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September 20, 2016

DEQ-AQD LANSING D.O.

SEP 22 2016

Daniel McGeen
Environmental Quality Analyst
Air Quality Division
Department of Environmental Quality
Constitution Hall
525 West Allegan Street
P.O. Box 30242
Lansing, Michigan 48909-7742

Re: September 7, 2016 Violation Notice (VN)
Diamond Chrome Plating (DCP), SRN: A2931, Livingston County;
First Amended Consent Decree (FACD);
Ingham County Circuit Court Docket No. 03-1862-CE

Dear Mr. McGeen:

On behalf of Diamond Chrome Plating, Inc. (DCP), this letter is provided in response to the Violation Notice (VN) issued by the Michigan Department of Environmental Quality (MDEQ) dated September 7, 2016 alleging a violation of the First Amended Consent Decree (FACD). By furnishing this response, DCP is neither waiving any objections it may have to the contentions set forth in the VN nor objections it may have to the alleged violation in the VN. Furthermore, the response provided by DCP in this letter shall not be considered an admission of liability, and DCP reserves its rights to contest the allegations in the VN.

DEQ Allegation:

MDEQ has alleged that DCP failed to provide notice to the Remediation and Redevelopment Division (RRD) Project Coordinator pursuant to Paragraph 10.2 of the FACD for a release to the outside environment, which allegedly occurred as a result of a fire at the DCP Facility on June 3, 2016.

Philadelphia

Boston

Washington, D.C.

Los Angeles

New York

Pittsburgh

Detroit

Berwyn

Harrisburg

Orange County

Princeton

Wilmington

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Response: Section X., Emergency Response, Paragraph 10.2 of the FACD provides:

*If during Defendant's performance of response activities conducted pursuant to this Decree, an act or the occurrence of an event causes a release or threat of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, **and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety or welfare or the environmental**, Defendant shall immediately undertake all appropriate actions to prevent, abate or minimize such release...and shall immediately notify the MDEQ's RRD Project Coordinator. (emphasis added)*

As set forth above, the conditions to be met before DCP is required to provide notice pursuant to Paragraph 10.2 are **all** of the following: (1) the act or the occurrence **must occur during the performance of a response activity**; (2) the act or occurrence **must cause a release or threat of a release** of a hazardous substance; **and** (3) the release, threat of release, or exacerbation **must pose or threaten to pose an imminent and substantial endangerment to public health, safety or welfare or the environmental**. Setting aside whether an actual release or threat of a release to the environment occurred as a result of the fire on June 3, 2016, the "light smoke" from the stack did not occur during the performance of a response activity, and certainly did not pose or threaten to pose an imminent and substantial endangerment to public health, safety or welfare or the environmental.

Tank 17 had been taken out of service before June 3, 2016, and as such, the fluid level in the tank had been lowered. While out of service, the heating coil for the tank had inadvertently been turned on. This resulted in the wood and plastic tank cover/liner starting a fire, triggering DCP's fire alarm on June 3, 2016. This was a small fire that was confined to the wood and plastic tank cover/liner in the Tank 17 area. The Howell Area Fire Authority responded to the fire within seven minutes of the alarm and the fire was extinguished quickly. The "light smoke" was limited to steam and smoke from the wood and plastic tank covering/liner and did not come from any other source or process (See Attachment 1). The Fire Authority used DCP's natural and mechanical ventilation and overhead doors to evacuate the steam and smoke that was created when they extinguished the fire with water. (See Attachment 1). This is not an unusual event in the case of a fire. This event was not remarkable, was confined, and certainly did not pose or threaten to pose any imminent and substantial endangerment to public health, safety or welfare or the environmental.

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Given the origin, cause and confined nature of the fire, the activities of the Howell Area Fire Authority, and inspection of the fire damage, DCP evaluated and then determined on June 3, 2016 that notice pursuant to Paragraph 10.2 of the FACD was not required. The wording of Paragraph 10.2 requires all three conditions to be met before the MDEQ is provided notice, and the three conditions were not met. Had the MDEQ not wanted this type of conditional notification provision, the FACD would have simply stated:

“If during Defendant’s operations, an act or the occurrence of an event causes a release or threat of a release of a hazardous substance at or from the Facility, Defendant shall immediately undertake all appropriate actions to prevent, abate or minimize such release...and shall immediately notify the MDEQ’s RRD Project Coordinator.”

However, that is not the language of Paragraph 10.2. The plain language of that provision is clear. Three conditions must be met before notice to MDEQ’s RRD Project Coordinator is triggered. This language must be given full meaning and effect. MDEQ’s interpretation conveniently reads out of the FACD the conditions contained in Paragraph 10.2, giving it no meaning or purpose. Such an interpretation of Paragraph 10.2 would render the “conditions” in Paragraph 10.2 meaningless and superfluous, and is rejected under general contract construction law.

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In conclusion, DCP believes that the allegation set forth in the VN is not a violation of the FACD. Please contact me if you have any questions regarding the information provided in this letter.

Sincerely yours,



Todd C. Fracassi

c: Robert Wagner – MDEQ
Lynn Fiedler – MDEQ
Teresa Seidel – MDEQ
Heidi Hollenbach – MDEQ
Thomas Hess – MDEQ
Angela Brown – MDEQ
Malcolm Mead-O'Brien – MDEQ
Rebecca Taylor – MDEQ
Brad Myott -- MDEQ
Bryan Grochowski – MDEQ
Richard Kuhl – Department of the Attorney General
John Wagner – DCP
Jim Colmer – BB&E
Wendi Michael – BB&E

ATTACHMENT 1

From: Jamil Czubenko [<mailto:jczubenkofire@gmail.com>]
Sent: Friday, September 09, 2016 10:09 AM
To: John Wagner
Subject: Re: Comment on Fire Report at DCP of 3 June

Good morning John,

The "light smoke" referenced in the fire report is smoke from a fire that involved plastic and wood in and around the area of fire origin. The smoke was NOT from any other source or processes. When water was then applied to extinguish the fire, further smoke and steam was produced. Natural horizontal ventilation, overhead doors, and mechanical ventilation, building ventilation, was used to evacuate the smoke and steam

Please let me know if you need any further information.

Jamil Czubenko
Battalion Chief/Fire Marshal
Howell Area Fire Department