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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'99 SEP 27 P3:17

<p>IN THE MATTER OF:</p> <p>Muncie Precision Hard Chrome, Inc. Muncie, Indiana,</p> <p style="text-align: center;">Respondent.</p>	<p>) Docket No. CAA-5-99-042</p> <p>)</p> <p>) Proceeding to Assess an</p> <p>) Administrative Penalty</p> <p>) under Section 113(d) of the</p> <p>) Clean Air Act,</p> <p>) 42 U.S.C. § 7413(d)</p> <p>)</p>
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Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (the 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, at 64 Fed. Reg. 40138 (July 23, 1999) (to be codified at 40 C.F.R. Part 22) (Consolidated Rules).
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 Muncie Precision Hard Chrome, Inc. (Muncie Precision), a corporation doing business in the State of Indiana.
4. 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.

Statutory and Regulatory Background

5. On January 25, 1995, in accordance with Section 112 of the CAA, U.S. EPA published as a final rule the National Emission Standard for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks (Chrome Plating NESHAP), at 40 C.F.R. Part 63, Subpart N. 60 Fed. Reg. 4963.
6. The Chrome NESHAP applies to each "affected source" as defined in 40 C.F.R. Section 63.340(a), including hard chromium electroplating tanks.
7. 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.
8. 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).

9. Under 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 6.6×10^{-6} grains per dry standard cubic foot (gr/dscf) (0.015 milligrams per dry standard cubic meter [mg/dscm]) of ventilation air.
10. Under 40 C.F.R. § 63.343(a)(1)(ii), the owner or operator of an existing affected source subject to the Chrome Plating NESHAP shall comply with the Chrome Plating NESHAP emission limitations no later than 2 years after January 25, 1995.
11. Section 113(a) of the Clean Air Act, 42 U.S.C. §7413(a), authorizes the Administrator to issue an order requiring a person to comply with the requirements or prohibitions of the Act.
12. Pursuant to Section 113(a)(3) of the Act, 42 U.S.C. §7413(a)(3), whenever the Administrator finds that any person has violated an order issued under Section 113 of the Act, the Administrator may issue an administrative penalty order.

General Allegations

13. Muncie Precision owns and operates a chrome electroplating

facility at 1001 East 18th Street, Muncie, Indiana (Facility).

14. Muncie Precision owns and operates two hard chrome electroplating tanks at its Facility.
15. The maximum cumulative potential rectifier capacity for the two tanks at the Facility are greater than or equal to 60 million ampere-hours per year. The two tanks are subject to the Chrome Plating NESHAP requirements for large hard chrome electroplating tanks.

Count I

16. Complainant hereby fully incorporates paragraphs 1 through 15 of this Complaint.
17. Muncie Precision conducted the initial performance test to show compliance with the emission limitations set out in 40 C.F.R. § 63.342(c)(1)(I) on December 8, 1998. The initial test showed that Muncie Precision exceeded the applicable Chrome Plating NESHAP emission limitations of 0.015 mg/dscm of total chromium.
18. After the test, Muncie Precision started adding a wetting agent to the Facility's chromium tanks to lower chromium emissions.
19. Muncie Precision retested the tanks on July 26, 1999. This test demonstrated compliance with the emission limits.

20. Between the test showing non-compliance and the test showing compliance, Muncie Precision exceeded the Chrome Plating NESHAP emission limit for 30 months.
21. Muncie precision's failure to maintain chromium emissions at or below the Chrome Plating NESHAP emission limitations of 0.015mg/dscm is a violation of 40 C.F.R. §63.342(c)(1)(I) and Section 112 of the Clean Air Act.

Count II

22. Complainant hereby fully incorporates paragraphs 1 through 15 of this Complaint.
23. U.S. EPA issued an Agreed Order to Muncie Precision under Section 113(a) of the CAA. The Order required Muncie Precision to conduct a stack test no later than July 24, 1998.
24. Muncie Precision failed to perform the stack test by July 24, 1998.
25. U.S. EPA issued an Administrator Order to Muncie Precision on November 25, 1998, requiring Muncie Precision to cease operations until it conducted a stack test; submit prior notification of the testing to U.S. EPA and IDEM; and submit the test results to IDEM and U.S. EPA within 30 days of the test.
26. Muncie Precision conducted the stack test on December 8, 1998 without notifying the U.S. EPA and did not provide the

results to IDEM and U.S. EPA within 30 days.

27. Muncie Precision's failure to conduct the stack tests by the dates set forth in the Orders, and failure to notify the U.S. EPA of the second stack test and failure to provide the results of the test within 30 days were a violation of the Orders and of Section 113(a) of the Act.

