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REGIONAL OFFICE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

99 07-5 00 02

IN THE MATTER OF:)
)
Master Chrome Service, Inc.) DOCKET No. 5-CAA-5-99-001
Cleveland, Ohio)
)
Respondent)

CONSENT AGREEMENT AND CONSENT ORDER

1. This civil administrative proceeding for the assessment of a penalty was initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and the Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(2) and 22.43.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, of the United States Environmental Protection Agency, Region 5. The Respondent is Master Chrome Service, Inc., which owns and operates a facility located at 5709 Herman Avenue, N.W., Cleveland, Ohio.

3. Respondent's facility includes five hard chromium electroplating tanks which are subject to the requirements for existing hard chrome electroplating tanks contained in the National Emission Standard 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.

4. The Complainant filed a two count Complainant and Notice of Opportunity For Hearing On Proposed Administrative Order Assessing Penalties (Complaint) on November 9, 1998. Count 1 of the Complaint alleged that Respondent violated 40 C.F.R. § 63.342 (c)(1)(I)

because emissions from its Tanks #4 and #5 violated the applicable emission limit during performance tests. Count 2 of the Complaint alleged that Respondent violated 40 C.F.R. § 63.7(a)(2)(iii) because it failed to conduct required performance testing within 180 days after the compliance date of January 25, 1997.

5. The parties have agreed to settle this action by entering into this Consent Agreement and Consent Order (CACO) pursuant to 40 C.F.R. §§ 22.18(b) and (c).

NOW THEREFORE,

6. The Respondent admits the jurisdictional allegations in the Complaint, neither admits nor denies the remaining findings of fact and conclusions of law in the Complaint, and consents to the terms of this CACO.

7. This CACO constitutes full and final settlement of all civil and administrative claims and causes of action that were alleged in the Complaint.

8. The Respondent waives any and all rights to request a hearing on any issue of fact or law alleged in the Complaint, as provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A) and 40 C.F.R. §22.15(c). The Respondent also waives any and all rights to file a petition for judicial review of this CACO in the applicable United States District Court, as provided by Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4).

9. The Respondent certifies that to the best of its knowledge it is currently in compliance with the CAA regulations for National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks at 40 C.F.R. Part 63, Subpart N.

10. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and in accordance

with the Clean Air Act Stationary Source Civil Penalty Policy (October 25, 1991) and based upon the facts alleged in the Complaint, Complainant initially proposed a civil penalty of \$137,457.

11. During settlement discussions, Respondent provided operating data and certifications to Complainant. In consideration of the foregoing and Respondent's cooperation in this matter, Complainant has determined that \$32,000, plus interest, is an appropriate and fair civil penalty to settle this action.

12. Respondent consents to the issuance of the Consent Order hereinafter recited and consents for purposes of settlement to the payment of the civil penalty cited in paragraph 11.

13. All civil penalties under this CACO shall be made payable to **Treasurer, United States of America** by certified or cashier's check and sent to:

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

14. The civil penalty of \$32,000 shall be paid in three installments, at a 7% annual interest rate. The first payment of \$10,000 is due on June 1, 1999. The second payment in the amount of \$11,580.82 will be due on November 1, 1999. The third payment in the amount of \$11,580.82 will be due on February 1, 2000. The second and third installment payment may be prepaid anytime prior to February 1, 2000, with the appropriate interest payment.

15. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of each check and transmittal letter to:

- 1) Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604;

- 2) Julie Brandt
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604; and
- 3) Susan Perdomo
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

16. Respondent's failure to timely comply with any material and substantial provision of this CACO shall render the entire unpaid portion of the assessed penalty of \$137,457 immediately due and payable, together with all accrued interest. Such failure may also subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413 (d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below. In any such collection action, the validity, amount and appropriateness of this CACO or the penalty and charges assessed hereunder shall not be subject to review.

17. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. §§ 3717, 3731, Respondent shall pay interest and penalties on debts owed to the United States and a charge to cover the costs of debt collection, including processing and handling costs and attorneys fees. If the civil penalty is not paid pursuant to the terms of this CACO, Respondent shall pay the following amounts:

- a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) [see 4 C.F.R. § 102.13(c)] from the date a copy of this CACO as issued is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a such copy of this CACO is mailed to Respondent. In addition, no interest shall be

payable on any portion of the assessed penalty that is suspended and deferred and is not subsequently required to be paid.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalty is more than 30 days past due.

c. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount of the assessed penalty, interest and handling charges, Respondent shall be liable to pay the United States' enforcement and collection expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

18. Nothing in this CACO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other Federal, state or local laws or statutes.

19. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting Complainant's ability to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

20. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

21. Nothing in this CACO shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

22. Nothing in this CACO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. The Respondent specifically denies that any conduct which could lead to any criminal charges occurred and further Respondent is unaware of

any such inquiry at the signing of this CACO.

23. This CACO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CACO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

24. Each party shall bear its own costs, attorney fees and disbursements in this action.

25. The parties to this agreement consent to the entry of this CACO without further notice.

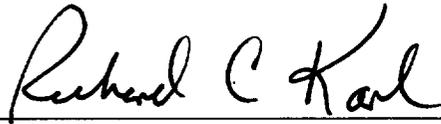
26. This CACO constitutes the entire agreement between the parties.

In the Matter of: Master Chrome Service, Inc.
Docket No. CAA-5-99-001

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

**U.S. ENVIRONMENTAL PROTECTION AGENCY,
COMPLAINANT**

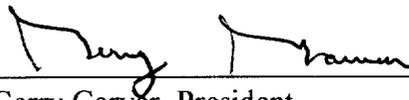
Date: 4-2-99



Richard Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency

**MASTER CHROME SERVICE, INC.
RESPONDENT**

Date: 3/31/99



Gerry Garver, President
Master Chrome Service, Inc.

In the Matter of: Master Chrome Service, Inc.
Docket No. CAA-5-99-001

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent, Master Chrome Service, Inc., is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: 4/5/99



David Ullrich
Acting Regional Administrator
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that I filed one original of the foregoing Consent Agreement and Consent Order (CACO) Assessing Administrative Civil Penalties Against Master Chrome Service, Inc., Docket Number 5-CAA-5-99-001, with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent the other executed original copy of the CACO via certified mail, return receipt requested, to:

Jerry Garver, President
Master Chrome Service, Inc.
5709 Herman Avenue, N.W.
Cleveland, Ohio 44102

I also certify that copies of the CACO were sent by first class mail to:

Honorable Carl Charneski, Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Mary Davis, Esquire
4070 Mayfield Road
Cleveland, Ohio 44121

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Mark Vilem, Project Coordinator
Division of the Environment
Cleveland Department of Public Health
1925 Saint Claire
Cleveland, Ohio 44114

on the 5th day of April, 1999.

P300 759 728
Certified Mail Article Number

Shwanda Mayo
Shwanda Mayo, Secretary
ARD/AECAB/AECAS (MN-OH)

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
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