

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS

Complainant,

v.

Case No. PCB 11-24

U.S. CHROME CORPORATION OF
ILLINOIS, a Connecticut corporation,

Respondent.

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JUL 28 2011

STATE OF ILLINOIS
Pollution Control Board

ANSWER AND AFFIRMATIVE DEFENSES

Respondent, U.S. Chrome Corporation of Illinois ("U.S. Chrome"), by its attorneys, DeWitt Ross & Stevens S.C., as and for an Answer to the Complaint, alleges and shows as follows:

COUNT I

Construction of Emission Sources Without a Permit

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ("Complainant"), by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

ANSWER: U.S. Chrome lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1 and, therefore, denies the same.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: Paragraph 2 states a legal conclusion and requires no answer.

3. At all times relevant to this Complaint, Respondent U.S. Chrome Corporation of Illinois, Inc. (“U.S. Chrome”) was and is a Connecticut corporation doing business in the State of Illinois at its facility located at 305 Herbert Road, Herbert, Boone County, Illinois 61244 (“Facility”).

ANSWER: U.S. Chrome admits the allegations of paragraph 3.

4. As a part of its Facility operations, U.S. Chrome conducts hard chromium electroplating operations including the treatment and coating of metal surfaces.

ANSWER: U.S. Chrome admits the allegations of paragraph 4.

5. On May 31, 2002, the Illinois EPA received from U.S. Chrome a permit application to construct and operate one chromium electroplating tank and one composite mesh pad (“CMP”) system utilized to control chromium emissions generated during electroplating operations. The application stated, in part, that existing chromium electroplating Tank 8 would be removed from service and replaced with a larger size tank controlled by existing CMP Unit 5.

ANSWER: U.S. Chrome admits it filed a permit application with the Illinois EPA on or about May 30, 2002, that Illinois EPA received the application on May 31, 2002, and affirmatively alleges that the permit application speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of the application.

6. On October 21, 2002, the Illinois EPA issued to U.S. Chrome construction permit number 02050088 for U.S. Chrome to construct Tank 8, but denied U.S. Chrome’s application to revise lifetime operating permit number 75040121 on the grounds that the application did not contain performance testing data to demonstrate compliance with the National Emission Standard for Hazardous Air Pollutants (“NESHAP”) applicable to hard chromium electroplating operations, 40 CFR Part 63, Subpart N.

ANSWER: U.S. Chrome admits that on October 21, 2002, Illinois EPA did issue to U.S. Chrome construction permit number 02050088 and did deny U.S. Chrome’s application to revise lifetime operating permit number 75040121,

and affirmatively alleges that the permit documents speak for themselves. U.S. Chrome denies any allegations inconsistent with the language of the permit documents.

7. On January 9, 2003, the Illinois EPA received from U.S. Chrome an application to revise Lifetime Operating Permit 75040121. On April 1, 2003, the Illinois EPA received information supplementing U.S. Chrome's January 9, 2003 application explaining, in part, that as chromium electroplating Tank 8 that is the subject of construction permit number 02050088 was not constructed, the application was not requesting that this new emission source be included within the existing lifetime operating permit.

ANSWER: U.S. Chrome admits that it filed an application to revise Lifetime Operating Permit 75040121 with the Illinois EPA on January 7, 2003, that Illinois EPA received it on January 9, 2003, and affirmatively alleges that the permit application speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of the permit application.

8. On April 9, 2003, Illinois EPA issued to U.S. Chrome, Lifetime Operating Permit 75040121 authorizing the operation of thirteen (13) hard chromium electroplating tanks and five (5) three-stage CMP chromium separators, excluding new chromium electroplating Tank 8.

ANSWER: U.S. Chrome admits that on April 9, 2003, Illinois EPA issued to U.S. Chrome Lifetime Operating Permit 75040121 and affirmatively alleges that the permit speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of the permit.

