

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
MAR 23 2009

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

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

COMPLAINANT'S MOTION FOR ACCELERATED DECISION ON LIABILITY

Complainant, through its undersigned attorney, files this Motion for Accelerated Decision, with its Memorandum in Support thereof, on the Issue of Liability pursuant to the authority of Section 22.20 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*, ("Consolidated Rules" or "CROP") 40 C.F.R. § 22.20. As indicated below, Complainant requests that this Honorable Court issue an Order finding Respondent, Wisconsin Plating Works of Racine, Inc., liable for its violations of the Clean Air Act and the regulations promulgated thereunder as alleged in the Complaint in this matter.

The Complaint alleges that Respondent failed, on six occasions, to monitor and record the temperature of the freeboard refrigeration device used to control emissions from Wisconsin Plating's vapor degreaser/open top batch solvent cleaning machine. Based on the Complaint, the Answer, and the prehearing exchanges of the parties, there are no genuine issues of material fact concerning Respondent's liability for the violations alleged in the Complaint. As a result, Complainant is entitled to judgment as a matter of law pursuant to 40 C.F.R. § 22.20(a).

Therefore, Complainant requests that the Court enter the following Findings of Fact and Conclusions of Law based upon the Complaint and Answer in this civil action, the parties' prehearing exchanges, and Complainant's Memorandum in Support of its Motion for Accelerated Decision. Complainant's counsel has contacted Respondent's counsel concerning this motion; Respondent's counsel objects to the Court granting the relief requested by this motion.

#### I. FINDINGS OF FACT

1. Complainant issued a Complaint to Respondent on September 22, 2008.
2. The Complaint alleged that Respondent failed to monitor and record the temperature of the freeboard refrigeration device for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.
3. Respondent filed an Answer to the Complaint on or about October 24, 2008.
4. Complainant had the authority to file this civil action against Respondent under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
5. Complainant has the authority to pursue violations which occurred more than 12 months prior to the filing of this civil action.
6. Respondent is Wisconsin Plating Works of Racine, Inc.
7. Respondent owns and operates an open top batch solvent cleaning machine (also called a vapor degreaser), Emission Unit P35, at 620 Stannard Street in Racine, Wisconsin.
8. Respondent's vapor degreaser/open top batch solvent cleaning machine, Emission Unit P35, uses trichloroethylene in a concentration greater than 5 percent by weight.

9. Respondent complies with the National Emission Standards for Hazardous Air Pollutants: Halogenated Solvents, 40 C.F.R. Part 63, Subpart T, using a combination of a freeboard refrigeration device and a freeboard ratio of 1.0 for its batch vapor solvent cleaning machine, Emission Unit P35, with a solvent/air interface of less than 13 ft<sup>2</sup>.

10. Respondent failed to record the temperature of the freeboard refrigeration device for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.

11. Respondent failed to monitor the temperature of the freeboard refrigeration device for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.

## II. CONCLUSIONS OF LAW

12. The NESHAP regulations contained at 40 C.F.R. Part 63, Subpart T became effective on December 2, 1997.

13. The NESHAP regulations contained at 40 C.F.R. Part 63, Subpart T apply to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride (CAS No. 75-09-2), perchloroethylene (CAS No. 127-18-4), trichloroethylene (CAS No. 79-01-6), 1,1,1-trichloroethane (CAS No. 71-55-6), carbon tetrachloride (CAS No. 56-23-5) or chloroform (CAS No. 67-66-3), or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

14. Respondent is subject to the NESHAP regulations at 40 C.F.R Part 63, Subpart T.

15. The NESHAP, at 40 C.F.R. §63.463(e)(1), requires each owner or operator of a solvent cleaning machine to monitor each control device used to comply with § 63.463 of 40 C.F.R. Part 63, Subpart T, as provided in § 63.466.

16. The NESHAP, at 40 C.F.R. 63.463(e)(2)(i), requires that if a facility uses a freeboard refrigeration device (FRD) to comply with the standards in the NESHAP, then the owner or operator shall ensure that the chilled air blanket temperature (in °F), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point.

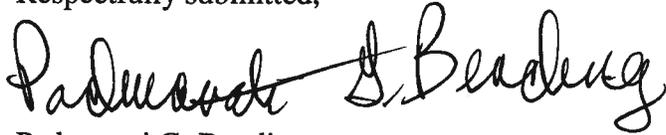
17. The NESHAP, at 40 C.F.R. §63.466(a), requires, except as provided in paragraph (g) of that section, that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment standards in §63.463(b)(1)(i), (b)(2)(i), (c)(1)(i), (c)(2)(i), (g)(1), or (g)(2) conduct monitoring and record the results on a weekly basis for the control devices, as appropriate, as specified in paragraphs (a)(1) through (5) of that section.

