

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of:

DCI Aerotech Inc.  
Detroit, Michigan

U.S. EPA ID No.: MID985612878

Respondent.

Docket No. RCRA-05-2019-0001

Proceeding to Assess a Civil Penalty  
Under Section 3008(a) of the Resource  
Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

Complaint and Compliance Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is DCI Aerotech Inc., a corporation doing business in the State of Michigan.
4. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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

#### **Jurisdiction and Waiver of Right to Hearing**

7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

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

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

#### **Statutory and Regulatory Background**

10. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

12. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste

program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986).

14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period, or both.

#### **Factual Allegations**

15. Respondent was and is a "person" as defined by MAC 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "owner" or "operator," as those terms are defined under MAC 299.9106(g) and (f) and 40 C.F.R. § 260.10, of a facility located at 7515 Lyndon Street, Detroit, Michigan (Facility).

17. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

18. Respondent's Facility is a "facility," as that term is defined under MAC 299.9103(q) and 40 C.F.R. § 260.10.

19. Respondent's actions and processes at the facility cause the production of "hazardous waste," as that term is defined under MAC 299.9104(e) and MAC 299.9203 [40 C.F.R. § 260.10].

20. Respondent is a "generator" of hazardous waste, as that term is defined under MAC 299.9104(b) [40 C.F.R. § 260.10].

21. Since at least 2013, Respondent generated 1000 kilograms or greater of hazardous waste in some calendar months (qualifying it as a "Large Quantity Generator"), which it shipped

off-site to a treatment, storage or disposal facility within the United States.

22. On June 12, 2017, U.S. EPA sent to Respondent a Notice of Potential RCRA Violations and Opportunity for Settlement.

23. The Notice letter identified potential RCRA violations and areas of concern at the facility warranting an evaluation of RCRA compliance, and an option and timeline for resolution of the matter through a streamlined settlement process.

24. The goal of the streamlined settlement process is to quickly and efficiently assess and resolve the matter, bring the facility into compliance, and enter into an agreed upon CAFO.

25. Thereafter, Respondent engaged with U.S. EPA to assess and evaluate the facility's compliance, in part through voluntarily providing U.S. EPA all necessary information.

#### **Alleged Violations**

##### **Count I: Operating as Storage Facility without a RCRA Permit or Interim Status**

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

27. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925(a), the treatment, storage, or disposal of hazardous waste by any person without a RCRA permit or interim status is prohibited.

28. At all times relevant times, Respondent did not have a RCRA permit or interim status to treat, store, or dispose of hazardous waste at its facility.

29. Pursuant to MAC 299.9306(1) [40 C.F.R. § 262.34(a)], applicable to Large Quantity Generators, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided it meets the conditions specified under MAC 299.9306(1) [40 C.F.R. § 262.34(a)].

30. Pursuant to MAC 299.9306(1)(d) [40 C.F.R. § 262.34(a)(4)], these conditions include the requirements for owners or operators under Subparts C and D of 40 C.F.R. Part 265, and 40 C.F.R. § 265.16, and 40 C.F.R. § 268.7(a)(5)].

31. Respondent failed to meet conditions specified below.

#### Contingency Plan

32. Pursuant to MAC R 299.9607 [40 C.F.R. § 265.51(a)] the owner or operator must have a contingency plan for the facility, designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

33. Respondent did not have all the elements of a contingency plan for the facility from at least 2013 until August 2017.

#### Personnel Training

34. Pursuant to MAC R 299.9306(1)(d) [40 C.F.R §256.16(a) and (c)] facility personnel must be trained to perform their duties in a way that ensures the facility's compliance with the requirements of this part, including implementation of the facility's contingency plan. Facility personnel must take part in an annual review of this training.

35. At all relevant times, Respondent's training program for the facility's personnel did not include training on implementation of all the elements of the facility's contingency plan.

36. Respondent did not provide sufficient documentation of an annual review of this training to facility personnel in the years 2013, 2014, 2015 and 2016. Respondent did provide training on July 19, 2017.

#### **Count II: Biennial Reporting**

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth

in this paragraph.

38. Pursuant to MAC R 299.9308(1), a generator of more than 1,000 kilograms of hazardous waste must provide to the director or the director's designee the data necessary for the department to prepare and submit Michigan's hazardous waste report as required to the EPA. A Biennial Report is due by March 1 of each numbered year, see 40 C.F.R. § 262.41.

39. For 2013 and 2015, Respondent did not prepare and submit a biennial report to the MDEQ by March 1 for the preceding calendar year, in violation of MAC R 299.9308(1) [40 C.F.R. § 262.41].

40. On or about August 1, 2017, Respondent submitted to MDEQ biennial reports for the years 2013 and 2015.

**Count III: Notification of Change of Hazardous Waste Activity**

41. Complainant incorporates paragraphs 1 through 40 of this CAFO as though set forth in this paragraph.

42. Pursuant to MAC R 299.9301(2) [40 C.F.R. § 262.10(b)], a generator must determine the quantity of hazardous waste generated per month, so as to allow the generator to determine the applicability of the provisions of MAC R 299.9205 [40 C.F.R. Part 262] that are dependent on quantity generated per month.

43. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file with an authorized State a notification (or if necessary a subsequent notification) including the types wastes handled and the type of hazardous waste activity (*e.g.*, change to Large Quantity Generator status).

44. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's

hazardous waste activity changes to Large Quantity Generator status.

45. From at least 2013 until July 21, 2017, Respondent did not submit a notification of the change of the facility's type of hazardous waste activity to Large Quantity Generator status in relevant months, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

46. On July 21, 2017, Respondent filed EPA Form 8700-12 with Michigan DEQ, providing notification of the facility's change in hazardous waste activity to the status of Large Quantity Generator.

#### **Civil Penalty**

47. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$10,526. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,526 civil penalty for the RCRA violations by:

*For checks sent by regular U.S. Postal Service mail*, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

*For checks sent by express mail*, sending a cashier's or certified check, payable to

“Treasurer, United States of America,” to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state Respondent’s name and the docket number of this CAFO.

*For electronic funds transfer*, sending funds electronically, payable to “Treasurer,  
United States of America,” and to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

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

49. Respondent must send a notice of payment that states Respondent’s name and the  
case docket number to EPA at the following addresses when it pays the penalty:



Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Walt Francis (LR-17J)  
Land and Chemicals Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Eaton Weiler (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

51. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

52. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **Supplemental Environmental Project**

53. Within 270 days of the effective date of this CAFO, Respondent must complete a supplemental environmental project (SEP) designed to reduce the amount of liquid cyanide bearing waste shipped off-site. Respondent will treat the copper strip solution, recover the

copper, and discharge the treated wastewater removed resulting in the reduction of the amount to be disposed from approximately 10,000 pounds per year to approximately 188 pounds per year.

54. At its Detroit, Michigan facility, Respondent must complete the SEP as follows:

- a. Design, bid and award contract for system;
- b. Apply for wastewater discharge permit modification, begin electrical and plumbing work and receive equipment and commence installation;
- c. Install an approximately 2,000 (or larger) -gallon treatment tank;
- d. Install pH, ORP probes, pumps for bleach, caustic and sulfuric acid;
- e. Install solution level probes and electric valves;
- f. Install lightning mixer;
- g. Replace control panel for new process;
- h. Install pumping system to move solution from the strip storage tank to the treatment tank;

55. Respondent must spend at least \$140,000.00 to design, purchase and install the SEP.

56. Respondent must continuously use or operate the SEP for a minimum of three (3) years following its installation.

57. In the Reduction of Copper Strip Solution process, Respondent must not use any chemical that is more toxic or hazardous than the copper strip solution. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.

58. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

59. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

60. Respondent must submit a SEP completion report to U.S. EPA within one month after completing the installation of the SEP, but no later than 300 days from the effective date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

61. Respondent must submit all notices and reports required by this CAFO by first class or overnight mail to Walt Francis of the RCRA Branch.

62. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for

submitting false information, including the possibility of fines and imprisonment for knowing violations.

63. Following receipt of the SEP completion report described in paragraph 60, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 65.

64. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 65, below.

65. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 53, Respondent must pay a penalty of \$31,577.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to

complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 55, Respondent will not be liable for a stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 55, Respondent must pay a penalty of \$4,210.
- d. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1st through 14th day
\$250	15 through 30th day
\$300	31st day and beyond

66. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

67. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 48, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

68. Any public statement that Respondent makes referring to the SEP must include the following language, "DCI Aerotech undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against DCI Aerotech for violations of RCRA."

69. If an event occurs which causes or may cause a delay in completing the SEP as

required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

70. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### General Provisions

71. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

72. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [weiler.eaton@epa.gov](mailto:weiler.eaton@epa.gov) (for Complainant), and [gotthelf@butzel.com](mailto:gotthelf@butzel.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

73. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

74. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

75. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

76. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA Civil Penalty Policy, and U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

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

79. Each party agrees to bear its own costs and attorney’s fees in this action.

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

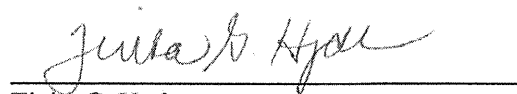
**DCI Aerotech Inc., Respondent**

10-4-18  
Date

  
\_\_\_\_\_  
Ronald Nichols  
President  
DCI Aerotech Inc.

**United States Environmental Protection Agency, Complainant**

10-18-18  
Date

  
\_\_\_\_\_  
Tinka G. Hyde  
Division Director  
Land and Chemicals Division

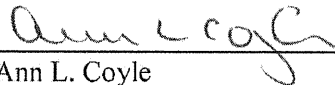


In the Matter of:  
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Docket No. RCRA-05-2019-0001

Final Order

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

10/24/18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

In the matter of: DCI Aerotech  
EPA ID Number: MID985612878  
Docket Number: **RCRA-05-2019-0001**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number **RCRA-05-2019-0001**, which was filed on October 24, 2018, in the following manner to the addressees:

Copy by e-mail to  
Respondent:

Ronald Nichols  
BigR@DCIAerotech.com

Copy by e-mail to  
Attorney for Respondent:

Beth S. Gotthelf  
gotthelf@butzel.com

Copy by e-mail to  
Attorney for Complainant:

Eaton Weiler  
weiler.eaton@epa.gov


Copy by e-mail to  
Case Assignee:

Walt Francis  
francis.walt@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

October 24, 2018   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5