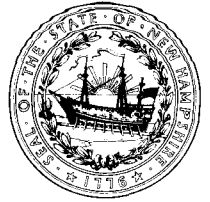




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 5, 2009

Gregory Burzynski, President
Aero-Dynamics, Inc.
142 Batchelder Rd
Seabrook, NH 03874-4403

Re: Docket No. AF 09-001 and AF 09-002 - Administrative Fine by Consent Agreements

Dear Mr. Burzynski:

Enclosed for your records are copies of the fully executed and accepted Administrative Fine by Consent Agreements in the above captioned matters.

We have received the first payments in each of these matters. Your second payments were due by February 1, 2009, and the final payments are due by October 1, 2009. Please disregard this payment request if the payments have crossed in the mail. All payments shall be made payable to "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Compliance Attorney
PO Box 95
Concord, NH 03302-0095

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

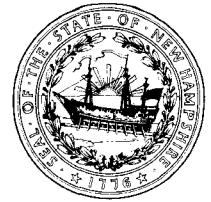
COPY
Jane Murray
Executive Secretary
DES Legal Unit

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau Head, NH DOJ
DES Public Information Officer
John J. Duclos, Administrator, HWCB-WMD, DES
Linda R. Birmingham, HWCB-WMD, DES

cc: DES Legal Unit



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Aero-Dynamics, Inc.
142 Batchelder Road
Seabrook, NH 03874-4403

Re: EPA ID #NHD091494971

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 09-001

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Aero-Dynamics, Inc. pursuant to RSA 147-A. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Aero-Dynamics, Inc. ("Aero"), is a corporation registered to do business in New Hampshire having a principal office and mailing address of 142 Batchelder Road, Seabrook, NH, 03874.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations.
3. Aero is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on September 5, 2006. EPA Identification Number NHD091494971 was assigned to Aero's site located at 142 Batchelder Road in Seabrook, New Hampshire (the "Facility").

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

4. On April 19, 2007, DES personnel inspected Aero for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No. WMD 07-016 ("LOD") to Aero on May 17, 2007. Based on the violations observed at the Facility during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Aero failed to conduct or document inspections of the wastewater treatment unit, as required by Env-Wm 353.04(f) and Env-Wm 353.04 (g), permitted by DES under Limited Permit # DES-HW-LP-02-02 ("Violation 1"). DES has determined this violation to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$500.

2. Aero failed to mark, as required by Env-Wm 507.03(a)(1)a, two (2) 55-gallon drums of hazardous waste marked "Chrome Waste" and two (2) 55-gallon drums of hazardous waste corrosive stored in the Main Hazardous Waste Storage Area with the beginning accumulation date when they are first used to store hazardous waste ("Violation 2"). For this violation, Env-C 612.06(k) authorizes a fine of \$250 for each container that is 55-gallons or greater, for a potential fine of \$1,000.

3. Aero failed to mark, as required by Env-Wm 507.03(a)(1)b, Env-Wm 507.03(a)(1)c and Env-Wm 507.03(a)(1)d, the two (2) 55-gallon drums of hazardous waste corrosive stored in the Main Hazardous Waste Storage Area with the words "Hazardous Waste", the contents of the container, and EPA or state waste number and; to mark the two (2) 55-gallon drums of hazardous waste marked "Chrome Waste" stored in the Main Hazardous Waste Storage Area with the words "Hazardous Waste" and the EPA or state waste number ("Violation 3"). For this violation, Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater, for a potential fine of \$2,400.

4. Aero failed to mark, as required by of Env-Wm 507.03(a)(2), one (1) 55-gallon container as "Hazardous Waste, Waste Corrosive Liquid, Acidic nos, Nitric Acid, Cadmium, D006/D002, 3/31/07" and one (1) 5-gallon container marked "Hazardous Waste, RQ Waste Caustic Alkali Liquid nos, D002, Ammonium Hydroxide, Ethylene Diamine" with a label that was visible (*i.e.*, label not hidden by a wall or other containers) ("Violation 4"). For this violation, Env-C 612.06(m) authorizes a fine of \$100 per container whose label is not visible, for a potential fine of \$200.

5. Aero failed to document inspections of the Main Hazardous Waste Storage Area, as required by Env-Wm 509.02(a)(1), for a total of one (1) week over a 1-year time period ("Violation 5"). For this violation, Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week.

6. Aero failed to maintain a personnel training program and provide hazardous waste training, as required by Env-Wm 509.02(a)(2), for the following employees with hazardous waste duties: no initial training for Emergency Coordinator Larry Cellamare; no initial and three (3) years of

annual training for Emergency Coordinator Chris Basti; no initial and four (4) years of annual training for Dan Swarbrick; no initial and three (3) years of annual training for hazardous waste handlers Gary Colcia, Juan Lopez, and Don Lebrun; and no initial and four (4) years of annual training for hazardous waste handler Joe Ferrairo. This training violation includes the sum of years of missed training for Aero employees at both 142 and 146 Batchelder Road facilities (“Violation 6”). For this violation, Env-C 612.07(b) authorizes a fine of \$1,750 for initial training and \$1,000 per individual not trained for annual updates, for a potential fine of \$32,250.

7. Aero failed to have spill control equipment, as required by Env-Wm 509.02(a)(4), within 100 feet of the Main Hazardous Waste Storage Area and adequate aisle space for three (3) 55-gallon containers of hazardous waste at the Main Hazardous Waste Storage Area (“Violation 7”). For this violation, Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area, for a potential fine of \$2,500.