9. On September 23, 2008, the Illinois EPA inspected the Facility for compliance with the Act and the NESHAP requirements for hard chromium electroplating operations, 40 CFR Part 63, Subpart N. During the inspection, Illinois EPA observed that U.S. Chrome had converted one existing tank from a cleaner tank to a hard chromium electroplating tank, designated as Tank 9; connected CMP Unit 5 to both the Tank 9 and existing Tank 8 to control

chromium emissions generated during the operation of both tanks; and, operated Tank 9 for a limited time period, commencing on or about July 1, 2008 -- all without having first obtained Illinois EPA-issued construction and operating permits.

ANSWER: U.S. Chrome admits that Illinois EPA did inspect U.S. Chrome's Facility on September 23, 2008. U.S. Chrome lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations relating to what Illinois EPA "observed" during such inspection and, therefore, denies the same. U.S. Chrome further denies that it failed to obtain any required permit. U.S. Chrome denies the remaining allegations in paragraph 9.

10. Illinois EPA further determined that the Facility: failed to conduct performance testing required by the NESHAP for hard chromium electroplating operations (40 CFR Part 63, Subpart N) to demonstrate chromium emissions generated during the operation of the converted electroplating tank were in compliance with the emission standard specified by the NESHAP; failed to monitor operation of the converted chromium electroplating tank controlled by CMP Unit 5 to ensure continuous compliance with the NESHAP hard chromium emission standards (40 CFR 63.342), failed to submit an initial notification informing the Illinois EPA that operation of the converted chromium electroplating tank had become subject to the hard chromium plating NESHAP requirements (40 CFR 63.9); and failed to maintain records required by the NESHAP for chromium electroplating operations involving Tank 9, 40 CFR 63.10.

ANSWER: U.S. Chrome lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations relating to what Illinois EPA "determined" and, therefore, denies the same. U.S. Chrome further denies any violation of law, express or implied, asserted by Illinois EPA.

11. On December 10, 2008, Illinois EPA issued a violation notice ("VN") letter to U.S. Chrome, citing violations of the NESHAP for hard chromium electroplating (40 CFR Part 63, Subpart N), the Act, and regulations thereunder resulting from: the modifications and operation of an existing

emissions source without first applying for and obtaining Illinois EPA-issued construction and operating permits; the failure to pay the requisite construction permit fee, maintain records, submit reports, and conduct performance testing prescribed by the NESHAP for hard chromium electroplating, 40 CFR Part 63, Subpart N.

ANSWER: U.S. Chrome admits that Illinois EPA issued a VN to U.S. Chrome on or about December 10, 2008 and affirmatively alleges that the VN speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of such VN. U.S. Chrome further denies any violation of law, express or implied, asserted by Illinois EPA.

12. On or about January 19, 2009, U.S. Chrome responded to the VN by submitting a joint construction and lifetime operating permit application, an initial notification report, a construction permit fee payment in the amount of \$500.00, and a 2007 AER stating, in part, that U.S. Chrome assumed operation of the converted cleaner tank was authorized by operating permit 75040121 as the permit allowed for the operation of 13 chromium electroplating tanks. In addition, the Illinois EPA was informed that, in January 2009, U.S. Chrome installed chromium electroplating Tank 10 to replace chromium electroplating Tank 1. Further, U.S. Chrome's joint construction and lifetime operating permit application stated that emission sources for which a construction permit were being sought had already been constructed by the Facility.

ANSWER: U.S. Chrome admits that on or about January 19, 2009 U.S. Chrome responded to the VN and affirmatively alleges that the response and any related submissions speak for themselves. U.S. Chrome denies any allegations inconsistent with the language of such response and submissions. U.S. Chrome lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 12 and, therefore, denies the same.

13. On February 18, 2009, the Illinois EPA issued a notice of incompleteness (“NOI”) to U.S. Chrome informing the Facility that the application had failed to set forth information clearly identifying all emission sources and air pollution control equipment utilized by the Facility and failed to provide the emissions data necessary to support the emissions limits being requested by the Facility.

ANSWER: U.S. Chrome admits that Illinois EPA issued a Notice of Incompleteness (“NOI”) to U.S. Chrome on or about February 18, 2009 and affirmatively alleges that the NOI speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of the NOI. U.S. Chrome further denies any violation of law, express or implied, asserted by Illinois EPA.

