



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

LANSING



LIESL EICHLER CLARK
DIRECTOR

June 25, 2020

VIA E-MAIL

Mr. Jerry Chinn, President
Diamond Chrome Plating, Inc.
604 South Michigan Avenue
Howell, Michigan 48843

Dear Mr. Chinn:

SUBJECT: Demand for Payment of Stipulated Penalties Regarding First Amended Consent Decree (FACD); Executed on July 28, 2015 (Docket No. 03-1862-CE); Diamond Chrome Plating, Inc. (DCP); Site ID No. 47000202

The Department of Environment, Great Lakes, and Energy (EGLE) has determined that DCP is in violation of the FACD and is, therefore, responsible for payment of stipulated penalties in the amounts set forth in Paragraph 16.2 of the FACD entered on July 28, 2015, between EGLE and DCP. Due to DCP's violations of the FACD that are detailed in this letter, EGLE hereby demands payment of stipulated penalties in the amount of one million four hundred seventy-nine thousand dollars (\$1,479,000). Payment of these stipulated penalties does not resolve DCP's obligations to perform responsive activities as required by the FACD.

Violations of Paragraphs 5.2-5.5; Section VI, Performance of Response Activities; and Paragraph 16.2 of the FACD subject DCP to stipulated penalties of \$250 per day from the 1st through the 14th day, \$500 per day from the 15th through the 30th day, and \$1,000 per day from the 31st day and beyond. Paragraph 16.3 of the FACD subjects DCP to a stipulated penalty of \$250 per day for each violation of the remainder of the FACD.

The violations listed herein were sent to DCP in 13 Violation Notices (VN) and letters in 2018, 2019, and 2020. Those VNs and letters are enclosed with this letter for your reference. This letter references the paragraphs in Section V, Compliance with State and Federal Laws; and Section VI, Performance of Response Activities, of the FACD for which EGLE alleges violations. The table below is a summary of the stipulated penalties organized by EGLE division:

Stipulated Penalties by EGLE Division	
Air Quality Division (AQD)	\$ 2,750
Remediation and Redevelopment Division (RRD)	\$ 653,000
Water Resources Division (WRD)	\$ 823,250
Total	\$1,479,000

RRD

Pursuant to Section VI, Performance of Response Activities, of the FACD, DCP is required to perform response activities, including completing investigations of soil and groundwater (Contamination Investigation [CI]) at the facility that achieves the objective in Paragraph 6.1(c) of the FACD by no later than June 30, 2016 (later extended to September 30, 2016). The RRD

informed DCP in writing on May 31, 2018 (Enclosure 1); July 20, 2018 (Enclosure 2); December 20, 2018 (Enclosure 3); February 13, 2020 (Enclosure 4); and February 26, 2020 (Enclosure 5), that the CI was incomplete and that stipulated penalties were accruing or were continuing to accrue due to the ongoing violation. As of February 27, 2020, the stipulated penalty for DCP's failure to complete the CI no later than September 30, 2016, amounts to \$616,500.

Pursuant to Paragraph 6.8(b) of the FACD, all physical components of the remedial action were to be constructed and fully operational by December 31, 2019. DCP has installed three extraction wells and is currently extracting and treating contaminated water at irregular intervals. The intermittent operation of the extraction wells is insufficient to maintain a capture zone that addresses groundwater contamination both on and off DCP's property, as is required by the FACD. Also, as stated above, the CI remains incomplete for volatilization to indoor air pathway (VIAP) and the evaluation of emissions to the ambient air from contaminated soil sources exceeds criteria at the facility. The evaluation of the VIAP includes preferential pathways for vapor movement through subsurface utility corridors, such as storm and sanitary sewers. Because the investigation of the VIAP and soil volatilization to ambient air pathways remains incomplete, the need for physical components or control for these pathways has not been established. For these reasons, the remedial action is not fully operational as required by Paragraph 6.8(b) of the FACD. On February 26, 2020, the RRD advised DCP that stipulated penalties related to this violation of the FACD are accruing pursuant to Paragraph 16.2 of the FACD. Stipulated penalties have been accruing since January 1, 2020; therefore, the stipulated penalty amount for DCP's failure to comply with Paragraph 6.8(b) of the FACD amounts to \$36,500 through February 27, 2020. In summary, for DCP's violations of Paragraphs 6.7 and 6.8 of the FACD, DCP is subject to stipulated penalties totaling \$653,000.

