

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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In the Matter of:)
)
AERO-DYNAMICS, INC.)
142 Batchelder Road)
Seabrook, New Hampshire 03874)
EPA ID No. NHD986467223)
)
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

**ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING**

I. STATEMENT OF AUTHORITY

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA”).
2. The Respondent, Aero-Dynamics, Inc., is hereby notified of EPA’s determination that it has violated Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925; 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 hereby provides notice of Respondent’s opportunity to request a hearing concerning this allegation.

3. Notice of commencement of this action has been given to the State of New Hampshire (“the State”) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. The information requested in this Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

II. NATURE OF ACTION

5. This Complaint seeks to obtain civil penalties and compliance with RCRA and is issued pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939e. Specifically, Complainant seeks civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for Respondent’s violations of the federal and state hazardous waste regulations promulgated pursuant to RCRA. Complainant also seeks compliance under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with various violated regulations.

III. STATUTORY AND REGULATORY FRAMEWORK

6. Congress enacted RCRA in 1976, and amended it thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984. RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. RCRA Subtitle C, 42 U.S.C. § 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer a hazardous waste program *in lieu* of the federal program when the Administrator deems the state program to be equivalent to the federal program.

8. In 1984, EPA granted New Hampshire final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program. *See* 49 Fed. Reg. 49,092 (Dec. 18, 1984). Final authorization of the New Hampshire hazardous waste program became effective on January 3, 1985.

9. Effective January 13, 1995 and April 28, 2006, New Hampshire received final authorization for revisions to its hazardous waste management program. *See* 59 Fed. Reg. 56,397 (Nov. 14, 1994) and 71 Fed. Reg. 9,727 (Feb. 27, 2006).

10. The authority for the New Hampshire hazardous waste program is set out at 147-A of the New Hampshire Revised Statutes, with the implementing hazardous waste management regulations codified at Chapters Env-Hw 100–1100 of the NH Rules.

11. As amended, Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA (Sections 3001–3023), 42 U.S.C. §§ 6921–6939e. Therefore, a violation of any requirement under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3006(g), 3008(a), and 3008(g) of RCRA, 42 U.S.C. §§ 6926(g), 6928(a), and 6928(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including the federally approved New Hampshire hazardous waste program and any federal regulations promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 for which the State did not receive authorization, by issuing orders requiring compliance immediately or within a specified time.

IV. GENERAL AND FACTUAL ALLEGATIONS

12. Aero-Dynamics, Inc. (“Respondent” or “Aero-Dynamics”) is a corporation established under the laws of the State of Massachusetts, having a principal place of business at 142 Batchelder Road, Seabrook, New Hampshire 03874.

13. As a corporation, Aero-Dynamics is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and NH Rules Env-Hw 104.23.

14. At all times relevant to the allegations set forth in this Complaint, Aero-Dynamics has been and is the “owner” and/or “operator,” as those terms are defined in 40 C.F.R. § 260.10, N.H. Rules Env-Hw 104.19, and N.H. Rules Env-Hw 104.20, of a facility located at 142 Batchelder Road, Seabrook, New Hampshire (“Facility”).

15. At all times relevant to the allegations set forth in this Complaint, Aero-Dynamics has been and is performing metal finishing, plating, and anodizing at the Facility.

16. On or about September 5, 2006, Aero-Dynamics notified the New Hampshire Department of Environmental Services (“NHDES”), pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), that it was operating as a large quantity generator of hazardous waste. The Facility’s EPA identification number is: NHD091494971.

17. At all times relevant to this Complaint, Aero-Dynamics generated and continues to generate “solid wastes,” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and 40 C.F.R. §§ 260.10 and 261.2, and “wastes” as defined in N.H. Rules Env-Hw 104.80.

18. At all times relevant to this Complaint, at least some of the wastes that Aero-Dynamics generated at the Facility were “hazardous wastes” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3, and N.H. Rules Env-Hw 103.62.

19. At all times relevant to the allegations set forth in this Complaint, Aero-Dynamics has been and is: (1) a “generator,” as that term is defined in 40 C.F.R. § 260.10 and N.H. Rules Env-Hw 103.58; and (2) a “full quantity generator,” as that term is defined in N.H. Rules Env-Hw 103.57, of hazardous waste.

20. Respondent, therefore, is subject to the federal and state standards applicable to generators of hazardous waste found at Section 3002 of RCRA, 42 U.S.C. § 6922, the federal regulations promulgated at 40 C.F.R. Parts 260–271 and 279, and N.H. Rules Env-Hw 501–514.

21. The Facility consists of two Buildings. Building One includes: most of the production lines; the Chemical Storage Room (“CSR”); a Chemistry and Quality Laboratory; and a hazardous waste receiving area (“Receiving Area”) being referred to as “Satellite Area C.” Building Two includes: plating areas; a less-than-90-day Hazardous Waste Storage Area (“HWSA”); and a Wastewater Treatment Unit (“WWTU”).

22. In 2009, Respondent entered into an agreement with NHDES to resolve alleged violations of the New Hampshire hazardous waste regulations. The alleged violations included: 1) failure to inspect the permitted wastewater treatment unit; 2) failure to mark containers of hazardous waste with the beginning accumulation date, the words “hazardous waste,” words that describe the contents, and EPA or state waste codes; 3) failure to ensure that hazardous waste container labeling is visible and accessible; 4) failure to consistently conduct and document weekly inspections at the main HWSA; 5) hazardous waste training deficiencies; 6) failure to ensure adequate aisle space between containers of hazardous waste; 7) failure to have spill control equipment available at the HWSA; 8) hazardous waste contingency plan deficiencies; 9) HWSA emergency posting deficiencies; 10) failure to keep containers of hazardous waste closed; and 11) failure to properly label SAA containers.

23. On May 29, 2012, duly authorized representatives from EPA conducted a RCRA compliance evaluation inspection (“Inspection”) at the Facility. At the time of the Inspection, Respondent was using a variety of chemicals and generating wastes at the Facility that were “hazardous wastes,” as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and N.H. Rules Env-Hw 103.62, including: corrosive, toxic, ignitable, and potentially reactive oxidizer wastes; halogenated solvent wastes; wastewater treatment sludges from electroplating operations; and wastewater treatment sludges from the chemical conversion coating of aluminum.

24. During the Inspection, EPA observed conditions at the Facility and reviewed various documents supplied by the Respondent, including (but not necessarily limited to) hazardous waste inspection records, training records, a Contingency Plan, and hazardous waste manifests.

25. At all times relevant to this Complaint, Respondent had not obtained a permit under the provisions of N.H. Rules Env-Hw Chapter 300 to, nor did it have interim status to, operate as a treatment, storage, or disposal facility. Respondent did, however, have a Hazardous Waste Limited Permit from NHDES (Permit Number: DES-HW-LP-07-07) authorizing the treatment of certain, specified hazardous wastewaters in its WWTU, which was issued December 13, 2007 (“Limited Permit”).

26. After the Inspection and in response to a request from EPA, Respondent provided EPA with an inventory of most of the materials in the CSR by electronic mail on November 29, 2012. Respondent sent another version of this information, also in response to a request from EPA, with certain of the materials highlighted in yellow, on February 14, 2013 (“Inventory”).

27. On December 18, 2012, EPA mailed Respondent a Notice of Potential Violation.

28. EPA received a letter in response to the Notice of Potential Violation on Respondent's behalf from Ransom Consulting, Inc., dated May 6, 2013.

V. VIOLATIONS

29. Based on EPA's Inspection of the Facility and review of subsequently provided information, the following violations were identified.

COUNT 1: Failure to Conduct Adequate Hazardous Waste Determinations

30. Paragraphs 1 through 29 are incorporated by reference as if fully set forth herein.

31. Pursuant to N.H. Rules Env-Hw 502.01, all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Hw 401.01. Pursuant to N.H. Rules Env-Hw 502.01(c), if a waste is not listed in N.H. Rules Env-Hw 402, a generator shall determine whether the waste is identified in N.H. Rules Env-Hw 403 or if it constitutes a hazardous waste mixture or other material regulated under N.H. Rules Env-Hw 404, by testing the waste according to the hazardous waste determination methods set forth in N.H. Rules Env-Hw 401.04 and N.H. Rules Env-Hw 403, or by applying the knowledge of the hazardous nature or characteristics of the waste based on the materials or processes used to generate the waste.

32. At the time of the Inspection, the CSR was full of various containers of liquid and solid materials; some were on the floor, some were stacked on top of each other, and others were on two different three-shelved units. Mr. Garry Wilson, Respondent's Laboratory and Environmental Manager, informed EPA inspectors that he and another facility employee had been going through the contents of the room "for the last month or so" to clean out chemicals and compounds that were no longer needed or useable at the Facility. A sign affixed to one of the shelving units read, "Notice: Please Place Expired Chemistries Here for Disposal."