14. On April 7, 2009, U.S. Chrome submitted a joint application for a construction permit and a revised Lifetime Operating Permit, requesting, in part, a lifetime operating permit allowing the operation of seven chromium electroplating tanks.

ANSWER: U.S. Chrome admits it submitted a joint application for a construction permit and a revised Lifetime Operating Permit on April 7, 2009 and affirmatively alleges that the application speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of such application.

15. On May 4, 2009, the Illinois EPA issued to U.S. Chrome a notice of intent to pursue legal action (“NIPLA”) for U.S. Chrome’s: failure to apply for and obtain a permit prior to constructing chromium electroplating Tank 10; failure to conduct performance testing after converting one cleaner tank to a chromium electroplating tank controlled by CMP Unit 5; failure to submit initial notifications; and failure to maintain documenting CMP monitoring data.

ANSWER: U.S. Chrome admits that on May 4, 2009, Illinois EPA issued a NILPA to U.S. Chrome and affirmatively alleges the NILPA speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of the

NILPA. U.S. Chrome further denies any violation of law, express or implied, asserted by Illinois EPA.

16. On June 16, 2009, U.S. Chrome submitted additional information amending its April 7, 2009 permit application to include chromium electroplating Tank 10 controlled by CMP System 4S.

ANSWER: U.S. Chrome admits that it sent a letter to Illinois EPA on or about June 16, 2009 and affirmatively alleges that the letter speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of such letter.

17. On June 29, 2009, the Illinois EPA denied the application requesting a permit to construct chromium electroplating Tanks 9.1 and 10 because the application stated that Tanks 9.1 and 10 were constructed by the Facility prior to June 16, 2009, on a date better known by Respondent.

ANSWER: U.S. Chrome admits that on June 29, 2009, Illinois EPA denied a construction permit application submitted by U.S. Chrome. U.S. Chrome lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 17 and, therefore, denies same.

18. On June 29, 2009, Illinois EPA issued a revised Lifetime Operating Permit 75040121 authorizing the operation of eight chromium electroplating tanks, including the converted chromium electroplating tank, designated as Tank 9.1, and chromium electroplating Tank 10, controlled by five CMP systems or alternatively, fume suppressant containing a wetting agent.

ANSWER: U.S. Chrome admits that Illinois EPA issued a revised Lifetime Operating Permit on June 29, 2009 and affirmatively alleges that the permit speaks for itself. U.S. Chrome denies any allegations inconsistent with the language of such permit.

19. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides, as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER: Paragraph 19 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited Act.

20. The Respondent, a Connecticut corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

ANSWER: Paragraph 20 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies the allegations in paragraph 20.

21. Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), provides, in pertinent part, as follows:

No person shall:

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * *

ANSWER: Paragraph 21 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited Act.

22. Section 201.142 of the Illinois Pollution Control Board ("Board") Air Pollution Control Regulations, 35 Ill. Adm. Code 201.142, provides, as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 20L170(b) of this Part.

ANSWER: Paragraph 22 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

23. Section 201.102 of the Board's Air Pollution Control Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, as follows:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

* * *

"New Air Pollution Control Equipment": Any air pollution control equipment, the construction or modification of which is commenced on or after April 14, 1972.

New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

ANSWER: Paragraph 23 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

24. Respondent's chromium electroplating tanks are "emission source[s]," and "new emission source[s]," as those terms are defined in 35 Ill. Adm. 201.102.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies the allegations in paragraph 24.

25. Since 2002, on one or more dates better known to the Respondent, Respondent constructed or modified chromium electroplating Tanks 9.1 and 10 at the Facility, without first having applied for or obtained construction permits from Illinois EPA.

ANSWER: U.S. Chrome denies the allegation in paragraph 25.

26. By constructing or modifying chromium electroplating Tanks 9.1 and 10 at the Facility, without first having applied for and/or obtained construction permits from Illinois EPA. Respondent violated 35 Ill. Adm. Code 201.142 and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 26.

COUNT II

Operation of Emission Sources Without a Permit

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 and paragraphs 23 and 24 of Count I as paragraphs 1 through 23 of this Count II.

