

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	
	)	<b>Docket No. CAA-5-2001-009</b>
DMI Automotive Incorporated	)	
Howell, Michigan	)	<b>Proceeding to Assess</b>
	)	<b>Administrative Penalties</b>
	)	<b>under Section 113(d) of the</b>
<b>Respondent.</b>	)	<b>Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>

**CONSENT AGREEMENT AND FINAL ORDER**

WHEREAS, Complainant, the Director, Air and Radiation Division, Region 5, United States Environmental Protection Agency (U.S. EPA) and Respondent, DMI Automotive Incorporated (DMI), the Parties herein, wishing to settle all matters pertaining to this case, and having consented to the entry of this Consent Agreement and Final Order ("CAFO");

NOW, THEREFORE, before the taking of any testimony, without an adjudication of any issues of law or fact herein, or an admission of liability on any specific question of fact or law by Respondent, the Parties consent to the entry of, and agree to comply with the terms of, this CAFO.

**PRELIMINARY STATEMENT**

1. Respondent, DMI Automotive Incorporated, is a corporation doing business in Michigan, with a facility located at 1200 Durant Drive, Howell, Michigan.
2. Respondent's facility includes a hard chromium electroplating tank that is subject to the requirements for hard chrome electroplating tanks contained in the National Emission

Standards for Chromium Emissions From Hard and Decorative Electroplating and Chromium Anodizing Tanks (“Chrome Plating NESHAP”) codified at 40 C.F.R. Part 63, Subpart N.

3. On June 5, 2001, Complainant initiated this action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (“the Act”), 42 U.S.C. § 7413(d)(1), and Sections 22.01(a)(2) and 22.13 of 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 (the Consolidated Rules of Practice), Final Rule, 64 Fed. Reg. 40138, codified at 40 C.F.R. §§ 22.1(a)(2) and 22.13.

4. The Complaint alleged that DMI violated Section 112 of the Act, 42 U.S.C. § 7412 and the Chrome Plating NESHAP.

5. The parties agree that this matter should be settled without a hearing or further proceedings, upon the terms set forth in this Consent Agreement and Final Order (CAFO) and Respondent will not be required to file an Answer to the Complaint.

#### **Consent Agreement**

6. Respondent admits the jurisdictional allegations set forth in the complaint and admits that U.S. EPA has jurisdiction over the matter. Respondent neither admits nor denies the findings of fact and conclusions of law in the Complaint and agrees that settlement of this action is in the best interests of the parties and in the public interest.

7. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint or this CAFO and waives its right to appeal this settlement and CAFO pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

8. Respondent and Complainant consent to the terms of this CAFO.

9. U.S. EPA sought in its complaint a proposed civil penalty of \$87,000. Through this CAFO, U.S. EPA agrees to mitigate the proposed civil penalty in consideration of good faith efforts to resolve this matter, the nature of the violations, ability to pay and other relevant factors. U.S. EPA has determined that an appropriate civil penalty to settle this action against Respondent is in the total amount of \$10,000. Further, this penalty conforms with the U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991, and the civil penalty provisions in Section 113(d) and (e) of the Act. Respondent agrees to the assessment of the civil penalty in the amount of \$10,000 as provided in this CAFO for the violations alleged in the Complaint.

10. Within 30 calendar days of the date of Respondent's receipt of a copy of the fully executed CAFO, Respondent shall pay the full penalty of \$10,000 by money order, cashier's or certified check, made payable to the "Treasurer of the United States of America." A transmittal letter, indicating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent shall write the case docket number and the billing document number on the face of the Order, or Cashier's or certified check.

Respondent shall send the payment to:

U.S. Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall send copies of each check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Janet Carlson, (R-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

11. The payment specified in paragraph 10 above represents civil penalties assessed by U.S. EPA and is not deductible for federal tax purposes.

12. Respondent's failure to comply with any provision of this CAFO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection proceedings. The validity, amount and appropriateness of the assessed penalty are not reviewable in a collection proceedings.

13. Late Payment Provisions. Interest shall accrue on any amount overdue from the effective date of this CAFO at a rate established under 26 U.S.C. § 6621(a)(2). Respondent will pay a monthly handling charge of \$15 for each month that any portion of the penalty is more than 30 days past due pursuant to 31 U.S.C. § 3717(e)(1). Respondent will 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.

14. Respondent certifies that, to the best of its knowledge, it is now in compliance with the Act and the requirements of 40 C.F.R. Part 63, Subpart N at any facility that it owns or operates.

**General Provisions**

15. This CAFO settles EPA's claims for civil penalties for the violations alleged in the complaint.

16. Nothing in this CAFO restricts EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

17. Nothing in this CAFO shall relieve Respondent of the responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

18. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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

20. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms. This CAFO shall be binding upon all Parties to this action, and their successors and assigns.

21. Each party agrees to bear its own costs and fees in this action.

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

23. The parties to this agreement consent to the entry of this CAFO without further

notice.

24. This CAFO is effective upon filing of this CAFO with the Regional Hearing Clerk.

**U.S. Environmental Protection Agency  
Complainant**

9/19/01  
Date

  
Bharat Mathur, Director  
Air and Radiation Division

**DMI Automotive Incorporated  
Respondent**

Sept. 4/2001  
Date

  
Dieter Schormann  
President

**In The Matter of: DMI Automotive  
Docket No. CAA-5-2001-009  
Consent Agreement and Final Order.**

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with all of the terms and conditions of the Consent Agreement upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

9/24/01  
Date

*for* David A. Walker  
Thomas V. Skinner  
Regional Administrator

Docket No: CAA-5-2001-009

CERTIFICATE OF FILING AND MAILING

I, Shanee Rucker, do hereby certify that the Original of the foregoing Consent Agreement and Final Order (CAFO), was sent to DMI Automotive Incorporated, was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a second original of the CAFO was sent Certified Mail, Return Receipt Requested, to:

Pepper Hamilton LLP  
Attn: Gregory S. Narsh  
200 One Keystone Plaza  
North Front and Market Streets  
P.O. Box 1181  
Harrisburg, PA 17108

I also certify that copies of the CAFO were sent by first class mail to:

Timothy McGarry, Enforcement Unit Supervisor  
Michigan Department of Environmental Quality  
Air Quality Division  
Michigan Department of Environmental Quality  
P. O. Box 30260  
Lansing, Michigan 48909-7760

Wendy Barrott, Director  
Air Quality Management Division  
Wayne County Department of Environment  
640 Temple, Suite 700  
Detroit, Michigan 48201

Gerald Avery, Field Operations Supervisor  
Michigan Department of Environmental Quality  
Air Quality Division  
106 West Allegan Street  
P.O. Box 30260  
Lansing, Michigan 48909-7760

on the 26<sup>th</sup> day of September 2001.

Shanee Rucker  
Shanee Rucker, Secretary  
AECAS (MI/WI)

Certified Mail No. 70993400000095809328