33. The Inspection and Inventory revealed that Respondent had not conducted waste determinations for wastes in certain containers in the CSR, including:

- a. Five one-gallon containers labeled "hydrofluoric acid 49°C" adjacent to the three-shelf storage unit described in Paragraph 32, above. The Inventory indicated that Respondent subsequently shipped this material as hazardous waste;
- b. One heavily stained and rusted 55-gallon blue polyurethane drum, labeled "Clariant Corporation, made in Switzerland, *K075421, Charleston 153174 U 025/060, Sanodal Deep Black H3LW Paste, net 25.0 kg, 11/9/98," which, according to MSDSs and chemical literature available online, contains chromium. This container was not described on the Inventory;
- c. One extremely corroded 55-gallon steel drum with layers of worn paint, labeled "oxidizer 5.1, corrosive, technical grade nitric acid 67%, Harcros Chemical Inc., prod./rec. date 5/16/12." This container was not described on the Inventory;
- d. One approximately 5-gallon carboy that was heavily stained, originating from the rim of the capped bung, labeled "Corrosive for HEFF25 ADDS Only." This container was not described on the Inventory;
- e. One 55-gallon fiber drum on a secondary containment pallet with a severely rusted lid, labeled "oxidizer, Hubbard Hall, ammonium nitrate fertilizer, 9-21-5." The Inventory indicated that Respondent subsequently shipped 110 pounds of this material as an oxidizer hazardous waste;
- f. One leaking 30-gallon fiber drum on a secondary containment pallet labeled "oxidizer, MacDermid Metex IT, 7/2005," which, according to MSDSs and chemical literature available online, contains 30-60% sulfamic acid. The Inventory indicated that Respondent subsequently shipped 100 pounds of this material as an oxidizer hazardous waste;
- g. One fiber drum with a loose lid and staining along side of the drum and on the floor around the base of the drum, labeled "100lb, MacDermid METEX Etch Salts, corrosive, product code 113051, expired 10/09." MSDSs and chemical literature available online indicate that this compound contains sodium fluorosilicate, which if exposed to water may form corrosive hydrogen fluoride. The Inventory indicates that Respondent subsequently shipped this material as a corrosive hazardous waste;
- h. Three 5-gallon containers labeled "MacDermid Eliminator 111, 179230, oxidizer, expired 4/2006," which, according to MSDSs and chemical literature available online, is a tin and lead solder stripper that contains 25% nitric acid. The

Inventory indicates that Aero Dynamics shipped this material as corrosive and oxidizing hazardous waste;

- i. One open, corroded, stained and unlabeled 30-gallon fiber drum. This container was not described on the Inventory;
- j. One corroded, closed 30-gallon fiber drum with the partially obscured label "shipped from MacDermid-Hubbard Hall [rest inaccessible]." This container was not described on the Inventory;
- k. One 5-gallon extremely corroded (rusted over entire surface) metallic container labeled "flammable liquid [partially obscured], 129, n-propanol, product 4361013." The Inventory indicates that Aero Dynamics shipped a 5-gallon container of flammable "HH Stabilizer 129" as hazardous waste;
- l. Three severely rusted, 1-gallon metal containers on the top shelf of a yellow metallic flammables cabinet, labeled "Spectrum Coating Inc, Spectraguard (flammable) epoxy thinner," "Spectraguard #1006 Part B Catalyst, epoxy strontium chromate yellow primer, flammable," and "Spectraguard #1006, Part A Base, epoxy strontium chromate yellow primer, flammable." The labels indicated the material was made in 2008 and that it has a shelf life of one year; and
- m. One full, closed, 55-gallon drum of waste labeled "Turco 4181 Solid Waste" that Mr. Wilson indicated had originated from one of the passivation lines and was waiting to be characterized and profiled by their environmental consultant (EQ Environmental Services) to determine if it needed to be regulated as a hazardous waste. [Note: The Inventory describes "Turco 4181L" as a corrosive material that contains sodium hydroxide, triethanolamine, and diethanolamine slated for "periodic adds and make-ups as needed" to a "passivation line." However, EPA has included the drum observed during the Inspection in this count as it was labeled "solid waste" and since Mr. Wilson informed EPA that it was a waste awaiting final disposition pending a hazardous waste determination by EQ Environmental Services.]

34. Respondent's failure to determine whether the approximately twenty-one (21) containers of waste at the Facility listed in Paragraph 33, above, were hazardous waste constitutes violations of N.H. Rules Env-Hw 502.01.

COUNT 2: Failure to Minimize Possibility of Release, Fire, and/or Explosion and Risk to Human Health and the Environment

35. Paragraphs 1 through 34 are incorporated by reference as if fully set forth herein.

36. Pursuant to N.H. Rules Env-Hw 509.02(a)(4), a full quantity generator must comply with the requirements of Subpart C of 40 C.F.R. § 265 (2001). Pursuant to 40 C.F.R. § 265.31, a generator of hazardous waste must maintain and operate its facility so as to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste that could threaten human health or the environment. Further, pursuant to N.H. Rules Env-Hw 513.02, for any discharge of a material that becomes a hazardous waste when discharged, a generator must either immediately contain and clean it up, or, if the generator cannot clean the discharge up within 24 hours, the generator shall develop and submit a clean-up plan to NHDES. Also, N.H. Rules Env-Hw 507.01 requires a generator to store all hazardous waste in containers or tanks that are in good condition, and N.H. Rules Env-Hw 506.01(a) bars a generator from using storage practices that pose a hazard to human health or the environment.

37. At the time of the Inspection, there were approximately ten gallons of pooled liquid on the floor in the area around the Nickel Plating Tank in Building One. Mr. Basti, who is the Quality Manager at the Facility, explained that this pooled liquid resulted from a vapor lock on the line from the "Nikclad 767 Electroless Nickel Solution #16 Tank." Some of the liquid was under, and some was around, an elevated walkway, and the exposed liner in the area of the pooled liquid was marked by footprints indicating that personnel had moved through the liquid. EPA performed a pH strip test that indicated that this liquid had a pH of 1.0 Standard Units ("S.U."). Mr. Wilson, Laboratory Manager and Environmental Manager of the Facility, tested the pooled liquid with a Facility pH meter that he said had been calibrated earlier the same day. The Facility pH meter recorded a value of 0.95 S.U., which corroborated EPA's reading. Both tests indicate the liquid was highly acidic and thus hazardous.

38. Similarly, at the time of the Inspection there were approximately three to four gallons of a pooled, green liquid, along with indications of other dried historic spills, on the liner of the floor in the Acid Etch/Rack Strip Room, where nitric acid is used to clean plating racks between batch jobs. EPA tested the pooled liquid with a pH strip and obtained a reading of approximately 1.0 S.U., which confirmed that the liquid was acidic and was consistent with hazardous nitric acid.

39. Finally, in the Receiving Area of Building One (being referred to as Satellite Area C), Respondent was storing an extremely corroded unlabeled container that Mr. Wilson stated contained spent anodized filters that had recently been pulled from the adjacent CSR.¹

40. Respondent's failure to prevent spills or to cleanup spilled hazardous waste in two areas of the Facility, and Respondent's storage of hazardous waste in an extremely corroded and comprised container amount to a failure to maintain and operate the Facility so as minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste, in violation of Section 3002 of RCRA, 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). Additionally, Respondent's failure, in two areas of the Facility, to clean up spilled hazardous waste within 24 hours or to submit a clean-up plan to NHDES, constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 513.02. Also, Respondent's failure to store all hazardous waste in containers of good condition constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 507.01(a).

COUNT 3: Failure to Ensure Presence and Implementation of Emergency Preparedness and Prevention Measures

41. Paragraphs 1 through 40 are incorporated by reference as if fully set forth herein.

¹ Another 55-gallon drum of this waste was also stored in this room and was labeled "Hazardous Waste, spent solid, anodized filters."

42. Pursuant to N.H. Rules Env-Hw 509.02(b), a full quantity generator must post certain emergency information at the telephone nearest to each hazardous waste storage area, including: a list of the steps to take if an emergency occurs; telephone number(s) for the emergency coordinator(s) and local emergency responders; and the location of fire extinguishers, spill control material, and the internal emergency alarm, if applicable.

43. At the time of the Inspection, Respondent had a posting in the main HWSA, titled "AeroDynamics Inc. Emergency Phone # Contact Sheet," but it did not include all of the required emergency information. The posting did not include a list of steps to be taken in case of emergency, and it did not include the location of the emergency equipment (fire extinguishers, spill control material, and alarms). Finally, while the list included titles, names, and telephone numbers for several people, it was not clear from the list who served the role of "Emergency Coordinator." The first person listed was identified as an "Evacuation Coordinator," followed by an "Alternate #1;" however, the list did not include telephone numbers for either of these people. Next on the list were a "Local Coordinator," an "Alternate #1," and an "Alternate #2," but Facility representatives indicated during the Inspection that none of these three people were trained or qualified to perform the role of Emergency Coordinator. The next title was "Corporate Coordinator" with the same name listed as for Local Coordinator (Greg Burzynski). Finally, the seventh title on the posting was "Certified Hazardous Waste Coordinator," listing Garry Wilson, who was the only Facility employee who was trained and qualified to serve as Emergency Coordinator at the time of Inspection, although he was not identified as such on the posting.

44. Further, at the time of Inspection, Respondent was accumulating hazardous waste that Mr. Wilson explained had come from various parts of the Facility (including the vapor degreaser and anodizing lines) in the Receiving Area of Building One that Respondent referred to as

“Satellite Area C.” EPA observed the storage of one full, 55-gallon drum of “hazardous waste, trichloroethylene,” two full, 55-gallon drums of “hazardous waste, spent solid, anodized filters,” one full, 55-gallon drum of “hazardous waste, nickel strip,” and one three-quarters full drum of “nickel acid stripper.” Because these wastes were not accumulated at or near the point of their generation, nor were they under the control of the operators of the processes that generated the wastes, the Receiving Area was functioning as a second hazardous waste storage area rather than an SAA, irrespective of the name given to it by Facility representatives and despite not being managed accordingly.² The Receiving Area did not have an emergency posting specifying the steps to take in case of emergency, telephone number(s) for the emergency coordinator(s), telephone numbers for local emergency responders, the locations of emergency response equipment, and the locations of internal emergency alarms.

