



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 03 2010

REPLY TO THE ATTENTION OF:

LR-8J

**CERTIFIED MAIL 7099 3400 0000 9585 4144**  
**RETURN RECEIPT REQUESTED**

Michael B. Staebler  
Partner  
Pepper Hamilton LLP  
100 Renaissance Center, Suite 3600  
Detroit, Michigan 48243

Re: Administrative Complaint and Compliance Order **RCRA-05-2011-0002**  
DMI Automotive Inc.  
EPA ID No.: MIR 000 021 444

Dear Mr. Staebler:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the U.S. Environmental Protection Agency's determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 *et seq.*, by DMI Automotive Inc. EPA based its determination on the March 4, 2008, inspection of the facility located at 1200 Durant Drive, Howell, Michigan, and your EPA files. The general allegations in the Complaint state the reasons for EPA's determination.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for hearing with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Andre Daugavietis, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with EPA will not affect or extend the thirty (30) day deadline to file the Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with Land and Chemicals Division staff, please contact Michael Cunningham, U.S. Environmental Protection Agency, RCRA Branch (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-4464.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Little". The signature is written in a cursive style with a large, stylized initial "P".

Paul J. Little  
Acting Chief, RCRA Branch  
Land and Chemicals Division

Enclosure

cc: Saulius Mikalonis, Plunkett Cooney, P.C. (w/enclosure)  
John Craig, MDNRE (w/enclosure)  
Bryan Grochowski, MDNRE, Lansing District Office (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**DMI Automotive Inc.  
1200 Durant Drive  
Howell, Michigan 48843**

**U.S. EPA ID: MIR 000 021 444**

**Respondent.**

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)  
) **Docket No. RCRA-05-2011-0002**  
)  
) **Proceeding to Assess a Civil**  
) **Administrative Penalty and Issue a**  
) **Compliance Order under Section 3008(a)**  
) **of the Solid Waste Disposal Act, as**  
) **amended, 42 U.S.C. § 6928(a)**  
)  
)  
)

**RECEIVED**  
NOV 03 2010

**I. COMPLAINT AND COMPLIANCE ORDER** **REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**A. Preliminary Statement and Jurisdiction**

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules) at 40 Code of Federal Regulations (C.F.R.) Part 22. A copy of the Consolidated Rules is enclosed with the Complaint served on Respondent.

2. The Complainant is, by lawful delegation, Director, Land and Chemicals Division, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

3. The Respondent is DMI Automotive Inc., a company incorporated in the State of Michigan.

## **B. Statutory and Regulatory Background**

4. Jurisdiction for this action is conferred on U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

5. Pursuant to Sections 3001 through 3005 of RCRA, 42 U.S.C. §§ 6921 through 6925, U.S. EPA promulgated regulations governing generators and transporters of hazardous waste, which are codified at 40 C.F.R. Parts 260 through 279.

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA (the Administrator) may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to RCRA Section 3006, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). U.S. EPA granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on April 23, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61175); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective

July 31, 2002 (67 FR 49617); and on March 9, 2006, effective March 9, 2006 (71 FR 12141). The U.S. EPA authorized Michigan regulations are codified at Michigan Administrative Code (MAC) 299.9101 et seq. See 40 C.F.R. § 272.1151 et seq.

8. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements imposed pursuant to HSWA take effect immediately in all states.

9. EPA has provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

10. The Administrator may assess a civil penalty of up to \$25,000 per day of violation for RCRA violations that occurred prior to January 31, 1997, under Section 3008 of RCRA, 42 U.S.C. § 6928. The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation for RCRA violations that occurred on or after January 31, 1997, and to \$32,500 for RCRA violations that occurred on or after March 16, 2004. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

### **C. General Allegations**

11. The Respondent is DMI Automotive Inc. (“DMI” or “Respondent”), which is, and was all times relevant to this Complaint, a corporation, incorporated under the laws of Michigan, and the owner and operator of a facility located at 1200 Durant Drive, Howell Michigan 48843 (“the Facility”).

12. Respondent is a “person” as defined by MAC R 299.9106(i) [40 C.F.R. § 260.10].

13. At all times relevant to this Complaint, Respondent was the “owner” and “operator” of the Facility, as defined by MAC R 299.9106(g) and (f), respectively [40 C.F.R. § 260.10].

