



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

JUL 03 2012

CERTIFIED MAIL 7009 1680 0000 7677 9821
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

Jack Ward
Director of Operations
Chicago Extruded Metals Company
1601 South 54th Avenue
Cicero, Illinois 60804

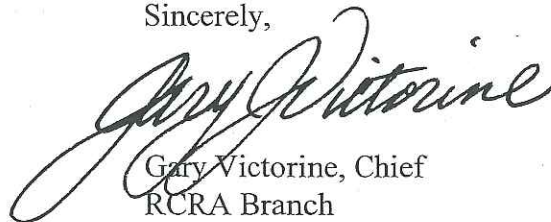
Re: Consent Agreement and Final Order
Berkshire Investments, LLC d/b/a Chicago Extruded Metals Company
Docket No: RCRA-05-2012-0009

Dear Mr. Ward:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on JUL - 3 2012, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$80,714.00 in the manner prescribed in paragraphs 112-114 and 116 of the CAFO, and reference all checks with the number BD 2751242R009 and docket number RCRA-05-2012-0009. Your payment is due within sixty (60) calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,


Gary Victorine, Chief
RCRA Branch

Enclosures

cc: Todd Marvel, Illinois Environmental Protection Agency (w/CAFO)
(todd.marvel@illinois.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Berkshire Investments, LLC)
Cicero, Illinois)
)
Respondent.)
_____)

Docket No. RCRA-05-2012-0009
Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act
42 U.S.C. § 6928(a)

RECEIVED
JUL - 3 2012

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 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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* as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of filing of this Consent Agreement and Final Order (CAFO) to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. The Respondent is Berkshire Investments, LLC, a limited liability company doing business in the State of Illinois as Chicago Extruded Metals.
5. 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 CAFO. 40 C.F.R. § 22.13(b).

6. 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.

7. 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

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

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

10. 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.

11. Respondent certifies that it is complying fully with RCRA, the regulations at 40 C.F.R. Parts 260-268, 273 and 279, and regulations promulgated by Illinois at 35 Illinois Administrative Code (I.A.C.) Parts 720-728, 733 and 739.

STATUTORY AND REGULATORY BACKGROUND

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260-268, 273 and 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001-3007 and 3013, among others, of RCRA, 42 U.S.C. §§ 6921-6927 and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

15. Illinois has promulgated hazardous waste regulations, which are part of its authorized hazardous waste program, at 35 I.A.C. Parts 700-729, 733 and 739.

16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

GENERAL ALLEGATIONS

17. Respondent is a "person" as defined by 35 I.A.C. § 720.110 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is an "owner" or "operator," as those terms are defined under 35 I.A.C. § 720.110, of a facility located at 1601 South 54th Avenue, Cicero, Illinois, 60804 (Facility).

19. The Facility is a "facility," as that term is defined under 35 I.A.C. § 720.110.

20. At all times relevant to this matter, Respondent has produced extruded brass products at the Facility.

21. As a result of its production processes at the Facility, Respondent generates wastewater. Respondent treats this wastewater in an on-site waste water treatment system (WWTS).

22. As a result of its operation of the WWTS at the Facility, Respondent generates sludge referred to as "Filter Press Sludge."

23. The Filter Press Sludge accumulates in a container referred to as the "Transfer Container."

24. Respondent periodically transfers the Filter Press Sludge from the Transfer Container to a container referred to as the "Roll-off Container" located at the Facility.

25. Respondent holds the Filter Press Sludge in the Roll-off Container until a third party removes the Roll-off Container, and the Filter Press Sludge in the Roll-off Container, from the Facility.

26. At all times relevant to this Complaint, the Filter Press Sludge was a “solid waste” as that term is defined under 35 I.A.C. § 721.102.

27. Solid waste which exhibits the characteristic of toxicity for lead as defined in 35 I.A.C. § 721.124 is a hazardous waste and is assigned the hazardous waste code D008.

28. At all times relevant to this Complaint, the Filter Press Sludge was a D008 “hazardous waste” as that term is defined under 35 I.A.C. §§ 721.103 and 721.124.