8. Aero failed to maintain a complete contingency plan, as required by Env-Wm 509.02(a)(5), on-site (“Violation 8”). For this violation, Env-C 612.07(e) authorizes a fine of \$2,000.

9. Aero failed to post a complete emergency posting, as required by Env-Wm 509.02(b), at the nearest telephone to Main Hazardous Waste Storage Area (“Violation 9”). For this violation, Env-C 612.07(h) authorizes a fine of \$1,000 per area.

10. Aero failed to keep, as required by Env-Wm 509.03(d) and Env-Wm 507.01(a)(3), one (1) cubic yard satellite tote of hazardous waste F006/F019 located in the waste water treatment area and one (1) 5-gallon satellite container of hazardous waste located in the laboratory, closed at all times except to add or remove waste (“Violation 10”). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in the same satellite storage areas.

11. Aero failed to mark, as required by Env-Wm 509.03(g), the one (1) cubic yard satellite tote of hazardous waste F006/F019 located in the waste water treatment area, one (1) 1-gallon satellite container of cadmium waste and the one (1) 5-gallon satellite container located in the laboratory with the words “Hazardous Waste” or words identifying the contents of the container and failed to mark one (1) 1-gallon satellite container used to store hazardous waste cadmium located in the laboratory with the words “Hazardous Waste (“Violation 11”). For this violation, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$2,000.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 1, 4, 5, and 7 through 10, because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 2, 3, 6 and 11, which are Class I violations:

a. Violation 2 is a Class I violation. DES has determined due to Aero’s high level of

cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$800 for Violation 2;

b. Violation 3 is a Class I violation. DES has determined due to Aero's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$1,920 for Violation 3;

c. Violation 6 is a Class I violation. Based on information received from Aero the penalty was reduced to \$12,000 for failing to provide hazardous waste training for the following employees: no initial training for Emergency Coordinator Larry Cellamare; no initial and two (2) years of annual training for Emergency Coordinator Chris Basti and Don Lebrun; no initial and one (1) year of annual training for Gary Colcia. In addition, DES has determined due to other circumstances and Aero's high level of cooperation that a 30% reduction should be applied (*i.e.*, (20%) other circumstances and (10%) cooperation) to the gravity portion of the penalty (*i.e.*, \$3,301 (gravity) + \$7,285 (economic benefit) = \$10,586). DES is thus seeking a fine of \$10,586 for Violation 6; and

d. Violation 11 is a Class I violation. DES has determined due to Aero's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$1,600 for Violation 11.

3. Of the total administrative fine for the Class I violations, as described in this Administrative Fine by Consent, in the amount of \$14,906 Aero agrees to pay \$7,909 within the next ten (10) months as follows:

a. Aero shall pay \$799 of the fine upon execution of this Agreement by an authorized representative of Aero; and

b. Aero shall pay an additional \$7,110 in nine (9) equal monthly payments of \$790 due the first of each month beginning February 1, 2009 and ending with the last payment due on October 1, 2009.

4. Aero may receive credit of up to the remaining amount of the fine due, \$6,997, by undertaking the Supplemental Environmental Project ("SEP") described as follows: Aero shall expend at least \$13,994 to purchase an acid recycling unit with the condition that only the capital equipment costs (*i.e.*, unit and associated piping) will be credited towards the SEP amount. The SEP shall be credited at a 2:1 ratio (*i.e.*, for every two dollars spent on the SEP up to \$13,994, one dollar is credited towards payment of the remaining fine amount of \$6,997). The SEP is not otherwise required by virtue of any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. The acid recycling unit will reduce the amount of hazardous waste generated at the Facility. Prior to commencing the SEP, Aero will submit a purchase order to DES which provides a detailed description of the equipment that will be purchased and associated costs. If no objection is received from DES within ten (10) days of receipt, Aero shall place an order for the equipment and complete this project within one (1) year of the execution of the Agreement. Aero shall certify to DES within ten (10) days after the one (1) year anniversary of the Agreement that the SEP has been completed and that at least \$13,994 in

capital equipment costs were incurred. Aero shall submit with this certification, copies of purchase orders and receipts or cancelled checks. If the final cost of the equipment does not reach the \$13,994 commitment, then any remainder of the amount due, \$6,997, not paid through SEP credits will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund within ten (10) days after the one (1) year anniversary of the Agreement.

5. Payments under paragraph "V.3" and any payment that becomes due pursuant to paragraph "V.4" shall be paid by certified check made payable to "Treasurer, State of New Hampshire" and mailed to: **DES Legal Unit, Attn: Legal Assistant, PO Box 95, Concord, NH 03302-0095.**

6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

7. By executing this Administrative Fine by Consent, Aero waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

8. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Aero, the Director of the Waste Management Division, and the Commissioner of DES.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Aero-Dynamics, Inc.

~~COPY~~
By: Gregory Burzynski, President
Duly Authorized

Date 1/20/09

Department of Environmental Services

~~COPY~~
Michael J. Wimsatt, P.G., Director
Waste Management Division

Date 1/27/09

for **COPY** *Wills, Ass't Comm* 2/2/09
Thomas S. Burack, Commissioner Date

cc: DES Legal Unit
DB/RCRA/AF

cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
John J. Duclos, Administrator, HWCB-WMD
Linda R. Birmingham, HWCB-WMD