

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )

Techmetals, Inc. )  
Dayton, Ohio, )

Respondent. )

) Docket No. CAA-5- '99 - 020

) 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), and 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.

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 Techmetals, Inc., a corporation doing business in the State of Ohio.

Statutory and Regulatory Background

**National Emission Standards for Hazardous Air Pollutants**

4. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), the U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Hard and

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Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 C.F.R. Part 63, Subpart N) on January 25, 1995.

60 Fed. Reg. 4963.

5. Pursuant to 40 C.F.R. § 63.340(a), the provisions of 40 C.F.R. Part 63, Subpart N, apply 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. § 63.345(b)(1), after January 25, 1995, no person may construct a new affected source without submitting a notification of construction to the Administrator.

7. Pursuant to 40 C.F.R. § 63.345(b)(5)(i), if the construction of a new affected source commences after January 25, 1995, the notification of construction for the new affected source must be submitted as soon as practicable before the construction is planned to commence.

8. 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.

9. In addition to the notifications of construction required by 40 C.F.R. § 63.345(b), 40 C.F.R. § 63.347(c)(2)(ii) requires the owner or operator of a new affected source that has an initial startup after January 25, 1995, to submit a notice of the

date that construction was commenced no later than 30 days after the commencement of construction, if construction was commenced after January 25, 1995.

10. Pursuant to 40 C.F.R. § 63.347(c)(2)(iii), the initial notifications required by 40 C.F.R. § 63.347(c)(2) must include a notice of the actual startup date submitted no later than 30 days after that date.

11. Pursuant to 40 C.F.R. § 63.343(a)(2), the initial compliance date for the owner or operator of an affected source with an initial startup date after January 25, 1995, is the initial startup date of the source.

12. 40 C.F.R. § 63.342(f)(3)(i) requires the owner or operator of an affected source to prepare an operation and maintenance plan to be implemented no later than the compliance date.

13. 40 C.F.R. § 63.343(b)(1) requires the owner or operator of an affected source subject to the requirements of 40 C.F.R. Part 63, Subpart N, to conduct an initial performance test as required at 40 C.F.R. § 63.7.

14. Pursuant to 40 C.F.R. § 63.7(a)(2)(iii), the owner or operator of an affected source required to do performance testing under a relevant standard shall perform such test within 180 days after the compliance date specified in an applicable subpart of 40 C.F.R. Part 63 for an existing source subject to an emission

standard established pursuant to Section 112(d) of the Act.

#### **Ohio State Implementation Plan**

15. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit a plan that provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

16. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, on October 31, 1980, the Administrator approved Ohio Administrative Code (OAC) Chapter 3745-31 as part of the federally enforceable SIP for the State of Ohio (45 Fed. Reg. 72119). The approval became effective on October 23, 1980, and includes OAC 3745-31-02.

17. OAC 3745-31-02 states that no person shall cause, permit, or allow the installation of a new source of air pollutants without first obtaining a permit to install from the Director.

18. Pursuant to OAC 3745-15-01(L), "Director" means the director of the Ohio Environmental Protection Agency (OEPA).

19. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, on June 10, 1982, the Administrator approved OAC Chapter 3745-35 as part of the federally enforceable SIP for the State of Ohio

(47 Fed. Reg. 25144). The approval became effective on July 12, 1982, and includes OAC 3745-35-02.

20. OAC 3745-35-02 states that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the OEPA in accordance with the requirements of this rule.

#### **General Allegations**

21. Techmetals is a "person" as defined at 42 U.S.C. § 7602 and at OAC 3745-15-01(U).

22. Techmetals owns and operates a facility located at 2200 East First Street, Dayton, Ohio (the facility), which includes tanks used for chromium electroplating.

23. The tanks used for chromium electroplating at the facility are "air contaminant sources" as defined at OAC 3745-35-01(B)(1) and, upon construction, were "new sources" of air pollutants as defined at OAC 3745-15-01(R).

24. Techmetals began operating three chromium electroplating tanks located at the facility after January 25, 1995, and therefore, the tanks are new chromium electroplating tanks according to 40 C.F.R. Part 63, Subpart N.

25. In April 1996, Techmetals commenced construction of a decorative chromium electroplating tank (OEPA source number P015) at the facility.

26. In February 1997, Techmetals commenced construction of

a hard chromium electroplating tank (OEPA source number P018) at the facility.

