

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)	
)	
Bison Plating, Inc.)	Docket No. CAA-5-99-031
Adell, Wisconsin)	
)	Proceeding to Assess
Respondent.)	Administrative Penalty
)	under Section 113(d) of the
)	Clean Air Act,
)	42 U.S.C. § 7413(d)
)	

COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d).

2. 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.

3. The Respondent is Bison Plating, Inc., (Bison) a corporation doing business in the State of Wisconsin.

4. Bison is a person within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

5. Bison is the owner or operator of a decorative chromium electroplating facility located at 600 Sherman Avenue, Adell, Wisconsin.

6. On January 25, 1995, U.S. EPA promulgated NESHAPs for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 C.F.R. Part 63 Subpart N (Chrome Plating NESHAP), pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b). These regulations apply to affected sources, as defined

at 40 C.F.R. § 63.2.

7. Under 40 C.F.R. § 63.340, the affected sources are chromium electroplating or chromium anodizing tanks at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

8. Bison is an affected source as defined by 40 C.F.R. §§ 63.2 and 63.340.

9. 40 C.F.R. § 63.341 defines facility as the major or area source at which chromium electroplating or chromium anodizing is performed.

10. Bison is a facility as defined by 40 C.F.R. § 63.341.

11. 40 C.F.R. § 63.341 defines chromium electroplating or chromium anodizing tank as the receptacle or container in which hard or decorative chromium electroplating or chromium anodizing occurs.

12. 40 C.F.R. § 63.341 defines a decorative chromium electroplating facility as the process by which a thin layer of chromium (typically 0.003 to 2.5 microns) is electrodeposited on a base metal, plastic, or undercoating to provide a bright surface with wear and tarnish resistance.

13. 40 C.F.R. § 63.343(b)(1) requires the owner or operator of an affected source to conduct an initial performance test pursuant to 40 C.F.R. § 63.7.

14. Pursuant to 40 C.F.R. § 63.343(c)(5), the owner or operator of an affected source subject to the emission limitations of the chrome NEHSAP shall conduct monitoring to demonstrate continuous compliance.

15. Pursuant to 40 C.F.R. § 63.342(f)(3)(i), the owner or operator of an affected source subject to the work practices of 40 C.F.R. § 63.342(f) shall prepare an operation and maintenance plan to be implemented by January 25, 1996.

16. Pursuant to 40 C.F.R. § 63.346(b)(2)-(11), the owner or operator of an affected source subject to the provisions of the chrome NESHAP shall maintain records for the source.

17. Pursuant to 40 C.F.R. § 63.347(c), the owner or operator of an affected source that has an initial startup before January 25, 1995, shall notify the Administrator in writing that the source is subject to this Subpart. The notification shall be submitted no later than 180 calendar days after January 25, 1995, and shall contain the information outlined in 40 C.F.R. § 63.347(c).

18. Pursuant to 40 C.F.R. § 63.347(e), the owner or operator of an affected source shall submit a notification of compliance status to the Administrator, attesting to whether the affected source has complied with the chrome NESHAP.

19. U.S. EPA conducted an inspection of Bison's facility on September 29, 1998.

20. On March 30, 1999, the Administrator of U.S. EPA issued to Bison a Finding of Violation for the violations of 40 C.F.R. Part 63, Subpart N, described in Counts 1-6 of this Complaint.

21. Bison owns one decorative chrome plating tank used to coat automobile and motorcycle parts.

22. The Attorney General of the United States and the Administrator of U.S. EPA each through their respective

delegates, have jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

COUNT 1

23. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.

24. During U.S. EPA's September 29, 1998 inspection, Bison did not produce an operation and maintenance plan for its decorative chrome plating tank.

25. Between January 25, 1996 and April 22, 1999, Bison did not have an operation and maintenance plan for its decorative chrome plating tank.

26. Bison's failure to prepare an operation and maintenance plan by January 25, 1996 for its decorative chrome plating tank constitutes a violation of the record keeping requirement at 40 C.F.R. § 63.342(f)(3)(i).

COUNT 2

27. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.

28. Bison did not conduct a performance test within 180 days after January 15, 1996, for its decorative chrome plating tank.

29. Bison conducted a performance test for its decorative chrome plating tank on April 22, 1999.

30. Between January 25, 1999 and April 22, 1999, Bison never conducted a performance test for its decorative chrome plating tank.

31. Bison's failure to conduct the performance testing within 180 days after January 15, 1996 constitutes a violation of 40 C.F.R. § 63.7(a)(2)(iii).

COUNT 3

32. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.

33. During U.S. EPA's September 29, 1998 inspection, Bison did not produce surface monitoring tension results for its decorative chrome plating tank.

