

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
 )  
Master Chrome Service, Inc. )  
Cleveland, Ohio )  
 )  
Respondent \_\_\_\_\_ )

DOCKET No. CAA-5-9-001

COMPLAINT  
AND  
NOTICE OF OPPORTUNITY FOR HEARING ON  
PROPOSED ADMINISTRATIVE ORDER ASSESSING PENALTIES

RECEIVED  
REGIONAL HEARING  
OFFICE  
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

This civil administrative action is instituted pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(2), 22.34, against Respondent, Master Chrome Service, Inc. (Master Chrome). The Complainant is by lawful delegation, the Director of the Air and Radiation Division, of the United States Environmental Protection Agency, (U.S. EPA), Region 5.

The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

REGULATORY BACKGROUND

1. Pursuant to Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), the U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 C.F.R. Part 63 Subpart N) on January 25, 1995. 60 F.R. 4963.

2. The NESHAP requirements at 40 C.F.R. Part 63 Subpart N apply to

each "affected source," as defined in 40 C.F.R. 63.341, including hard chromium electroplating tanks.

3. 40 C.F.R. § 63.341 defines "maximum cumulative potential rectifier capacity" as the sum of the total installed rectifier capacity associated with the hard chromium electroplating tanks at the facility, expressed in amperes, multiplied by the maximum potential operating schedule of 8,400 hours per year and 0.7 hours of electrode energizing per hour of operation.

4. 40 C.F.R. § 63.341 defines a "large, hard chromium electroplating facility" as a facility that performs hard chromium electroplating and has a maximum cumulative potential rectifier capacity greater than 60 million ampere-hours per year (amp-hr/yr).

5. Pursuant to 40 C.F.R. § 63.342(c)(1)(i), the owner or operator of a hard chromium electroplating tank located at a large hard chromium electroplating facility, shall control chromium emissions discharged to the atmosphere from that source by not allowing the concentration of total chromium in the exhaust gas to exceed 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air.

6. Pursuant to 40 C.F.R. § 63.343(a)(1)(ii), the owner or operator of an existing affected source shall comply with the emission limitation no later than 2 years after January 25, 1995.

7. Pursuant to 40 C.F.R. § 63.7(a)(2)(iii), the owner or operator of an existing affected source is required to conduct performance testing within 180 days after the compliance date specified in the specific subpart.

#### **GENERAL ALLEGATIONS**

8. Respondent, Master Chrome, is a corporation doing business in the State of Ohio.

9. Master Chrome is a "person" as defined at 42 U.S.C. § 7602.

10. Master Chrome owns and operates a facility located at 5709 Herman Avenue, N.W., Cleveland, Ohio, which includes five tanks, identified as Tanks #1-5, used for hard chromium electroplating.

11. These hard chromium electroplating tanks at the Master Chrome facility began operation prior to December 16, 1993, and therefore, these tanks are considered existing hard chromium electroplating tanks according to 40 C.F.R. Part 63 Subpart N.

12. The maximum cumulative potential rectifier capacity at the Master Chrome facility is 147 million amp-hr/yr.

13. Pursuant to 40 C.F.R. § 63.341, the maximum cumulative potential rectifier capacity of 147 million amp-hr/yr classifies the Master Chrome facility as a large hard chromium electroplating facility.

14. Pursuant to 40 C.F.R. § 63.342(c), the large hard chromium electroplating tanks at the Master Chrome facility must meet the emission limit of 0.015 mg/dscm.

15. On May 15, 1997, Master Chrome conducted an initial performance test of Tank #5, and the results of the performance test showed the chromium emissions from Tank #5 to be 0.122 mg/dscm.

16. On July 25, 1997, Master Chrome conducted an initial performance test of Tank #4 and a retest of Tank #5, and the results of the performance test showed the chromium emissions from Tank #4 to be 0.058 mg/dscm and the emissions from Tank #5 to be 0.120 mg/dscm.