27. In January 1998, Techmetals commenced construction of a hard chromium electroplating tank (OEPA source number P016) at the facility.

28. In October 1996, Techmetals began operating a decorative chromium electroplating tank (OEPA source number P015) at the facility.

29. In May 1997, Techmetals began operating a hard chromium electroplating tank (OEPA source number P018) at the facility.

30. In March 1998, Techmetals began operating a hard chromium electroplating tank (OEPA source number P016) at the facility.

31. On March 4, 1999, Richard Karl, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to Techmetals, alleging violations of the federal regulations set forth at 40 C.F.R. §§ 63.343(c)(2)(i), 63.343(c)(2)(ii), 63.343(c)(5)(ii)(B), 63.344(d)(4), 63.346(b)(8), and 63.347(e)(2)(iv).

32. On March 4, 1999, Richard Karl, Acting Director, Air and Radiation Division, Region 5, issued a Notice of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to Techmetals, alleging violations of the federally enforceable

regulations set forth in the Ohio State Implementation Plan (SIP) at OAC 3745-31-02(A) and OAC 3745-35-02(A).

33. U.S. EPA offered Techmetals an opportunity to discuss the Finding and Notice of Violation. The parties held conference on April 20, 1999, in U.S. EPA's Region 5 office in Chicago, Illinois.

34. The Attorney General of the United States and the Administrator of U.S. EPA have jointly determined, each through their respective delegates, that an administrative penalty action is appropriate for the violations alleged in this Complaint.

#### Count I

35. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

36. According to 40 C.F.R. § 63.343(b)(1), Techmetals was required to submit a notification of construction to the Administrator for any affected sources that Techmetals began constructing after January 25, 1995.

37. According to 40 C.F.R. § 63.343(b)(5)(i), Techmetals was required to submit this notification of construction to the Administrator as soon as was practicable before the construction of the new affected sources commenced.

38. Techmetals did not submit a notification of construction for OEPA sources P015, P018, and P016 to the Administrator until January 4, 1999, after construction of these

sources was completed.

39. Techmetals failure to submit a notification of construction to the Administrator for OEPA sources P015, P018, and P016 prior to beginning the construction of the three new affected sources violates 40 C.F.R. § 63.345(b)(1) and (5)(i) and Section 112 of the Act.

### Count II

40. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

41. According to 40 C.F.R. § 63.347(c)(2)(ii), Techmetals is required to submit to the Administrator a notification of the date when construction of any new affected source commenced no later than 30 days after such date.

42. According to 40 C.F.R. § 63.347(c)(2)(iii), Techmetals is required to submit to the Administrator a notification of the actual startup date of any new affected source within 30 calendar days after such date.

43. Techmetals did not notify the Administrator of the dates that it began the construction of and the dates that it began the operation of OEPA sources P015, P018, or P016 until January 4, 1999, more than 30 days after it commenced operation of these sources.

44. Techmetals' late notification of the dates that it began the construction of and late notification of the dates that

it began the operation of OEPA sources P015, P018, and P016, violate 40 C.F.R. § 63.347(c)(2)(ii) and (iii) and Section 112 of the Act.

### **Count III**

45. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

46. According to 40 C.F.R. § 63.342(f)(3)(i), Techmetals was required to prepare and implement an operation and maintenance plan for OEPA source P015 by October 1996, for OEPA source P018 by May 1997, and for OEPA source P016 by March 1998.

47. Techmetals did not prepare and implement operation and maintenance plans for OEPA sources P015, P018, and P016 until January 11, 1999.

48. Techmetals' failures to prepare and implement operation and maintenance plans for OEPA source P015, P018, and P016 until January 11, 1999, violate 40 C.F.R. § 63.342(f)(3)(i) and Section 112 of the Act.

### **Count IV**

49. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

50. According to 40 C.F.R. § 63.343(b)(1), Techmetals was required to conduct initial performance tests as required under 40 C.F.R. § 63.7 on OEPA sources P018 and P016.

51. According to 40 C.F.R. § 63.7(a)(2)(ii), Techmetals was

required to conduct an initial performance test on or before November 1997 for OEPA source P018, and on or before September 1998 for OEPA source P016.

52. Techmetals failed to conduct an initial performance test for OEPA source P016 until January 4, 1999, and failed to conduct an initial performance test for OEPA source P018 until February 10, 1999.