45. Additionally, pursuant to N.H. Rules Env-Hw 509.02(a)(4), a full quantity generator must comply with Subpart C of 40 C.F.R. Part 265 (2007), which includes 40 C.F.R. § 265.32. Forty C.F.R. § 265.32(c) requires that certain emergency equipment be available, including fire control, spill control, and decontamination equipment. N.H. Rules Env-Hw 509.02(f) specifies that this equipment must be not more than 100 feet from each hazardous waste storage area.

46. At the time of Inspection, Respondent did not have the required fire control, spill control equipment, or decontamination kit available within 100 feet of the Receiving Area, which, as described above in Paragraph 44, was functioning as a hazardous waste storage area.

47. Accordingly, Respondent failed to have adequate emergency preparedness and prevention measures in place at the Facility. Respondent’s failure to post all of the required

² Even had the waste in the Receiving Area been generated there or nearby, Respondents still were not complying with the requirements for an SAA, which limit the amount of hazardous waste to less than 55 gallons, in that there were more than four full 55-gallon drums in this area.

emergency information in the HWSA and any in the Receiving Area constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(b). Respondent's failure to have the necessary fire, spill control, and decontamination equipment available not more than 100 feet from the Receiving Area constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(4), incorporating by reference 40 C.F.R. § 265.32(c).

COUNT 4: Failure to Have an Adequate Hazardous Waste Training Program

48. Paragraphs 1 through 47 are incorporated by reference as if fully set forth herein.

49. Pursuant to N.H. Rules Env-Hw 509.02(a)(2), a full quantity generator must comply with the requirements of 40 C.F.R. § 265.16 (2001). Pursuant to 40 C.F.R. § 265.16, a generator of hazardous waste must ensure that all facility personnel who manage hazardous waste complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulatory requirements. The program must be directed by a person trained in hazardous waste management procedures and must include instruction in hazardous waste management procedures, including contingency plan implementation, relevant to the position in which the employee is employed. Personnel may not work in unsupervised positions until they have such training, and they must receive it within six months of starting their position. They must also receive annual refresher training. The facility must maintain documents identifying the job title and description, including qualifications, duties, and necessary training, for each position involving hazardous waste management and include the names of the employees performing each of those roles, and the facility must keep training records reflecting the completion of the required training for personnel for three years after they leave.

50. At the time of the Inspection, Aero-Dynamics personnel who manage hazardous waste had not received the required RCRA hazardous waste training. Training records reviewed by EPA revealed that Mr. Wilson, who functions as the primary emergency coordinator and the hazardous waste coordinator, and his predecessor, Larry Cellamare, both had received the requisite training. Additionally, Facility representatives indicated that Mr. Basti was in the process of receiving on-the-job training at the time of the Inspection. However, Respondent had no records indicating that other necessary employees had received the required training, including: 1) Mr. Daniel Swarbrick, who signed hazardous waste manifests in 2010 and 2011; 2) Mr. Greg Burzynski, who was identified in the emergency posting and the Contingency Plan ("CP") as the "Local Coordinator," with responsibility for being the primary Emergency Coordinator in the event of a spill, and assessing any damage therefrom; 3) Mr. Tom Gilligan, who was listed in the CP as another alternate Local Coordinator and who would assume the above-described responsibilities of Mr. Burzynski in his and Mr. Basti's absences; and 4) Mr. Greg Hudak, who had responsibility for managing the hazardous waste in the Receiving Area. Additionally, while Respondent had a written job description for Mr. Wilson, the description only outlined the duties of a Laboratory and Chemical Inventory and Process Manager and did not describe hazardous waste management duties. It provided no specifics on the roles and duties of the Environmental Manager or Hazardous Waste Coordinator roles played by Mr. Wilson. Furthermore, the job description did not provide specifics on the types and frequencies of initial and recurring hazardous waste management training.

51. Respondent's failure to ensure that its employees with hazardous waste management responsibilities received adequate hazardous waste management training and its failure to

maintain adequate training documents constitute violations of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(2), incorporating by reference 40 C.F.R. § 265.16.

COUNT 5: Failure to Maintain an Adequate Contingency Plan

52. Paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.

53. Pursuant to N.H. Rules Env-Hw 509.02(a)(5), a full quantity generator must comply with Subpart D of 40 C.F.R. Part 265 (2001), which includes 40 C.F.R. §§ 265.51, 265.52 and 265.55. A generator of hazardous waste is required, pursuant to 40 C.F.R. § 265.51, to have a contingency plan for the facility that is designed to prevent and minimize hazards to people and the environment from fires, explosions, spills, or other releases of hazardous waste. The elements of the contingency plan are outlined in 40 C.F.R. § 265.52, and include requirements to describe actions Facility personnel must take in response to emergencies involving hazardous waste, describe arrangements with local response authorities in case of emergency, list up-to-date contact information for all emergency coordinators, maintain an up-to-date list and description of all emergency equipment on-site, and include an evacuation plan. Pursuant to 40 C.F.R. § 265.55, the generator of hazardous waste must identify one qualified employee to be responsible for coordinating all emergency response measures at all times. This person must be thoroughly familiar with all aspects of the contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. This person also must have the authority to commit the resources needed to carry out the contingency plan.

54. At the time of Inspection, the CP that Respondent developed, and submitted to local emergency responders and that was dated November 2011, did not meet all of the requirements set forth in 40 C.F.R. § 265.52. The delegation of authority for coordinating a response to spills

and fires involving hazardous waste, which mirrored that of the emergency posting described above in Paragraph 43, included numerous names and titles of ambiguous responsibility. Further, the one person who had received RCRA training and was qualified to function as the Emergency Coordinator was seventh (last) on the list of responsible Facility representatives. Additionally, the CP focused solely on spills and fires, and made no provisions for other emergencies such as explosions, power failures, floods and other natural disasters, or man-made threats (such as employee or intruder actions).

55. Also, the CP discussed an inventory of emergency equipment (*i.e.*, rubber aprons, gloves, boots, face shields, eyewear, gas masks and cartridges) but only stated that these materials were “located in both the manufacturing and container storage areas for easy access by personnel” and that additional equipment is “available from other sources.” No specifics were provided in the CP as to the exact location of emergency equipment in the event of an emergency.

56. Respondent’s failure to have a clear and otherwise adequate contingency plan constitutes a 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.

COUNT 6: Failure to Close Containers of Hazardous Waste

57. Paragraphs 1 through 56 are incorporated by reference as if fully set forth herein.

58. Pursuant to N.H. Rules Env-Hw 509.02(a)(6), a full quantity generator must comply with Subpart I of 40 C.F.R. Part 265 (1999), which includes 40 C.F.R. § 265.173. Pursuant to 40 C.F.R. § 265.173(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

59. Similarly, pursuant to N.H. Rules Env-Hw 509.03(d), a full quantity generator may accumulate up to 55 gallons of non-acutely hazardous waste at or near the point of generation (at

an SAA) without a standard permit or interim status if it complies with various requirements, including N.H. Rules Env-Hw 507.01. Section 507.01(a)(3) of the N.H. Rules requires that containers of hazardous waste remain closed at all times except when adding or removing waste.

60. At the time of Inspection, Respondent was storing two open containers of hazardous waste in the Receiving Area: a full, 55-gallon, blue polyurethane drum that was labeled "Accumulation container, hazardous waste, spent solid, anodized filters," and one 55-gallon, extremely corroded drum that was unlabeled, but which Mr. Wilson explained also contained anodized filters that were recently pulled from the adjacent CSR. Respondent was also storing two open containers of hazardous waste near the WWTU in Building Two. These containers were brought to the WWTU's chrome reduction tank for eventual treatment therein: one was a full, 55-gallon, black polyurethane drum, and the other was an approximately 30-gallon white polyurethane drum that was about one-third full. Both of these drums were labeled "Chrome HCL for Treatment." Respondent was not adding or removing waste from any of these containers at the time of the Inspection.

61. Additionally, at the time of Inspection, Respondent was storing two open containers of hazardous waste at or near the point of generation in the Chemistry and Quality Laboratory: one was an approximately one-liter plastic beaker located under a fume hood that was about one-quarter full and was labeled "30% sulfuric acid," and the other was a five-gallon bucket used to collect chromium-bearing titration waste that was approximately one-eighth full and was labeled "Hazardous Waste, Work Place Accumulation Container, lab waste to be transferred to waste treatment." Respondent was not adding or removing waste from these containers at the time of the Inspection.

62. Respondent's failure to close two containers of hazardous waste in the Receiving Area and two containers of hazardous waste near the WWTU constitutes a 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). Respondent's failure to close two containers of hazardous waste in the Chemistry and Quality Laboratory SAA constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.03(d), incorporating by reference N.H. Rules Env-Hw 507.01(a)(3).

COUNT 7: Failure to Properly Label Hazardous Waste

63. Paragraphs 1 through 62 are incorporated by reference as if fully set forth herein.

64. Pursuant to N.H. Rules Env-Hw 507.03(a)(1), a generator must clearly label or mark a container of hazardous waste with the words "hazardous waste," with words that identify the contents of the container, and with the EPA or state waste code number.

65. Similarly, when a full quantity generator accumulates a limited volume of hazardous waste at or near the point of generation (in an SAA), N.H. Rules Env-Hw 509.03(g) requires the generator to label the containers with the words "hazardous waste" and with words that describe the contents of the containers as soon as the accumulation begins.

