The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

August 4, 2006

Nim-Cor, Inc.
Attn: Marcel Binette
575 Amherst Street
Nashua, NH 03063

Re: Docket No. AF 06-023 - Administrative Fine by Consent Agreement

Dear Mr. Binette:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

Michael P. Sclafani,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Jennifer J. Patterson, NH DOJ
Linda Birmingham, DES WMD
DES Public Information Officer

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
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DES Web site: **www.des.nh.gov**

The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

Nim-Cor, Inc.
575 Amherst Street
Nashua, NH 03063

EPA ID No. NHD001082304

ADMINISTRATIVE FINE BY CONSENT

NO. AF 06-023

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Nim-Cor, Inc. pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.

2. Nim-Cor, Inc. ("Nim-Cor") is a foreign corporation registered to do business in New Hampshire. Nim-Cor has a principal office and mailing address of 575 Amherst Street, Nashua, NH 03063.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.

2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to $2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.

3. Nim-Cor is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 13, 1984. EPA Identification Number NHD001082304 was assigned to Nim-Cor's site located at 575 Amherst Street, Nashua, New Hampshire.

4. On November 17, 2004 and December 6, 2004, DES personnel inspected Nim-Cor for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No. WMD 05-13 ("LOD") to Nim-Cor on June 1, 2005. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Nim-Cor failed to conduct adequate hazardous waste determinations on four (4) waste streams (*i.e.*, the "Waste Disposable MEK Rags" generated in the Carbon Fiber Shaft Area; the "Waste Sandblasting Media" generated in the Maintenance/Welding Area; the "VM & P Naptha" stored in the Outdoor Shed; and the "Waste Metal Chips" generated in the Metal Fabrication Area), as required by Env-Wm 502.01 ("Violation 1"). Env-C 612.05(a) authorizes a fine of $1,500 per determination, for a potential fine of $6,000.

2. Nim-Cor failed to close one (1) 55-gallon container of hazardous waste (the aerosol can puncturer), as required by Env-Wm 507.01(a)(3) ("Violation 2"). Env-C 612.06(c)(1) authorizes a fine of $400 for each container that is 55-gallons or greater.

3. Nim-Cor failed to ship off-site three (3) five gallon containers of unused VM & P Naptha located in the Outdoor Shed within 90 days of the date when accumulation first began, except as provided in Env-Wm 508.02, Env-Wm 508.03, and Env-Wm 509.03, as required by Env-Wm 507.02(a) ("Violation 3"). Env-C 612.06(j), which references Env-Wm 507.02(a)(3) modified in August 2000 to Env-Wm 507.02(a) authorizes a fine of $500 for each container not shipped within 90 days, for a potential fine of $1,500.

4. Nim-Cor failed to mark three (3) five gallon containers of unused VM & P Naptha in the Outdoor Shed, and one (1) 55-gallon container of Hazardous Waste Acetone and Toluene in the Outdoor Shed with the beginning accumulation date when they are first used to store hazardous waste, as required by Env-Wm 507.03(a)(1)a. ("Violation 4"). Env-C 612.06(k) authorizes a fine of $250 for each container that is 55-gallons or greater and $125 for each container that is less than 55-gallons, for a potential fine of $625.

5. Nim-Cor failed to properly mark three (3) five gallon containers of unused VM & P Naptha in the Outdoor Shed with the words "Hazardous Waste," the contents of the container, and EPA or state waste number, as required by Env-Wm 507.03(a)(1)b., c., and d. ("Violation 5"). Env-C 612.06(l) authorizes a fine of $300 for each container that is less than 55-gallons for a potential fine of $900.

6. Nim-Cor failed to document inspections of the hazardous waste storage area for a total of fifty-two (52) weeks over a 1-year time period, as required by Env-Wm 509.02(a)(1) ("Violation 6"). Env-C 612.07(a) authorizes a fine of $1,000 per inspection per area per week. For settlement purposes only, DES is seeking a fine for the seventeen (17) weeks prior to the date of the inspection, for a potential fine of $17,000.

7. Nim-Cor failed to maintain a personnel training program and provide hazardous waste training for the following employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2): no initial training and four (4) years of annual training for Emergency Coordinator Alastair Millns; no initial training and two (2) years of annual training for Hazardous Waste Coordinator Arthur Tuthill ("Violation 7"). Env-C 612.07(b) authorizes a fine of $1,750 per individual not trained for initial training and $1,000 per individual not trained for annual updates, for a potential fine of $9,500.

8. Nim-Cor failed to post a "No Smoking" sign near ignitable wastes stored in the Outdoor Shed, as required by Env-Wm 509.02(a)(3) ("Violation 8"). Env-C 612.07(c) authorizes a fine of $2,000.

9. Nim-Cor failed to have, within 100 feet of the Outdoor Shed, an internal/external communication system capable of providing immediate contact with facility personnel and local authorities (*e.g.*, fire department), as required by Env-Wm 509.02(a)(4) ("Violation 9"). Env-C 612.07(d) authorizes a fine of $1,250 per requirement not met per storage area.