ANSWER: U.S. Chrome repeats, realleges, and incorporates by reference its answers to paragraphs 1- 21 and paragraphs 23 and 24 of Count I as if fully set forth herein.

24. Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143, provides, as follows:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by Section 201.157) as shall be specified in the construction permit.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

25. Since 2002, on one or more dates better known to the Respondent, Respondent has operated one or more new emission sources or new air pollution control equipment (*i.e.*, Tanks 9.1 and 10) at the Facility without having first obtained operating permits from Illinois EPA in accordance with 35 Ill. Adm. Code 201.143 and Section 9(b) of the Act, 415 ILCS 5/9(b) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 25.

26. By operating chromium electroplating Tanks 9.1 and 10 at the Facility, prior to obtaining operating permits from Illinois EPA. Respondent violated 35 Ill. Adm. Code 201.143 and thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 26.

COUNT III

Failure to Conduct Performance Testing and Implement Monitoring, Recordkeeping and Reporting Measures as Required Under NESHAP

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count 1 as paragraphs 1 through 20 of this Count III as if fully set forth herein.

ANSWER: U.S. Chrome repeats, realleges, and incorporates by reference its answers to paragraphs 1- 20 of Count I as if fully set forth herein.

21. Section 9. 1 (d)(1) and (2) of the Act, 415 ILCS 5/9.1 (d)(1) and (2) (2010), provides, in pertinent part, as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

ANSWER: Paragraph 21 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited Act.

22. Section 63.340 of Title 40 of the Code of Federal Regulations provides, in part, as follows:

(a) The affected source to which the provisions of this subpart [N] apply is each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

(b) Owners or operators of affected sources subject to the provisions of this subpart [N] must also comply with the requirements of subpart A of this part, according to the applicability of subpart A of this part to such sources, as identified in Table 1 of this subpart.

* * *

ANSWER: Paragraph 22 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

23. The Facility is subject to the requirements 40 C.F.R. Part 63, Subpart N.

ANSWER: Paragraph 23 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies the allegations in paragraph 23.

24. Section 63.7 of Title 40 of the Code of Federal Regulations provides, in part, as follows:

(a) Applicability and performance test dates.

* * *

(2) Except as provided in paragraph (a)(4) of this section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

25. Section 63.343 of Title 40 of the Code of Federal Regulations provides, in pertinent part, as follows:

(a) Compliance dates ...

* * *

(2) The owner or operator of a new or reconstructed affected source that has an initial startup after January 25, 1995, shall comply immediately upon startup of the source....

* * *

(b) Methods to demonstrate initial compliance.

(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, an owner or operator of an affected source subject to the requirements of this subpart is required to conduct an initial performance test as required under §63.7, except for hard chromium electroplaters and chromium anodizing operations in California which have until January 25, 1998, using the procedures and test methods listed in §§63.7 and 63.344.

(2) If the owner or operator of an affected source meets all of the following criteria, an initial performance test is not required to be conducted under this subpart:

(i) The affected source is a hard chromium electroplating tank, 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(c)(1)(iii), (c)(2)(iii), or (d)(2) as demonstrated through the continuous compliance monitoring required by paragraph (c)(5)(ii) of this section.

(3) If the affected source is a decorative chromium electroplating tank using a trivalent chromium bath, and the owner or operator is subject to the provisions of §63.342(e), an initial performance test is not required to be conducted under this subpart.

* * *

(c) Monitoring to demonstrate continuous compliance. The owner or operator of an affected source subject to the emission limitations of this subpart shall conduct monitoring

according to the type of air pollution control technique that is used to comply with the emission limitation. The monitoring required to demonstrate continuous compliance with the emission limitations is identified in this section for the air pollution control techniques expected to be used by the owners or operators of affected sources.

(1) Composite mesh-pad systems.

(i) During the initial performance test, the owner or operator of an affected source, or a group of affected sources under common control, complying with the emission limitations in §63.342 through the use of a composite mesh-pad system shall determine the outlet chromium concentration using the test methods and procedures in §63.344(c), and shall establish as a site-specific operating parameter the pressure drop across the system, setting the value that corresponds to compliance with the applicable emission limitation, using the procedures in §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.