66. At the time of the Inspection, Respondent was storing hazardous waste in several containers in various areas of the Facility without the required labels. On the left side of the main HWSA, among the rows of containers was one 55-gallon drum that was labeled "Hazardous Waste, E-120" and with the waste code ("D002"). The term "E-120" was not sufficient to identify the contents of the container. Respondent also was storing the following four containers of hazardous waste without sufficient labels in the Receiving Area: 1) the extremely corroded, open container of hazardous waste described above in Paragraph 60 (reportedly containing spent anodized filters), which was completely unlabeled; 2) the 55-gallon,

blue polyurethane drum described in Paragraph 60 that was labeled "Accumulation container, hazardous waste, spent solid, anodized filters," but which lacked the applicable waste codes; 3) a full, 55-gallon container labeled "hazardous waste, trichloroethylene," which was not labeled with the applicable waste codes; and 4) a full, 55-gallon, blue polyurethane drum labeled "Accumulation container, hazardous waste, nickel strip," which was also missing the applicable waste codes. Further, Respondent had placed two containers near the WWTU for eventual treatment in the WWTU's chrome reduction tank, also described above in Paragraph 60, that were both labeled "Chrome HCL for Treatment" but were both missing the words "hazardous waste" and the associated waste codes.

67. Additionally, at the time of Inspection, Respondent was storing the following two containers in the Chemistry and Quality Laboratory, described above in Paragraph 61, that were insufficiently labeled: the plastic 1-liter beaker labeled "30% sulfuric acid" was not labeled with the words "hazardous waste," and the five-gallon bucket container, which reportedly contained chromium-bearing titration waste and which was labeled "Hazardous Waste, Work Place Accumulation Container, lab waste to be transferred to waste treatment," did not have a label describing the contents therein.

68. Respondent's failure to adequately label one container of hazardous waste in the main HWSA, four containers of hazardous waste in the Receiving Area, and two containers of hazardous waste near the WWTU constitutes a violation of Section 3002 of RCRA and of N.H. Rules Env-Hw 507.03(a)(1). Respondent's failure to adequately label two containers of hazardous waste in the Chemistry and Quality Laboratory constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.03(g).

COUNT 8: Failure to Mark Containers with the Beginning Accumulation Date

69. Paragraphs 1 through 68 are incorporated by reference as if fully set forth herein.

70. Pursuant to N.H. Rules Env-Hw 507.03(a)(1)(a), a generator must clearly label or mark a container of hazardous waste with the beginning accumulation date at the time it is first used to store wastes.

71. At the time of the Inspection, Respondent was storing the following two containers of hazardous waste near the WWTU, both described above in Paragraph 60, that were not marked with their beginning accumulation dates: a full 55-gallon polyurethane drum and a one-third full 30-gallon polyurethane drum, both labeled "Chrome HCL for Treatment."

72. At the time of the Inspection, Respondent was also storing the following five containers of hazardous waste in the Receiving Area that were not marked with the beginning accumulation date: 1) a full, 55-gallon container labeled "hazardous waste, trichloroethylene"; 2) the extremely corroded open container described above in Paragraph 60, which was completely unlabeled; 3) the 55-gallon, blue polyurethane drum described above in Paragraph 60 that was labeled "Accumulation container, hazardous waste, spent solid, anodized filters"; 4) a full, 55-gallon, blue polyurethane drum labeled "Accumulation container, hazardous waste, nickel strip"; and 5) a 55-gallon, black polyurethane drum labeled "Accumulation container, hazardous waste, nickel acid stripper, D001, D002, D006."

73. Respondent's failure to mark the beginning accumulation date on two containers of hazardous waste near the WWTU and on five containers of hazardous waste stored in the Receiving Area constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 507.03(a)(1)(a).

COUNT 9: Failure to Manage Hazardous Waste in Accordance with the Requirements for a Satellite Accumulation Area

74. Paragraphs 1 through 73 are incorporated by reference as if fully set forth herein.

75. Pursuant to N.H. Rules Env-Hw 509.03, a full quantity generator may accumulate as much as 55 gallons of non-acutely hazardous waste in an SAA for 90 days or more without a standard permit or interim status and without complying with the requirements for a less-than-90-day storage area, provided that certain conditions are met. Pursuant to N.H. Rules Env-Hw 509.03(i), when amounts in excess of the allowance accumulate, the generator must mark the container holding the excess waste with the date upon which the accumulation limit was reached and with the EPA or state waste number. The generator must also, within three days, move the waste to a designated hazardous waste storage area and begin managing the waste in accordance with the requirements for a less-than-90-day storage area.

76. At the time of the Inspection, in an area near the WWTU, Respondent was storing a covered, plastic lined, one-cubic yard cardboard tote labeled "hazardous waste, accumulation container, chrome debris, D007." Mr. Wilson explained that this tote contained rags, tape, and other solid wastes contaminated with hexavalent chrome, and that these wastes originated from the nearby chrome plating line. The tote, which had a total capacity of approximately 202 gallons, was half-full; therefore, the tote contained approximately 101 gallons of hazardous waste.

77. Respondent's accumulation of hazardous waste in excess of 55 gallons in an SAA constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.03.

COUNT 10: Failure to Have an Adequate Hazardous Waste Inspection Program

78. Paragraphs 1 through 77 are incorporated by reference as if fully set forth herein.

79. Pursuant to N.H. Rules Env-Hw 509.02(a)(1), a full quantity generator must comply with 40 C.F.R. § 265.15 (2001). Pursuant to 40 C.F.R. § 265.15, a generator must develop and follow a written inspection schedule for all equipment that is needed to prevent, detect, or respond to environmental or human health hazards. The inspection plan must be kept at the facility, the times and results of the inspections and any needed repairs must be recorded, and the records must be maintained for at least three years. Further, N.H. Rules Env-Hw 509.02(a)(6) requires a full quantity generator to comply with Subpart I of 40 C.F.R. Part 265 (1999), which includes 40 C.F.R. § 265.174. Forty C.F.R. § 265.174 requires generators to conduct weekly inspections of areas where containers of hazardous waste are stored, looking for leaking containers and for deterioration of containers caused by corrosion or other factors.

80. When, during the Inspection, EPA requested to review the written inspection plan for the Facility, Mr. Wilson indicated that the Facility did not have a written HWSA inspection plan. Additionally, EPA's review of inspection records provided by Mr. Wilson indicated that while Respondent had been conducting weekly inspections (despite no written schedule), the inspection logs did not include all of the necessary information. The inspection logs included the name of the inspector (Mr. Wilson) and the date and time of the inspection, but they did not include any notations regarding observations or results of the inspections, nor of any remedial measures undertaken for that entire period. The inspections should have uncovered, and the records should have reflected, the container management deficiencies alleged in this Complaint and the remedial actions undertaken by Respondent to correct these deficiencies. Additionally, as described above in Paragraph 44, the Receiving Area was functioning as a less-than-90-day

hazardous waste storage area, but Respondent had no records indicating that it was performing the necessary weekly inspections of all for this area.³

81. Respondent's failure to develop a written inspection schedule, its failure to perform weekly inspections of the Receiving Area, and its failure to maintain complete records of the inspections conducted at the Facility, constitutes a violation of Section 3002 of RCRA and N.H. Rules Env-Hw 509.02(a)(1), incorporating 40 C.F.R. § 265.15, and N.H. Rules Env-Hw 509.02(a)(6), incorporating 40 C.F.R. § 265.174.

COUNT 11: Treatment of Hazardous Waste without a Permit

82. Paragraphs 1 through 81 are incorporated by reference as if fully set forth herein.

83. Pursuant to N.H. Rules Env-Hw 303.01(d), an operator of a wastewater treatment unit must obtain a permit for the operation of the unit and operate the unit in conformance with the requirements of the permit. Further, N.H. Rules Env-Hw 304.04(p) requires a facility that conducts hazardous waste activities beyond that specified in its Limited Permit to follow all applicable hazardous waste rules, including those for generators at N.H. Rules Env-Hw Chapter 500.

84. At the time of the Inspection, Aero-Dynamics was operating a permitted WWTU for the treatment of various rinse waters, and discharge of the resulting treated wastewaters, to the Seabrook, New Hampshire municipal wastewater treatment facility, pursuant to the requirements of its Limited Permit. The Limited Permit authorized the addition of certain treatment compounds to the WWTU, along with rinse waters from the Facility's anodizing, steel cleaning,

³ Even had this area been the SAA that Respondent considered it to be, Respondent should have been regularly inspecting it and maintaining records thereof. Pursuant to N.H. Rules Env-Hw 509.03(h), when a full quantity generator accumulates more than ten gallons of hazardous waste at an SAA, the generator must perform at least monthly inspections of containers of hazardous waste, looking for leaks and for deterioration caused by corrosion and other factors.

aluminum cleaning and preparation, yellow iriditing, and clear chromating, electroplating, and electroless plating. At the time of Inspection, Mr. Wilson informed EPA inspectors that Respondent was also adding 22% nitric acid and a compound called "Specialty Sealant MTL" to the wastewater treatment process, neither of which are authorized under the Limited Permit. Both of these materials are hazardous wastes: the 22% nitric acid is corrosive, with a pH of 1.0, while Specialty Sealant MTL is a nickel acetate sealant that may cause severe skin, eye or respiratory tract irritation and that it may be potentially carcinogenic. The Inventory identifies Specialty Sealant, containing nickel acetate, as a toxic. Additionally, Mr. Wilson indicated that all titration wastes, except chromium-bearing titration wastes, from the Chemistry and Quality Laboratory, some of which are hazardous, are poured down the laboratory sink, which is piped to the Facility's WWTU. Neither the Limited Permit, nor Respondent's permit application, reference the treatment of laboratory titration wastes.