29. The Roll-off Container is a “container” as that term is defined by 35 I.A.C. § 720.110.

30. The Transfer Container is a “container” as that term is defined by 35 I.A.C. § 720.110.

31. Respondent’s holding of the Filter Press Sludge in the Roll-off Container constituted hazardous waste “storage” as that term is defined under 35 I.A.C. § 720.110.

32. Respondent’s holding of the Filter Press Sludge in the Transfer Container constituted hazardous waste “storage” as that term is defined under 35 I.A.C. § 720.110.

33. Respondent is a “generator” as that term is defined under 35 I.A.C. § 720.110.

34. At all times relevant to this Complaint, Respondent generated more than 1000 kg of hazardous waste at the Facility in a calendar month.

35. On August 14, 2008, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (2008 Inspection).

36. On May 19, 2010, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (2010 Inspection).

37. Hazardous waste was generated or otherwise managed at the Facility on or before November 19, 1980.

38. Pursuant to 35 I.A.C. § 725.101, the regulations in 35 I.A.C. Part 725, Subpart A apply to all hazardous waste facilities which were in existence on November 19, 1980 which have not received a permit or fulfilled closure and post-closure requirements.

39. Pursuant to 35 I.A.C. § 725.150, the regulations in 35 I.A.C. Part 725, Subpart D apply to owners and operators of all hazardous waste management facilities.

40. Pursuant to 35 I.A.C. § 725.151, each owner or operator must have a contingency plan for the facility.

41. Pursuant to 35 I.A.C. § 725.270, the regulations in 35 I.A.C. Part 725, Subpart I apply to the owner or operator of a hazardous waste facility that stores containers of hazardous waste.

42. Pursuant to 35 I.A.C. § 725.273(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

43. Pursuant to 35 I.A.C. § 725.110, the regulations in 35 I.A.C. Part 725, Subpart B apply to owners and operators of all hazardous waste facilities.

44. Pursuant to 3005 of RCRA, 42 U.S.C. § 6925, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit or interim status is prohibited.

45. Pursuant to 35 I.A.C. § 703.153, such owners and operators may obtain interim status and shall be treated as having been issued a permit if they:

(1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity; and

(2) Complied with the requirements of § 270.10 governing submission of Part A applications.

46. At no time relevant to this Complaint did Respondent have interim status for the treatment, storage, or disposal of hazardous waste at the Facility.

47. At no time has Respondent applied for or received a RCRA permit to treat, store, or dispose of hazardous waste at the Facility.

VIOLATIONS

Count I: Failure to Keep Roll-Off Container Closed

48. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

49. During the 2008 Inspection, Respondent stored Filter Press Sludge in the Roll-off Container.

50. During the 2008 Inspection, the Roll-off Container was not closed.

51. During the 2008 Inspection, Respondent was not adding waste to or removing waste from the Roll-off Container.

52. By having the Roll-off Container open at a time when Respondent was storing hazardous waste in it but Respondent was not adding hazardous waste to it or removing hazardous waste from it, Respondent violated 35 I.A.C. § 725.273(a).

Count II: Failure to Keep Transfer Container Closed

53. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

54. During the 2010 Inspection, Respondent stored Filter Press Sludge in the Transfer Container.

55. During the 2010 Inspection, the Transfer Container was not closed.

56. During the 2010 Inspection, Respondent was not adding waste to or removing waste from the Transfer Container.

57. By having the Transfer Container open at a time when Respondent was storing hazardous waste in it but Respondent was not adding hazardous waste to it or removing hazardous waste from it, Respondent violated 35 I.A.C. § 725.273(a).

Count III: Failure to Inspect Roll-off Container

58. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

59. Pursuant to 35 I.A.C. § 725.274, at least weekly, the owner or operator must inspect areas where containers are stored.

60. At various times between 2006 and 2009, Respondent stored Filter Press Sludge in the Roll-Off Container.

61. Between 2006 and 2009, Respondent did not conduct weekly inspections of the Roll-off Container when Filter Press Sludge was stored in the Roll-Off Container.