34. Bison received surface tension monitoring results for its decorative chrome plating tank on April 22, 1999.

35. Between January 25, 1996 and April 22, 1999, Bison did not monitor the surface tension on its decorative chrome plating tank.

36. Bison's failure to monitor the surface tension of the electroplating or anodizing bath between January 25, 1996 and April 22, 1999 constitutes a violation of the work practice requirements as referenced in 40 C.F.R. § 63.343(c)(5).

COUNT 4

37. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.

38. Under 40 C.F.R. § 63.346(b)(2)-(11), Bison was required to keep records associated with maintenance, malfunction, excess emissions, add-on air pollution control devices and monitoring equipment.

39. During the September 29, 1998, inspection, Bison did not produce records associated with maintenance, malfunction,

excess emissions, add-on air pollution control devices and monitoring equipment.

40. Between January 25, 1996 and April 22, 1999, Bison did not keep records associated with maintenance, malfunction, excess emissions, add-on air pollution control devices and monitoring equipment.

41. Bison's failure to keep records of maintenance, malfunction, excess emissions, add-on air pollution control devices and monitoring equipment between January 25, 1996 and April 22, 1999 constitutes a violation of 40 C.F.R. § 63.346(b)(2)-(11).

COUNT 5

42. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.

43. Under 40 C.F.R. § 63.347(c), Bison was required to notify U.S. EPA in writing that the source was subject to the chrome NESHAP. The notification was to be submitted no later than 180 calendar days after January 25, 1995.

44. On May 11, 1999, Bison submitted the initial notification to U.S. EPA that its decorative chrome plating tank is subject to the chrome NESHAP.

45. Bison's failure to submit the initial notification that its decorative chrome plating tank is subject to the chrome NESHAP within 180 days after January 25, 1995 constitutes a violation of 40 C.F.R. § 63.347(c).

COUNT 6

46. Complainant incorporates paragraphs 1 through 22 of

this Complaint, as if set forth in this paragraph.

47. Under 40 C.F.R § 63.347(e), the owner or operator of an affected source must submit a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the affected source has complied with the chrome NESHAP.

48. On May 11, 1999, U.S. EPA received the notification of compliance status from Bison for its decorative chrome plating tank.

49. Bison did not submit a notification of compliance status from Bison for its decorative chrome plating tank prior to May 11, 1999.

50. Bison's failure to submit the notification of compliance status for its decorative chrome plating tank by January 25, 1995 constitutes a violation of 40 C.F.R. § 63.347(e).

Notice of Proposed Order Assessing a Civil Penalty

51. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

52. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$1,300. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint

is a copy of the penalty policy.

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

Rules Governing This Proceeding

54. 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" (the Consolidated Rules) at 64 Fed. Reg. 40135 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

55. Respondent must file with the 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 (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

56. 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 Thor W. Ketzback to receive service for Complainant of all documents in this

proceeding. You may telephone Mr. Ketzback at (312) 353-6720.

Mr. Ketzback's address is:

Thor W. Ketzback (C-14J)
 Assistant Regional Counsel
 Office of Regional Counsel
 U.S. EPA, Region 5
 77 West Jackson Boulevard
 Chicago, Illinois 60604-3590

Penalty Payment

57. 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:

U.S. Environmental Protection Agency
 Region 5
 P.O. Box 70753
 Chicago, Illinois 60673

Respondent must include the case name and the docket number on the check and in the letter transmitting the check.

Respondent simultaneously must send copies of the check and transmittal letter to Thor W. Ketzback and to:

Attn: Compliance Tracker, (AE-17J)
 Air Enforcement and Compliance Assurance Branch
 Air and Radiation Division
 U.S. EPA, Region 5
 77 West Jackson Boulevard
 Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

58. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the

appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 63 through 68 below.

Answer

59. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 56, above, and must serve copies of the written answer on the other parties.

60. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

61. Respondent's 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 Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

62. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an

admission of the allegation.

63. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes; and
- c. whether Respondent requests a hearing as discussed in paragraph 62 above.

64. 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 U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

65. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Thor W. Ketzback at the address or phone number specified in paragraph 56 above.

66. Respondent's request for an informal settlement conference does not extend the 30 calendar day period to file a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and

adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

Continuing Obligation to Comply

67. 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.

8/26/99
Date



Margaret M. Guerriero, Acting
Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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In the Matter of Bison Plating, Inc.
Docket No. **CAA-5-99-031**

CERTIFICATE OF SERVICE

I, Shanee Rucker, do hereby certify that the original of the foregoing Administrative Complaint was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that correct copies, 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 Policy (described in the Compliant) was mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Frank Ramaker, President
Bison Plating, Inc.
600 Sherman Avenue
Adell, Wisconsin 53001

on the 26th day of August, 1999.

Betsy Williams for Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: P140779173