14. The Facility is a “facility” as defined by MAC R 299.9103(r) [40 C.F.R. § 260.10].
15. The Facility consists of a building with two chromium plating tanks with a capacity of approximately 8,000 gallons each.
16. At all times relevant to this Complaint, Respondent conducted chromium plating on automotive dies at the Facility.
17. At the Facility, Respondent chromium plates metal stamping dies by electro-cleaning the die, electorplating the die, rinsing the die, and final rinsing the die.
18. On February 6, 1997, DMI submitted to the Michigan Department of Environmental Quality (MDEQ) a Hazardous Waste Notification pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930 and Public Act 451 if 1994, Part 111, Michigan Compiled Laws 324.11101 et seq., identifying the Facility as a generator of hazardous waste.
19. At all times relevant to this Complaint, Respondent did not have a RCRA permit, operating license or interim status for the Facility.
20. Respondent generated hazardous waste at the Facility including, but not limited to, hazardous waste spent chromium electroplating solution (EPA Hazardous Waste Numbers D002, D007, and D008) and spent chromium plating rinse waste water (EPA Hazardous Waste Numbers D007 and D008).
21. At all times relevant to this Complaint, Respondent generated more than 1,000 kilograms of hazardous waste per month at the Facility.
22. The Respondent is a “generator” as defined by MAC R 299.9104(a) [40 C.F.R. § 260.10].

23. In generating hazardous waste as an incident of conducting its business at the Facility, Respondent is subject to the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921-6939e; 40 C.F.R. Part 260 *et seq.*; and MAC R 299.9301 *et seq.*

24. At times relevant to this Complaint, Respondent placed spent chromium plating solution and spent chromium plating rinse waste water into a pit (“the pit”) at the Facility for accumulation.

25. Respondent contacted a waste disposal company to pump the spent chromium plating solution and spent chromium plating rinse waste water out of the pit from time to time, for off-site disposal.

26. On March 4, 2008, representatives of the EPA and MDEQ conducted a RCRA compliance evaluation inspection at the Facility.

27. Based upon the inspection results, EPA issued Respondent a Notice of Violation (NOV) on November 13, 2008.

28. Respondent submitted a letter and records to the EPA in response to the NOV on or about December 11, 2008.

29. On June 8, 2009, EPA issued a Section 3007 “Request for Information” (“Information Request”) to DMI, which required DMI to submit certain information relating to hazardous waste activities at the Facility.

30. On or about June 22, 2009, DMI submitted responses to EPA in response to the Information Request.

31. On November 20, 2009, EPA issued DMI a Notice of Intent to File an Administrative Complaint for the violations alleged herein.

32. The regulation at MAC R 299.9212(4) [40 C.F.R. § 261.24] states that a solid waste exhibits the toxicity characteristic of chromium (EPA Hazardous Waste Number D007), if a representative sample contains a chromium concentration of equal to or greater 5 milligrams per liter (mg/L).

33. A sample of the spent chromium electroplating solution collected from the Facility in September 2005 contained 86,000 mg/L of chromium.

34. The regulation at MAC R 299.9212(4) [40 C.F.R. § 261.24] states that a solid waste exhibits the toxicity characteristic of lead (EPA Hazardous Waste Number D008), if a representative sample contains a lead concentration of equal to or greater 5 milligrams per liter (mg/L).

35. A sample of the spent chromium electroplating solution collected from the Facility in September 2005 contained 20 mg/L of lead.

36. The regulation at MAC R 299.9212(1)(a) [40 C.F.R. § 261.21] states that a solid waste exhibits the corrosivity characteristic (EPA hazardous waste Number D002), if it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5.

37. A sample of the spent chromium electroplating solution collected from the Facility in September 2005 was aqueous and had a pH of less than 2.

38. The spent chromium electroplating solution and spent chromium plating rinse waste water accumulated in the pit at the Facility is a hazardous waste as defined at MAC R 299.9104(d) and 299.9203 [40 C.F.R. § 261.3].

39. Manifest records for 2006 and 2007 indicate that DMI generated 137,802 gallons of spent chromium electroplating solution and spent chromium plating rinse waste water at the Facility.



40. The pit where spent chromium electroplating solution and spent chromium plating rinse waste water was accumulated was a “tank system” as defined in MAC R 299.9108(b) [40 C.F.R. § 260.10].

41. The tank system was installed in 1996, and therefore, was a “new tank system” as defined in the regulation at MAC R 299.9105(x) [40 C.F.R. § 260.10].

42. Pursuant to the regulation at MAC R 299.9306(1), generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a construction permit or operating license, provided that the generator complies with the provisions of MAC R 299.9306.

43. At the time of the inspection, Respondent had not applied for or received a variance from the secondary containment requirements for its tank system as provided for by MAC R 299.9306(1)(a)(ii) and 40 C.F.R. § 265.193(g).

44. Any generator storing hazardous waste without a construction permit or operating license that fails to fully comply with the provisions of MAC R 299.9306, as applicable, is storing hazardous waste in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a), and corresponding state and federal regulations.