53. Techmetals' failure to conduct an initial performance test for OEPA source P016 until January 4, 1999, and its failure to conduct an initial performance test for OEPA source P018 until February 10, 1999, violate 40 C.F.R. § 63.343(b)(1) and Section 112 of the Act.

#### Count V

54. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

55. According to OAC 3745-31-02(A), Techmetals is required to obtain a permit to install from the Director of the Ohio EPA prior to causing, permitting, or allowing the installation of a new source of air pollutants.

56. Techmetals did not apply for a permit to install for OEPA source P015 until December 20, 1996, for OEPA source P018 until June 2, 1997, and for OEPA source P016 until November 17, 1997.

57. Techmetals' failures to apply for and obtain permits to

install for OEPA sources P018, P016, and P015 until after the construction of each source began violate OAC 3745-31-02(A) of the Ohio SIP.

**Count VI**

58. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

59. According to OAC 3745-35-02(A), Techmetals is required to obtain a permit to operate from the Director of the Ohio EPA prior to causing, permitting, or allowing the operation or other use of any air contaminant source.

60. Techmetals did not apply for a permit to operate for OEPA sources P018, P016, and P015 until September 9, 1998.

61. Techmetals' failures to apply for and obtain permits to operate for OEPA sources P018, P016, and P015 until after the initial startup date of each source violate OAC 3745-35-02(A) of the Ohio SIP.

**Proposed Civil Penalty**

62. The Administrator of U.S. EPA may assess a civil penalty not to exceed \$27,500 per day of violation up to a total of \$220,000 for violations of requirements under the Act that occurred on or after January 31, 1997 and \$25,000 per day of violation up to a total of \$200,000 for violations of requirements under the Act that occurred before 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.

63. 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.

64. Based upon the facts alleged in this Complaint and the factors in paragraph 63, above, Complainant proposes to assess a civil penalty against Respondent of \$36,190. 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.

65. 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 monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Because the subject violations involved only nominal economic benefit to the Respondent, Complainant did not include an economic benefit component in the proposed penalty.

66. In evaluating the seriousness of the violation, Complainant considered the importance of the reporting, testing, and permitting requirements to achieving the goals of the Act and its implementing regulations. These regulations are very important to the regulatory scheme of the Act because they are intended to limit the release of chromium, an extremely hazardous air pollutant. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

67. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced in August, 1997, and continued through February, 1999. Thus, Complainant based the penalty on a 19 month duration of violations.

68. In calculating the proposed penalty, Complainant considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth is less than \$100,000, as determined from a report prepared by the Dun & Bradstreet financial information service on November 5, 1998.

Accordingly, the proposed penalty includes a component based on the size of Respondent's business.

69. 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 has not increased the proposed penalty based on this factor.

70. Complainant considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the November 5, 1998, Dun & Bradstreet report, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

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

72. 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

Susan Tennenbaum, (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**

73. 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, as discussed in paragraphs 74 through 77 below. 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 and the Revocation

or Suspension of Permits" (Consolidated Rules),  
40 C.F.R. Part 22. Enclosed with the Complaint served on  
Respondent is a copy of the Consolidated Rules.

**Answer**

74. 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.

75. 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.

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

77. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. the facts that Respondent intends to place at issue; and
- c. whether Respondent requests a hearing as discussed in paragraph 73 above.

78. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Susan Tennenbaum, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Tennenbaum at (312) 886-0273.

79. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Administrator of U.S. EPA may issue a default order, after motion, under 40 C.F.R. § 22.17(a). 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 60 days after a default order becomes the final order of the Administrator under 40 C.F.R. § 22.27 or § 22.31.

#### **Settlement Conference**

80. 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 Erik Hardin, 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 Mr. Hardin at (312) 886-2402.

81. 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**

82. 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.

7/14/99  
Date

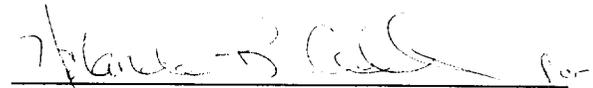
  
Margaret M. Guerriero, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

In the Matter of Techmetals, inc.  
Docket No. CAA-5- '99 - 020

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 and the Revocation or Suspension of Permits," 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 15<sup>th</sup> day of July, 1999.

  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: PS64 115 662

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