Proposed Civil Penalty

28. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred on or after January 31, 1997 according to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.
29. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):
- a. the size of Respondent's business;
 - b. the economic impact of the proposed penalty on Respondent's business;
 - c. Respondent's full compliance history and good faith efforts to comply;
 - d. the duration of the violations alleged in the complaint as established by any credible evidence;
 - e. Respondent's payment of penalties previously assessed for the same violations;
 - f. the economic benefit of noncompliance;

- g. the seriousness of the violations; and
- h. such other factors as justice may require.

30. Based upon an evaluation of the facts alleged in this Complaint and the factors in paragraph 29 above, Complainant proposes that the Administrator of U.S. EPA assess a civil penalty against Respondent of \$2,000. 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.
31. In determining the proposed penalty, Complainant considered the economic benefit that the Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Respondent received a small economic benefit from delaying compliance costs. A penalty factor associated with Respondent's economic benefit from the violations was accounted for in the proposed penalty.
32. Complainant considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted in violation of the Act. Complainant compared the detected

violation with the standard 0.015 mg/dscm. A penalty factor associated with the actual or potential environmental harm from the violations was accounted for in the proposed penalty.

33. In evaluating the seriousness of the violation, Complainant considered the toxicity of the pollutant. Chromium is a hazardous air pollutant that is known to cause death and serious irreversible illness. A penalty factor associated with the actual or potential environmental harm from the violations was accounted for in the proposed penalty.
34. In evaluating the seriousness of the violation, Complainant considered the importance of complying with Administrative Orders to achieving the goals of the Act and its implementing regulations. A penalty factor associated with the importance of these violations to the regulatory scheme was accounted for in the proposed penalty.
35. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. The emission violations commenced on January 24, 1997 and continued through July 26, 1999, an eighteen month duration of violations, based on the number of days of operation. The Administrative Order violations commenced on July 24, 1998 and continued through December 8, 1998, a five month duration of violations. A penalty factor associated

with the duration of these violations was accounted for in the proposed penalty.

36. In calculating the proposed penalty, Complainant considered the size of Respondent's business. Respondent's net worth is approximately \$180,000, as determined from past tax return records. A penalty factor associated with the size of Respondent's business was accounted for in the proposed penalty.
37. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant does not know of any prior citations against Respondent for violating environmental laws, Complainant did not increase the proposed penalty based on this factor.
38. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the information available to Complainant at this time, including the Respondent's tax returns from 1991 to 1995 and the February 1999 Dun & Bradstreet Report, and information received from the Respondent, the proposed penalty has been adjusted downward to reflect Respondent's limited ability to pay a penalty amount and to continue in business.
39. 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 further bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Penalty Payment

40. Respondent may pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", 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 docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter 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

and

Andre Daugavietis, (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

41. The Administrator of U.S. EPA 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 to contest any material fact alleged in the Complaint and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to 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, at 64 Fed. Reg. 40138 (July 23, 1999) (to be codified at 40 C.F.R. Part 22) (Consolidated Rules). A copy of the Consolidated Rules is enclosed with this Complaint served on Respondent.

Answer

42. To avoid being found in default, Respondent 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 30 calendar days after receiving the Complaint. In counting the 30-day time period, the actual date of receipt is not included; Saturdays, Sundays and federal legal holidays are included.

If the 30-day time period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

43. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state 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.
44. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.
45. 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.
46. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Andre Daugavietis, Assistant Regional Counsel (C-29A), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Daugavietis at (312) 886-6663.
47. If Respondent does not file a timely written Answer, the Administrator of U.S. EPA may issue a default order, after motion, under § 22.17(a) of the Consolidated Rules. Default

by Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of the right to a hearing. The proposed penalty will be due without further proceedings 30 days after a default order becomes the final order of the Administrator under § 22.27 or § 22.31 of the Consolidated Rules.

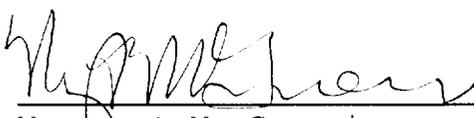
Settlement Conference

48. Whether or not Respondent requests 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 Sarah Graham, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Graham at (312) 886-6797.
49. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written Answer to this Complaint. Respondent may pursue simultaneously the 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

50. 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.

Sept. 27, 1999
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

CAA-5-99-042

REC'D

In the Matter of Muncie Precision Hard Chromium

Docket No. **CAA-5-99-042**

'99 SEP 27 P3:17

CERTIFICATE OF SERVICE

I certify that I hand delivered the original of the Administrative Complaint in this matter 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, as amended by 64 Fed. Reg. 40138 (July 23, 1999), and copies of the penalty policy (described in the Complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Darryal Hawkins, President
Muncie Precision Hard Chrome
1001 East 18th Street
P.O. Box 2631
Muncie, Indiana 47302

on the 27th day of September, 1999.

Betty Williams
Betty Williams
U.S. EPA Region 5
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140895452