

of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.

3. The Respondent is Acme Hard Chrome Inc., which operates a job shop metal finishing facility in Alliance, Ohio providing plating, polishing, and grinding services to mid west customers.

STATUTORY AND REGULATORY BACKGROUND

4. On January 25, 1995, pursuant to Section 112 of the Act, U.S. EPA published, as a final rule, the National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks ("Chrome Plating NESHAP"), found at 40 C.F.R. Part 63, Subpart N, 60 Fed. Reg. 4948.

5. The federal regulation found at 40 C.F.R. § 63.343(b)(1) provides that an owner or operator of an affected source subject to the requirements of this subpart must conduct an initial performance test as required under § 63.7, using the procedures and test methods listed in § 63.7 and § 63.344.

6. The federal regulation found at 40 C.F.R. § 63.342(c)(1)(i) provides that during tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 milligrams of total chromium per dry

standard cubic meter (mg/dscm) of ventilation air (6.6×10^{-6} grains per dry standard cubic foot (gr/dscf)).

7. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit a plan which 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.

8. Section 110(n)(1) of the Act, 42 U.S.C. § 7410(n)(1), provides that any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to Section 110 as in effect prior to November 15, 1990, shall remain in effect as part of such applicable implementation plan.

9. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the Administrator approved Ohio Administrative Code (OAC) Chapter 3745-31 as part of the federally enforceable SIP ("State Implementation Plan") on October 31, 1980 (45 Fed. Reg. 72119). This approval became effective on October 23, 1980. This includes OAC 3745-31-02, which requires a permit to install ("PTI").

10. OAC 3745-31-02 (A) provides that no person shall cause, permit, or allow the installation of a new source of air pollutants ... or cause, permit, or allow the modification of an

air contaminant source ... without first obtaining a permit to install from the director.

11. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), prohibits any person from operating a source in violation of any emissions standard, limitation, or regulation promulgated under Section 112.

GENERAL ALLEGATIONS

12. Acme is a "person" as defined at Section 302 of the Clean Air Act, 42 U.S.C. § 7602.

13. Acme owns and operates a hard chrome plating facility located at 555 Freedom Avenue, Alliance, Ohio, which contains ten tanks that are subject to the Chrome Plating NESHAP.

14. On March 23, 1999, Richard C. Karl, Acting Director, Air and Radiation Division, Region 5, issued a Notice of Violation pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and a Finding of Violation to Acme, alleging violations of the applicable Chrome Plating NESHAP, 40 C.F.R. § 63.340-347 and of the Ohio State Implementation Plan for permits to install, Ohio Administrative Code Chapter 3745-31 (45 Fed. Reg. 72119).

15. U.S. EPA and Acme held a conference call on April 21, 1999, to discuss the Notice of Violation and Finding of Violation.

Specific Allegations

COUNT I - OAC 3745-31-02(a)

16. Paragraphs 1 through 15 are incorporated by reference, as if set forth in this paragraph.

17. According to OAC 3745-31-02(a), no person shall cause, permit, or allow the installation of a new source of air pollutants ... or cause, permit, or allow the modification of an air contaminant source ... without first obtaining a permit to install from the director.

18. Acme installed tanks 1, 2, and 3 in April 1997 and tanks 5 and 7 in July 1997.

19. A final PTI was granted from Ohio EPA on November 26, 1997.

20. Acme's failure to secure a PTI prior to installation of the tanks constitutes a violation of OAC 3745-31-02(a).

COUNT II - 40 C.F.R. § 63.343(b)(1)

21. Paragraphs 1 through 15 are incorporated by reference, as if set forth in this paragraph.

22. According to 40 C.F.R. § 63.343(b)(1), an owner or operator of an affected source subject to the requirements of this subpart must conduct an initial performance test as required under § 63.7, using the procedures and test methods listed in § 63.7 and § 63.344.

23. In accordance with 40 C.F.R. § 63.7(a)(2), Acme was

required to conduct this initial performance test within one-hundred eighty (180) days of the January 25, 1997 compliance date for hard chromium electroplating tanks, which is on or before July 24, 1997, or within one-hundred eighty (180) days after the initial startup for new hard chromium electroplating tanks, as established under 40 C.F.R. § 63.343(a)(1)(ii).