85. Respondent's treatment of hazardous waste in its WWTU without permit authorization constitutes a violation of Sections 3002 and 3005 of RCRA and N.H. Rules Env-Hw 303.01(d) and 304.04.

VI. COMPLIANCE ORDER

86. Based on the foregoing findings, Respondent is hereby **ORDERED** to achieve and maintain compliance with all applicable requirements of RCRA and the New Hampshire hazardous waste management regulations, specifically including compliance with the following requirements.

- a. **Immediately upon receipt of this Complaint**, Respondent shall:
 - i. use adequate storage practices so as to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste that could threaten

- human health or the environment, in accordance with N.H. Rules Env-Hw 509.02(a)(4), 507.01, and 506.01(a);
- ii. post the required emergency information at the telephone nearest to each hazardous waste storage area, in accordance with N.H. Rules Env-Hw 509.02(b);
 - iii. close all containers of hazardous waste at the Facility in accordance with N.H. Rules Env-Hw 509.02(a)(6), incorporating 40 C.F.R. § 265.173, and N.H. Rules Env-Hw 509.03(d), requiring compliance with N.H. Rules Env-Hw 507.01;
 - iv. label and date, as required, all hazardous waste at the Facility, in accordance with N.H. Rules Env-Hw 507.03(a)(1) and N.H. Rules Env-Hw 509.03(g);
 - v. manage hazardous waste in SAAs in accordance with the requirements of N.H. Rules Env-Hw 509.03;
 - vi. operate the WWTU in conformance with the authorization in the Limited Permit, as required by N.H. Rules Env-Hw 303.01(d);
- b. Within thirty (30) days of receipt of this Complaint, Respondent shall:**
- i. perform hazardous waste determinations for all wastes present at the Facility, including, but not limited to, all of the waste in the CSR, in accordance with N.H. Rules Env-Hw 502.01;
 - ii. ensure that the required emergency equipment is within 100 feet of each hazardous waste storage area, in accordance with N.H. Rules Env-Hw 509.02(a)(4), requiring compliance with 40 C.F.R. § 265.32;

- iii. update the contingency plan and submit the revised contingency plan, and any subsequent revisions thereto, to the required authorities and emergency responders in accordance with N.H. Rules Env-Hw 509.02(a)(5), which requires compliance with 40 C.F.R. §§ 265.52, 265.53, and 265.55;
 - iv. develop and follow a written inspection schedule for all equipment in accordance with N.H. Rules Env-Hw 509.02(a)(1), requiring compliance with 40 C.F.R. § 265.15, and perform all necessary inspections in accordance with N.H. Rules Env-Hw 509.02(a)(6), which incorporates 40 C.F.R. § 265.174;
- c. **Within sixty (60) days of receipt of this Complaint, and annually thereafter,** Respondent shall provide hazardous waste management training to all employees at the Facility with hazardous waste management responsibilities and maintain the required documents and records, in accordance with N.H. Rules Env-Hw 509.02(a)(2), requiring compliance with 40 C.F.R. § 265.16.

87. Within sixty-five (65) days of receipt of this Complaint, Respondent shall 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 paragraph 86 above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance. This statement shall specify all actions taken by Respondent to comply with Paragraph 86 of this Compliance Order. Respondent shall submit the above-required information and notices to:

Susann D. Nachmann, Environmental Engineer
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES05-1
Boston, Massachusetts 02109-3912

and

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

88. The information requested in this Compliance Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 *et seq.*

89. If Respondent fails to comply with the requirements of this Compliance Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.

90. This Compliance Order shall become effective immediately upon receipt by Respondent.

91. In accordance with 40 C.F.R. § 22.37(b), this Compliance Order shall automatically become a final order unless, no later than 30 days after the Compliance Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

92. Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701–706, once it is final and reviewable pursuant to RCRA section 3008(b) and 40 C.F.R. Part 22.

VII. PROPOSED PENALTY

93. Based on the nature, circumstances, extent, and gravity of the above-cited violations, a civil penalty in the amount of \$185,516 is hereby proposed to be assessed against Respondent (see Attachment A to this Complaint explaining the reasoning for this penalty). The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

94. By this Complaint, Complainant seeks to assess Respondent the following civil penalties:

| <u>COUNT</u> | <u>PENALTY</u> |
|--------------------------------------------------------------------------------------------------------------------|----------------|
| 1. Failure to Conduct Adequate Hazardous Waste Determinations | \$49,935 |
| 2. Failure to Minimize Possibility of Release, Fire, and/or Explosion and Risk to Human Health and the Environment | \$32,915 |
| 3. Failure to Ensure Presence and Implementation of Emergency Preparedness and Prevention Measures | \$10,592 |
| 4. Failure to Have an Adequate Hazardous Waste Training Program | \$45,010 |
| 5. Failure to Maintain an Adequate Contingency Plan | \$10,592 |
| 6. Failure to Close Containers of Hazardous Waste | \$6,521 |
| 7. Failure to Properly Label Hazardous Waste | \$6,521 |

| | |
|------------------------------------------------------------------------------------------------------------|------------------|
| 8. Failure to Mark Containers with the Beginning Accumulation Date | \$6,521 |
| 9. Failure to Manage Hazardous Waste in Accordance with the Requirements for a Satellite Accumulation Area | \$430 |
| 10. Failure to Have an Adequate Hazardous Waste Inspection Program | \$15,059 |
| 11. Treatment of Hazardous Waste without a Permit | \$1,420 |
| TOTAL PROPOSED PENALTY | \$185,516 |

95. Payment of the penalty may be made by a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (EPA Docket No. RCRA-01-2013-0056). The check should be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded 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
 Office of Environmental Stewardship
 U.S. Environmental Protection Agency, Region 1
 5 Post Office Square, Suite 100
 Mail Code OES04-2
 Boston, MA 02109-3912

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

96. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondent has the right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty or compliance order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22, a copy of which is provided with this Complaint. **A request for a hearing must be incorporated into a written Answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint.**

97. In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. *See* 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

98. The original and one copy of any motions or other pleadings filed or made before an Answer to the Complaint is filed, the Answer to the Complaint, and any Consent Agreement and Final Order to settle the case filed in this action must be sent 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

99. After an Answer has been filed, except for a Consent Agreement and Final Order settling the case, a copy of all other documents that Respondent files in this action must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings –
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

For UPS, FedEx, DHL, or other courier, or personal delivery –
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

100. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to Christine M. Foot, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter at:

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

IX. DEFAULT ORDER

101. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

X. SETTLEMENT CONFERENCE

Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. In addition, where circumstances so warrant, a recommendation that any or all of the charges be dropped may be made to the Regional Judicial Officer. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

58. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Christine Foot, Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above, at (617) 918-1333, or at foot.christine@epa.gov. Ms. Foot has been designated to

represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1

9/27/13
Date

ATTACHMENT A

In the Matter of Aero-Dynamics, Inc. RCRA-01-2013-0056 Explanation of Proposed Penalty

The following represents the penalty calculation and justification for Aero-Dynamics, Inc. ("Aero-Dynamics" or "Respondent"), located in Seabrook, New Hampshire, for violations of certain requirements of the:

1. Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("RCRA");
2. The federal RCRA regulations at 40 C.F.R. Parts 262 and 265;
3. Chapter 147-A of the New Hampshire Revised Statutes; and
4. The New Hampshire Hazardous Waste Rules at Chapters Env-Hw 100-1114 ("N.H. Rules").

The penalties were calculated in accordance with the RCRA Civil Penalty Policy, dated June 23, 2003, as revised on September 21, 2004 ("Penalty Policy"), and in accordance with the Civil Monetary Inflation Adjustment Rule (and revised penalty matrices for the Penalty Policy), which became effective on January 13, 2009.

Adjustment factors examined by EPA in determining the amount of the proposed penalty against Aero-Dynamics include: economic benefit of noncompliance; history of non-compliance; the degree of willfulness or negligence; good faith effort; and other unique factors. Adjustments for some of these factors may have been deemed appropriate as discussed below.

The penalty calculations are based upon alleged violations documented during an EPA compliance evaluation inspection ("Inspection"), conducted May 29, 2012, of the Aero-Dynamics facility at 142 Batchelder Street ("Facility") in Seabrook, New Hampshire, and upon subsequent information submitted to EPA by Aero-Dynamics.

The following violations have been documented and are included in the Complaint issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), against Aero-Dynamics.

1. Failure to Conduct Adequate Hazardous Waste Determinations

Provision Violated: *New Hampshire Hazardous Waste Rules (N.H. Rules) Env-Hw 502.01*

At the time of the Inspection, approximately twenty-one (21) containers of waste in the Facility's Chemical Storage Room ("CSR") and one container of waste near the wastewater treatment unit ("WWTU") had not undergone adequate hazardous waste determinations. Many of these materials were stored in compromised containers (*i.e.*, leaking, stained, open, corroded, or rusted), and most were stored in a neglected fashion.

Potential for Harm:¹ MAJOR

¹ When determining the gravity-based portion of the penalty for a violation in accordance with the Penalty Policy, EPA considers two factors: the violation's potential for harm and its extent of deviation from the requirements.