62. By failing to conduct weekly inspections of the Roll-off Container when hazardous waste was stored in that container, Respondent violated 35 I.A.C. § 725.274.

Count IV: Failure to Meet Contingency Plan Requirements

63. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

64. Pursuant to 35 I.A.C. § 724.155, at all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures.

65. Pursuant to 35 I.A.C. § 725.152(d), the contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date.

66. At the time of the 2008 Inspection, Respondent's contingency plan did not list the home address for the emergency coordinator for the Facility.

67. By not listing the home address for the emergency coordinator for the Facility in the contingency plan, Respondent violated 35 I.A.C. § 725.152(d).

Count V: Failure to Distribute Contingency Plan

68. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

69. Pursuant to 35 I.A.C. § 725.153(b), a copy of the contingency plan must be submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

70. At the time of the 2008 Inspection, U.S. EPA alleges that Respondent had not distributed a copy of its contingency plan to local police departments (other than the Cicero police department), fire departments, hospitals, and state and local emergency response teams. In response to this allegation, Respondent asserts that it did distribute the contingency plan to all

entities required by 35 I.A.C. § 725.153(b) but merely failed to retain documentation of such distribution.

71. By failing to distribute a copy of its contingency plan to local police departments (other than the Cicero police department), fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services to the Facility, Respondent violated 35 I.A.C. § 725.153(b).

Count VI: Failure to Conduct Annual Employee Training

72. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

73. Pursuant to 35 I.A.C. § 725.116(c), facility personnel must take part in an annual review of the initial hazardous waste training required in 35 I.A.C. § 725.116(a)(1).

74. In 2007 and 2009, Respondent did not provide an annual review of the training required by 35 I.A.C. § 725.116(a)(1) to several employees.

75. By not providing to all employees in positions potentially related to hazardous waste management an annual review of the training required by 35 I.A.C. § 725.116(a)(1) in 2007 and 2009, Respondent violated 35 I.A.C. § 725.116(c).

Count VII: Failure to Maintain Employee Training Records

76. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

77. Pursuant to 35 I.A.C. § 725.116(d), an owner or operator must maintain the following documents and records at a facility:

- 1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
- 2) A written job description for each position listed under subsection (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications, and duties of employees assigned to each position;
- 3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subsection (d)(1) of this Section;
- 4) Records that document that the training or job experience required under subsections (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.

78. Pursuant to 35 I.A.C. § 725.116(e), training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date the employee last worked at the facility.

79. Respondent has not maintained the training records required by 35 I.A.C. § 725.116(d) and (e) for training in 2007 and 2009.

80. By not maintaining records for training in 2007 and 2009, Respondent violated 35 I.A.C. § 725.116(d) and (e).

**Count VIII: Storage of Hazardous Waste Without a Permit –
Failure to Meet Generator Exemption Conditions**

81. Complainant incorporates paragraphs 1 through 80 of this CAFO as though set forth herein.

82. Pursuant to 35 I.A.C. § 722.134(a), a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim

status, provided that the generator complies with all applicable conditions in 35 I.A.C.

§ 722.134(a), including the following:

- 1) The waste is placed in or on one of the following types of units, and the generator complies with the applicable requirements:
 - A) In containers, and the generator complies with Subparts I, AA, BB, and CC of 35 Ill. Adm. Code 725;
 - ...
- 2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
- 3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and
- 4) The generator complies with the requirements for owners or operators in Subparts C and D of 35 Ill. Adm. Code 725 and with 35 Ill. Adm. Code 725.116 and 728.107(a)(5).

83. Failure to comply with any of the conditions of 35 I.A.C. § 722.134(a) subjects the generator of hazardous waste to the permit requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121.