24. Existing tanks 9, 10, 11, and 12 were tested on October 16, 1997, and passed.

25. Acme's failure to conduct an initial performance test within 180 days of the January 25, 1997 compliance date for hard chromium electroplating tanks constitutes a violation of the testing deadline established under 40 C.F.R. § 63.343(b)(1) and § 63.7(a)(2), and of Section 112 of the Clean Air Act.

COUNT III - 40 C.F.R. § 63.342(c)(1)(i)

26. Paragraphs 1 through 15 are incorporated by reference, as if set forth in this paragraph.

27. According to 40 C.F.R. § 63.116(c), during tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air (6.6×10^{-6} grains per dry standard cubic foot

(gr/dscf)).

28. Tanks 1, 2, and 3 were newly installed in April of 1997 and control system 1 was initially tested on October 14, 1997. The results were 0.01608 mg/dscm. Acme failed in excess of 6.72% above the standard.

29. On December 11, 1997, an air flow elbow was replaced.

30. On February 19, 1998, tanks 1, 2, and 3 were tested again and passed.

31. Acme's failure to control the emissions below the standard limit constituted a violation of the emission limit for hard chromium tanks established by 40 C.F.R. 63.342(c)(1)(i) and Section 112 of the Act.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

32. Pursuant to Section 113(d)(1) of the Act, 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 40 C.F.R. Part 19, 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 Act.

33. 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 the Complainant to take the following factors into consideration in determining

the amount of penalty assessed under Section 113:

- (a) the size of the Respondent's business;
- (b) the economic impact of the penalty on the 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 credible evidence (including evidence other than the applicable test method);
- (e) payment by Respondent of penalties previously assessed for the same alleged violations;
- (f) the economic benefits of noncompliance; and
- (g) the seriousness of the alleged violations.

34. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General have authorized U.S. EPA to include in this administrative penalty action, violations which allegedly began more than 12 months prior to the filing of this administrative action.

35. After consideration of the factors set forth at Section 113(e)(1) of the Act and 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 **\$47,600**. 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), a copy of which is attached to this Complaint as Exhibit A. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases.

36. The proposed penalty of \$47,600 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.

37. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

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

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Margaret Sieffert (AE-17J)
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

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

38. 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 bona fide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

OPPORTUNITY TO REQUEST A HEARING

39. 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 in Paragraphs 40 through 45 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 and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316

(1992), a copy of which is attached to this Complaint as Exhibit B.

ANSWER

40. To avoid being found in default, you 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 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 day, in which case the deadline shall be extended to the next business day.

41. 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.

42. Your Answer shall also specifically state:

- (a) the circumstances or arguments which you allege constitute grounds for a defense;
- (b) the facts that you intend to place at issue; and
- (c) whether you request a hearing discussed in

Paragraph 39, above.

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

44. You must send a copy of your Answer and any documents subsequently filed in this action to Allison Gassner, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Gassner at (312) 886-2250.

45. 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 sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

SETTLEMENT CONFERENCE

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

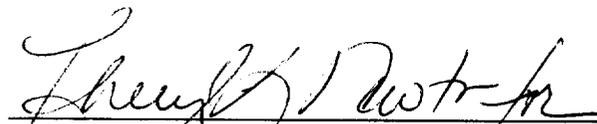
telephone Ms. Sieffert at (312) 353-1151.

47. 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 process. 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.

CONTINUING OBLIGATION TO COMPLY

48. 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.

8/4/99
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

In the Matter of Acme Hard Chrome, Inc.

Docket No. **CAA-5-99-023**

CERTIFICATE OF SERVICE

I hereby certify that I, Loretta Shaffer, filed the original of the foregoing Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order (Order) Assessing Penalties against Acme Hard Chrome, Inc. Docket No. **CAA-5-99-023** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the Order 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 Policies (described in the Complaint) was sent via certified mail, return receipt requested to:

Richard Burton, President
Acme Hard Chrome, Inc.
555 Freedom Avenue
P.O. Box 2388
Alliance, Ohio 44601

P 140 777 331
Certified Mail Number

I also certify that a copy of the Order was sent by first class mail to:

Daniel Aleman, Acting Administrator
Air Pollution Control Division
Canton City Health Department - City Hall
420 Market Ave. North
Canton, Ohio 44702-1544

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

PROF. REGISTRATION
REC'D
99 AUG -5 P2:41

on the 5th Day of August, 1999

Loretta Shaffer
Loretta Shaffer, Secretary
AECAS (MN-OH)