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8 **BEFORE THE HEARING BOARD OF THE**
9 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**
10

11 **In the Matter of**

12 SOUTH COAST AIR QUALITY
13 MANAGEMENT DISTRICT,

14 Petitioner,

15 v.

16 LUBECO INC.,
17 [Facility ID No. 41229],

18 Respondent.
19

Case No. 6089-1

**FINDINGS AND DECISION FOR A
STIPULATED ORDER FOR
ABATEMENT**

Health & Safety Code § 41700,
District Rule 402

Hearing Dates: August 17 and 23, 2017
Time: 9:00 a.m.
Place: 21865 Copley Drive
Diamond Bar, CA 91765

20 **FINDINGS AND DECISION OF THE HEARING BOARD**

21 This Petition for an Order for Abatement was heard on August 17 and 23, 2017, pursuant to
22 notice and in accordance with the provisions of California Health and Safety Code §40823 and
23 District Rule 812. The following members of the Hearing Board were present: Julie Prussack,
24 Chair; Patricia Byrd, Vice Chair; Edward Camarena; Roger L. Lerner, M.D.; and Hon. Nate Holden.
25 Petitioner South Coast Air Quality Management District, Executive Officer, (“SCAQMD”) was
26 represented by Teresa R. Barrera, Senior Deputy District Counsel and Stacey Pruitt, Senior Deputy
27 District Counsel. Respondent Lubeco Inc. (“Respondent” or “Lubeco”) was represented by
28 Christopher G. Foster, Esq. of Clark Hill. The public was given the opportunity to testify. The

1 matter was submitted and evidence received.

2 The Hearing Board finds that GOOD CAUSE exists to issue the stipulated Order for
3 Abatement. This finding of good cause is based on the following:

4 1. The District has established a prima facie case that Lubeco, Inc. is violating
5 California Health and Safety Code section 41700 and District Rule 402. The District's prima facie
6 case is based on the following allegations and evidence:

- 7 a. Petitioner is a body corporate and politic established and existing pursuant to
8 Health and Safety Code §40000 *et seq.* and §40400 *et seq.*, and is the sole and
9 exclusive local agency with the responsibility for comprehensive air pollution
10 control in the South Coast Basin.
- 11 b. Respondent Lubeco is a business subject to the jurisdiction of the District. It is
12 located at 6859 Downey Avenue, Long Beach, CA 90805 (Facility ID No.
13 41229) ("Facility"), which is within the District's jurisdiction and is subject to
14 the District's regulations.
- 15 c. Lubeco is a metal finishing facility that serves the aerospace industry. Its
16 operations primarily involve surface preparation, anodizing, and coating aspects
17 of metal finishing operations. These processes utilize material that result in
18 emissions of hexavalent chromium.
- 19 d. Directly across the street from Lubeco, in the prevailing downwind direction, is
20 a residential neighborhood. Within 300 feet of the facility, in the prevailing
21 downwind direction, the District has identified approximately seven residential
22 duplexes that are home to a considerable number of persons. Additional
23 residences, including a large apartment building, as well as an elementary
24 school are located within 1000 feet of the facility.
- 25 e. On April 27, 2017, the District conducted a source test of the heated sodium
26 dichromate seal tank [Tank 14 of the anodizing line operating under Permit No.
27 G29366] and determined that the average emissions rate of hexavalent
28 chromium from the tank was 244,000 ng/dscm in concentration units and 1.71 x

1 10⁻⁴ lb/hr in mass emission units. The District alleges that these source test
2 results indicate a significant source of hexavalent chromium within the facility,
3 which, without appropriate air pollution controls, likely contribute substantially
4 to the elevated levels measured at the monitor near the facility, as well as the
5 elevated risk levels detected in the modeling.