Respondent's failure to determine if solid wastes are hazardous, to determine the types of hazards associated with each hazardous waste stream stored on-site, and then to immediately implement hazardous waste management practices designed for the safe handling, storage, shipment and disposal of hazardous wastes posed a substantial risk of exposure to humans and/or environmental receptors due to the potential for improper handling, storage, treatment, and disposal of these wastes. Without prompt solid waste identification, followed by appropriate and timely hazardous waste determination, waste materials could be neglected and/or stored in uncontrolled areas where emergency responders, inspectors, and Facility personnel might not recognize associated hazards, thereby increasing the likelihood for mismanagement, improper disposal, or release to the environment.

Further, this failure posed a substantial potential for harm to the regulatory program because conducting a proper hazardous waste determination is the foundation of the RCRA Program. The failure to conduct proper hazardous waste determinations renders it impossible for state/federal inspectors to determine whether the solid wastes generated and/or stored on-site were hazardous, or whether additional precautions were required to properly manage these wastes prior to off-site shipment or disposal (*i.e.*, due to corrosivity, ignitability, reactivity or incompatibility). The harm to the regulatory program is magnified because wastes that do not receive timely and proper hazardous waste determinations drop out of RCRA regulation and oversight.

Extent of Deviation: MAJOR

Respondent's failure to conduct adequate waste determinations on these materials deviates substantially from the regulatory standards because it impeded the timely application of management standards designed to ensure safe accumulation and the timely removal of said wastes within 90 days of becoming characterized as hazardous wastes. In addition, numerous subsequent violations flow from the failure to conduct waste determinations. These violations include failure to properly label, failure to place accumulation dates, failure to have containers in good condition, failure to ensure storage with regard to chemical compatibility, failure to keep containers closed, failure to maintain proper aisle space, failure to conduct weekly inspections, failure to place warning signs, storage without a permit, failure to inspect, and failure to post emergency contact information.

The combined total of corrosive, toxic, ignitable, and reactive wastes that Aero-Dynamics had failed to perform complete, accurate, and timely hazardous waste determinations on at the time of the Inspection was approximately 373 gallons. This amount of waste, in conjunction with the storage practices within the CSR, the age of the wastes, and the condition of the containers represents a substantial deviation from the regulatory standards.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Major/Major.

Gravity Matrix Cell Range (gravity-based penalty): \$28,330–\$37,500

Penalty Amount Chosen: \$32,915 (mid-point)²

² Factors such as seriousness of the violation (as compared to other violations in the same matrix cell), size, and sophistication of the facility, efforts to remediate the violation, number of days of the violation, and other relevant factors specific to the violation are considered in determining the appropriate amount within the matrix cell range for

Multiple/Multi-day Assessment: EPA is assessing violations for each of the following categories of hazardous waste:

1. Ignitable wastes;
2. Corrosive wastes;
3. Toxic wastes;
4. Potentially reactive oxidizers, and
5. Unknown wastes.

However, in accordance with Section A.3 on page 22 of the Penalty Policy, the Region has chosen to apply the multi-day penalty matrix for each category of violation after the first, rather than assessing a full gravity-based penalty for each of these violations, because the violations are so similar in nature.

Multi-day Range: \$1,420–\$7,090

Penalty Amount Chosen = \$4,255 (mid-point)

| | |
|--------------------------------------------------------|----------|
| First violation for ignitable wastes | \$32,915 |
| Multi-day penalty other waste categories (4 x \$4,255) | \$17,020 |

TOTAL PENALTY AMOUNT: \$49,935

2. Failure to Minimize Possibility of Release, Fire and/or Explosion and Risk to Human Health and the Environment

Provisions Violated: *N.H. Rules Env-Hw 509.02(a)(4), incorporating 40 C.F.R § 265.31; N.H. Rules Env-Hw 506.01(a), 507.01, and 513.02*

At the time of the Inspection, two locations in the Facility had pools of spilled acidic hazardous waste on the floor. The floors in these areas were also marked with stains from historic spills and with footprints, which indicates that personnel had moved through the waste and tracked it around. Additionally, one container that Aero-Dynamics was using to store hazardous waste was extremely corroded.

Potential for Harm: MAJOR

Respondent's failure to minimize the possibility of a release, fire, and/or explosion by not promptly controlling and preventing spills of hazardous waste posed a substantial threat to human health and the environment. The spills of hazardous waste could have easily lead to harm to human health and the environment because they occurred, and were left in place, in highly trafficked areas where people (*i.e.*, Facility staff, emergency responders, transporters, contractors, and state/federal inspectors) would be exposed to them. Additionally, compromised hazardous waste storage containers are more likely to fail and release their contents.

Extent of Deviation: MAJOR

all components of the gravity-based penalty throughout this justification. When no extenuating circumstances warrant selection of either the high or the low end of the matrix cell range, the mid-point is selected.

The spills involved only approximately 10 gallons and 4 gallons of highly acidic, liquid, hazardous wastes, but they represent completely uncontrolled hazardous wastes that circumvented many of the management standards designed for the protection of human health and the environment. They, in combination with the extremely corroded container, represent a substantial deviation from the regulatory requirement.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Major/Major.

Gravity Matrix Cell Range (gravity-based penalty): \$28,330–\$37,500

Penalty Amount Chosen: \$32,915 (mid-point)

TOTAL PENALTY AMOUNT: \$32,915

3. Failure to Ensure Presence and Implementation of Emergency Preparedness and Prevention Measures

Provisions Violated: *N.H. Rules Env-Hw 509.02(b) and 509.02(a)(4), incorporating 40 C.F.R. § 265.32(c)*

At the time of Inspection, the emergency posting in the main less-than 90-day hazardous waste storage area in Building No. 2 ("HWSA") lacked certain of the required information. Additionally, the hazardous waste receiving area that Respondent referred to as "Satellite Area C" ("Receiving Area") was functioning as an additional hazardous waste storage area, but it did not have the required emergency posting or the necessary emergency equipment.

Potential for Harm: MODERATE

Respondent's failure to have the required emergency equipment and emergency postings in each HWSA posed a significant threat to human health and the environment. The posting (describing such items as internal communication and alarm systems, emergency information to summon local police/fire departments or state/local emergency response teams, locations of fire extinguishers, fire/spill/decontamination equipment) is a key tool for preventing or containing hazardous waste emergencies. The availability of this information and emergency equipment allows personnel to initiate early responses to an emergency situation. They ensure that personnel, first on the scene of a potential or actual incident, can properly communicate and begin the initial remedial responses to spills, fires, or explosions. Their availability allows area personnel to quickly respond to, and potentially mitigate, an emergency situation while summoned emergency responders travel to the site. The immediate presence of these tools can reduce the dangers posed to human health and the environment soon after area personnel become aware of the situation.

Extent of Deviation: MODERATE

Given that the main HWSA had much of the required information on its emergency posting (albeit that the posted instructions on who to contact during an emergency was very unclear), and that, while the Receiving Area was functioning as an unregulated HSWA (without benefit of emergency response equipment or posted emergency information), it only contained five 55-gallon drums of hazardous wastes, Respondent deviated significantly from the regulatory requirement.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Moderate.

Gravity Matrix Cell Range (gravity-based penalty): \$7,090–\$11,330

Penalty Amount Chosen: \$9,210 (mid-point)

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$1,382) because the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$10,592.

4. Failure to Have an Adequate Hazardous Waste Training Program

Provision Violated: *N.H. Rules Env-Hw 509.02(a)(2), incorporating 40 C.F.R. § 265.16*

Aero-Dynamics had not provided hazardous waste training to the necessary employees and had not maintained adequate training documentation. While one employee had received the required training (through NHDES), four other employees had not received the needed initial or refresher training, for a total of seven violations from May 2009 through May 2012. Additionally, Aero-Dynamics was not maintaining the necessary training documentation: it lacked written job titles for each position at the Facility related to hazardous waste management, and it lacked written descriptions of the type and amount of training that must be given to each employee with such duties.

The following individuals had significant responsibilities for managing hazardous wastes over the following three year-long periods (May 29, 2009–May 28, 2010, May 29, 2010–May 28, 2011, and May 29, 2011–May 28, 2012), resulting in seven instances of training violations:

| <u>5/29/2009-5/28/2010</u> | <u>5/29/2010-5/28/2011</u> | <u>5/29/2011-5/28/2012</u> |
|----------------------------|----------------------------|----------------------------|
| 1. Daniel Swarbrick | 2. Daniel Swarbrick | (left 9/2011) |
| ----- | ----- | 3. Greg Burzynski |
| ----- | ----- | 4. Tom Gilligan |
| 5. Greg Hudak | 6. Greg Hudak | 7. Greg Hudak |

***Note: Titles/Responsibilities:**

Daniel Swarbrick: (former) General Manager; manifest signer in 2010 and 2011;

Greg Burzynski: President; Local (emergency) Coordinator, per 2011 CP;

Tom Gilligan: Second Alternate Local (emergency) Coordinator, per 2011 CP; and

Greg Hudak: HWSA manager (Mr. Hudak's responsibilities went beyond SAA operator, and as the primary manager of hazardous waste in the Receiving Area, he should have been trained every year.)

Potential for Harm: MAJOR

Respondent's failure to have an adequate training program in place posed a substantial risk of exposure of humans or other environmental receptors to hazardous waste. Training

personnel who handle or manage hazardous waste is an essential part of proper hazardous waste management. The failure to provide initial and annual training is a serious violation because only proper training provides the knowledge of how to manage hazardous waste safely and in accordance with all state and federal regulations. Improper handling of hazardous waste increases the likelihood of releases and needless worker exposure to hazardous waste. The specific mismanagement attributable to these training deficiencies is made evident by the other ten counts described in this document.