17. On December 12, 1997, Master Chrome conducted a retest of emissions from Tank #5, and the results showed the chromium emissions from Tank #5 to be 0.0025 mg/dscm, which complies with the 0.015 mg/dscm emission

limit in 40 C.F.R. § 63.342(c) (1) (i).

18. On April 28, 1998, Master Chrome conducted an initial performance test of Tank #1 and Tank #2, and the results of the performance test showed the chromium emissions from Tank #1 to be 0.0029 mg/dscm and the emissions from Tank #2 to be 0.0026 mg/dscm, both of which comply with the 0.015 mg/dscm emission limit in 40 C.F.R. § 63.342(c) (1) (i).

19. On April 29, 1998, Master Chrome conducted an initial performance test of Tank #3 and a retest of Tank #4, and the results of the performance test showed the chromium emissions from Tank #3 to be 0.0064 mg/dscm and the emissions from Tank #4 to be 0.0067 mg/dscm, both of which comply with the 0.015 mg/dscm emission limit in 40 C.F.R. § 63.342(c) (1) (i).

#### **COUNT 1**

20. Paragraphs 1 through 19 of this Complaint are hereby incorporated by reference as if fully set forth herein.

21. The emissions from Master Chrome's Tank #4, as documented during the July 25, 1997 performance test, violate the 0.015 mg/dscm emission limit in 40 C.F.R. § 63.342(c) (1) (i).

22. The emissions from Master Chrome's Tank #5, as documented during the May 15 and July 25, 1997, performance tests, violate the 0.015 mg/dscm emission limit in 40 C.F.R. § 63.342(c) (1) (i).

23. Master Chrome's violation of 40 C.F.R. § 63.342(c) (1) (i) subjects it to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **COUNT 2**

24. Paragraphs 1 through 19 of this Complaint are hereby incorporated by reference as if fully set forth herein.

25. Master Chrome's April 28, 1998, initial performance test of Tank #1 and Tank #2 was conducted 458 days after the compliance date of January 25, 1997.

26. Master Chrome's April 29, 1998, initial performance test of Tank #3 was conducted 459 days after the compliance date of January 25, 1997.

27. Failure of the owner or operator of this existing affected source to conduct performance testing within 180 days after the compliance date constitutes violation of 40 C.F.R. § 63.7(a)(2)(iii).

28. Master Chrome's violation of 40 C.F.R. § 63.7(a)(2)(iii) subjects it to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

29. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 61 Fed. Reg. 69362 (December 31, 1996), the Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of requirements under the Act. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), which requires Complainant to take the following factors into consideration in determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test method); payment by

Respondent of penalties previously assessed for the same alleged violations; the economic benefit of noncompliance; and the seriousness of the alleged violations (in addition to such other factors as justice may require).

30. After consideration of the factors set forth at Section 113(e) (1) of the Act, based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of \$137,457.00. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. The penalty calculation is explained in more detail below. A copy of the Penalty Policy accompanies this Complaint.

31. In assessing the proposed penalty, U.S. EPA considered the importance of emissions limits and testing requirements of the Chrome Plating NESHAP under the Act. Accordingly, this proposed penalty includes a component corresponding to the emissions violations and test deadline violations as applied through the Penalty Policy.

32. In assessing the proposed penalty, U.S. EPA considered the economic benefit which a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from noncompliance with the Act, both for deterrence purposes and because other regulated entities incurred expenses in complying with the Act. Master Chrome achieved final compliance with the emission limit and testing requirements at issue on or about April 29, 1998, and expended approximately \$59,350 for necessary modifications to the control equipment and

testing procedures. The emission limit was achieved approximately 15 months after the compliance date of January 25, 1997, and the required testing was conducted approximately 9 months after the test deadline of July 24, 1997. Accordingly, the proposed penalty includes the economic benefit of the Respondent received from a 15 month delay in complying with the emission limit and a 9 month delay in complying with the test deadline.

33. In assessing the proposed penalty, U.S. EPA considered the actual or possible harm resulting from the alleged violations. Chromium, the pollutant of concern, is listed as a toxic air pollutant in Section 112(b) (1) of the Act. Accordingly, this proposed penalty includes a component corresponding to the potential harm from emitting chromium, a toxic air pollutant.

