



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 22 2008

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert J. Toeppe, President
Wisconsin Plating Works of Racine, Inc.
620 Stannard Street
Racine, Wisconsin 53403

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

Dear Mr. Toeppe:

I have enclosed a Complaint filed against Wisconsin Plating Works of Racine, Inc., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The Complaint alleges violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning at 40 C.F.R. Part 63, Subpart T.

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Padmavati Bending, Associate Assistant Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-8917.

Sincerely,

Cheryl L. Newton
Acting Director
Air and Radiation Division

Enclosures

cc: Ted Cauwels, WDNR

ARD
EDMS

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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

1. This is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois.
3. The Respondent is Wisconsin Plating Works of Racine (Wisconsin Plating), a corporation doing business in Wisconsin.

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Statutory and Regulatory Background

4. Pursuant to Section 112(d) of the Clean Air Act, on December 2, 1994, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (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.
5. 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 concentration of these solvents may be determined using EPA test method 18, material safety data sheets, or engineering calculations. Wipe cleaning activities, such as using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent are not covered under the provisions of this subpart.

6. Wisconsin Plating's vapor degreaser, Emission Unit P35, uses trichloroethylene in a concentration greater than 5 percent by weight; therefore Emission Unit P35 is subject to the requirements at 40 C.F.R. Part 63 Subpart T.

7. 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.

8. 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.

9. The NESHAP, at 40 C.F.R. 63.466(a), states that except as provided in paragraph (g) of this section, 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.

10. 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.

11. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. Section 113(d)(1) 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.

13. 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 this complaint.

General Allegations

14. Wisconsin Plating owns and operates a vapor degreaser at 620 Stannard Street in Racine, Wisconsin.

15. On July 18, 2007, Wisconsin Plating submitted their semi-annual report for the NESHAP, indicating there were six (6) occurrences where the temperature of the FRD was not recorded.

Count I

16. Complainant incorporates paragraphs 1 through 15 of the Complaint, as if set forth in this paragraph.

17. Respondent failed to monitor and record the temperature of the FRD for Emission Unit P35 for the six weeks listed below.

1. Week of February 26, 2007
2. Week of March 5, 2007
3. Week of April 2, 2007
4. Week of May 14, 2007
5. Week of June 11, 2007
6. Week of June 25, 2007

18. Respondent's failure to monitor and record the temperature of the FRD for Emission Unit P35 is a violation of § 63.463(e)(1) and § 63.466(a).

19. On March 7, 2008, EPA issued a Finding of Violation (FOV) to Respondent regarding the violations described herein.

20. On March 26, 2008, EPA and Respondent held a conference to discuss the March 7, 2008 FOV.

Proposed Civil Penalty

21. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$72,683.

Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

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

Rules Governing This Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Padmavati Bending, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Bending at (312) 353-8917. Ms. Bending's address is:

Padmavati Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

For checks sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Respondent must include the case name, docket number, and billing document number of the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Bending at the address given above, and to:

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

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before the Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint, or must state clearly that Respondent has no knowledge of a particular factual allegation. Where the Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty;
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Ms. Bending at (312) 353-8917.

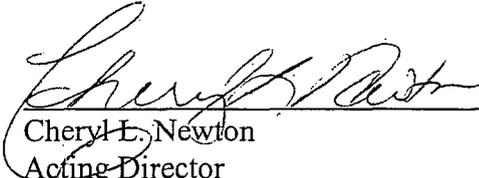
Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties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

Continuing Obligation to Comply

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

Date

9/22/08

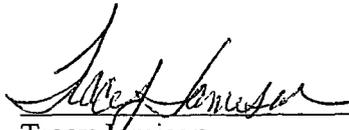

Cheryl E. Newton
Acting Director
Air and Radiation Division

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

CERTIFICATE OF SERVICE

I, Tracy Jamison, certify that I hand delivered the original and one copy of the Complaint, docket number [] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and [Respondent's Counsel if known] by placing them in the custody of the United States Postal Service addressed as follows:

on the 27 day of September, 2008.



Tracy Jamison
AECAS ([MI/WI])

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