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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:	)	
	)	
Electrolizing Corporation of Ohio Cleveland, Ohio	)	**DOCKET No.** CAA-5-99-012
	)	
	)	
Respondent	)	

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

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 (the Consolidated Rules), 40 C.F.R. §§ 22.01(a)(2), 22.34, against Respondent, Electrolizing Corporation of Ohio (Electrolizing). 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.

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 (Chrome Plating NESHAP), on January 25, 1995. 60 Fed. Reg. 4963.

2. The Chrome Plating NESHAP requirements at 40 C.F.R. Part 63 Subpart N apply to each "affected source," as defined in 40 C.F.R. 63.2,

including hard chromium electroplating tanks. 40 C.F.R. §63.340(a).

3. Pursuant to 40 C.F.R. 63.8(c)(1), the owner or operator of an affected source shall maintain and operate each continuous monitoring system (CMS) as specified in a relevant standard, and in a manner consistent with good air pollution control practices.

4. 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.

5. 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 or equal to 60 million ampere-hours per year (amp-hr/yr).

6. According to 40 C.F.R. 63.343(a)(ii), the compliance date for hard chromium electroplating tanks was January 25, 1997.

7. Pursuant to 40 C.F.R. 63.343(b)(1), the owner or operator of an existing affected source required to do performance testing under the Chrome Plating NESHAP shall perform such a test as required under §63.7.

8. Pursuant to 40 C.F.R. 63.7(a)(2)(iii), the owner or operator of an affected source who is required to do performance testing under the Chrome Plating NESHAP shall perform such a test within 180 days after the specified compliance date if the source began operation before the effective date of the Chrome Plating NESHAP.

9. Pursuant to 40 C.F.R. 63.343(c)(1), the Chrome Plating NESHAP performance test shall include the establishment of a compliant pressure drop range across the composite mesh pad (CMP).

GENERAL ALLEGATIONS

10. The Attorney General of the United States has concurred with the determination of the Administrator of the 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.

11. Respondent, Electrolizing, is incorporated in the State of Ohio and does business in the State of Ohio.

12. Electrolizing is a "person" as defined at 42 U.S.C. § 7602.

13. Electrolizing owns and operates a facility located at 1325 East 152nd Street, Cleveland, Ohio.

14. Electrolizing currently owns and operates four hard chromium electroplating tanks at its facility which has a maximum cumulative potential rectifier capacity greater than or equal to 60 million ampere-hours per year (amp-hr/yr).

15. Electrolizing's facility in Cleveland, Ohio is a large hard chromium electroplating facility, as defined by 40 C.F.R. § 63.341.

16. Pursuant to 40 C.F.R. 63.2, Electrolizing's hard chromium electroplating tanks are "affected sources", and are therefore subject to the Chrome Plating NESHAP.

17. One of the four hard chromium electroplating tanks at the Electrolizing facility (Tank #4) is controlled by a composite mesh pad system

(CMP #4).

18. Electrolizing uses a CMS to monitor the pressure drop across CMP #4.

19. Prior to January 25, 1997, Electrolizing owned and operated eight hard chromium electroplating tanks within its facility.

20. The eight hard chrome electroplating tanks at Electrolizing's Cleveland, Ohio facility were existing "affected sources" under 40 C.F.R. §63.340(a).

21. The eight affected sources were shut down within a period starting April 22, 1997, and ending September 26, 1997.

22. On January 20, 1999, U.S. EPA sent a pre-filing notice letter to Respondent, Electrolizing, informing Electrolizing that U.S. EPA intended to bring a civil administrative enforcement action against Electrolizing for violations of the Chrome Plating NESHAP.

23. Electrolizing provided a February 9, 1999, response to U.S. EPA's January 20, 1999 letter.

24. U.S. EPA has reviewed the information Electrolizing provided in its response, prior to filing this action.

COUNT 1

25. Paragraphs 1 through 24 of this Complaint are hereby incorporated by reference.

26. Pursuant to Section 112 of the CAA, 42 U.S.C. 7412, and 40 C.F.R. 63.8(c)(1), Electrolizing is required to maintain and operate its CMS as specified for pressure drop, in the Chrome Plating NESHAP, and in a manner

consistent with good air pollution control practices.

27. At U.S. EPA's request, Electrolizing submitted pressure drop recordings at CMS #4 for the period October 10, 1997 to January 4, 1999.

28. The pressure drop readings submitted by Electrolizing indicated that from May 18, 1998 to September 24, 1998, Electrolizing operated CMP #4 outside of the compliant pressure drop range established pursuant to 40 C.F.R. 63.343(c)(1).

29. On or about September 25, 1998, Electrolizing corrected the setup of CMS #4's monitoring equipment.

30. On December 11, 1998, Electrolizing conducted a performance test for Tank #4, pursuant to a CAA Section 114 Request for Information issued by U.S. EPA.

31. The results from Electrolizing's December 11, 1998, performance test showed compliance with the Chrome Plating NESHAP emission limitation and established a different compliant pressure drop range for CMS #4.