In addition, the omission of an effective RCRA hazardous waste management training program, applied to all those with hazardous waste management duties, has a substantial adverse effect on the entire RCRA regulatory program. Without proper initial and annual training, staff responsible for hazardous waste management may be either unaware of, or are likely to forget, state and federal regulations designed to ensure the safe management of hazardous wastes.

Extent of Deviation: MODERATE

Respondent's failure to have an adequate RCRA training program represents a significant deviation from the RCRA requirements. Comprehensive training is paramount to ensuring that hazardous wastes are properly managed. At the time of the inspection, Aero-Dynamics only employed one individual who had been thoroughly trained in hazardous waste management or on the requirements of the Facility's own hazardous waste contingency plan. However, the Facility consistently sent its key environmental managers (first Mr. Cellamare, followed by Mr. Wilson) to NHDES' comprehensive hazardous waste management training on an annual basis from calendar years 2004 through 2012. Additionally, Mr. Basti was receiving on-the-job training at the time of the Inspection.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Major/Moderate.

Gravity Matrix Cell Range (gravity-based penalty): \$21,250–\$28,330
Penalty Amount Chosen: \$24,790 (mid-point)

Multiple/Multi-day Assessment: In accordance with Section A.3. on page 22 of the Penalty Policy, EPA has chosen to treat multiple violations of the training requirements as multi-day violations because of the number and similarity of the violations, rather than assessing each failure to comply as a full gravity-based penalty. In accordance with the Penalty Policy, a full gravity-based penalty is assessed for the failure to train Mr. Swarbrick for the period 5/29/2009-5/28/2010. Multi-day penalties are applied for the failure to train him and the four other employees with hazardous waste management over the three year period prior to EPA's inspection (*i.e.*, May 29, 2009–May 28, 2012), resulting in six additional instances of missed training.

Multi-day Range: \$1,070–\$5,670
Penalty Amount Chosen = \$3,370 (mid-point)

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| First violation for Mr. Swarbrick for 2009/2010 | \$24,790 |
| Multi-day penalty for Mr. Hudak for 2009/2010 and 2011/2012, Mr. Swarbrick for 2010/2011, and Mr. Burzynski, Mr. Gilligan, and Mr. Hudak for 2011/2012 (6 x \$3,370) | \$20,220 |

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$9,279) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$45,010.

5. Failure to Maintain an Adequate Hazardous Waste Contingency Plan

Provisions Violated: *N.H. Rules Env-Hw 509.02(a)(5), incorporating 40 C.F.R. §§ 265.52, .53, and .55*

Aero-Dynamics had a contingency plan ("CP"), but it was inadequate. The delegation of authority in the event of a hazardous waste emergency at the Facility was extremely confusing and included personnel who have not received RCRA training. The CP also failed to address all the necessary types of emergencies, and it failed to identify the location of emergency equipment.

Potential for Harm: MODERATE

Respondent's failure to have a complete and comprehensive CP (and emergency coordinators who are versed in the location of the plan, its contents, and requirements), posed a significant potential harm to human health and the environment, especially considering the myriad of wastes generated at the Facility. The primary function of a contingency plan is to establish a framework for making management decisions during a chemical emergency. A contingency plan must establish key emergency coordinators and clear lines of communication among facility personnel and describe the actions facility personnel shall take in a variety of emergencies, and should identify the key equipment. The failure to have such a plan increases the likelihood that Facility personnel will not sufficiently minimize hazards to public health, safety and welfare, and threats to the environment from fires, explosions, spills or other unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water. There is also regulatory harm since the regulations specifically outline all aspects that must be addressed in the development, maintenance and implementation of an adequate contingency plan.

Extent of Deviation: MODERATE

Respondent's failure to have an adequate CP deviated significantly from the applicable regulations. However, Respondent did have a CP in place, and it addressed many of the necessary elements of contingency planning.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Moderate.

Gravity Matrix Cell Range (gravity-based penalty): \$7,090-\$11,330

Penalty Amount Chosen: \$9,210 (mid-point)

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$1,382) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$10,592.

6. Failure to Close Containers of Hazardous Waste

Provisions Violated: *N.H. Rules Env-Hw 509.02(a)(6), incorporating 40 CFR 265.173(a); N.H. Rules Env-Hw 509.03(d), incorporating N.H. Rules Env-Hw 507.01*

Aero-Dynamics failed to close two containers of hazardous waste near the WWTU, two containers of hazardous waste in the Receiving Area, and two containers of hazardous waste in the Chemistry and Quality Laboratory SAA.

Potential for Harm: MODERATE

Respondent's failure to close these containers posed a significant risk of human or environmental exposure to hazardous waste. The purpose of this requirement is to minimize emissions of volatile wastes, to help protect ignitable or reactive wastes from sources of ignition or reaction, to help prevent spills, to reduce the potential of mixing incompatible wastes, and to prevent direct contact of personnel with hazardous wastes. Failure to close containers of toxic and corrosive wastes completely circumvents this release minimization technique. The open containers create harm to the regulatory program because there is no way for the EPA or state inspector to know, upon inspection, if there has been a release of hazardous waste or mixing of incompatible hazardous wastes. However, the open containers represented a spill risk rather than a release of volatile hazardous constituents into the Facility's immediate atmosphere, and two of the containers held solids (in the Receiving Area) while two of the containers were only partially full (in the laboratory SAA).

Extent of Deviation: MINOR

Given the total number of containers observed throughout the Facility and that only six containers were involved in this count, the extent of deviation from the regulatory requirement is minor.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Minor.

Gravity Matrix Cell Range (gravity-based penalty): \$4,250–\$7,090

Penalty Amount Chosen: \$5,670 (mid-point)

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$851) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$6,521.

7. **Failure to Properly Label Hazardous Waste**

Provisions Violated: *N.H. Rules Env-Hw 507.03(a)(1) and N.H. Rules Env-Hw 509.03(g)*

Respondent failed to label nine containers of hazardous waste with one or more of: the words "hazardous waste," words that described their contents, and/or the federal or state waste codes. One of the containers was in the HWSA, two were near the WWTU, four were in the Receiving Area, and two were in the Chemistry and Quality Laboratory SAA.

Potential for Harm: MODERATE

Respondent's failure to label these nine containers of hazardous waste with the necessary words posed a significant risk of harm to the environment by increasing the risk that the hazardous waste within them would be mismanaged. Without proper labeling, facility personnel, responders, and inspectors may not fully recognize potentially dangerous constituents in hazardous waste containers. The likelihood that these hazardous wastes could be improperly managed increases the likelihood of fires, explosions, releases or improper disposition of hazardous waste. Proper labeling provides facility personnel and emergency responders with the necessary information about the types of wastes, and their associated hazards, to ensure proper storage and management during accumulation, and it also prevents the commingling of incompatible hazardous wastes within the same container. There is also regulatory harm associated with the failure to properly label containers of hazardous waste because inspectors cannot easily determine, solely by observation, whether container contents are hazardous and what potential hazards they pose. However, a majority of the containers at the Facility were properly labeled, and of those that were not, all but one had at least some of the required labeling.

Extent of Deviation: MINOR

Failure to completely label containers usually represents a serious deviation from the regulations. However, of the hundreds of hazardous waste containers observed at Aero-Dynamics at the time of the Inspection, only six 55-gallon, one 30-gallon, one 5-gallon and one 1-liter containers were deficient in one or more aspects of required hazardous waste labeling. Therefore, Respondent's failure to consistently apply all three labeling requirements to all its containers of hazardous waste is a minor deviation from the regulations.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Minor.

Gravity Matrix Cell Range (gravity-based penalty): \$4,250–\$7,090

Penalty Amount Chosen: \$5,670 (mid-point)

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$851) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$6,521.

8. Failure to Mark Containers with the Beginning Accumulation Date

Provision Violated: *N.H. Rules Env-Hw 507.03(a)(1)(a)*

Respondent failed to mark seven containers of hazardous waste (two in the WWTU and five in the Receiving Area) with the dates upon which their accumulation began.

Potential for Harm: MODERATE

Respondent's failure date these seven containers of hazardous waste with the accumulation start-date posed a significant risk of harm to the environment by increasing the risk of a release of hazardous waste. Failing to mark containers of hazardous wastes with the date that accumulation began creates the potential that hazardous waste will be stored for greater than the 90 days allowed. Long-term storage increases the likelihood that wastes could be mismanaged, thereby increasing the likelihood of contamination or accidents due to leaks and spills. The requirement to date containers allows inspectors to determine if a facility is regularly shipping wastes off-site within the regulated amount of time. A facility that stores hazardous waste for greater than 90 days is required to get a permit and is subject to numerous additional requirements to ensure safe and proper management of waste. By failing to mark containers with the accumulation date, Aero-Dynamics undermined the purpose of the regulatory requirement and may have evaded permit requirements. However, the two drums of chrome-bearing wastes were only temporarily stored near the WWTU for eventual permitted treatment in the WWTU's chrome reduction tank (and one of these was almost empty), the Receiving Area and the main HWSA were fairly uncluttered and organized (indicative of frequent waste shipments), and EPA's review of Respondent's hazardous waste manifests indicated regular shipment of hazardous wastes from the Facility.

Extent of Deviation: MINOR

Of the numerous containers of hazardous waste observed during the inspection, EPA only noted six 55-gallon containers and one 30-gallon container that were undated. Given this, in conjunction with the fact that Aero-Dynamics consistently placed accumulation dates on the containers of hazardous waste observed in the main HWSA and regularly ships hazardous wastes off-site once established in the HWSA, the extent of deviation from the regulatory requirement is minor.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Minor.

