

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Christine Foot 2/14/14
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number RCRA-DI-2013-0056

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

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

Total Dollar Amount of Receivable \$ 118,000 Due Date: ~~3/15/14~~ 2/13/16

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ 23,600 on 3/15/14
2nd \$ 24,780 on 8/13/14
3rd \$ 24,602 on 2/13/15
4th \$ 24,308 on 8/13/15
5th \$ 23,954 on 2/13/16

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
FIVE POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

FEB 13 2014

EPA ORC ^{WS}
Office of Regional Hearing Clerk

February 13, 2014

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square
Suite 100, Mail Code ORA18-1
Boston, MA 02109-3912

BY HAND

Re: In the Matter of: Aero-Dynamics, Inc., Docket No. RCRA-01-2013-0056

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

Christine M. Foot

Christine Foot
Enforcement Counsel
EPA Region 1

Enclosures

cc: Mark E. Beliveau, Esq., Pierce Atwood LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

RECEIVED

FEB 13 2014

In the Matter of:)
)
AERO-DYNAMICS, INC.)
142 Batchelder Road)
Seabrook, New Hampshire 03874)
)
Respondent)
)
Proceeding under Section 3008(a) of the)
Resource Conservation Recovery)
Act, 142 U.S.C. § 6928(a))
)

EPA Docket No. RCRA-01-2013-0056

EPA ORC WJ
Office of Regional Hearing Clerk

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA” or “Complainant”) filed a civil Administrative Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) on September 30, 2013, against Respondent, Aero-Dynamics, Inc. (“Aero-Dynamics” or “Respondent”). The Complaint alleged violations at Respondent’s facility located in Seabrook, New Hampshire (the “Facility”) under Sections 3002 and 3005 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6922 and 6925; the regulations promulgated thereunder at 40 C.F.R. Parts 262 and 265; Chapter 147-A of the New Hampshire Revised Statutes; and the New Hampshire Hazardous Waste Rules promulgated thereunder, found at Chapters Env-Hw 100-1100 of the New Hampshire Code of Administrative Rules (“NH Rules”).

Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of settling this matter. Therefore, before taking any testimony,

without any adjudication of issues of law or fact herein, and upon consent and agreement of the parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA is pursuing this proceeding for the assessment of a civil penalty pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

2. The Complainant alleged in the Complaint that Respondent failed to: (a) conduct hazardous waste determinations for certain wastes, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 502.01; (b) maintain and operate the Facility so as to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste, by failing to prevent spills or to promptly clean up spilled hazardous waste in two areas of the Facility, and by storing hazardous waste in an extremely corroded and compromised container, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(4), incorporating by reference 40 C.F.R. § 265.31 and N.H. Rules Env-Hw 506.01(a), and in violation of N.H. Rules Env-Hw 507.01(a) and 513.02; (c) have adequate emergency preparedness and prevention measures in place at the Facility, by failing to post all of the required emergency information in the Hazardous Waste Storage Area and in a receiving area of the Facility being referred to as "Satellite Area C" ("Receiving Area") and failing to have the necessary fire, spill control, and decontamination equipment available in the Receiving Area, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(b) and of N.H. Rules Env-Hw 509.02(a)(4), incorporating by reference 40 C.F.R. § 265.32(c); (d) ensure that its employees with hazardous waste management responsibilities received adequate hazardous waste management training and maintain adequate training documents, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(2),

incorporating by reference 40 C.F.R. § 265.16; (e) have a clear and adequate contingency plan, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(5), which requires compliance with 40 C.F.R. §§ 265.52, 265.53, and 265.55; (f) close containers of hazardous waste, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(6), incorporating by reference 40 C.F.R. § 265.173(a), and in violation of N.H. Rules Env-Hw 509.03(d), incorporating by reference N.H. Rules Env-Hw 507.01(a)(3); (g) adequately label containers of hazardous waste in violation of Section 3002 of RCRA and of N.H. Rules Env-Hw 507.03(a)(1) and N.H. Rules Env-Hw 509.03(g); (h) mark the accumulation start-dates on containers of hazardous waste, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 507.03(a)(1)(a); (i) manage waste in accordance with the requirements for a Satellite Accumulation Area, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.03; (j) develop a written inspection schedule, perform weekly inspections of the Receiving Area, and maintain complete records of the inspections conducted at the Facility, in violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(1), incorporating 40 C.F.R. § 265.15, and of N.H. Rules Env-Hw 509.02(a)(6), incorporating 40 C.F.R. § 265.174; and (k) treat hazardous waste in its Wastewater Treatment Unit in accordance with the requirements of its Hazardous Waste Limited Permit, in violation of Sections 3002 and 3005 of RCRA and N.H. Rules Env-Hw 303.01(d) and 304.04.