34. In assessing the proposed penalty, U.S. EPA considered the actual or possible harm resulting from the level of exceedance of the alleged violations. Accordingly, this proposed penalty includes a component corresponding to the potential harm from exceeding the emission limitations at the chrome plating operations.

35. In assessing the proposed penalty, U.S. EPA considered the quality of the air in the area where the violating facility is located with respect to the pollutant(s) involved in the violations. The proposed penalty does not include a component for the quality of the air in the area, as there is not an applicable National Ambient Air Quality Standard for chromium.

36. In assessing the proposed penalty, U.S. EPA considered the duration period of the violations. Master Chrome operated the chrome plating tanks for 15 months during the period of emission violation and 9 months during the period of test deadline violation. Accordingly, this proposed

penalty includes a component corresponding to the potential harm from 13-18 months of emission violation and 7-12 months of test deadline violation.

37. In assessing the proposed penalty, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth is believed to be \$304,837.00. This proposed penalty includes a component which considers this size of Respondent's business.

38. In assessing the proposed penalty, U.S. EPA considered Respondent's full compliance history and good faith efforts to comply. Respondent's compliance history, good faith efforts to comply, and degree of cooperation are reflected in the proposed penalty.

39. In assessing the proposed penalty, U.S. EPA considered whether Respondent has paid penalties previously assessed for the same violation(s). Respondent is not believed to have paid any penalties for the violations at issue, and no penalty adjustment was deemed warranted by this factor.

40. The proposed penalty of \$137,457.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business, but does not take into account Respondent's particular financial circumstances.

41. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

42. The Respondent may pay the penalty by certified or cashier's check, payable to Treasurer, the United States of America, and remit to:

United States Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

The check shall include the name of the case and the Docket Number on the check and be accompanied by a transmittal letter. Simultaneous with the payment of the check at the above address, the Respondent shall send copies of both the check and the transmittal letter to the following three addressees:

Regional Hearing Clerk  
Planning and Management Division (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Susan Perdomo  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Julie Brandt  
Environmental Engineer  
Air and Radiation Division (AE-17J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**OPPORTUNITY TO REQUEST A HEARING**

43. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2) requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed below.

44. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which accompanies this Complaint.

**ANSWER**

45. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

46. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied. Your Answer also specifically shall state:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing discussed above.

47. Failure to respond to any factual allegation in this Complaint shall constitute admission of the alleged fact.

48. You must send a copy of your Answer and any documents subsequently filed in this action to Susan Perdomo, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Perdomo at (312) 886-0557.

49. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

**SETTLEMENT CONFERENCE**

50. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Julie Brandt, U.S. EPA, Region 5, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Brandt at (312) 886-6768.

51. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

52. Neither assessment nor payment of an administrative civil penalty



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REGIONAL HEARING

CERTIFICATE OF SERVICE

I certify that I filed the original of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) Assessing Penalties Against Master Chrome Service, Inc. Docket No. CAA-5-9-001 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the Order along with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and a copy of the Penalty Policies (described in the Complaint) was sent via certified mail, return receipt requested, to:

Gerry Garver, President  
Master Chrome Service, Inc.  
5709 Herman Avenue, N.W.  
Cleveland, Ohio 44102

7 411 898 446  
Certified Mail Number

I also certify that copies of the Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order were sent by first class mail to:

Mary Davis, Attorney and Counselor at Law  
4070 Mayfield Road  
Cleveland, Ohio 44121

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
1600 WaterMark Drive  
Columbus, Ohio 43215-1034

Eric Myles, Commissioner  
Division of the Environment  
Cleveland Department of Public Health  
1925 Saint Clair Avenue  
Cleveland, Ohio 44114

on the 6<sup>th</sup> day of November, 1998.

Regina Willis for  
Shwanda Mayo, Secretary  
ARD/AECAB/AECAS (MN/OH)