AQD

Paragraph 5.3 of the FACD primarily addresses the capture and control system of the chromic acid air emissions and related recordkeeping and reporting requirements. The emissions are generated from DCP's chrome plating tanks and are transported through ductwork to air pollution control scrubbers. Paragraph 5.3(b) of the FACD requires DCP to conduct daily inspections, document repairs of leaks of chromic acid from the ductwork, document the inspection and repairs in a written record, and submit those records to the project coordinator together with progress reports required in Paragraph 6.11 of the FACD. The approved format for reporting is the Roof Area Inspection Form (RAIF). Paragraph 5.3(b) of the FACD also requires repairs to be completed within 48 hours of discovery. The RAIF requires that the date and time of the completion of repairs be reported on the RAIF (a requirement of the Storm Water Pollution Prevention Plan [SWPPP] referenced in the WRD section, below). Inspections and repairs of ductwork are identified by ductwork segments as required in Paragraph 5.3(a) of the FACD that, at the time of entry of the FACD, consisted of approximately ten-foot segments. The RAIF documentation is used to identify ductwork segments for which ten releases are identified that then must be replaced in accordance with Paragraph 5.3(e) of the FACD.

Since entering the FACD in 2015, AQD staff has initiated 17 site investigations. As a result of these investigations and facility compliance monitoring, the AQD has issued 8 VNs and asserted 12 FACD violations. Violations asserted here are referenced within four of the VNs. Violations of the FACD were not all sequential chronological days of violation; therefore, DCP is subject to stipulated penalty amounts of \$250 for 11 days, totaling \$2,750.

After identifying numerous ductwork leaks and consistent with the requirements of Paragraph 5.3(e) of the FACD, DCP replaced deteriorated ductwork with new ductwork. The new ductwork consisted of 24-inch diameter, 20-foot segments, constructed of extruded polyvinyl chloride. Nonetheless, violations of the RAIF requirements of daily inspections, timely repairs, and required associated recordkeeping are primarily due to leaks within old ductwork.

As also detailed in the WRD section, below, in a joint AQD and WRD VN (VN-006809) dated October 26, 2016 (Enclosure 6), DCP failed to comply with Part I.B.1.b. of the National Pollutant Discharge Elimination System (NPDES) Permit wherein DCP is required to implement the approved SWPPP. The SWPPP and Paragraph 5.3(b) of the FACD contain requirements to complete all repairs within 48 hours of discovery, as noted above. The repair must be reported on the RAIF, as well as the date and time of the completion of the repair. DCP failed to document the repair or time and date of completion of the RAIF as required on the east roof in five instances; however, DCP produced documentation for the May 23, 2016, weep. DCP is subject to a stipulated penalty of \$250 for each of the 5 violations. However, the AQD and WRD accept the May 23, 2016, documentation; therefore, DCP is subject to stipulated penalties for 4 violations, totaling \$1,000.

As detailed in the AQD's VN dated May 14, 2018 (Enclosure 7), DCP is required by Paragraph 5.3(b) of the FACD to conduct and document inspections and repairs, if needed, of its air pollution capture and control equipment. DCP recorded in the First Quarter 2018 RAIF three leaks of the chrome plating ductwork on the east roof on January 8, 2018, that were reported to be cleaned on January 9, 2018. However, no documentation was made of repairs, which is in violation of Paragraph 5.3(b) of the FACD. Additionally, DCP recorded in the Third Quarter 2017 RAIF that a leak was identified on ductwork on the east roof on August 18, 2017, but DCP failed to document a date of repair, which is in violation of Paragraph 5.3(b) of the FACD. DCP is subject to a stipulated penalty of \$250 for each of the 4 violations, totaling \$1,000.