84. During the 2008 Inspection, Filter Press Sludge was stored in the Roll-off Container.

85. During the 2008 Inspection, the Roll-off Container was not labeled with the words "Hazardous Waste."

86. During the 2010 Inspection, Filter Press Sludge was stored in the Transfer Container.

87. During the 2010 Inspection, the Transfer Container was not labeled with the words "Hazardous Waste."

88. By not labeling the Roll-off Container and the Transfer Container with the words “Hazardous Waste,” Respondent failed to comply with the permit condition exemption of 35 I.A.C. § 722.134(a)(3).

89. During the 2008 Inspection, the Roll-off Container was not labeled with the accumulation start date.

90. During the 2010 Inspection, the Transfer Container was not labeled with the accumulation start date.

91. By not labeling the Roll-off Container and the Transfer Container with the accumulation start date, Respondent failed to comply with the permit exemption condition of 35 I.A.C. § 722.134(a)(2).

92. By violating 35 I.A.C. §§ 725.273(a) and 274 as alleged in Counts I through III, supra, Respondent failed to comply with the permit exemption condition of 35 I.A.C. § 722.134(a)(1)(A).

93. By violating 35 I.A.C. §§ 725.152(d) and 724.153(b) as alleged in Counts IV and V, supra, Respondent failed to comply with the permit exemption condition of 35 I.A.C. § 722.134(a)(4).

94. By violating 35 I.A.C. §§ 725.116(c), (d) and (e) as alleged in Counts VI and VII, supra, Respondent failed to comply with the permit exemption condition of 35 I.A.C. § 722.134(a)(4).

95. By failing to satisfy, as described above, all of the conditions at 35 I.A.C. § 722.134(a) for the exemption from the requirement to have an operating permit or interim status for the storage of hazardous waste, Respondent failed to qualify for the permitting

exemption provided at 35 I.A.C. § 722.134(a) and became subject to the requirements of 35 I.A.C. Part 725 and the permit requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121.

96. By storing hazardous waste without a permit, interim status or a permitting exemption, Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121.

**Count IX: Storage of Hazardous Waste Without a Permit –
Storage Greater than 90 Days**

97. Complainant incorporates paragraphs 1 through 47 of this CAFO as though set forth herein.

98. Pursuant to 35 I.A.C. § 722.134(b), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 I.A.C. §§ 724 and 725 and the permit requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121, unless the generator has been granted an extension to the 90-day period.

99. At no time relevant to this Complaint had Respondent been granted an extension to accumulate hazardous waste for more than 90 days.

100. Respondent stored Filter Press Sludge in the Roll-Off Container from approximately July 27, 2006, to November 17, 2006. This time period is in excess of 90 days.

101. Respondent stored Filter Press Sludge in the Roll-Off Container from approximately December 1, 2006, to July 3, 2007. This time period is in excess of 90 days.

102. Respondent stored Filter Press Sludge in the Roll-Off Container from approximately August 12, 2007, to April 22, 2008. This time period is in excess of 90 days.

103. Respondent stored Filter Press Sludge in the Roll-Off Container from approximately May 1, 2008, to November 10, 2008. This time period is in excess of 90 days.

104. By storing Filter Press Sludge in the Roll-off Container in excess of 90 days without an extension, Respondent became subject to the requirements of 35 I.A.C. Part 725 and the permit requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121.

105. By storing hazardous waste without a permit or interim status, Respondent violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the requirements of 35 I.A.C. §§ 703.121, 703.180, and 705.121.

COMPLIANCE ORDER

106. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b) to comply with the requirements of this CAFO immediately upon the effective date of this CAFO.

107. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 108 of this CAFO.

108. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by 35 I.A.C. § 722.134, by the effective date of this CAFO.

109. Respondent shall notify U.S. EPA in writing within 15 days of the effective date of this CAFO either certifying compliance with the CAFO or explaining why it is not in compliance and proposing a date to achieve compliance.

110. Respondent shall submit all reports, submissions, and notifications required by this CAFO to the United States Environmental Protection Agency, Region 5, Land and

Chemicals Division, RCRA Branch, Attention: Michael Valentino (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

CIVIL PENALTY

111. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$80,714.00. In determining the penalty amount, Complainant took into account the seriousness of the violations, any good faith efforts to comply with the applicable requirements and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

112. Respondent shall pay the \$80,714.00 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after the effective date of this CAFO.