Gravity Matrix Cell Range (gravity-based penalty): \$4,250-\$7,090

Penalty Amount Chosen: \$5,670 (mid-point)

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$851) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$6,521.

9. **Failure to Manage Hazardous Wastes in Accordance with the Requirements for a Satellite Accumulation Area**

Provision Violated: *N.H. Rules Env-Hw 509.03*

Respondent failed to properly manage hazardous waste in an SAA by exceeding the limit of fifty-five gallons of non-acutely hazardous waste. An SAA near the WWTU contained a half-full 202 gallon tote, totaling 101 gallons of hazardous waste.

Potential for Harm: MINOR

Respondent's failure to move the excess hazardous waste to the HWSA or otherwise manage it in accordance with the requirements of a less-than-90-day storage area within three days of becoming excess posed a potential for risk of harm to humans and the environment by increasing the risk for the mismanagement of hazardous waste. SAAs have less stringent hazardous waste management requirements because of the low volume of hazardous waste kept in them. This ensures that work areas remain unencumbered by excess containers and amounts of dangerous hazardous waste. This storage limitation also ensures that personnel are moving smaller, more manageable amounts of hazardous wastes through potentially high traffic areas on the way to long-term storage locations. This decreases the potential for accidents, container mismanagement, and harm to human health and the environment. However, the waste involved in this count corresponds to toxic (non-volatile) solid debris, rather than liquid spill-prone hazardous waste, and the tote was plastic lined and closed, decreasing the threat to human health and the environment.

Extent of Deviation: MINOR

Because this violation only corresponds to one half-full tote (approximately 101 gallons), the extent of deviation is minor.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Minor/Minor.

Gravity Matrix Cell Range (gravity-based penalty): \$150-\$710

Penalty Amount Chosen: \$430 (mid-point)

TOTAL PENALTY AMOUNT: \$430.

10. **Failure to have an Adequate Hazardous Waste Inspection Program**

Provisions Violated: *N.H. Rules Env-Hw 509.02(a)(1), incorporating 40 C.F.R. § 265.15; N.H. Rules Env-Hw 509.02(a)(6), incorporating 40 C.F.R. § 265.174*

Respondent failed to have an adequate hazardous waste inspection program: it had no written inspection schedule; its inspection records for the HWSA lacked any notes regarding any concerns/issues (which should have noted some of the violations in the Complaint), and Respondent was not performing the needed weekly inspections of the Receiving Area.

Potential for Harm: MODERATE

Respondent's failure to have an adequate hazardous waste inspection program posed a significant risk of harm to the environment by increasing the risk of a release of hazardous waste. An inspection plan and weekly HWSA inspections are required so that staff remain aware of the condition of the storage area and the containers therein on a frequent enough basis to ensure that proper and timely action are taken to eliminate environmental harm. Without a plan and weekly inspections (including documentation of findings and remedial actions), containers could remain in poor condition, open, mislabeled, unlabeled, leaking and/or stored for greater than the allowed time period without personnel noticing. At the time of the Inspection, EPA observed numerous container management violations (described in this document) that might have been corrected with the proper implementation of an inspection plan and with documentation of an inspection program. Furthermore, documentation of weekly inspections would allow both Aero-Dynamics staff and inspectors to confirm that inspections actually occurred, that the inspections reviewed all aspects of the storage area and container conditions, including the presence and suitability of emergency response equipment, and that remedial actions were recommended, documented, and implemented in a timely fashion. However, Facility staff are regularly working in the areas (and thus would have likely observed and been able to respond to spills of hazardous waste).

Extent of Deviation: MODERATE

The fact that Aero-Dynamics routinely conducted and documented weekly inspections at its main HWSA suggests that Aero-Dynamics would have conducted and documented weekly inspections in the Receiving Area, had it recognized this area as a second HWSA. (However, even given that Aero-Dynamics considered this area an SAA, it should have been conducting state-required monthly SAA inspections.) Since a well thought out inspection plan was also lacking and the presence of a written plan may have induced staff to be in compliance with state and federal inspection requirements, EPA considers the extent of deviation to be moderate.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Moderate/Moderate.

Gravity Matrix Cell Range (gravity-based penalty): \$7,090–\$11,330

Penalty Amount Chosen: \$9,210 (mid-point)

Multiple/Multi-day Assessment: In accordance with Section A.3. on page 22 of the Penalty Policy, multiple/multi-day penalties are being sought because of the number and similarity of the violations, rather than assessing each failure to comply as a full gravity-based penalty for each missed inspection. Aero-Dynamics repeatedly violated the same regulatory requirement for the containers of hazardous waste stored in the Receiving Area. However, EPA has no way of knowing if containers of hazardous waste were consistently stored in this area from month to month. Given that EPA's Inspection occurred at the end of the month (May 29, 2012), multiple penalties are being assessed only for the month of May 2012. At minimum, Aero-Dynamics should have conducted and documented four weekly inspections prior to EPA's site visit.

Multi-day Range: \$360–\$2,230

Penalty Amount = \$1,295 (mid-point)

| | |
|--------------------------------------------------------------------------------------------|---------|
| First violation for inspection deficiencies | \$9,210 |
| Multi-day penalty for failing to perform three subsequent weekly inspections (\$1,295 x 3) | \$3,885 |

Adjustment to Penalty Amount for History of Noncompliance: EPA has chosen to increase the total gravity by 15% (\$1,964) since the Facility was cited and penalized for similar violations by the NHDES Waste Management Program in 2009.

TOTAL PENALTY AMOUNT: \$15,059.

11. Treatment of Hazardous Waste without a Permit

Provisions Violated: *N.H. Rules Env-Hw 303.01(d) and 304.04(p)*

Respondent treated hazardous waste without a permit by adding a small number of wastes to its WWTU that did not fall within the scope of its Limited Permit from NHDES.

Potential for Harm: MINOR

Respondent's treatment of hazardous wastes without authorization under a permit (in this case a NHDES Limited Permit) violates a central and fundamental requirement of the RCRA regulatory program and posed a potential for harm to the regulatory program, as it circumvented the state review, approval and permitting process. Also, without this review and approval process for all waste influents to a WWTU, there is no way of knowing whether the wastes will be properly treated given the available treatment processes. Although there is harm posed by the Respondent's treatment of unauthorized waste, EPA considered the extremely limited types and amounts of wastes in this count while assessing the potential for harm.

Extent of Deviation: MODERATE

The treatment of hazardous wastes without a permit significantly deviates from the requirements. The volumes of wastes involved were small, but regular.

Penalty Assessment

EPA has determined that Respondent's violation of this requirement warrants a classification of Minor/Moderate.

Gravity Matrix Cell Range (gravity-based penalty): \$710–\$2,130

Penalty Amount Chosen: \$1,420 (mid-point)

TOTAL PENALTY AMOUNT: \$1,420.

SUMMARY OF VIOLATIONS

| No. | Description | Harm/ Deviation | Econ. Ben. | \$ Gravity | \$ Adjust. (+15%) for History | \$ Total Penalty |
|-----|-----------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------|------------|----------------------------------|---------------------|
| 1 | Failure to conduct adequate hazardous waste determinations | Major/ Major | Not Applicable (Insignificant) | 49,935 | Not applicable | 49,935 |
| 2 | Failure to use minimize hazards to human health and the environment | Major/ Major | Not applicable | 32,915 | Not applicable | 32,915 |
| 3 | Failure to ensure presence/implementation of emergency preparedness and prevention measures | Moderate/ Moderate | Not applicable | 9,210 | 1,382 | 10,592 |
| 4 | Failure to have an adequate hazardous waste training program | Major/ Moderate | Not applicable (Insignificant) | 61,860 | 9,279 | \$45,010 |
| 5 | Failure to maintain an adequate hazardous waste contingency plan | Moderate/ Moderate | Not applicable | 9,210 | 1,382 | 10,592 |
| 6 | Failure to close containers of hazardous waste | Moderate/ Minor | Not applicable | 5,670 | 851 | 6,521 |
| 7 | Failure to properly label hazardous waste | Moderate/ Minor | Not applicable | 5,670 | 851 | 6,521 |
| 8 | Failure to mark containers of hazardous with the beginning accumulation date | Moderate/ Minor | Not applicable | 5,670 | 851 | 6,521 |
| 9 | Failure to manage hazardous waste in accordance with requirements for a Satellite Accumulation Area | Minor/ Minor | Not applicable | 430 | Not applicable | 430 |
| 10 | Failure to have an adequate hazardous waste inspection program | Moderate/ Moderate | Not applicable | 13,095 | 1,964 | 15,059 |
| 11 | Treatment of hazardous wastes without a permit | Minor/ Moderate | Not applicable | 1,420 | Not applicable | 1,420 |

GRAND TOTAL → \$185,516

**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 Complaint, Compliance Order, and Notice of Opportunity for Hearing has been sent to the following persons on the date noted below:

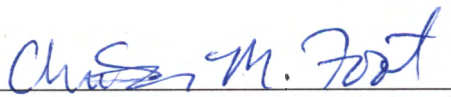
Original and one copy,
hand-delivered:

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 of Complaint (with the
Consolidated Rules of Practice
and Penalty Policy), certified mail,
return receipt requested:

Mr. Gregory Burzynski, President
Aero-Dynamics, Inc.
142 Batchelder Road
Seabrook, New Hampshire 03874-4403

Dated: 9/30/13


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