UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2016

REPLY TO THE ATTENTION OF:

VIA E-MAIL: bloucks@electrohio.com
RETURN RECEIPT REQUESTED

William F. Loucks, General Manager
Electrolizing Corporation of Ohio
1325 East 152nd Street
Cleveland, Ohio, 44112

Dear Mr. Loucks:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Electrolizing Corporation of Ohio, docket no. **CAA-05-2016-0046**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2016.

Pursuant to paragraph 35 of the CAFO, Electrolizing Corporation of Ohio must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Robert M. Peachey, Office of Regional Counsel, (312) 353.4510.

Sincerely,

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Robert M. Peachey/C-14J
Bob Hodanbosi, Chief, Ohio Division of Air Pollution Control
bob.hodanbosi@epa.ohio.gov

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:		**Docket No. CAA-05-2016-0046**
Electrolizing Corporation of Ohio **Cleveland, Ohio**	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
Respondent.	)	

REGIONAL HEARING CLERK RECEIVED SEP 30 2016 U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 5

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Section 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. § 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3).

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Electrolizing Corporation of Ohio, a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), authorizes EPA to promulgate regulations for particular industrial sources that emit one or more of the hazardous air pollutant (HAPs) listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b), in significant quantities..

10. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Subpart N) on January 25, 1995. *See* 60 Fed. Reg. 4,948 (Jan. 25, 1995) (codified at 60 C.F.R. Part 63, Subpart N). On September 19, 2012, EPA amended Subpart N by, among other things, lowering the emission limitations in 40 C.F.R. § 63.342. *See* 77 Fed. Reg. 58,220 (Sept. 19, 2012).[1]

11. Pursuant to 40 C.F.R. § 63.340(a), Subpart N applies, in part, to each chromium electroplating tank at facilities performing hard chromium electroplating.

12. Subpart N, at 40 C.F.R. § 63.341(a), defines "hard chromium electroplating" as the process by which a thick layer of chromium (typically 1.3 to 760 microns) is electrodeposited on a base material to provide a surface with functional properties such as wear resistance, a low coefficient of friction, hardness, and corrosion resistance.

[1] The citations in this CAFO reflect the regulations in effect before the September 19, 2012, amendments.

13. Subpart N, at 40 C.F.R. § 63.342(a), provides that each owner or operator of an affected source subject to the provisions of Subpart N shall comply with the requirements of Subpart N on and after the compliance dates specified in 40 C.F.R. § 63.343(a).

14. Subpart N, at 40 C.F.R. § 63.342(b)(1), states, in part, that the emission limitations in 40 C.F.R. § 63.342 apply during tank operation, which Subpart N defines as the time in which current and/or voltage is being applied to a chromium electroplating tank or a chromium anodizing tank, and during periods of startup and shutdown. *See* 40 C.F.R. § 63.341(a).

15. Subpart N, at 40 C.F.R. § 63.342(b)(2), states that for a group of tanks with a common add-on air pollution control device, the emission limitations in 40 C.F.R. § 63.342 apply whenever any one affected source is operated.

16. Subpart N, at 40 C.F.R. § 63.342(f)(1)(i), states that owners or operators of an affected source subject to the emission limitations in 40 C.F.R. § 63.342 shall at all times, including periods of startup, shutdown, and malfunction, operate and maintain that source, including associated air pollution control devices and monitoring equipment, in a manner consistent with good air pollution control practices.

17. Pursuant to Subpart N, at 40 C.F.R. § 63.343(a)(2), the owner or operator of a hard chromium electroplating tank that had an initial startup after January 25, 1995 shall comply with the emission limitations in 40 C.F.R. § 63.342 immediately upon startup of the source.

18. Subpart N, at 40 C.F.R. § 63.343(c)(1)(i), requires that the owner or operator of an affected source, or a group of affected sources under common control, complying with the emission limitations in 40 C.F.R. § 63.342 through the use of a composite mesh-pad system shall determine the outlet chromium concentration using the test methods and procedures in 40 C.F.R. § 63.344(c), and shall establish as a site-specific operating parameter the pressure drop across the

system during the initial performance test, setting the value that corresponds to compliance with the applicable emission limitation, using the procedures in 40 C.F.R. § 63.344(d)(5). An owner or operator may conduct multiple performance tests to establish a range of compliant pressure drop values, or may set as the compliant value the average pressure drop measured over the three test runs of one performance test and accept ± 2 inches of water column from this value as the compliant range.

19. Subpart N, at 40 C.F.R. § 63.341(a), defines "composite mesh-pad system" as an add-on air pollution control device typically consisting of several mesh-pad stages. The purpose of the first stage is to remove large particles. Smaller particles are removed in the second stage, which consists of the composite mesh pad. A final stage may remove any reentrained particles not collected by the composite mesh pad.