3. As part of its Complaint, Complainant also ordered (“RCRA Order”) Respondent to correct the deficiencies alleged in the Complaint and to submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in the RCRA Order.

4. The provisions of this CAFO shall apply to and be binding upon EPA and Respondent and its successors or assigns.

5. Respondent: (a) admits that EPA has jurisdiction over the subject matter alleged in the Complaint; (b) neither admits nor denies the factual allegations contained in the Complaint; and (c) consents to the terms of this CAFO.

6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint and waives its right to appeal the proposed Final Order accompanying this Consent Agreement.

II. TERMS OF SETTLEMENT

7. Respondent has demonstrated to the satisfaction of EPA that it has complied with the terms of the RCRA Order. Further, Respondent certifies that the Facility is, as of the date of this CAFO, in compliance with the requirements of RCRA, the federal regulations promulgated thereunder, and the NH Rules, with respect to Respondent's management of hazardous waste.

8. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), based on the nature of the violations alleged in EPA's Complaint and other relevant factors, EPA has determined that an appropriate civil penalty to settle all of the Counts alleged in the Complaint, and listed in Paragraph 2 above, is in the amount of \$118,000.

9. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the forgoing paragraph.

10. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

11. Respondent shall pay the civil penalty of \$118,000 in five (5) installments. The first payment shall be \$23,600 and shall be made within thirty (30) days of the effective date of this CAFO. The second payment shall be \$24,780 (consisting of \$23,600 in principal plus \$1,180 in interest) and shall be made within six (6) months of the effective date of this CAFO. The third payment shall be \$24,662 (consisting of \$23,600 in principal plus \$1,062 in interest) and shall be made within twelve (12) months of the effective date of this CAFO. The fourth payment shall be \$24,308 (consisting of \$23,600 in principal plus \$708 in interest) and shall be made within eighteen (18) months of the effective date of this CAFO. The fifth and final payment shall be \$23,954 (consisting of \$23,600 in principal plus \$354 in interest) and shall be made within twenty-four (24) months of the effective date of this CAFO. If Respondent accelerates these payments, any interest will accrue at a rate of 3% on the remaining balance until EPA receives the payment. In each case, Respondent shall pay the penalty, and any interest thereon, by submitting a cashier's or certified check made payable to the order of the "Treasurer, United States of America" to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the case name and docket number ("*In the Matter of Aero-Dynamics, Inc.*"; Docket No. RCRA-01-2013-0056) on the check and in an accompanying cover letter and shall simultaneously provide copies of the check and cover letter to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912.

12. If Respondent fails to make any of the payments required by Paragraph 11 by the required due dates, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment. All payments to the United States under this paragraph shall be made by cashier's or certified check as described in Paragraph 11.

13. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt

which remains delinquent more than 90 days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

14. All penalties, interest, and other charges payable pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deducted for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

15. Payment of the penalties, interest, or other charges does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and, except as provided in paragraph 16 herein, shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

16. This CAFO constitutes a settlement by EPA with regard to all claims for civil penalties for the violations specifically alleged in the Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

17. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO, and specifically waives any right to recover such costs, disbursements,

or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

18. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

For Respondent:

Cara Burzynski

Mrs. Cara Burzynski, President
Aero-Dynamics, Incorporated
142 Batchelder Road
Seabrook, NH 03874-4403

02/10/2014
Date

Gregory J. Burzynski

Mr. Gregory Burzynski, Treasurer
Aero-Dynamics, Incorporated
142 Batchelder Road
Seabrook, NH 03874-4403

2-10-14
Date

For EPA:

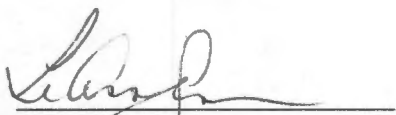
Joanna Jerison

Joanna Jerison, Legal Enforcement Manager
U.S. Environmental Protection Agency, Region 1
5 Post Office Square Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

2/12/14
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: 2/12/14

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)

AERO-DYNAMICS, INC.)
142 Batchelder Road)
Seabrook, New Hampshire 03874)
EPA ID No. NHD986467223)

Respondent)

EPA Docket No. RCRA-01-2013-0056

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

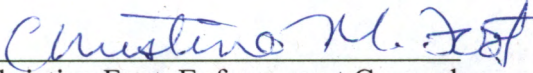
Original and One Copy
(Hand-Delivered):

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Copy (Certified Mail,
Return Receipt Requested):

Mark E. Beliveau, Esq.
Pierce Atwood LLP
Pease International Tradeport
One New Hampshire Avenue, #350
Portsmouth, NH 03801

Dated: 2/13/14


Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912