18. The NESHAP, at 40 C.F.R. §63.466(a)(1), requires that if a freeboard refrigeration device (FRD) is used to comply with these standards, then the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket during the idling mode.

19. Respondent was required by 40 C.F.R. §63.466(a) to monitor and record the temperature of the FRD for Emission Unit P35 on a weekly basis.

20. Respondent's failure to monitor and record the temperature of the FRD for Emission Unit P35 during the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007 violated 40 C.F.R. §63.466(a).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Padmavati G. Bending". The signature is written in a cursive style with a large, prominent initial "P".

Padmavati G. Bending  
Associate Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of: ) Docket No. CAA-05-2008-0037  
) REGIONAL HEARING CLERK  
) U.S. ENVIRONMENTAL  
Wisconsin Plating Works of Racine, Inc. ) PROTECTION AGENCY  
Racine, Wisconsin )  
) Honorable Judge Susan Biro  
) Presiding Administrative Law Judge  
Respondent. )  
\_\_\_\_\_ )

COMPLAINANT'S MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR ACCELERATED DECISION ON LIABILITY

Complainant, through its undersigned attorney, files this Motion for Accelerated Decision, with its Memorandum in Support thereof, on the Issue of Liability pursuant to the authority of Section 22.20 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*, 40 C.F.R. § 22.20. As indicated below, Complainant requests that this Honorable Court issue an Order finding Respondent, Wisconsin Plating Works of Racine, Inc, liable for its violations of the Clean Air Act and the regulations promulgated thereunder as alleged in the Complaint in this matter.

I. THE STATUTORY AND REGULATORY PROVISIONS

The Administrator of EPA may assess any civil penalty for which a person is liable under Section 113 of the Clean Air Act (CAA), 42 U.S.C. §7413, by administrative order. A person is liable under Section 113 of the CAA for, among other things, failing to comply with regulations promulgated by the Administrator of EPA.

On December 2, 1997, the Administrator of EPA promulgated the NESHAP for Halogenated Solvent Cleaning, 59 Fed. Reg. 61801. These regulations were final on December 2, 1997 and are codified at 40 C.F.R. Part 63, Subpart T, §§ 63.460 - 63.471.

The NESHAP for Halogenated Solvent Cleaning applies to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride (CAS No. 75-09-2), perchloroethylene (CAS No. 127-18-4), trichloroethylene (CAS No. 79-01-6), 1,1,1-trichloroethane (CAS No. 71-55-6), carbon tetrachloride (CAS No. 56-23-5) or chloroform (CAS No. 67-66-3), or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent. The NESHAP for Halogenated Solvent Cleaning sets forth certain monitoring requirements for particular control equipment used in subject solvent cleaning machines.

The NESHAP, at 40 C.F.R. §63.463(e)(1), states that each owner or operator of a solvent cleaning machine shall conduct monitoring of each control device used to comply with § 63.463 of this subpart as provided in § 63.466.

The NESHAP, at 40 C.F.R. 63.463(e)(2)(i), states that if a freeboard refrigeration device is used to comply with these standards, the owner or operator shall ensure that the chilled air blanket temperature (in °F), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point.

The NESHAP, at 40 C.F.R. §63.466(a), states that except as provided in paragraph (g) of this section (which allows for alternative monitoring procedures), each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment standards in §63.463(b)(1)(i), (b)(2)(i), (c)(1)(i), (c)(2)(i), (g)(1), or (g)(2) shall conduct monitoring and record the results on a weekly basis for the control devices, as appropriate, specified in paragraphs (a)(1) through (5) of this section.

The NESHAP, at 40 C.F.R. §63.466(a)(1), states that if a freeboard refrigeration device (FRD) is used to comply with these standards, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket during the idling mode.

## II. THE COMPLAINT

On September 22, 2008, Complainant issued to Respondent a Complaint which alleged that Respondent failed to monitor and record the temperature of the freeboard refrigeration device for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007. On October 24, 2008, Respondent filed its Answer to the Complaint, admitting some factual allegations and denying others.

