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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. **CAA-5-99-049**  
)  
Yale Polishers and Platers, ) Proceeding to Assess an  
Inc. ) Administrative Penalty  
Chicago, Illinois, ) under Section 113(d) of the  
) Clean Air Act,  
Respondent. ) 42 U.S.C. § 7413(d)  
)

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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 Yale Polishers and Platers, Inc. (Yale), a corporation doing business in the State of Illinois.
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. Pursuant to 40 C.F.R. § 63.7(a)(2)(iii), the owner or operator of an affected existing source must complete performance testing by July 25, 1996, which is 180 days after the compliance date of January 25, 1996, as set forth at 40 C.F.R. § 63.343.
8. Under 40 C.F.R. § 63.343 (b)(1), except in limited circumstances, an owner or operator of an affected source is required to conduct an initial performance test as required under 40 C.F.R. § 63.7, using the procedures and test methods listed in 40 C.F.R. § 63.7 and 40 C.F.R. § 63.344.
9. 40 C.F.R. § 63.343 (b)(2) provides that, "(I)f the owner or operator of an affected source meets all of the following

criteria, an initial performance test is not required to be performed under this subpart:

- (i) The affected source is a decorative chromium electroplating tank or a chromium anodizing tank; and
- (ii) A wetting agent is used in the plating or anodizing bath to inhibit chromium emissions from the affected source; and
- (iii) The owner or operator complies with the applicable surface tension limit of § 63.342 (d) (2) as demonstrated through the continuous compliance monitoring required by paragraph (c) (5) (ii) of this section.

10. 40 C.F.R. § 63.343(c) (5) (i) provides that in lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 45 dynes/cm as the maximum surface tension value that corresponds to compliance with the applicable emission limitation, if the criteria of 40 C.F.R. § 63.343 (b) (2) are met.
11. 40 C.F.R. § 63.343(b) (2) (iii) requires the owner or operator to demonstrate compliance with the applicable surface tension limit of 45 dynes/cm through the continuous compliance monitoring required by 40 C.F.R. § 63.343 (c) (5) (ii).

12. 40 C.F.R. § 63.343(c)(5)(ii) states that on and after the date on which the initial performance test is required to be completed under Section 63.7 (July 25, 1996), the owner or operator of an affected source choosing to comply with the 45 dynes/cm standard must monitor the surface tension according to 40 C.F.R. § 63.343 (c)(5)(ii)(A) through (C).
13. On December 12, 1992, U.S. EPA approved Illinois' program for issuance of federally enforceable state operating permits (FESOP) as part of the federally enforceable State Implementation Plan (SIP) for the State of Illinois. 57 Fed. Reg. 59936.
14. On July 9, 1996, the Illinois Environmental Protection Agency issued a FESOP, Application No. 86100005, to Yale. This FESOP was issued pursuant to Illinois' federally-approved program for issuance of FESOPs that is incorporated into the SIP. Pursuant to 40 C.F.R. § 52.23, failure to comply with the terms of a FESOP is a violation of the Illinois SIP and section 113 of the Clean Air Act.
15. 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**

16. Yale owns and operates a metal plating facility at 5247 South Keeler Avenue, Chicago, Illinois (Facility).
17. Yale owns and operates one decorative chrome electroplating tank at its Facility.
18. Yale's decorative chrome electroplating tank is an "affected source" under 40 C.F.R. § 63.340 (a) and is subject to the NESHAP for chromium Emissions at 40 C.F.R. § 63.340-347.
19. Yale uses a fume suppressant, which is both a wetting agent and a foam blanket, to control emissions.
20. Yale is subject to 40 C.F.R. § 63.343 (b), which requires Yale to demonstrate compliance by either: (1) conducting an initial performance test; or (2) complying with the applicable surface tension requirements set forth at 40 C.F.R. § 63.343 (c) (5).
21. Permit condition 18 of Yale's FESOP requires Yale to monitor the surface tension of its decorative chromium plating tank.
22. On August 20, 1999, U.S. EPA issued a Finding of Violation and a Notice of Violation to Yale for violations of the National Emission Standard for Chromium Emissions and for violations of its FESOP. On September 9, 1999, U.S. EPA and Yale held a conference to discuss the Finding of Violation and the Notice of Violation.

**Count I**

23. Paragraphs 1 through 22 are realleged as if fully set forth herein.
24. Yale did not perform an initial performance test as required under 40 C.F.R. § 63.7 and § 63.343 (b)(1), using the test methods listed in 40 C.F.R. § 63.7 and § 63.344, in violation of 40 C.F.R. § 63.7 (a) and § 63.343 (b)(1), and Section 113 of the Act, 42 U.S.C. § 7413.
25. Yale failed to perform surface tension readings on their hexavalent decorative chromium electroplating tank, in violation of 40 C.F.R. § 63.343 (b)(2), and Section 113 of the Act, 42 U.S.C. § 7413.
26. Yale has failed to establish compliance with 40 C.F.R. § 63.342 (d), the standard for hexavalent decorative chromium electroplating tanks.

**Count II**

27. Paragraphs 1 through 26 are realleged as if fully set forth herein.
28. Yale has not performed surface tension readings of its hexavalent chromium plating tank, in violation of condition 18 of its FESOP and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

**Proposed Civil Penalty**

29. 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.

30. 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 \$1,000.00. 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. 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 balance sheets from 1996 to the present, the proposed penalty has been adjusted downward to reflect Respondent's limited ability to pay a penalty amount and to continue in business.
32. 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**

33. 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 must simultaneously 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

Karl Karg, (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**

34. 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**

35. 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.

36. 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.
37. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.
38. 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.
39. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Karl Karg, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Karg at (312) 886-7948.
40. 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**

41. 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 Nicholas Autry, 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. Autry at (312) 886-2258.
42. 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 simultaneously pursue the 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 the parties hold a conference.

**Continuing Obligation to Comply**

43. 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.

9/29/99  
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

**CAA-5- '99 - 049**

RECEIVED

In the Matter of Yale Polishers and Platers, Inc.

Docket No:

CAA-5-99-049

'99 SEP 30 10:34

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby 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:

Richard McCarter, President  
Yale Polishers and Platers, Inc.  
5247 South Keeler Avenue  
Chicago, Illinois 60632

I also certify that copies of the Administrative Complaint were sent by First Class Mail to:

David Kolaz, Manager  
Compliance and Systems Management Section  
Bureau of air  
Illinois Environmental Protection agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

Harish Narayan Acting Regional Manager  
Region I  
Illinois Environmental Protection Agency  
1701 First Avenue  
Suite 1202  
Maywood, Illinois 60153

on the 30<sup>th</sup> Day of September 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P 140 895 455 **CAA-5-99-049**

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