- 6 f. **California Health & Safety Code §41700** and **District Rule 402** prohibit any
7 person from discharging from any source whatsoever such quantities of air
8 contaminants that will endanger the health or safety of any considerable number
9 of persons or to the public.
- 10 g. The term “endanger” as used in §41700 and District Rule 402 includes the
11 creation of a significant risk of harm.
- 12 h. The District alleges that Lubeco is violating **California Health & Safety Code**
13 **§41700** and **District Rule 402** because its emissions of hexavalent chromium
14 into the ambient air are creating a significant risk of harm that endangers the
15 health or safety of a considerable number of persons or the public.
- 16 i. District Rule 1402 was adopted to reduce the health risk associated with
17 emissions of toxic air contaminants from existing sources by specifying limits
18 for maximum individual cancer risk (MICR), cancer burden, and non-cancer
19 acute and chronic hazard index (HI) applicable to total facility emissions.
20 According to District Rule 1402 (c)(19), a “significant” risk level is defined as a
21 cancer risk of 100 in a million.
- 22 j. District staff has estimated the cancer risk at the nearest residential receptor by
23 modeling the emissions from Lubeco, including the emissions of the sodium
24 dichromate seal tank, and is alleging that Lubeco is creating a significant risk of
25 harm to a considerable number of persons/nearby residents. The District alleges
26 that the modeled cancer risk exceeds 100 in a million.
- 27 k. The District’s risk calculations, which are the basis for the alleged nuisance, are
28 consistent with elevated readings of hexavalent chromium measured at Monitor

No. 29 located directly in front of LUBECO.

2. Respondent LUBECO, Inc. denies the allegations. Respondent further denies that it is violating California Health & Safety Code §41700 and District Rule 402. Nonetheless, Respondent has agreed to stipulate to issuance of this Order for Abatement pursuant to California Health & Safety Code §42451; and

3. There are benefits to the community of issuing a prompt enforceable order in lieu of a prolonged hearing that will involve litigation of complex issues and numerous potential defenses.

CONCLUSIONS

1. The issuance of this Order for Abatement will not constitute a taking of property without due process of law.

2. If the issuance of this Order for Abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

3. This Order for Abatement is not intended to be nor does it act as a variance.

4. The issuance of this Order for Abatement upon a fully noticed hearing will not constitute a taking of property without due process of law.

ORDER

THEREFORE, subject to the aforesaid statements and good cause appearing, the Hearing Board hereby orders Respondent to immediately cease and desist from violating California Health & Safety Code §41700 and District Rule 402, or in the alternative comply with the following conditions and increments of progress:

1. LUBECO shall provide space and reasonable access to the District to install and operate up to 4 ambient air monitors and a meteorological (“met”) station on its property. Access shall be made available during LUBECO’s normal business hours and on weekend days and holidays that follow days of sampling. These monitors are intended to supplement the information generated by nearby off-site ambient air monitors also operated by the District.

2. LUBECO shall allow the District access to Tank No. 25 of the anodizing line and Tank No. 39 of the passivation line in order to conduct source testing for hexavalent chromium

1 emissions.

2 3. LUBECO shall not operate any process or piece of equipment identified in
3 Attachment 1 if the air monitoring results measured at the LUBECO downwind ambient air
4 monitor(s) exceed 1.0 ng/m³ of hexavalent chromium, based on an average of the most recent 3
5 samples. If a valid sample is not collected on any monitoring day, the most recent previous valid
6 samples available shall be used to determine the average. Prior to averaging, the level at the
7 downwind ambient air monitor shall reflect a subtraction for a. or b.:

8 a. Any result obtained from an upwind ambient air monitor. The upwind and
9 downwind ambient air monitors, including those on-site and off-site, shall be
10 determined solely by the District based on the met data generated for a particular
11 sampling day or, if that data is not available, based on the met data generated by
12 the next nearest met station.

13 b. Sub-regional background levels of Cr VI as determined by either:

- 14 • The value from the lowest monitor in the Paramount area on that sampling
15 day; or
- 16 • The average level found from the nearest MATES-IV site (Compton)
17 (0.11ng/m³) if a sub-regional background cannot be determined from the
18 monitors in the Paramount area (due to meteorological conditions, data from
19 other monitors, or the influence of Paramount sources)

20 4. Prior to averaging, the level at the LUBECO downwind monitor may reflect a
21 subtraction for known or suspected contributions from other known sources. Consideration of other
22 sources may include analysis of meteorological data from the days each sample was collected.
23 Specific sources should be identified as contributors before subtracting any potential contribution.
24 Emissions from unidentified or unverified 'other sources' cannot be considered as contributors to a
25 source-specific monitor.

26 5. Notwithstanding the foregoing, the District may authorize LUBECO to operate some
27 or all of the processes or pieces identified in Attachment 1 upon (i) a showing by LUBECO, to the
28 satisfaction of the District, that the cause or causes of the exceedance have been identified and

1 remediated, or (ii) if the LUBECO downwind monitoring results are determined by the District to
2 not have been caused by LUBECO. For example, the District may subtract for, or decide to not
3 impose curtailment, based on consideration of other pertinent information including, but not limited
4 to specific operational data from the facility on the days included in the average, modeling analysis
5 from the facility, monitoring data from the facility, etc. LUBECO may submit operational data that
6 shows that key Cr VI emitting devices/processes were not operational on a specific day and there
7 are no other contributing factors such as housekeeping activities or maintenance activities.