## III. THE STANDARD FOR ACCELERATED DECISION

The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part 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, as to all or any part of the proceeding. 40 C.F.R. §22.20(a). See also, BWX Technologies, Inc., 9 E.A.D. 61, 74-75 (EAB 2000); In the Matter of Four Corners Wholesale, Inc., Docket No. FIFRA-9-2007-008 (May 29, 2008); In the Matter of Clarksburg Casket Co., Docket No. EPCRA-III-165 (June 6, 1997); In the Matter of Borden Chemicals and Plastics, Docket No. EPCRA-003-1992 (Feb. 18, 1992); In the Matter of Urschel Laboratories, Inc., RCRA Docket No. V-W-89-R-35 (April 25, 1991). The standard set forth at 40 C.F.R. §22.20(a) is comparable to the standard for summary judgment under Federal Rule of Civil Procedure 56.

See, In re CWM Chemical Services, TSCA Appeal 93-1 (EAB May 15, 1995); In the Matter of Arizona Environmental Container Corp., Docket No. EPCRA-09-2007-0028 (Oct. 16, 2008).

#### IV. ARGUMENT

Therefore, to prevail on its Motion for Accelerated Decision, Complainant must demonstrate no genuine issue of material fact exists that it had the authority to file a civil action against Respondent, that Respondent violated various regulations of the Clean Air Act, as alleged in the Complaint, and that it is entitled to judgment as a matter of law pursuant to 40 C.F.R. §22.20(a).

A. Complainant Had the Authority to File this Civil Action Against Respondent

The Administrator of U.S. EPA may issue an administrative order against any person assessing a civil administrative penalty under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). The Complainant alleges and Respondent admits this is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d). (Complaint ¶1, Answer ¶1). The Complainant alleges and Respondent admits 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. (Complaint ¶3, Answer ¶3).

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Complainant had the authority to file a civil action against Respondent under Section 113(d) of the CAA, 42 U.S.C. § 7413.

B. Complainant has the authority to file a civil action which includes violations that occurred more than 12 months prior to the date the Complaint was filed.

Section 113(d) of the CAA limits the authority of the Administrator to seek civil penalties through an administrative civil action to violations which occurred “no more than 12 months prior to the initiation of the administrative action, *except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.*” §113(d) of the CAA, 42 U.S.C. §7413(d) (emphasis added). Exhibits 3 and 4 of Complainant’s prehearing exchange demonstrate that the Administrator and Attorney General have determined that the violations of Respondent which occurred more than 12 months prior to the filing of this action are appropriate for administrative penalty action. In addition, the Complainant alleges and Respondent admits that 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 violation alleged in the complaint. (Complaint ¶13, Answer ¶13).

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Complainant had the authority to file a civil action against Respondent under Section 113(d) of the CAA, 42 U.S.C. §7413 for violations which occurred more than 12 months prior to the filing of the Complaint.

C. Respondent is Subject to the NESHAP for Halogenated Solvents, 40 C.F.R. Part 63, Subpart T.

To demonstrate Respondent failed to comply with certain requirements of the CAA regulations, specifically the NESHAP regulations, as alleged in the Complaint, Complainant

must first establish that Respondent is subject to the applicable regulations. To do so, Complaint must establish that Respondent is an owner or operator of an individual batch vapor, in-line vapor, in-line cold, or batch cold solvent cleaning machine that uses any solvent containing methylene chloride (CAS No. 75-09-2), perchloroethylene (CAS No. 127-18-4), trichloroethylene (CAS No. 79-01-6), 1,1,1-trichloroethane (CAS No. 71-55-6), carbon tetrachloride (CAS No. 56-23-5) or chloroform (CAS No. 67-66-3), or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

- i. **Respondent owns or operates an individual batch vapor, in-line vapor, in-line cold, or batch cold solvent cleaning machine.** Complainant alleges and Respondent admits that the Respondent owns and operates a vapor degreaser at 620 Stannard Street in Racine, Wisconsin. (Complaint ¶14, Answer ¶14) In addition, Page 7 of Wisconsin Plating's Title V permit, Permit No. 252016270-F10 (Complainant's Exhibit 17) states that P35 is a halogenated open top vapor degreaser which is a batch vapor degreaser.
- ii. **Respondent's vapor degreaser uses trichloroethylene in a concentration greater than 5 percent by weight.**

Complainant alleges and Respondent admits that the Respondent's vapor degreaser uses trichloroethylene in a concentration greater than 5 percent by weight. (Complaint ¶6, Answer ¶6)

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Respondent owns or operates a vapor degreaser that is subject to 40 C.F.R. Part 63, Subpart T.

There is also no issue of law since Complainant alleges and Respondent admits that Respondent's vapor degreaser, Emission Unit P35, is subject to the requirements of 40 C.F.R. Part 63, Subpart T. (Complaint ¶6, Answer ¶6).

D. Respondent has chosen a compliance method under NESHAP for Halogenated Solvents, 40 C.F.R. Part 63, Subpart T which uses a freeboard refrigeration device.

