



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

SEP 26 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Kokula, Chief Financial Officer
DeZURIK, Inc.
250 Riverside Avenue North
Sartell, Minnesota 56377

Dear Mr. Kokula:

Enclosed is a file-stamped Amendment to Consent Agreement and Final Order (Amendment to CAFO) which amends the Consent Agreement and Final Order (CAFO) In Matter of DeZURIK, Inc., Docket No., CAA -05-2011-0057. As indicated by the filing stamp on its first page, we filed the Amendment to CAFO with the Regional Hearing Clerk on SEP 26 2012.

Pursuant to paragraph 9 of the Amendment to CAFO, DeZURIK, Inc. must pay the stipulated penalty within 30 days of [date Amendment to CAFO filed]. Your check must display the case name In the Matter of DeZURIK, Inc., the docket number, CAA 05-2011-0057, and the billing document number, 2751203A052.

Please direct any questions regarding this case to Michael Berman, Associate Regional Counsel, 312-886-6837.

Sincerely,

A handwritten signature in black ink that reads "William L. MacDowell".

William MacDowell
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Michael Berman/C-14J
David Crowell, Minnesota Pollution Control Agency Brainerd Office
Nancy Burke, Gray Plant Mooty



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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2011-0057
)	
DeZURIK, Inc.)	Proceeding to Assess a Civil Penalty
Sartell, Minnesota,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA-REGION 5
2012 SEP 26 PM 1:18

Amendment to Consent Agreement and Final Order

Preliminary Statement

1. This is an amendment to a Consent Agreement and Final Order (CAFO) between the United States Environmental Protection Agency and DeZURIK, Inc. (DeZURIK), docket number, CAA-05-2011-0057, dated September 28, 2011. This amendment to the Consent Agreement and Final Order (Amendment to CAFO) supplements the CAFO by providing for the payment of a stipulated penalty and by providing for an additional Supplemental Environmental Project (SEP).

2. Under the CAFO, DeZURIK was to complete two SEPs. One of the projects, the installation and implementation of automated paint mixing equipment, proved to be technically incapable of being completed due to the viscous nature of the specialized coatings being used. This SEP was valued at \$82,810.

3. The other SEP, a paint solvent recycler for DeZURIK's Sartell, Minnesota facility was completed successfully. This SEP is valued at \$9,142.

4. Because DeZURIK was unable to complete both SEPs satisfactorily, pursuant to the CAFO, DeZURIK is required to pay a stipulated penalty of \$32,862.

5. However, for completing successfully the SEP for a paint solvent recycler at its

Sartell Minnesota facility, DeZURIK receives a credit of \$9,142 against the stipulated penalty it owes.

6. In order to mitigate the stipulated penalty further, DeZURIK will install a paint solvent recycler as a SEP at its APCO, Schaumburg, Illinois facility, described in paragraphs 14 – 17. For installing this paint solvent recycler, DeZURIK will receive an additional credit of \$7,008 against the stipulated penalty it owes.

7. DeZURIK will pay a stipulated penalty of \$16,712.

8. Respondent consents to the assessment of the stipulated penalty specified in this Amendment to CAFO and to the terms of this Amendment to CAFO.

Stipulated Penalty

9. Within 30 days after the effective date of this Amendment to CAFO, Respondent must pay a \$16,712 stipulated civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

or sent by express mail to:

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

The check must note the case name, docket number of this Amendment to CAFO, and the billing document number.

10. Respondent must send a notice of payment that states Respondent's name, the

docket number of this Amendment to CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Michael Berman (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

11. This stipulated penalty is not deductible for federal tax purposes.

12. If Respondent does not pay timely the stipulated penalty due under paragraph 9 above or the stipulated penalties due under paragraph 26 below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the stipulated penalty are not reviewable in a collection action.

13. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this Amendment to the CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C.

§ 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Additional Supplemental Environmental Project

Paint Solvent Recycler

14. Respondent must complete a SEP designed to protect the environment by recycling pollution in an environmentally safe manner.

15. At DeZURIK's APCO facility in Schaumburg, Illinois, Respondent must install and use a paint solvent recycler by December 31, 2012.

16. Respondent must spend at least \$6,055 to purchase equipment and \$1,396 annually to service and maintain the equipment.

17. Respondent must continuously use or operate the paint solvent recycler for 1 year following its installation.

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

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

General SEP Requirements

20. By January 15, 2013, Respondent must submit a report demonstrating the paint solvent recycler was installed and in use by December 31, 2012.

21. Respondent must submit a SEP completion report to EPA by February 1, 2013.

This report must contain the following information:

- a. Detailed description of the SEP as completed;

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

22. Respondent must submit all notices and reports required by this Amendment to CAFO by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 9 above.

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

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

24. Following receipt of the SEP completion report described in paragraph 21, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 26.

25. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an

agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 26, below.

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

- a. Except as provided in subparagraph b, below, if Respondent does not complete the SEP satisfactorily according to the requirements of this Amendment to CAFO, including the schedule in paragraph 15, Respondent must pay a penalty of \$7,008.
- b. If Respondent does not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 16, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 16, Respondent must pay a penalty of \$700.
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraphs 20 and 21, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$300	31 st day and beyond

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

28. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in

paragraph 9, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

29. Any public statement that Respondent makes referring to the SEP must include the following language: "DeZURIK, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against DeZURIK, Inc. for violations of 40 CFR §§63.3910(c)(7)."

30. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

DeZURIK, Inc., Respondent

Sept. 13, 2012
Date

JO Kokula
John Kokula, Chief Financial Officer
DeZURIK, Inc.

United States Environmental Protection Agency, Complainant

9/29/12
Date

George T. Czerniak
George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5


Amendment to Consent Agreement and Final Order

**In the Matter of: DeZURIK, Inc.
Docket No. CAA-05-2011-0057**

Final Order

This Amendment to the Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

9-24-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**Amendment to Consent Agreement and Final Order
In the Matter of: DeZURIK, Inc.
Docket No. CAA-05-2011-0057**

Certificate of Service

I certify that I filed the original and one copy of the Amendment to Consent Agreement and Final Order (Amendment to CAFO), docket number, CAA-05-2011-0057 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John Kokula
Chief Financial Officer
DeZURIK, Inc.
250 Riverside Avenue North
Sartell, Minnesota 56377

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the Amendment to CAFO by first-class mail to:

Nancy Quattlebaum Burke
Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-3796

and

David Crowell, Manager, Environmental Control
Minnesota Pollution Control Agency - Brainerd Office
7678 College Road, Suite 105
Baxter, Minnesota 56425

On the 26 day of September 2012.

Josetta Shaffer
[Name of APA, Title]
[Section]

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7667 4515

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REGIONAL HEARING CLERK
U.S. EPA REGION 5
2012 SEP 26 PM 1:12

Standard bcc's:

Official file copy w/Attachment(s)

Originating Organization Reading File w/Attachment(s)

[insert document path]

Michele Jencius (AE-17J)

Michael Berman (C-14J)