**COUNT 1: STORAGE OF HAZARDOUS WASTE WITHOUT A CONSTRUCTION PERMIT OR OPERATING LICENSE AND FAILURE TO OBTAIN A TANK ASSESSMENT / CERTIFICATION AND FAILURE TO PROVIDE SECONDARY CONTAINMENT**

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth fully in this paragraph.

46. Pursuant to the regulation at MAC R 299.9306(1)(a)(ii), a generator may accumulate hazardous waste on-site without obtaining a construction permit or operating license

if the hazardous waste is placed in tanks and the generator complies with 40 C.F.R. Part 265, subpart J (40 C.F.R. §§ 265.190 through 265.202).

47. Respondent's pit did not meet all of the requirements of 40 C.F.R. Part 265, Subpart J; therefore, Respondent did not satisfy the conditions specified at MAC R 299.9306(1)(a)(ii) necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

#### Failure to Obtain a Tank Assessment and Certification

48. The regulation at 40 C.F.R. § 265.192(a) requires that for each new tank system, the owner or operator must determine that the tank is not leaking or unfit for use. The owner and operator must obtain a written assessment reviewed and certified by a qualified, registered professional engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity.

49. At the time of the EPA and MDEQ inspection, the Facility had not obtained for the pit a written assessment reviewed and certified by a qualified, registered professional engineer attesting to its integrity.

50. Because the Facility did not obtain a written assessment reviewed and certified by a qualified, registered professional engineer attesting to the pit's integrity, Respondent did not comply with the requirements of 40 C.F.R. § 265.192(a).

51. By failing to comply with 40 C.F.R. § 265.192(a), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

#### Failure to Provide Secondary Containment

52. The regulation at 40 C.F.R. § 265.193(a)(1) requires that all new tank systems be provided with secondary containment to prevent the release of hazardous waste or hazardous waste constituents to the environment.

53. At the time of the inspection, Respondent failed to provide the pit at the Facility with secondary containment to prevent the release of hazardous waste or hazardous waste constituents to the environment.

54. By failing to comply with 40 C.F.R. § 265.193(a)(1), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

#### Failure to conduct inspections of the tank system

55. The regulation at 40 C.F.R. § 265.195(a) requires that the owner or operator must inspect the a) discharge, overflow/spill control equipment, b) above ground portion of the tank, c) materials and area around the tank, where present, at least once each operating day.

56. At the time of the inspection, Facility representatives indicated that the Facility failed to conduct daily inspections of the pit.

57. By failing to comply with 40 C.F.R. § 265.195(a), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

**COUNT 2: STORAGE OF HAZARDOUS WASTE WITHOUT A CONSTRUCTION PERMIT OR OPERATING LICENSE AND FAILURE TO PROPERLY LABEL TANKS OF HAZARDOUS WASTE**

58. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth fully in this paragraph.

59. Pursuant to MAC R 299.9306(1)(c) [40 C.F.R. § 262.34(a)(3)], a generator may accumulate hazardous waste in tanks if the tank is labeled or marked clearly with the words “Hazardous Waste.”

60. At the time of the inspection, Respondent failed to label or mark the pit that accumulated hazardous waste spent chromium electroplating solution and spent chromium plating rinse waste water with the words “Hazardous Waste.”

61. By failing to label or mark the pit with the words “Hazardous Waste,” Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(c) [40 C.F.R. § 262.34(a)(3)].

**II. PROPOSED CIVIL PENALTY**

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for each violation of Subtitle C of RCRA that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$27,500 per day of violation for RCRA violations that occur on or after January 31, 1997, and to \$32,500 per day for violations that occur after March 15, 2004.

Section 3008(a)(3) of RCRA requires the Administrator to consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements” in assessing an administrative penalty. 42 U.S.C. § 6928(a)(3). Based on an evaluation of the facts alleged in this Complaint and the requirements of Section 3008 of RCRA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$50,800, as further explained in Attachment 1, “Penalty Summary Sheet.”

Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy. A copy of the June 2003 RCRA Civil Penalty Policy is enclosed.

Complainant determined the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty’s appropriateness, and based on new information which may become available regarding the facts and circumstances of the violations alleged.

### **III. COMPLIANCE ORDER**

Based on the foregoing and under the authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules, Respondent is ordered to comply with the following requirements immediately upon the effective date of this Order:

1. Respondent may not treat, store, or dispose of hazardous waste at the Facility without a RCRA permit or operating license, except as provided for in paragraph 2 of this Order.

2. Respondent must achieve and maintain compliance at the Facility with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by MAC R 299.9306 and 40 C.F.R. Part 262.

3. Respondent must notify U.S. EPA in writing upon achieving compliance with this Order with 15 calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent must notify U.S. EPA of the failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.