8 6. In addition, the District may, by written notification, remove specific processes or
9 pieces of equipment from the list of equipment required to be shut down under this condition if
10 emissions from the equipment are tested under conditions representing normal and expected
11 operation and it is shown to the satisfaction of the District that the processes or pieces of equipment
12 do not or would not materially contribute to an exceedance of the 1.0 ng/ m³ hexavalent chromium
13 action level at the LUBECO monitor.

14 7. If the District determines that the most recent 3-sample average, as calculated above,
15 has exceeded 1.0 ng/m³, then the District shall send written notice by 1:00 p.m. to LUBECO via
16 email (lubecoinc@gmail.com) of the monitoring results and the need to curtail operations pursuant
17 to Paragraph 3. On the same day that the curtailment notice is provided, the District shall initiate a
18 telephone call (Tel. No. 562-602-1791) at 3:00 p.m. with Steve Rossi, President of LUBECO or any
19 other responsible corporate official available at the time of the telephone call to advise LUBECO
20 of the monitoring results and the need to curtail operations. LUBECO shall have until 4:30 p.m. of
21 the day when the curtailment notice is received to wrap up operations.

22 8. LUBECO may resume operation of any processes and equipment shut down as the
23 result of a hexavalent chromium action level exceedance when it receives notice from the District
24 that the most recent 3-sample average, as calculated above, measured at the LUBECO monitor is
25 less than or equal to 1.0 ng/m³. The District shall notify LUBECO via email (lubecoinc@gmail.com)
26 of these air monitoring results at the earliest possible time after results from the laboratory have been
27 confirmed.

28 9. During any period of curtailment, the total quantity of uncontrolled hexavalent

1 chromium that is contained in coatings sprayed in spray booth Nos. 1, 2, and 3 combined shall not
2 exceed 0.3 pound per week. To demonstrate compliance with this condition, the operator shall
3 determine the amount of hexavalent chromium as follows: (coating usage) x (coating density) x
4 (weight percent of chromium compounds) x (ratio of hexavalent chromium molecular weight to
5 chromium compound molecular weight). Records shall be maintained to demonstrate compliance
6 with this condition.

7 10. During any period of curtailment, the total electric current applied to chromic acid
8 anodizing Tank No. 16 of the anodizing line and Ticermet "A" Tank No. 37 of the passivation line
9 combined shall not exceed 5,350 Ampere-Hours in any one week.

10 11. LUBECO may, at its discretion, maintain and operate ambient hexavalent chromium
11 monitor(s) consistent with a District approved Sampling and Analysis Plan. The District will review
12 LUBECO's Sampling and Analysis Plan within 7 District working days of submittal and either
13 approve, conditionally approve, or reject the Plan. Prior to the District's decision on LUBECO's
14 Sampling and Analysis Plan, LUBECO will operate consistent with its proposed Plan. LUBECO
15 may present evidence to the District consisting of data from ambient monitors operated consistent
16 with the Sampling and Analysis Plan, LUBECO's meteorological station, and other credible sources
17 justifying the reduction of any particular day's monitoring result to better reflect LUBECO's
18 contribution to ambient concentrations in the community. The District shall consider LUBECO's
19 evidence but is not required to use that evidence in concluding whether the 1.0 ng/m³ action level
20 has been exceeded and its determination may be appealed.

21 12. LUBECO shall immediately disconnect and cease operating Tank Nos. 23, 24, 35,
22 and 41. The contents of these tanks shall be removed from the premises within 90 days in accordance
23 with applicable hazardous waste control laws. LUBECO shall file a permit application to remove
24 these tanks from its permit in conjunction with the applications associated with the implementation
25 of the plan approved pursuant to Condition 20.

26 13. Starting immediately, LUBECO shall not conduct air sparging in Tank Nos. 14, 23,
27 24, and 25 of the anodizing line and Tank Nos. 33, 35, 39 and 41 of the passivation line; LUBECO
28 shall disconnect the air supply line to those tanks within 30 days. LUBECO shall cover with plastic

1 Tank Nos. 14, 23, 24, 25 of the anodizing line and Tank Nos. 33, 35, 37, 39, and 41 of the passivation
2 line when not in use. Except for Tank Nos. 16 and 37, LUBECO shall turn off the tank heaters for
3 any of the other tanks referenced in this paragraph when that tank is not in use.