20. Subpart N, at 40 C.F.R. § 63.343(c)(1)(ii), requires that, on and after the date on which the initial performance test is required to be completed under 40 C.F.R. § 63.7, the owner or operator of an affected source, or a group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating. To be in compliance with the standards, the composite mesh-pad system shall be operated within ± 2 inches of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

21. Subpart N, at 40 C.F.R. § 63.340(b), requires that the owners or operators of affected sources subject to the provisions of Subpart N shall comply with the requirements of Subpart A of this 40 C.F.R. Part 63 (General Provisions), according to the applicability of the General Provisions to such sources, as identified in Table 1 of Subpart N.

22. Table 1 of Subpart N lists 40 C.F.R. § 63.4 of the General Provisions as applicable to Subpart N.

23. The General Provisions, at 40 C.F.R. § 63.4(a)(1), require that no owner or operator subject to the provisions of 40 C.F.R. Part 63 shall operate any affected source in violation of its requirements.

24. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day for each violation, with a maximum of $295,000, for violations that occurred after January 12, 2009 through December 6, 2013, and a maximum of $320,000 for violations that occurred after December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

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

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

27. Respondent owns and operates a metal finishing facility at 1325 East 152nd Street, Cleveland, Ohio (the facility), where it conducts, as relevant to this CAFO, hard-chromium electroplating. *See* 40 C.F.R. § 63.341(a) (definition of "hard-chromium electroplating").

28. The facility consists of four existing hexavalent chromium-electroplating tanks subject to Subpart N: Tanks C51, C52, C53, and C54.

29. Emissions from tanks C51, C52, and C53 vent to a common three-stage composite mesh-pad system (System 1), and Tank C54 is equipped with its own composite mesh-pad system (System 2). *See* 40 C.F.R. § 63.341(a) (definition of "composite mesh-pad system").

30. Respondent determines the pressure drop across each system by summing the pressure drop across each of the three stages of the system.

31. During an inspection of the facility conducted on November 19, 2014 and after reviewing documents provided by Respondent after the inspection, EPA discovered that (1) on 10 days from January 12 through January 25, 2012, Respondent operated Tank C54 when System 2 could not generate a pressure drop reading due to the mesh pad lines having been crushed by construction of a new roof; and (2) on 41 days from January 28 through March 26, 2014, Respondent operated Tanks C51, C52, and C53 when one of the lines for the third stage of System 1 was frozen and unable to generate a pressure drop reading.

32. On July 28, 2015, EPA issued a Finding of Violation (FOV) to Respondent for the failure to monitor and record the pressure drop across System 2 from January 12 through January 25, 2012, and across System 1 from January 28 through March 26, 2014, once each day that Respondent operated the applicable tanks, in violation of 40 C.F.R. § 63.4(a)(1), 63.342(a), and 63.343(c)(1)(ii).

33. On September 22, 2015, EPA and Respondent met to discuss the July 28, 2015, FOV. On September 28, 2015, Respondent provided Complainant with additional documentation related to the allegations contained in the FOV. The parties have been engaged in subsequent good faith settlement negotiations since that time.

Civil Penalty

34. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, as well as Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $41,904.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a $41,904 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
(Field Tag 4200 of the Fedwire message should read:
"D68010727-Environmental Protection Agency".)

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

36. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard

Chicago, Illinois 60604

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 42 U.S.C. § 7413(d)(5).

General Provisions

40. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: peachey.robert@epa.gov (for Complainant), and bloucks@electrohio.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in paragraph 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that it is complying fully with Subpart N.

45. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

46. The terms of this CAFO bind Respondent, its successors and assigns.

47. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

48. Each party agrees to bear its own costs and attorneys' fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order
In the Matter of: Electrolizing Corporation of Ohio
Docket No. CAA-05-2016-0046

Electrolizing Corporation of Ohio, Respondent

9/22/2016
Date

William F. Loucks
General Manager
Electrolizing Corporation of Ohio

United States Environmental Protection Agency, Complainant

9/27/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Electrolizing Corporation of Ohio
Docket No. CAA-05-2016-0046

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

9/29/16
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Electrolizing Corporation of Ohio, Cleveland, Ohio
Docket Number: **CAA-05-2016-0046**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2016-0046**, which was filed on September 30, 2016, in the following manner to the following addressees:

Copy by E-mail to Respondent:	William F. Loucks bloucks@electrohio.com
Copy by E-mail to Attorney for Complainant:	Robert M. Peachey peachey.robert@epa.gov
Copy by E-mail to Attorney for Respondent:	Francis X. Lyons FLyons@schiffhardin.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: September 30, 2016

L Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5