4. Respondent must submit all reports, submissions, and notifications required by this Order to:

Michael Cunningham  
RCRA Branch (LR-8J)  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **IV. FILING AND SERVICE OF DOCUMENTS**

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

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

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Andre

Daugavietis, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. Respondent may telephone Mr. Daugavietis at (312) 886-6663. Mr. Daugavietis' address is:

Andre Daugavietis  
Associate Regional Counsel  
U.S. EPA Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **V. PENALTY PAYMENT**

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

#### **CHECK PAYMENTS**

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check.

#### **WIRE TRANSFERS**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

## **OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

Contact: Natalie Pearson  
314-418-4087

## **ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, D.C. 20074  
Contact: Jesse White  
301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

## **ON LINE PAYMENT**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

Enter 'sfo 1.1' in the Search Public Forms field.  
Open form and complete required fields.

Respondent simultaneously must send copies of the check or proof of transfers and transmittal letter to Mr. Cunningham and Mr. Daugavietis at the addresses stated above in Parts III and IV, respectively.

## **VI. OPPORTUNITY TO REQUEST A HEARING**

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 3008(b) of RCRA, 42 U.S.C.



§ 6928(b) and in accordance with the Consolidated Rules, codified at 40 C.F.R. Part 22.

Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in Part VII below.

## **VII. ANSWER**

Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original Answer and one copy with the Regional Hearing Clerk at the address specified in Part IV above and must serve copies of the Answer on the other parties.

If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving this Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in Part VII above.

If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations.

Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

### **VIII. SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent may contact Mr. Daugavietis at the address or phone number specified in Part IV above.

Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this Complaint. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Administrator, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

**X. CONTINUING OBLIGATION TO COMPLY**

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with RCRA and any other applicable federal, state, or local law.

Dated this 2<sup>nd</sup> day of Nov., 2010



Bruce F. Sypniewski, Acting Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region 5

Complaint Docket No. RCRA-05-2010-

**RCRA-05-2011-0002**

**RECEIVED**  
NOV 03 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Attachment A  
**PENALTY SUMMARY SHEET**  
 DMI Automotive Inc.

NATURE OF VIOLATION DATE OF VIOLATION	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY- BASED PENALTY	MULTI-DAY PENALTY	ADJUSTMENT	ECONOMIC BENEFIT	TOTAL PENALTY
1. Storage of hazardous waste without an operating license by failing to obtain an assessment of a new tank system's integrity, failing to comply with secondary containment requirements and failing to conduct tank inspections. March 4, 2008 - September 6, 2007	MAC R 299.9306(1)(a)(ii) [40 C.F.R. § 262.34(a)(1)(ii)]; 40 C.F.R. § 265.192(a), 265.193(a), and 265.195(a)	Minor / Moderate (50% of the Matrix Cell)	\$1,289	\$46,182	\$0	\$2,050	\$49,521
2. Storage of hazardous waste without an operating license by failing to label tanks storing hazardous waste with the words "hazardous waste." March 4, 2008	MAC R 299.9306(1)(c); 40 C.F.R. § 262.34(a)(3)	Minor / Moderate (50% of the Matrix Cell)	\$1,289	\$0	\$0	\$0	\$1,289
<b>Subtotals</b>			\$2,578	\$46,182	\$0	\$2,050	\$50,800

**Note:** The gravity-based penalty amount is determined using the Revised Penalty Matrices for the RCRA Civil Penalty Policy, dated January 11, 2005. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix outlined in the Revised Penalty Matrices for the RCRA Civil Penalty Policy. Policy adjustments and economic benefit (BEN) are as explained in the 2003 RCRA Civil Penalty Policy. The gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996. Also note that the total penalty in the Total Penalty Column was rounded to the nearest \$100.

**CASE NAME:** DMI Automotive Incorporated  
**DOCKET NO:** RCRA-05-2011-0002

**CERTIFICATE OF SERVICE**


I hereby certify that today I filed the original of this **Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Michael B. Staebler  
Partner  
Pepper Hamilton LLP  
100 Renaissance Center, Suite 3600  
Detroit, Michigan 48243  
Certified Mail # 7099 3400 0000 9585 4144

Saulius Mikalonis  
Plunkett Cooney, P.C.  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, Michigan 48304  
Certified Mail # 7009 1680 0000 7667 0142

Dated: 11/3/10, 2010

  
Margaret Gray  
Administrative Program Assistant  
United States Environmental Protection Agency  
Region V  
Land and Chemicals Division LR-8J  
RCRA Branch  
77 W. Jackson Blvd, Chicago, IL 60604-3590

**RECEIVED**  
NOV 03 2010

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**