



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

SEP 29 2011

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 Consent Agreement and Final Order (CAFO) which resolves In the Matter of DeZURIK, Inc. and case docket no. CAA-05-2011-0057. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 29, 2011.

Pursuant to paragraph 24 of the CAFO, DeZURIK, Inc. must pay the civil penalty within 30 days of October 31, 2011. 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, 2751103A056.

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

Sincerely,

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

Enclosure

cc: Marcy Toney, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J

Michael Berman/C-14J
David Crowell, Manager, Environmental Control
Minnesota Pollution Control Agency Brainerd Office

Nancy Burke
Gray Plant Mooty

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

DeZURIK, Inc.
Sartell, Minnesota

Respondent.

) Docket No. CAA-05-2011-0057
)

) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air Act
) 42 U.S.C. § 7413(d)
)

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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is DeZURIK, Inc., a corporation doing business in Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Surface Coating of Miscellaneous Metal Parts and Products at 40 C.F.R. §§ 3880 through 3981.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.3890(b)(1) and 63.3910(c)(7) by October, 2009.

11. The NESHAP for the Surface Coating of Miscellaneous Metal Parts and Products at 40 C.F.R. §§ 3880 through 3981 applies, subject to certain exceptions, to owners and operators of new, reconstructed or existing affected sources that use 946 liters (250 gallons) per year or more of coatings that contain hazardous air pollutants (HAP) in the surface coating of miscellaneous metal parts and products, and that are a major source, located at a major source, or are part of a major source of emissions of HAP.

12. The NESHAP, at 40 C.F.R. § 63.3910(c)(7), requires the owner and operator of an affected source to supply example calculations and supporting data during the initial notification of compliance status.

13. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum

civil penalties that may be assessed pursuant to each agency's statutes. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for NESHAP violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for NESHAP violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

14. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

16. DeZURIK, Inc. manufactures valves and related products at its facility at 250 Riverside Avenue North in Sartell, MN.

17. In the course of its manufacturing processes, DeZURIK, Inc. engages in the surface coating of miscellaneous metal products at its facility.

18. DeZURIK's facility is an existing affected source under 40 C.F.R. §§63.3881(a) and 63.3882.

19. DeZURIK, Inc.'s affected source is subject to the requirements at 40 C.F.R. Part 63 Subpart Mmmm.

20. DeZURIK, Inc. submitted to the Minnesota Pollution Control Agency a Compliance Status Notification dated November 30, 2009.

21. The facility became a major source of organic HAPs on October 30, 2007, when the facility exceeded the five ton limit specified in its Minnesota Pollution Control Agency Option D permit.

22. Based on the Compliance Status Notification dated November 30, 2009, DeZURIK, Inc. did not comply with the requirement to submit example calculations and supporting data during the period from October 30, 2008, to the present. This is a violation of the NESHAP found in 40 CFR § 63.3910(c)(7).

Civil Penalty

23. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and factors such as cooperation, prompt return to compliance, and agreement to perform supplemental environmental projects, Complainant has determined that an appropriate civil penalty to settle this action is \$8,215.

24. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,215 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 63197-9000

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 CAFO, and the billing document number.

25. Respondent must send a notice of payment that states the case title, In the Matter of: DeZURIK, Inc., the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Michael Berman, Associate Regional Counsel 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 West Jackson Boulevard
Chicago, Illinois 60604

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

26. This civil penalty is not deductible for federal tax purposes.

27. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 48 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 civil penalty are not reviewable in a collection action.

28. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this 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.

Supplemental Environmental Projects

Centralized Paint Mixing System

29. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by preventing HAP pollution.

30. At its Sartell, Minnesota facility, Respondent must complete the SEP as follows: By July 1, 2012, install and use the paint mixer, automated mixing equipment with adjustable mixing ratios and paint delivery lines that run from the central mixing area to smaller paint areas.

31. Respondent must spend at least \$82,810 to purchase equipment.

32. Respondent must continuously use or operate the centralized paint mixing system for 1 year following its installation.

33. 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 CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

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

Paint Solvent Recycler

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

36. At its Sartell, Minnesota facility, Respondent must install and use a paint solvent recycler by December 31, 2011.

37. Respondent must spend at least \$6,055 to purchase equipment and \$2,940 annually to service and maintain the equipment.

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

39. 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 CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

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

General SEP Requirements

41. By July 15, 2012, Respondent must submit a report demonstrating the centralized paint mixing system was installed and in use by July 1, 2012.

42. By January 15, 2012, Respondent must submit a report demonstrating the paint solvent recycler was installed and in use by December 31, 2011.

43. Respondent must submit a SEP completion report to EPA by August 1, 2012. This report must contain the following information:

- a. Detailed description of the SEPs 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 SEPs 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 SEPs in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if practicable).

44. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 25, above.

45. In each report that Respondent submits as provided by this 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.

46. Following receipt of the SEP completion report described in paragraph 43, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEPs and the SEP report;
- b. There are deficiencies in the SEPs 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 SEPs or the SEP report and EPA will seek stipulated penalties under paragraph 48.

47. 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 48, below.

48. If Respondent violates any requirement of this 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 SEPs satisfactorily according to the requirements of this CAFO, including the schedule in paragraphs 30 and 36, Respondent must pay a penalty of \$32,862.
- b. If Respondent does not complete the SEPs satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEPs and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraphs 31 and 37, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEPs satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 31 and 37, Respondent must pay a penalty of \$3,286.
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraphs 41, 42, and 43, 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

49. 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.

50. 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 24, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

51. 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)."

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

General Provisions

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the Finding of Violation, dated September 28, 2010.

54. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

55. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 53, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

56. Respondent certifies that it is complying fully with the Act, and the NESHAP regulations for the Surface Coating of Miscellaneous Metal Parts and Products, Subpart MMMM, at 40 C.F.R §§3880 through 3981.

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

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

59. Each person signing this consent agreement 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.

60. Each party agrees to bear its own costs and attorney's fees in this action.

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

DeZURIK, Inc., Respondent

9/19/2011
Date

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

United States Environmental Protection Agency, Complainant

9/23/11
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

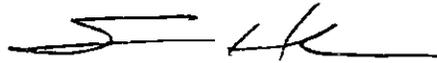
Consent Agreement and Final Order
In the Matter of: DeZURIK, Inc.
Docket No. CAA-05-2011-0057

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-28-11

Date



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

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**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 Consent Agreement and Final Order (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

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

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

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

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

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

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

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

On the 29th day of September 2011.

Betty Williams

Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

70091680 00007672 8010

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