As detailed in the AQD's VN dated December 20, 2018 (Enclosure 8), DCP is required by Paragraph 5.3(b) of the FACD to conduct and document inspections and repairs, if needed, of its air pollution capture and control equipment. DCP recorded in the Second Quarter 2018 RAIF two leaks of the chrome plating ductwork on the east roof on June 5, 2018, and June 25, 2018, that were reported to be cleaned. However, repairs were neither made nor documented, which is in violation of Paragraph 5.3(b) of the FACD. DCP is subject to a stipulated penalty of \$250 for each of these 2 violations, totaling \$500.

As detailed in the AQD's VN dated October 30, 2019 (Enclosure 9), DCP is required by Paragraph 5.3(b) of the FACD to conduct and document inspections and repairs, if needed, of its air pollution capture and control equipment. DCP recorded in the Second Quarter 2019 RAIF for the west roof on April 29, 2019, that an inspection was conducted, and a cracked duct and chrome leak were repaired. However, DCP failed to record the date and time of leak repair, which is in violation of Paragraph 5.3(b) of the FACD. This failure to document the leak repair subjects DCP to a \$250 penalty.

WRD

The FACD requires that DCP comply with the NPDES Permit issued by the WRD to DCP on November 14, 2014 (and any permits issued thereafter). The NPDES Permit requires DCP to meet water quality standards at manhole (MH) 1379 (the final outfall prior to discharge to the

Marion-Genoa Drain, also called Monitoring Point 001A) for total chromium, hexavalent chromium, and hydrogen ionization potential (pH). The NPDES Permit also requires DCP to comply with a total chromium monthly limit and hexavalent chromium daily limit at Monitoring Point 001A. Due to contaminated groundwater conditions, the FACD allowed DCP to exceed the total chromium limit at MH 1379 until December 31, 2019. The FACD requires DCP to implement response activities to attain compliance with effluent limitations. DCP requested an extension for meeting the total chromium permit limit at MH 1379, along with its request for extension for installation of the physical components of the remedial action. This extension request was denied by EGLE. For the violations of Paragraph 5.4(a) of the FACD, as detailed below, DCP is subject to stipulated penalties totaling \$823,250.

As detailed in VN-006809 issued jointly by the AQD and WRD dated October 26, 2016, DCP failed to comply with Part I.B.1.b. of the NPDES Permit wherein DCP shall implement the approved SWPPP. The SWPPP and Paragraph 5.3(b) of the FACD contain requirements to complete all repairs within 48 hours of discovery, as noted above. All repairs must be reported on the RAIF, as well as the date and time of the completion of repairs. DCP failed to document the repairs or times and dates of completion of the RAIF as required on the east roof in five instances; however, DCP produced documentation for the May 23, 2016, weep. DCP is subject to a stipulated penalty of \$250 for each of the 5 violations. However, the AQD and WRD accept the May 23, 2016, documentation; therefore, these violations total \$1,000. This penalty is incorporated into the AQD's stipulated penalty calculation, above.

As detailed in the WRD's VN-008450 dated September 4, 2018 (Enclosure 10), and follow-up correspondence in the WRD's letter dated December 14, 2018 (Enclosure 11), DCP failed to:

1. Comply with Part I.A.1. of the NPDES Permit for effluent limitation violations seven times. Compliance with the NPDES Permit is required by Paragraph 5.4(a) of the FACD. The total chromium violation at Monitoring Point 001A is not subject to a stipulated penalty until December 31, 2019; therefore, DCP is subject to pay a \$250 penalty for 6 effluent limit violations, totaling \$1,500.
2. Comply with Part I.B.1.b. of the NPDES Permit wherein DCP shall implement the approved SWPPP. A violation of this part of the NPDES Permit is a violation of Paragraph 5.4(a) of the FACD. The SWPPP contains requirements to inspect and report the roof daily, including daily inspections of exterior ductwork. Such inspections are to be documented on the RAIF. For each day between August 3, 2016, and October 18, 2018, DCP failed to conduct (through May 22, 2018) and properly document (through October 18, 2018) using the approved form (missing information) the daily roof inspections of the west roof. This is 807 days, or 555 workdays excluding weekends and holidays. The SWPPP and Paragraph 5.3(b) of the FACD contain requirements to complete all repairs within 48 hours of discovery. All repairs must be reported on the RAIF, as well as the dates and times of completion of the repairs. On three occasions, DCP failed to repair leaks on the east roof and on one additional occasion, failed to report a repair. Compliance with the NPDES Permit is required in Paragraph 5.4(a) of the FACD. Incomplete SWPPP daily roof inspections with failure to conduct and report air pollution control equipment inspections for 555 workdays subjects DCP to a \$535,500 penalty. Failure to repair and document 4 roof leaks subjects DCP to a stipulated penalty of \$1,000. This penalty is incorporated into the AQD's stipulated penalty calculation, above. These 2 penalties added together total \$536,500.

3. Submit for approval a complete Operations and Maintenance (O&M) Manual for its storm water collection and treatment system by March 1, 2015. An incomplete O&M Manual was submitted on June 2, 2015, and the WRD supplied comments. DCP resubmitted an incomplete O&M Manual on August 28, 2015, and the WRD supplied comments on June 6, 2017, indicating that the manual remained incomplete. DCP submitted a third incomplete O&M Manual on October 16, 2017. A fourth revision was submitted on February 4, 2019. Compliance with the NPDES Permit is required in Paragraph 5.4(a) of the FACD. A reasonable penalty calculation is from the entry date of the FACD on July 28, 2015, through the date when the next version was submitted on August 28, 2015. This is 30 days' late, subjecting DCP to a stipulated penalty of \$11,500.
4. Comply with Part II.C.2. of the NPDES Permit wherein DCP is required to submit self-monitoring data (Discharge Monitoring Reports [DMR]) to EGLE no later than the 20th day of the month following each month of required monitoring. DCP failed to submit the November 2017 DMR until July 2, 2018, which is 194 days late and is considered significant noncompliance. DCP also failed to submit the July 2018 DMR until August 22, 2018, which is two days late. Compliance with the NPDES Permit is required in Paragraph 5.4(a) of the FACD. Each of these violations subject DCP to a penalty of \$250 for each day of violation. The WRD is assessing a total penalty of \$500 for these 2 violations.
5. Comply with Part II.D.2. of the NPDES Permit wherein DCP shall have the waste treatment facilities under direct supervision of an operator certified by EGLE at the appropriate level for the facility, as required by Section 3110 of Part 31, Water Resources Protection, and Section 4104 of Part 41, Sewerage Systems, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. DCP failed to have a certified operator for the facility from September 29, 2017, until May 22, 2018; and from September 29, 2017, until October 18, 2018, for B-3b and B-3c certified operators, respectively. Compliance with the NPDES Permit is required by Paragraph 5.4(a) of the FACD. Failure to have a properly certified operator for 385 days, or 264 workdays excluding weekends and holidays, subjects DCP to a penalty of \$245,500.
6. Comply with Part II.B.2. of the NPDES Permit wherein DCP shall analyze pollutants in accordance with Title 40 of the Code of Federal Regulations (CFR), Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. Specifically, DCP failed to properly preserve collected samples, as required in 40 CFR, Section 136.3, Table II, Required Containers, Preservation Techniques, and Holding Times. Also, DCP was using method ASTM E70 for pH analysis, which is not an approved method in 40 CFR, Part 136. On 104 occasions between August 3, 2016, and October 19, 2018, DCP was in noncompliance with the sampling preservation requirements for total dissolved solids at Monitoring Point 001A. Compliance with the NPDES Permit is required in Paragraph 5.4(a) of the FACD. Failure to follow the test procedure for the analysis of pollutants 104 times subjects DCP to a penalty of \$250 for each instance, for a total of \$26,000.
7. Calibrate the effluent flow meter. During an inspection on May 22, 2018, DCP representatives could find no records of when the effluent flow meter was last calibrated by the manufacturer or vendor. This is part of DCP's quality assurance/quality control program and is a requirement of Part II.B.3. of the NPDES Permit. Failure to properly calibrate the metering equipment is a violation that subjects DCP to a \$250 penalty.