ANSWER: Paragraph 25 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

25. U.S. Chrome was required to conduct an initial performance test after start-up of chromium electroplating Tank 9.1 as the exceptions provided in 40 CFR §63.343 were not applicable to it.

ANSWER: U.S. Chrome denies the allegations in paragraph 25.

26. U.S. Chrome failed to conduct an initial performance test after startup of chromium electroplating Tank 9.1 in accordance with the requirements set forth in 40 C.F.R. §§63.7 and 63.343 to demonstrate chromium emissions generated during the tank's operation are in compliance with the emissions standard specified by 40 C.F.R. §63.342.

ANSWER: U.S. Chrome denies the allegations in paragraph 26.

27. By failing to conduct an initial performance test after startup of chromium electroplating Tank 9.1 in accordance with the requirements set forth in 40 C.F.R. §§63.7 and 63.343, U.S. Chrome violated 40 CFR §§63.7 and 63.343 and thereby also violated Section 9.1(d) of the Act. 415 ILCS 5/9.1(d) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 27.

COUNT IV

Failure to Maintain Proper Records

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count III as paragraphs 1 through 23 of this Count IV.

ANSWER: U.S. Chrome repeats, realleges, and incorporates by reference its answers to paragraphs 1- 23 of Count III as if fully set forth herein.

24. Section 63.346 of Title 40 of the Code of Federal Regulations provides, in pertinent part, as follows:

(a) The owner or operator of each affected source subject to these standards shall fulfill all recordkeeping requirements outlined in this section and in the General Provisions to 40 CFR part 63, according to the applicability of subpart A of this part as identified in Table 1 of this subpart.

(b) The owner or operator of an affected source subject to the provisions of this subpart shall maintain the following records for such source:

(1) Inspection records for the add-on air pollution control device, if such a device is used, and monitoring equipment, to document that the inspection and maintenance required by the work practice standards of §63.342(f) and Table 1 of §63.342 have taken place. The record can take the form of a checklist and should identify the device inspected, the date of inspection, a brief description of the working condition of the device during the inspection, and any actions taken to correct deficiencies found during the inspection.

- (2) Records of all maintenance performed on the affected source, the add-on air pollution control device, and monitoring equipment;
- (3) Records of the occurrence, duration, and cause (if known) of each malfunction of process, add-on air pollution control, and monitoring equipment;
- (4) Records of actions taken during periods of malfunction when such actions are inconsistent with the operation and maintenance plan;
- (5) Other records, which may take the form of checklists, necessary to demonstrate consistency with the provisions of the operation and maintenance plan required by §63.342(f)(3);
- (6) Test reports documenting results of all performance tests;
- (7) All measurements as may be necessary to determine the conditions of performance tests, including measurements necessary to determine compliance with the special compliance procedures of §63.344(e);
- (8) Records of monitoring data required by §63.343(c) that are used to demonstrate compliance with the standard including the date and time the data are collected;
- (9) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during malfunction of the process, add-on air pollution control, or monitoring equipment;
- (10) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during periods other than malfunction of the process, add-on air pollution control, or monitoring equipment;
- (11) The total process operating time of the affected source during the reporting period;
- (12) Records of the actual cumulative rectifier capacity of hard chromium electroplating tanks at a facility expended

during each month of the reporting period, and the total capacity expended to date for a reporting period, if the owner or operator is using the actual cumulative rectifier capacity to determine facility size in accordance with §63.342(c)(2);

(13) For sources using fume suppressants to comply with the standards, records of the date and time that fume suppressants are added to the electroplating or anodizing bath;

(14) For sources complying with §63.342(e), records of the bath components purchased, with the wetting agent clearly identified as a bath constituent contained in one of the components;

(15) Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements, if the source has been granted a waiver under §63.10(f); and

(16) All documentation supporting the notifications and reports required by §63.9, §63.10, and §63.347.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

25. Since 2002, on one or more dates better known to the Respondent, U.S. Chrome failed to maintain the records required by 40 C.F.R. §63.346.

ANSWER: U.S. Chrome denies the allegations in paragraph 25.

