penalty policy to calculate the proposed penalty in this case against Wisconsin Plating Works of Racine, Inc. (Wisconsin Plating)

Due to the insignificant economic benefit of noncompliance for the avoided costs of measuring the temperature of the freeboard refrigeration device on six occasions between February 1, 2007 and June 30, 2007, no amount was assessed for the economic benefit of noncompliance. Wisconsin Plating is subject to the Halogenated Solvent Cleaning NESHAP, and the Hazardous Air Pollutant (HAP) they use is trichloroethylene. Since only one HAP is involved, \$15,000 is assessed for the toxicity of pollutant component. Wisconsin Plating's violations took place over a five month period of time, which leads to an assessment of \$12,000 for the length of the violation. Since the violation involves both failure to monitor the freeboard refrigeration device and failure to record the results of such monitoring, if it was performed during the weeks for which Wisconsin Plating reported no data, a \$30,000 penalty is assessed (half for recordkeeping and half for monitoring) for the seriousness of the violation. A Dun and Bradstreet report indicates that as of February 29, 2008, the company net worth was \$333,412. As a result, a \$5,000 penalty is assessed for the size of the violator. Since all the violations occurred after March 2004 when the statutory penalty amount was increased, the gravity component is multiplied by 1.2895 to account for a 10% increase in the statutory penalty amounts. This results in a final gravity component of \$73,502.

Due to a calculation error, U.S. EPA requested a proposed penalty of \$72,683. Complainant has decided not to request an amendment of the complaint to correct this error at this time.

**5. A copy of any "penalty policy" or any amendment, appendix or clarification thereto, upon which Complainant has relied upon in consideration of a proposed penalty assessment, *but not* the Clean Air Act Stationary Source Civil Penalty Policy or the Modification to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule.**

**Complainant's Response:** The only penalty policy upon which Complainant has relied is the 1991 Clean Air Act Stationary Source Civil Penalty Policy as modified by the Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule.

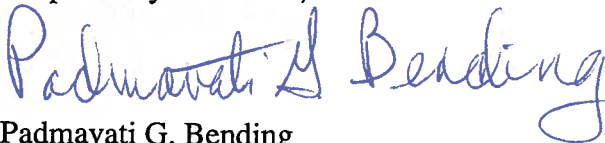
**6. A statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.**

**Complainant's Response:** The Paperwork Reduction Act of 1990 (PRA) does apply to the recordkeeping and reporting requirements of the National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning which are located at 40 C.F.R. §§63.467 and 63.468. 40 C.F.R. §9.1 indicates that the ICR number for these requirements is 2060-0273. As a result, Section 3512 of the PRA does not apply to this matter.

**Reservation of Rights.**

Complainant respectfully reserves the right to supplement its list of witnesses, its list of exhibits, and/or its responses to the Prehearing Order Requests, upon reasonable notice to Wisconsin Plating Works of Racine, Inc., and to this Honorable Court.

Respectfully submitted,



Padmavati G. Bending  
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Office of Regional Counsel  
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Region 5  
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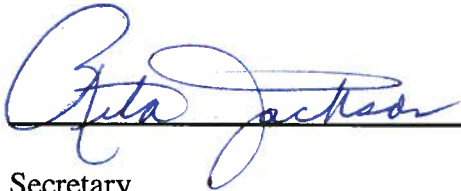


CERTIFICATE OF SERVICE

I hereby certify that today I filed personally with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-13J), Chicago, Illinois, 60604-3590, the original document entitled Initial Prehearing Exchange for this civil administrative action, and that I issued to the Court and Respondent's Counsel by first class mail a copy of the original document:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Christopher T. Nowatarski  
Stone, Pogrud and Korey, LLC  
1 East Wacker Drive, Suite 2610  
Chicago, IL 60601

  
Secretary

1/15/09  
Date

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