32. Electrolizing violated 40 C.F.R. §63.8(c)(1), since it operated its continuous monitoring equipment in a manner inconsistent with good air pollution control practices, as shown by the incorrect set up of its monitoring equipment prior to September 25, 1998.

COUNT 2

33. Paragraphs 1 through 32 of this Complaint are hereby incorporated by reference.

34. Pursuant to 40 C.F.R. 63.343(b)(1), Electrolizing is required to conduct a performance test for its existing hard chrome plating tanks by

July 25, 1997.

35. Electrolizing operated eight existing hard chrome plating tanks prior to January 25, 1997, the effective date of the Chrome Plating NESHAP.

36. Electrolizing ceased operating its eight existing hard chrome plating tanks within a period starting April 22, 1997, and ending September 26, 1997.

37. Electrolizing did not conduct performance tests on its eight existing hard chrome plating tanks before July 25, 1997.

38. Electrolizing no longer operated these existing hard chrome plating tanks after September 26, 1997.

39. Since Electrolizing did not conduct performance testing on its eight existing hard chrome plating tanks by July 25, 1997, as required by the Chrome Plating NESHAP, then Electrolizing was in violation of 40 C.F.R. §63.343(b)(1) from July 25, 1997 to September 26, 1997.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

40. Pursuant to Section 113(d)(1) of the CAA, 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. 69,362 (Dec. 31, 1996), the Administrator of U.S. EPA may assess a civil penalty of up to $27,500 per day for each violation occurring after January 30, 1997, up to a total of $220,000, for violations of requirements under the CAA.

41. 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).

42. After consideration of the factors set forth at Section 113(e)(1) of the CAA, based upon the facts and circumstances alleged in this Complaint, U.S. EPA *proposes to issue to* Respondent a Final Order Assessing Administrative Penalties of $54,332.00. U.S. EPA calculated this proposed penalty pursuant to 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.

43. In assessing the proposed penalty, U.S. EPA considered the importance of timely performance testing to the regulatory scheme. This violated requirement is necessary to achieve the goals of the Act and its implementing regulations. Therefore, a part of the proposed penalty includes

an amount to account for this factor, within the guidelines of the Penalty Policy.

44. 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. Accordingly, the proposed penalty includes the economic benefit of the Respondent received from a delay in complying with the regulations.

45. 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 chrome.

46. In assessing the proposed penalty, U.S. EPA considered the duration period of the violations. This proposed penalty includes a component corresponding to the potential harm from 12 months of violating the monitoring standard (40 C.F.R. § 63.8(c)(1)), and 3 months of violating the testing standard (40 C.F.R. § 63.343(b)(1)).

47. In assessing the proposed penalty, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth was determined to be $787,195, according to a 1997 company financial statement. This proposed penalty includes a component which considers the size of Respondent's business.

48. In assessing the proposed penalty, U.S. EPA considered Respondent's full compliance history. U.S. EPA deemed no penalty adjustment was warranted by Respondent's compliance history.

49. In assessing the proposed penalty, U.S. EPA considered whether Respondent has paid penalties previously assessed for the same violation(s). U.S. EPA is not aware that the Respondent has paid any penalties for the violations at issue, and U.S. EPA made no penalty adjustment using this factor.

50. The proposed penalty of $54,332.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.

51. 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.

52. 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 (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Leslie A. Kirby
Assistant Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Newton Ellens
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

53. 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 in Paragraphs 55 through 59, below.

54. 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

55. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (E-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.

56. 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:

- The circumstances or arguments which you allege constitute grounds for defense;
- The facts that you intend to place at issue; and
- Whether you request a hearing discussed in Paragraphs 53 and 54, above.

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

58. You must send a copy of your Answer and any documents subsequently filed in this action to Leslie A. Kirby, Assistant Regional Counsel (C-14J),

U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Kirby at (312) 886-7166.

59. 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

60. 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 Newton Ellens, U.S. EPA, Region 5, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Ellens at (312) 353-5562.

61. 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 simultaneously pursue 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.

62. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act or any other Federal, State or local law or regulation.

4-12-99
Date

Richard C Karl
Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois 60604-3590

CAA-5-'99-012

CERTIFICATE OF SERVICE

I certify that on 4/14/99, I deposited in the U.S. Mail, certified mail, return receipt requested, a copy of a Clean Air Act Administrative Complaint and the Part 22 Rules of Practice addressed to the following Respondent:

Lawrence Noble, President
Electrolizing Corporation of Ohio
1325 East 152nd Street
P.O. Box 12007
Cleveland, Ohio 44112

Certified Mail Number: P300 159 733

I certify that a copy of the Clean Air Act Administrative Complaint for penalties was sent by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Mark Vilem, Project Coordinator
Bureau of Air Pollution Control
Cleveland Department of Public Health

I certify an original of the Clean Air Act Administrative Complaint for penalties was hand-delivered to:

Regional Hearing Clerk
77 West Jackson Boulevard
Chicago, Illinois 60604

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4/14/99
Date

Shwanda Mayo
Shwanda Mayo, Secretary
AECAS (MN/OH)