10. Nim-Cor failed to have a complete contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 10"). Env-C 612.07(e) authorizes a fine of $2,000.

11. Nim-Cor failed to post an emergency posting at the nearest telephone to the Outdoor Shed hazardous waste storage area, as required by Env-Wm 509.02(b) ("Violation 11"). Env-C 612.07(h) authorizes a fine of $1,000 per area.

12. Nim-Cor failed to mark one (1) 55-gallon satellite storage container with the aerosol can puncturer, with the words "hazardous waste," as required by Env-Wm 509.03(g) ("Violation 12"). Env-C 612.07(j) authorizes a fine of $1,000 per satellite storage area.

13. Nim-Cor failed to conduct and document monthly inspections at the satellite storage area that accumulated greater than 10 gallons of hazardous waste, as required by Env-Wm 509.03(h) ("Violation 13"). The potential fine for this violation is included in the fine sought in Paragraph 12 because the violation occurred in the same satellite storage area.

14. Nim-Cor failed to mark the one (1) 1000-gallon tank of used coolant, destined for recycling with the words "Used Oil for Recycle," as required by Env-Wm 807.06(b)(4) ("Violation 14"). Env-C 612.10 (a)(3), which references Env-Wm 807.06(b)(2), modified in August 2000 to Env-Wm 807.06(b)(4), authorizes a fine of $250 for each tank.

15. Nim-Cor failed to label/mark the seven (7) universal waste lamps and two (2) containers of universal waste lamps with any of the following markings: "Universal Waste – Lamps(s) ," "Waste Lamp(s) ," or "Used Lamp(s) ," as required by Env-Wm 1112.04 ("Violation 15"). Pursuant to Env-C 610, a fine of $10/lamp and $50/container has been calculated, for a potential fine of $170.

16. Nim-Cor failed to store seven (7) universal waste lamps in container(s), as required by Env-Wm 1112.03(a) ("Violation 16"). Pursuant to Env-C 610, a fine of $25/lamp has been calculated, for a potential fine of $175.

17. Nim-Cor failed to close two (2) containers of universal waste lamps, except to add or remove universal waste, as required by Env-Wm 1102.03(c)(1) ("Violation 17"). Pursuant to Env-C 610, a fine of $15/container has been calculated, for a potential fine of $30.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 2, 4, 5, 8 through 10, and 12 through 17 because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 1, 3, 6, 7, and 11, which are Class I violations.

a. Violation 1 is a Class I violation. Nim-Cor documented that two (2) waste streams were analyzed and determined to be non-hazardous. DES is thus seeking a penalty for failing to perform two (2) hazardous waste determinations (*i.e.*, the "Waste Disposable MEK Rags" and the "VM & P Naptha."). DES has determined that due to Nim-Cor's high level of cooperation and its effort to correct the violation that a 15% reduction should be applied. DES is thus seeking a fine of $2,550.

b. Violation 3 is a Class I violation. DES has determined that due to Nim-Cor's high level of cooperation in providing information, its effort to correct the violation and the fact that this was a one time unintentional violation, that a 40% reduction should be applied (*i.e.*, (20%) cooperation and (20%) one time unintentional). DES is thus seeking a fine of $900.

c. Violation 6 is a Class I violation. DES has determined that due to Nim-Cor's high level of cooperation in providing information, its effort to correct the violation and other circumstances, that a 40% reduction should be applied (*i.e.*, (20%) cooperation and (20%) other circumstances). DES is thus seeking a fine of $10,200.

d. Violation 7 is a Class I violation. Nim-Cor documented that Arthur Tuthill did have initial training on March 17, 1999. DES is thus seeking a penalty for failing to provide hazardous waste training for the following employees: three (3) years of annual training for Emergency Coordinator Arthur Tuthill; no initial training and four (4) years of annual training for Emergency Coordinator Alastair Millns. DES has determined that due to Nim-Cor's high level of cooperation and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of $7,000.

e. Violation 11 is a Class I violation. DES has determined that due to Nim-Cor's high level of cooperation and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of $800.

3. Nim-Cor agrees to pay $21,450 within the next six (6) months as follows:

a. $3,575 of the fine shall be due and payable upon execution of this Agreement by Nim-Cor.

b. $17,875 of the fine shall be paid in five equal payments of $3,575 due the first of each month beginning August 1, 2006 and ending with the last payment due on December 1, 2006.

4. Payment under Section V. Paragraph 3 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or $25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Agreement, Nim-Cor waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Nim-Cor, and the Director of the Waste Management Division, and the Commissioner of DES.

8. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

NIM-COR, INC.

COPY

By: Marcel Binette, Secretary
Duly Authorized

7-25-06
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

For Anthony P. Giunta, P.G., Director
Waste Management Division

2 Aug. 2006
Date

COPY

Michael P. Nolin, Commissioner

08 03 06
Date