4 14. Within 30 days, LUBECO shall install overlapping plastic strip curtains along the
5 western edge of the canopy associated with the overhead door on the west side of the building. The
6 distance between the bottom of the plastic strips and the ground shall not exceed ½ inch. In addition,
7 within 90 days, LUBECO shall install an industrial curtain along portions of the southern and eastern
8 end of the open process tank area consistent with the diagram and specifications set forth in
9 Attachment 2. The curtains shall be in place at all times during any heating of the tanks.

10 15. Starting immediately, LUBECO shall conduct all de-masking operations involving
11 chrome-sprayed parts inside a spray booth vented to air pollution control equipment. All materials
12 from de-masking that are laden with chrome-sprayed materials must be placed in a bag or container
13 with a lid prior to removing them from the spray booth.

14 16. Starting immediately, LUBECO shall store all paint trays used during the painting of
15 parts with chromated coatings in an enclosed container when not in use.

16 17. Starting immediately, LUBECO shall conduct general housekeeping and
17 maintenance using a vacuum device that is vented to High Efficiency Particle Arrestor (HEPA)
18 filters. The HEPA filters used shall be individually DOP or IEST-RP-CC007 tested with 0.3 micron
19 particles and certified to have an efficiency of not less than 99.97%. LUBECO shall cease using
20 brooms to sweep the premises.

21 18. Starting immediately, LUBECO shall conduct and document weekly inspections of
22 the roof. The inspections are intended to identify staining or material accumulations. If staining or
23 material accumulations are noted, LUBECO shall immediately clean the areas with a vacuum device
24 that is vented to High Efficiency Particle Arrestor (HEPA) filters. The HEPA filters used shall be
25 individually DOP or IEST-RP-CC007 tested with 0.3 micron particles and certified to have an
26 efficiency of not less than 99.97%.

27 19. LUBECO shall continue to comply with all housekeeping requirements of District
28 Rules 1469 and 1469.1. In addition, within 15 days, LUBECO shall prepare and file with the District

1 a housekeeping and maintenance plan and implementation schedule. SCAQMD will either approve,
2 partially approve, conditionally approve, or reject the plan. If the plan is rejected by SCAQMD, the
3 parties will return to the Hearing Board at the next earliest available hearing date after any
4 appropriate notice if applicable.

5 20. Within 45 days, LUBECO shall submit a plan to the District (Attn: Laki Tisopulos)
6 identifying all feasible measures by which it can reduce its emissions of hexavalent chromium.
7 Within 30 days of District approval of that plan, LUBECO shall submit any required permit
8 applications on an expedited basis. LUBECO shall complete installation of all upgrades as soon as
9 possible and in no event later than 150 days after issuance of the permits.

10 21. The Hearing Board may modify this Order for Abatement without the stipulation of
11 the parties upon a showing a good cause therefore, and upon making the findings requirement by
12 Health and Safety Code Section 42451(c) and District Rule 806(a). Any modification of the Order
13 shall be made only at a public hearing held upon 10 days published notice and appropriate written
14 notice to Respondent.

15 22. Unless terminated earlier, the Hearing Board shall retain jurisdiction over this matter
16 until December 1, 2018 at which time this Order for Abatement, if it has not been properly extended,
17 shall expire.

18 20. This Order for Abatement does not act as a variance, and Respondent is subject to all
19 rules and regulations of the District, and with all applicable provisions of California law. Nothing
20 herein shall be deemed or construed to limit authority of the District to issue Notices of Violation,
21 or to seek civil penalties, or injunctive relief, or to seek further orders for abatement, or other
22 administrative or legal relief.

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FOR THE BOARD: 
Patricia Byrd, Vice Chair

DATE SIGNED: *August 24, 2017*

I VOTE NO: 
Honorable Nate Holden

ATTACHMENT 1

TANK NO. 14 – DICHROMATE SEAL

TANK NO. 23 – DEOXIDIZER (TO BE REMOVED)

TANK NO. 24 – POTASSIUM DICHROMATE (TO BE REMOVED)

TANK NO. 25 – CHEM FILM

TANK NO. 33 – CHROMIC RINSE

TANK NO. 35 – DOW 7 (TO BE REMOVED)

TANK NO. 39 – PASSIVATE TY II

TANK NO. 41 – DICHROMATE RINSE (TO BE REMOVED)