

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
Western Roto Engravers, Inc. ) **Docket No. CAA-5- '99 - 043**  
Wadsworth, Ohio )  
 )  
Respondent. ) **Proceeding to Assess an**  
 ) **Administrative Penalty**  
 ) **under Section 113(d) of the**  
 ) **Clean Air Act,**  
 ) **42 U.S.C. § 7413(d)**  
\_\_\_\_\_ )

**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).

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 Western Roto Engravers, Inc. (WRE), a corporation doing business in the State of Ohio.

**Statutory and Regulatory Background**

4. On January 25, 1995, the U.S. EPA promulgated National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Chrome Plating NESHAP), 40 C.F.R. Part 63, Subpart N, pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b). 60 Fed. Reg.

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5. Pursuant to 40 C.F.R. § 63.340(a), the Chrome Plating NESHAP applies to each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

6. Pursuant to 40 C.F.R. § 63.2, "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

7. Section 63.343(a)(1)(ii) of the Chrome Plating NESHAP, 40 C.F.R. § 63.343(a)(1)(ii), required an owner or operator of an existing hard chromium electroplating tank or chromium anodizing tank to comply with the Chrome Plating NESHAP no later than January 25, 1997.

8. 40 C.F.R. § 63.343(d) requires an owner or operator of a source subject to the Chrome Plating NESHAP who uses an air pollution control device not listed in 40 C.F.R. § 63.343(c) to submit certain information and documentation to U.S. EPA. Specifically, the owner or operator must submit a description of the device, test results collected in accordance with 40 C.F.R. § 63.344(c) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by the Chrome Plating NESHAP, a copy of its operation and maintenance plan, and appropriate operating parameters the source plans to

monitor to establish continuous compliance with the standards. This monitoring plan is subject to the Administrator's approval.

9. With limited exceptions, 40 C.F.R. §§ 63.7 and 63.343(b) require an owner or operator of a source subject to the Chrome Plating NESHAP to conduct an initial performance test within 180 days after the compliance date.

10. 40 C.F.R. § 63.344(c) requires an owner or operator subject to the Chrome Plating NESHAP to use the test methods identified in that section to conduct its initial performance test. Two of these methods, Method 306 and 306(a), require a minimum sampling time for each run of 120 minutes, and require that the sample volume be at least 1.70 dscm (60 dcsf).

11. 40 C.F.R. § 63.347(e)(3) provides that sources required by 40 C.F.R. § 62.343(b) to conduct a performance test must submit to U.S. EPA a notification of compliance status no later than 90 calendar days following completion of the initial performance test.

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 a NESHAP, the Administrator may issue an administrative penalty order.

13. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Clean

Air Act violations that occurred prior to January 31, 1997. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997.

14. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to bring an administrative action to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Attorney General of the United States and the Administrator, each through their respective delegates, have determined that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

#### **General Allegations**

16. WRE is a "person" as defined at 42 U.S.C. § 7602.

17. WRE owns and operates two hard chromium electroplating tanks at its facility located at 668 Seville Road, Wadsworth, Ohio.

**Count I**

18. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

19. The air pollution control device which WRE uses on the two hard chromium electroplating tanks at its Wadsworth Ohio facility is not listed at 40 C.F.R. § 63.343(c).

20. Section 63.343(d) of the Chrome Plating NESHAP, 40 C.F.R. § 63.343(d), required WRE to submit to the Administrator, for approval, a description of its alternative air pollution control device, test results collected in accordance with 40 C.F.R. § 63.344(c) verifying the performance of the device, a copy of the operation and maintenance plan, and appropriate monitoring parameters to be monitored to demonstrate continuous compliance with the standard.

21. WRE did not submit to U.S. EPA a description of its alternative control device until February 9, 1999.

22. WRE did not submit for the Administrator's approval a complete operation and maintenance plan indicating appropriate operating parameters to be monitored until June 28, 1999.

23. WRE's use of an alternative air pollution control device without submitting for the Administrator's approval an operation and maintenance plan, indicating appropriate operating parameters to be monitored for the alternative device, violated 40 C.F.R. § 63.343(d) and Section 112(i)(3)(A) of the Act, 42

U.S.C. § 7412(i)(3)(A).

