

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 7704

April 16, 2019

Michael G. Sterthous, Esq.
Whiteman, Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260

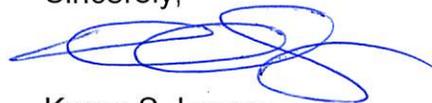
Re: Order on Consent
R4-2018-1022-191
Hartchrom, Inc.

Dear Mr. Sterthous:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$8,333.35, 1st of 6 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$8,333.33 is due on or before May 15, 2019.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: B. Potter
V. Schmitt



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 19

-by-

ORDER ON CONSENT
File No. R4-2018-1022-191

Hartchrom, Inc.
25 Gibson St.
Watervliet, NY 12189

Respondent

WHEREAS:

1. Pursuant to Environmental Conservation Law ("ECL") Article 19, the Department of Environmental Conservation ("Department" or "DEC") is the State agency which has jurisdiction over the environmental law and policy of the State pursuant to, *inter alia*, §3-0301 of the ECL.
2. Pursuant to ECL Article 19, the New York State Department of Environmental Conservation has administrative jurisdiction to safeguard the air resources of the state from pollution.
3. Respondent, Hartchrom, Inc., operates a chrome plating and surface finishing operation within Building 35 of the Watervliet Arsenal located at 25 Gibson Street, Watervliet, New York (Albany County) ("site").
4. Respondent is a person as defined at ECL §19-0107(1).
5. Respondent operates pursuant to Registration ID 4-0118-00042/0001.
6. Respondent utilizes a scrubber as a control device for their chromium plating operation.

7. On August 7, 2018 and August 9, 2018, Department staff inspected the site.

FIRST VIOLATION

8. At the time of the August 7, 2018 and August 9, 2018 inspections, Department staff checked Respondent's records for operation and maintenance practices in accordance with 40 CFR 63.342 (Table 1) as incorporated by reference by 40 CFR 63.342(f)(3)(i)(B).

9. Table 1 provides that on a quarterly basis a facility should:

"a. Visually inspect device to ensure that there is proper drainage, no chromic acid build-up on the pads, and no evidence of chemical attack on the structural integrity of the device;

b. Visually inspect the back portion of the mesh pad closest to the fan to ensure there is no breakthrough of chromic acid mist;

c. Visually inspect duct work from the tank to the control device to ensure that there are no leaks."

10. Department staff determined that Respondent violated "item C" in Table 1 by failing to visually inspect the entire duct work from the tank to the control device to ensure that there were no leaks as a portion of it was not subject to visible assessment.

SECOND VIOLATION

11. At the time of the inspection, Department staff observed cracks in the scrubber vent collection system.

12. Regulations at 6 NYCRR 200.7 provide that *"Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively."*

13. Respondent's failure to operate the control device in an effective manner is a violation of regulations at 6 NYCRR 200.7.

CIVIL PENALTY

14. Section 71-2103 generally provides for a civil penalty of not less than \$500 and not more than \$18,000 for each violation of Article 19 or any code, rule or regulation which was promulgated thereto.

WAIVER OF HEARING

15. Respondent hereby affirmatively waives its right to a hearing in the manner provided by law, consent to the issuance and entry of this Order and agree to be bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Penalty

In respect of the aforesaid violations, a civil penalty in the amount of SIXTY THOUSAND DOLLARS (\$60,000) of which FIFTY THOUSAND DOLLARS (\$50,000) shall be paid by money order, or check made payable to the order of "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to:

**The Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway
10th Floor
Albany, NY 12233-4900**

In the alternative, payment of the civil penalty can be made by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line>

The balance TEN THOUSAND DOLLARS (\$10,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$8,333.35 with the return of the Order by April 15, 2019;
2. \$8,333.33 by May 15, 2019;
3. \$8,333.33 by June 14, 2019;
4. \$8,333.33 by July 15, 2019;
5. \$8,333.33 by August 15, 2019
6. \$8,333.33 by September 16, 2019

The penalty assessed in the Order on Consent constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in

accordance with the schedule contained in the Order on Consent, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

The signed and notarized Order on Consent shall be sent to:

**New York State Department of Environmental Conservation
Region 4 Main Office
1130 North Westcott Road
Schenectady, NY 12306-2014
ATTN: Karen S. Lavery, Esq.**

II. Communications

All communications or submissions required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention – Victoria Schmitt, Regional Engineer, victoria.schmitt@dec.ny.gov. All communications shall include a reference to the Order on Consent Case Number R4-2018-1022-191.

III. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

V. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VII. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.
2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department- approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.
3.
 - a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.
 - b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.
4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any

other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

IX. Modifications and Extensions

No modifications or extensions of this Order shall be made or become effective except as may be specifically set forth in writing by the Department.

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

XIII. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

IX. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations.

X. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

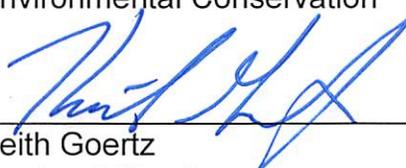
XI. This Order on Consent will terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

DATED: *April 15*
Rotterdam, New York

2019

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Hartchrom, Inc.

Authorized Representative Charles H Collins

SIGNED: Charles H Collins

TITLE: VIP General Manager

DATE: 10th of April 2019

STATE OF NEW YORK

)ss.:

COUNTY OF Albany)

On the 10 day of April in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared Charles H. Collins personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Michael G. Sterthous

Notary Public
Qualified in the County of:
My Commission Expires:

MICHAEL G. STERTHOUS
Notary Public, State of New York
Qualified in Schoenectady County
No. 02873000000
Commission Expires Sept. 29, 2021

Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department for review and approval, its updated Standard Operating Procedures (“the plan”) to include maintenance required under 40 CFR 63 Subpart N and regulations at 6 NYCRR 200.8.
2. Respondent shall ensure that all emissions collections to the scrubber can be visually inspected on a quarterly basis as required by 40 CFR 63 Subpart N.
3. Within 30 days of notification of Department approval of the plan set forth in paragraph No. 1 above, Respondent shall certify in notification submitted to the Department, that the required maintenance/record keeping has commenced at the facility.