Page 7 of Wisconsin Plating's Title V permit, Permit No. 252016270-F10 (Complainant's Exhibit 17) states that P35 is controlled with a combination of a freeboard refrigeration device and a freeboard ratio of 1.0 for its batch vapor solvent cleaning machine with a solvent/air interface of less than 13 ft<sup>2</sup>.

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Respondent has chosen to comply with 40 C.F.R. Part 63, Subpart T through the use of a freeboard refrigeration device.

E. Respondent did not record the temperature of the freeboard refrigeration device for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.

Complainant alleges and Respondent admits that Respondent submitted a semi-annual report for the NESHAP, indicating there were six (6) occurrences where the temperature of the freeboard refrigeration device was not recorded. (Complaint ¶15, Answer ¶15). In addition, Respondent's July 18, 2007 report was included as Complainant's Exhibit 1 with Complainant's Initial Prehearing Exchange and as Respondent's Group Exhibit 5 with Respondent's Prehearing Exchange. Both documents contain pages headed "HALOGENATED SOLVENT CLEANER NESHAP: Exceedance Report (Jan. – June 2007)" which indicates that six weekly temperature

readings may have been missed and that no data was entered into the degreaser's compliance log for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007. In addition, Respondent's Answer states that "Respondent denies that it failed to monitor the temperature of the FRD for emission. For further affirmative answer, Respondent states that during the weeks in question Respondent does not believe it was using the FRD." (Answer ¶17) These sentences appear to deny that Respondent failed to monitor the temperature of the FRD, but do not clearly admit, deny or explain if it failed to record the temperature of the FRD for Emission Unit P35 for the six weeks indicated above. 40 C.F.R. §22.15(d) states that the failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Respondent failed to record the temperature of the FRD for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.

F. Respondent failed to monitor the temperature of the freeboard refrigeration device for Emission Unit P35 on at least 6 occasions.

Respondent's documents state that Respondent historically performed the monitoring and recording of the temperature of the FRD for Emission Unit P35 on Mondays, that maintenance techs [sic] would perform those readings, that the maintenance techs did not do so, and that the gap in taking readings (not merely recording the readings) was discovered during Respondent's semi-annual compliance review. Respondent's Group Exhibit 6.

Therefore, there is no genuine issue of material fact under 40 C.F.R. §22.20(a) that Respondent failed to monitor the temperature of the FRD for Emission Unit P35 for the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007.

#### V. CONCLUSION

As a result of the pleadings, prehearing exchanges and the above arguments, Complainant has demonstrated that no genuine issue of material fact exists that it had the authority to file a civil action against Respondent, that it had the authority to file a civil action against Respondent for violations which occurred more than 12 months prior to the filing date of the complaint, that Respondent is subject to the NESHAP for Halogenated Solvents, 40 C.F.R. Part 63, Subpart T, and that Respondent failed to monitor and record the temperature of the freeboard refrigeration device for Emission Unit P35 during the weeks of February 26, 2007, March 5, 2007, April 2, 2007, May 14, 2007, June 11, 2007 and June 25, 2007. Complainant has demonstrated that it is entitled to judgment as a matter of law under 40 C.F.R. §22.20(a).

Complainant respectfully requests this court issue an accelerated decision pursuant to 40 C.F.R. §22.20(a) finding Respondent liable for its failures to comply with the regulations of the CAA as demonstrated above.

Respectfully submitted,



Padmavati G. Bending  
Associate Regional Counsel

CERTIFICATE OF SERVICE

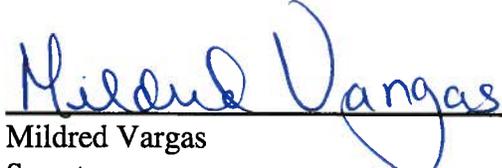
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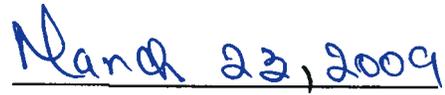
MAR 23 2009

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-191), Chicago, Illinois, 60604-3590, the original document and a copy entitled ~~Complainant's Motion for Accelerated Decision on Liability and Memorandum in Support thereof~~ for this civil administrative action, and that I issued to the Court (via pouch mail) and Respondent's Counsel (via 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. Nowotarski  
Stuart M. Sheldon  
Stone, Pogrund and Korey, LLC  
1 East Wacker Drive, Suite 2610  
Chicago, IL 60601

  
\_\_\_\_\_  
Mildred Vargas  
Secretary

  
\_\_\_\_\_  
Date