**Count II**

24. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

25. Section 63.344(c)(1) of the Chrome Plating NESHAP, 40 C.F.R. § 63.344(c)(1), requires WRE to conduct performance testing according to Method 306 or Method 306(a), both of which require that the sampling time for each run be at least 120 minutes and that the sample volume for each run be 1.70 dscm.

26. WRE conducted its initial performance test on October 16, 1996. WRE conducted three test runs but each run only lasted for one hour. The sample volumes for runs 1, 2, and 3 were only 40.97, 52.44, and 50.31 dscf respectively.

27. WRE's failure to comply with the sampling time and volume requirements specified at 40 C.F.R. § 63.344(c)(1) for Method 306A violates 40 C.F.R. § 63.344(c) and Section 112(I)(3)(A) of the Act, 42 U.S.C. § 7412(I)(3)(A).

**Count III**

28. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

29. Section 63.347(e) of the Chrome Plating NESHAP, 40 C.F.R. § 63.347(e), required WRE to submit a notification of compliance status report no later than 90 calendar days following the completion of its initial performance test.

30. Because WRE completed its initial performance test on October 16, 1996, it was required by the Chrome Plating NESHAP to submit its notification of compliance no later than January 14, 1997.

31. WRE did not submit its notification of compliance to U.S. EPA until February 9, 1999.

32. WRE's failure to submit a notification of compliance within 90 days of completing its initial performance test violated 40 C.F.R. § 63.347(e) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A).

**Proposed Civil Penalty**

33. Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires the Administrator to 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.

34. 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 \$18,150. 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), a copy of which is enclosed with this complaint.

35. 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.

36. Respondent may pay the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, the United States of America", 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: Yasmine Wadia, (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

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

**Rules Governing This Proceeding**

37. 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. 40138 (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.

**Opportunity to Request a Hearing**

38. The Administrator must provide 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), with an opportunity for a hearing. Respondent has the right to 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, as discussed in paragraphs 39 through 45 below. If Respondent

requests a hearing, U.S. EPA will hold the hearing and conduct it according to the Consolidated Rules.

**Answer**

39. Respondent must file a written answer to this complaint if Respondent contests any material fact alleged in 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 following address:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

40. 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.

41. 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.

42. Respondent's failure to admit, deny or explain any material factual allegation in the complaint constitutes an admission of the allegation.

43. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. basis for opposing any proposed relief; and
- d. whether Respondent requests a hearing.

44. Respondent must send a copy of the answer and any documents subsequently filed in this action to Janice S. Loughlin, Associate Regional Counsel (C-14A), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Loughlin at (312) 886-7158.

45. If Respondent does not file a written answer within 30 calendar days after receiving this complaint, the Administrator may issue a default order, after motion, under Section 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 Respondent's right to contest such factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the default order becomes final under Section 22.27(c) of the Consolidated Rules.

**Settlement Conference**

46. 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 Yasmine Wadia, 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. Wadia at (312) 886-4035.

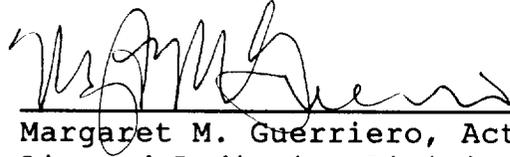
47. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written answer to this Complaint. Respondent may pursue simultaneously the settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue 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**

48. 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. 28, 1999  
Date



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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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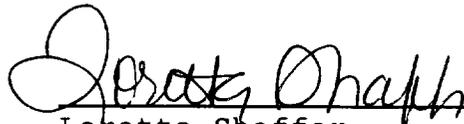
In the Matter of Western Roto Engravers, Inc.  
Docket No.

CAA-5-99-043

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy 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" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) and a copy of the Penalty Policy (described in the Complaint) by 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:

on the 29<sup>th</sup> day of September, 1999.

  
Loretta Shaffer  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: P 140 777 343

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