8. Conduct two rounds of sampling for volatiles during a bypass event, as required under Part I.A.7. of the NPDES Permit, even though DCP had several storm water bypasses since the NPDES Permit was issued, thereby providing DCP with the opportunity to conduct the volatiles sampling. Failure to monitor two bypass events for volatiles is a violation of the terms and conditions of the NPDES Permit. Compliance with the NPDES Permit is required in Paragraph 5.4(a) of the FACD. Failure to sample for volatiles is a violation that subjects DCP to a \$250 penalty.

As detailed in the WRD's VN-010125 dated November 6, 2019 (Enclosure 12), DCP failed to:

9. Comply with Part I.A.1. of the NPDES Permit for daily maximum effluent limitation for violations of the daily effluent limit for hexavalent chromium and the monthly average maximum effluent limitation for concentrations of total chromium at Monitoring Point 001B (treated storm water runoff). These exceedances occurred four times between July 2018 and July 2019. Compliance with the NPDES Permit is required by Paragraph 5.4(a) of the FACD. Violations of the NPDES Permit are subject to a \$250 penalty each. These violations subject DCP to a penalty totaling \$1,000.
10. Conduct and document inspections and repairs, if needed, of its air pollution control equipment as specified in its approved SWPPP, which is a violation of Paragraph 5.3(b) and Paragraph 5.4(a) of the FACD and Part I.B.1.b. of the NPDES Permit. Specifically, DCP failed to record the date and time of a leak repair of the chrome plating ductwork on the west roof on April 29, 2019. Failure to document the leak repair is a violation that subjects DCP to a \$250 penalty. This penalty is incorporated into the AQD's stipulated penalty calculation, above.

EGLE did not receive notification of a *force majeure* event that delayed DCP's ability to comply with the obligations specified in the FACD for any of the violations detailed in this letter. Pursuant to Paragraph 11.3 of the FACD, failure to submit a claim of *force majeure* to EGLE with 48 hours of the occurrence of the incident may constitute a waiver of right to assert a *force majeure* claim with regard to these violations specified above.

Additionally, EGLE has not received a written Notice of Dispute as specified in Section XVII, Dispute Resolution, of the FACD with regard to these violations.

Penalties will continue to accrue until the violations are corrected. Pursuant to Paragraph 16.5 of the FACD, stipulated penalties owed to the State of Michigan shall be paid no later than 30 days after receipt of a written demand from EGLE. Payment should be made in accordance with Paragraph 16.5 of the FACD; however, please note the updated payment address below. Please pay the stipulated penalty in a single payment to the State of Michigan in the total amount of \$1,479,000. This payment is demanded to be received by the State of Michigan within 30 days of DCP's receipt of this letter. Payment should be made by check made payable to the State of Michigan and delivered to the Accounting Services Center, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Center, Cashier's Office for EGLE, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this letter and the FACD must include **Payment Identification Number MUL3011**. Please take notice that EGLE may seek additional stipulated penalties for each day after the date of this letter that DCP continues to violate the FACD.

Mr. Jerry Chinn
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Be advised that payment of stipulated penalties shall not in any way alter DCP's obligation to complete the performance of response activities required by the FACD. If DCP fails to pay stipulated penalties when due, EGLE may also commence proceedings to collect the penalties. Should you have any questions regarding this demand for stipulated penalties, please feel free to contact the appropriate project coordinators as defined in Paragraph 13.1 of the FACD.

Sincerely,



Aaron B. Keatley
Chief Deputy Director
517-284-6709

Enclosures

cc/enc: Mr. Scott Wright, DCP
Mr. Todd Fracassi, Pepper Hamilton, LLP
Mr. Brian Negele, Department of Attorney General
Ms. Mary Ann Dolehanty, EGLE
Mr. Mike Neller, EGLE
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