26. By failing to maintain the records required by 40 C.F.R. §63.346, U.S. Chrome violated 40 CFR §63.346 and thereby also violated Section 9.1(d) of the Act. 415 ILCS 5/9.1(d) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 26.

COUNT V

Failure to Prepare and Submit Notifications of Compliance Status

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count III as paragraphs 1 through 23 of this Count V.

ANSWER: U.S. Chrome repeats, realleges, and incorporates by reference its answers to paragraphs 1- 23 of Count III as if fully set forth herein.

24. Section 63.347 of Title 40 of the Code of Federal Regulations provides, in pertinent part, as follows:

(a) The owner or operator of each affected source subject to these standards shall fulfill all reporting requirements outlined in this section and in the General Provisions to 40 CFR part 63, according to the applicability of subpart A as identified in Table I of this subpart. These reports shall be made to the Administrator at the appropriate address as identified in §63.13 or to the delegated State authority....

(b) The reporting requirements of this section apply to the owner or operator of an affected source when such source becomes subject to the provisions of this subpart....

* * *

(e) Notification of compliance status.

(1) A notification of compliance status is required each time that an affected source becomes subject to the requirements of this subpart.

(2) If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator a notification of compliance status, signed by the responsible official (as defined in §63.2) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the appropriate authority. The notification shall list for each affected source:

(i) The applicable emission limitation and the methods that were used to determine compliance with this limitation;

(ii) If a performance test is required by this subpart, the test report documenting the results of the performance test, which contains the elements required by §63.344(a), including measurements and calculations to support the special compliance provisions of §63.344(e) if these are being followed;

(iii) The type and quantity of hazardous air pollutants emitted by the source reported in mg/dscm or mg/hr if the source is using the special provisions of §63.344(e) to comply with the standards. (If the owner or operator is subject to the construction and reconstruction provisions of §63.345 and had previously submitted emission estimates, the owner or operator shall state that this report corrects or verifies the previous estimate.) For sources not required to conduct a performance test in accordance with §63.343(b), the surface tension measurement may fulfill this requirement;

(iv) For each monitored parameter for which a compliant value is to be established under §63.343(c), the specific operating parameter value, or range of values, that corresponds to compliance with the applicable emission limit;

(v) The methods that will be used to determine continuous compliance, including a description of monitoring and reporting requirements, if methods differ from those identified in this subpart;

(vi) A description of the air pollution control technique for each emission point;

(vii) A statement that the owner or operator has completed and has on file the operation and maintenance plan as required by the work practice standards in §63.342(f);

(viii) If the owner or operator is determining facility size based on actual cumulative rectifier capacity in accordance with §63.342(c)(2), records to support that the facility is small. For existing sources, records from any 12-month period preceding the compliance date shall be used or a description of how operations will change to meet a small designation shall be provided. For new sources, records of projected rectifier capacity for the first 12-month period of tank operation shall be used;

(ix) A statement by the owner or operator of the affected source as to whether the source has complied with the provisions of this subpart.

(3) For sources required to conduct a performance test by §63.343(b), the notification of compliance status shall be submitted to the Administrator no later than 90 calendar days following completion of the compliance demonstration required by §63.7 and §63.343(b).

(4) For sources that are not required to complete a performance test in accordance with §63.343(b), the notification of compliance status shall be submitted to the Administrator no later than 30 days after the compliance date specified in §63.343(a), except the date on which sources in California shall monitor the surface tension of the anodizing bath is extended to January 25, 1998.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited code.

25. Since 2002, on one or more dates better known to the Respondent, U.S. Chrome failed to prepare and submit to the administrator a complete and accurate notification of compliance status as required by 40 CFR §63.347(e).

ANSWER: U.S. Chrome denies the allegations in paragraph 25.

26. By failing to prepare and submit to the administrator a complete and accurate notification of compliance status as required by 40 CFR §63.347(e), U.S. Chrome violated 40 CFR §63.347(e) and also violated Section 9.1 (d) of the Act, 415 ILCS 5/9.1(d) (2010).

ANSWER: U.S. Chrome denies the allegations in paragraph 26.

