

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )

Pine View Plating Company )  
Mineral City, Ohio )

Respondent )

DOCKET No. CAA-5-99-044

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

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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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 40138 (July 23, 1999), against Respondent, Pine View Plating Company (Pine View). The Complainant is, by lawful delegation, the Acting 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 (Chrome Plating NESHAP), 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. §63.2, including hard chromium electroplating tanks. 40 C.F.R. §63.340(a).

3. 40 C.F.R. § 63.341 defines a "small, hard chromium electroplating facility" as a facility that performs hard chromium electroplating and has a maximum cumulative potential rectifier capacity less than 60 million ampere-hours per year (amp-hr/yr).

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. Pursuant to 40 C.F.R. 63.342(c)(1), an owner or operator of an existing affected source at a small hard chromium electroplating facility shall not allow the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.030 milligrams of total chromium per dry standard cubic meter (mg/dscm).

6. Pursuant 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. 63.7(a)(2)(iii), the owner or operator of an

existing affected source required to do performance testing under the Chrome Plating NESHAP was required to perform such testing within 180 days (by July 25, 1997) after the compliance date (January 25, 1997) specified in the Chrome Plating NESHAP.

#### **GENERAL ALLEGATIONS**

8. Respondent, Pine View, is a company doing business in the State of Ohio.

9. Pine View is a "person" as defined at 42 U.S.C. § 7602.

10. Pine View owns and operates two hard chrome electroplating tanks at a facility located in Mineral City, Ohio.

11. Pine View's two hard chrome electroplating tanks are "existing affected sources" under the Chrome Plating NESHAP.

12. Pine View's facility in Mineral City, Ohio is a small hard chromium electroplating facility.

13. Since Pine View operates two existing sources at a small hard chromium electroplating facility, it is subject to a chromium emission limit of 0.030 mg/dscm, as cited in 40 C.F.R. § 63.342(c)(1)(ii).

14. Pine View uses a composite mesh pad system to meet the emission limitations of § 63.342.

15. On May 7, 1999, U.S. EPA sent a letter to Respondent, Pine View, informing Pine View that U.S. EPA was intending to bring a civil administrative enforcement proceeding against Pine View for violations of the Chrome Plating NESHAP.

16. U.S. EPA provided Pine View with an opportunity to advise U.S. EPA

of any factors that should be considered before the administrative complaint was issued.

17. Pine View provided U.S. EPA with information, and such information was taken into account in issuing this Complaint.

**COUNT 1**

18. Pine View sent a letter to U.S. EPA, dated January 23, 1997, in which Pine View proposed a schedule for delayed compliance with the emission limitation in the Chrome Plating NESHAP, and indicated that the delayed compliance would be achieved by replacing its existing scrubber with a composite mesh pad system.

19. Pine View informed U.S. EPA that Pine View completed the installation of its composite mesh pad system by August 15, 1997.

20. Pine View informed U.S. EPA that Pine View used a scrubber to control emissions from its hard chrome plating tanks from the compliance deadline of the Chrome Plating NESHAP (January 25, 1997) until the completion of the installation of its composite mesh pad system on August 15, 1997.

21. Pursuant to 40 C.F.R. 63.7(a)(2)(iii), Pine View was required to conduct a performance test for its existing hard chrome plating tanks by July 25, 1997.

22. U.S. EPA has received stack test review summary reports for the Pine View facility which indicate that Pine View conducted performance testing for its composite mesh pad system on September 9, 1998.

23. Since Pine View failed to conduct a performance test for the control equipment existing at its facility by the July 25, 1997 deadline, it

violated the requirements of 40 C.F.R. 63.7(a)(2)(iii).

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

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. 69362 (Dec. 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 CAA. 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).

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 hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of **\$1,500**. 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.

In assessing the proposed penalty, U.S. EPA considered the importance of the particular requirements to the regulatory scheme. A penalty factor associated with Respondent's late performance test report is accounted for in the proposed penalty for these violations under the Penalty Policy.

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 a component corresponding to the economic benefit of the Respondent received from a delay in complying with the regulations.

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.

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 4 months delay of the required testing under 40 C.F.R. 63.7(a)(2)(iii).

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 assumed to be \$100,000 or less. This proposed penalty includes a component which takes into account this size of Respondent's business.

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

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.

In assessing the proposed penalty, U.S. EPA considered Respondent's willingness to cooperate and come into compliance. The proposed penalty includes a mitigation amount to account for this factor.

In assessing the proposed penalty, U.S. EPA considered Respondent's good faith efforts to comply. The proposed penalty includes a mitigation amount to account for this factor.

In assessing the proposed penalty, U.S. EPA considered Respondent's application for extension of the testing deadline. The proposed penalty includes a mitigation amount to account for this factor.

The proposed penalty of \$1,500 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.

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.

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

Andre Daugavietis  
Associate 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**

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.

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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 40138 (July 23, 1999).

**ANSWER**

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.

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 46 and 47, above.

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

You must send a copy of your Answer and any documents subsequently filed in this action to Andre Daugavietis, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Daugavietis at (312) 886-6663.

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 thirty (30) days after a final Default Order pursuant to 40 C.F.R. §§ 22.27 or 22.31.

**SETTLEMENT CONFERENCE**

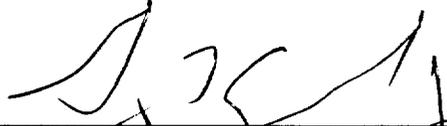
Whether or not you request a hearing, you may request an informal

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.

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.

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.

Dated: 9/23/99

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

**CAA-5-99-044**

CERTIFICATE OF SERVICE

I certify that 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:

Ron Shaw, Owner  
Pine View Plating Company  
4529 New Cumberland Road  
Mineral City, Ohio 44656

Certified Mail Number: P1407773AA

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

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

Fred Klingelhafer, APC Supervisor  
Southeast District Office  
Ohio Environmental Protection Agency  
2195 Front Street  
Logan, Ohio 43138

I certify that an original and a copy of the Clean Air Act Administrative Complaint for penalties was hand-delivered for filing to:

Regional Hearing Clerk  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**SEP 29 1999**

Date

*Loretta Shaffer*  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

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