COUNT VI

Failure to Submit the Requisite Construction Permit Fee

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 and paragraphs 23 and 24 of Count I as paragraphs 1 through 23 of this Count VI.

ANSWER: U.S. Chrome repeats, realleges, and incorporates by reference its answers to paragraphs 1 through 21 and paragraphs 23 and 24 of Count I as if fully set forth herein.

24. Section 9.12 of the Act, 415 ILCS 5/9.12 (2010), provides, in pertinent part, as follows:

(a) An applicant for a new or revised air pollution construction permit shall pay a fee, as established in this Section, to the Agency at the time that he or she submits the application for a construction permit. Except as set forth below, the fee for each activity or category listed in this Section is separate and is cumulative with any other applicable fee listed in this Section.

ANSWER: Paragraph 24 states a legal conclusion and requires no answer. To the extent an answer may be necessary, U.S. Chrome denies any allegations inconsistent with the language of the cited Act.

25. U.S. Chrome failed to submit to the Illinois EPA the requisite construction permit fees prior to constructing two hard chromium electroplating tanks.

ANSWER: U.S. Chrome denies the allegations in paragraph 25.

26. By failing to submit to the Illinois EPA the requisite construction permit fees prior to constructing two hard chromium electroplating tanks, U.S. Chrome violated Section 9.12 of the Act, 415 ILCS 5/9.12 (2010).

ANSWER: U.S. Chrome denies the allegations in Paragraph 26.

AFFIRMATIVE DEFENSES

1. U.S. Chrome asserts for its affirmative defense that at all times relevant to this Complaint, it had obtained and was operating pursuant to valid

operating permits, including Lifetime Operating Permit 75040121, and was in compliance with all permit conditions and applicable emissions limitations.

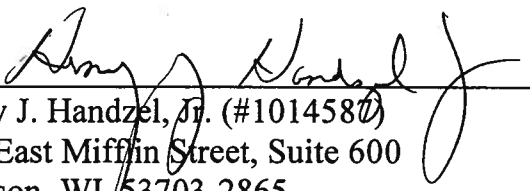
2. U.S. Chrome asserts for its affirmative defense that at all times relevant to this Complaint, any work performed on the chromium electroplating tanks at the facility was performed either pursuant to a valid construction permit or was considered routine maintenance and/or work that would not require a construction permit.

3. U.S. Chrome asserts for its affirmative defense that, to the extent U.S. Chrome may be shown to have been in temporary violation of any applicable law, regulation or permit condition, U.S. Chrome would be subjected to an arbitrary and unreasonable hardship if required to pay a penalty. The reasons supporting this include, without limitation: the economic condition of the facility, the small size and limited operations of the facility (the facility only has five employees), that U.S. Chrome was either under the good faith belief that it was in compliance with all applicable laws, regulations, and permit conditions, or upon learning that Illinois EPA believed it was not in compliance, U.S. Chrome proactively took steps to address the concerns of the Illinois EPA, and there was no environmental harm caused by any of the alleged activities.

WHEREFORE, Respondent, U.S. Chrome Corporation of Illinois, respectfully requests that the Board enter a judgment in favor of Respondent and against Complainant, People of the State of Illinois, on all counts, dismiss the Complaint with prejudice, and award such other relief that is just and equitable.

Dated this 26th day of July, 2011.

DEWITT ROSS & STEVENS s.c.

By: 
Henry J. Handzel, Jr. (#1014580)
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Madison, WI 53703-2865
608-255-8891

Attorneys for Respondent, U.S. Chrome
Corporation of Illinois

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on July 26, 2011, I served the attached Answer and Affirmative Defenses by:

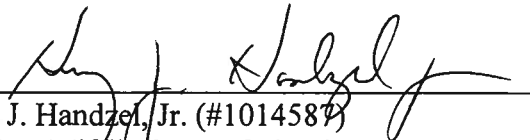
- certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)
- registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)
- messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)
- personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

on the following parties at the addresses below:

Name: George D. Theophilos, Esq.
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Attorneys for Respondent, U.S. Chrome Corporation
of Illinois

Subscribed to and sworn to before
me this 26th day of July, 2011


Notary Public

My commission expires: 6/16/2013