113. If Respondent sends the check by regular U.S. Postal Service mail, Respondent must send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

114. If Respondent sends the check by express mail, Respondent must send the check to the following address:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

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

116. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk, (E-19J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Michael Valentino
Land and Chemicals Division
RCRA Branch (LR-8J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Charles V. Mikalian (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

117. If Respondent does not timely pay the civil penalty or any stipulated penalty due under paragraph 132, U.S. 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. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

118. 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 amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). 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 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

119. In accordance with this CAFO, Respondent must complete the SEP as described herein at the Facility. The purpose of the SEP is to provide for a waste minimization program that would reduce the amount of wastewater discharged from the Facility and the amount of hazardous filter press sludge generated from the Facility WWTS. The SEP will involve capital improvements to the pickling process, billet casting and wastewater treatment operations at the Facility. Through the recycling of pickle rinse waters, the use of these rinse waters along with treated process wastewater in the cooling of cast billets, and the installation of an inclined plate clarifier, new plate and frame filter press and sludge dryer, Respondent expects to effectively reduce almost all of its current wastewater discharges and to reduce the amount of hazardous filter press sludge by as much as 60%. The SEP is further described in greater detail in the December 20, 2011 letter from Jack Ward to Michael Valentino, included as Attachment 1 hereto.

120. Respondent shall implement the SEP in accordance with Attachment 1 and according to the following schedule (which supersedes the schedule in Attachment 1):

- a. Complete detailed engineering by June 30, 2012;
- b. Procure and receive capital equipment by July 30, 2012;
- c. Install capital equipment by September 30, 2012;
- d. Test, shake out and debug equipment by October 30, 2012; and
- e. Commission and start up equipment by November 30, 2012.

121. Respondent must spend at least \$361,000 to purchase and install the equipment required to implement the SEP. Within 45 days after installing all equipment required by the SEP, Respondent shall begin operation of that equipment.

122. Unless Respondent has ceased all operations at the Facility, Respondent shall continuously operate the equipment installed under the SEP for at least five years from the effective date of the CAFO.

123. Respondent shall obtain all permits and approvals necessary for the implementation and completion of the SEP.

124. Certifications

a. 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.

b. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

125. Reporting Requirements. Respondent shall submit reports to U.S. EPA as provided in this paragraph.

a. Respondent shall submit monthly progress reports for the construction phase of the SEP no later than the 15th day of each month following the effective date of this CAFO. The monthly progress reports shall note the significant accomplishments and any difficulties encountered during the reporting period.

b. Respondent shall submit a Construction Completion Report within 30 days after Respondent begins operation of the equipment required by the SEP. The Construction Completion Report shall include a certification that Respondent has installed the equipment required by the SEP pursuant to the provisions of this CAFO. The Construction Completion Report shall also include a detailed description of the SEP as installed and an audit of SEP expenditures, including but not limited to itemized costs for the SEP, documented by copies of purchase orders and receipts or canceled checks.

c. During the first year of operation of the equipment required by the SEP, Respondent shall submit Quarterly Operation Reports every 90 days after Respondent begins operation of that equipment. Each Quarterly Operation Report shall identify the amount of wastewater treatment sludge generated (pounds) and amount of wastewater discharged (gallons) in the reporting period:

d. Respondent shall submit an Annual SEP Summary Report within 60 days after the 1st, 2nd, 3rd, 4th and 5th anniversaries of beginning operation of the equipment required under the SEP. Each Annual SEP Summary Report shall provide the information required by paragraph 125(c) for the reporting period.

126. U.S. EPA Approval

For each report submitted by Respondent pursuant to this CAFO for which U.S. EPA determines that there are deficiencies in the report, U.S. EPA must notify Respondent in writing that:

- a. There are deficiencies in the report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- b. There are deficiencies in the report and U.S. EPA will seek stipulated penalties under paragraph 132.

127. If U.S. EPA exercises the option set forth in paragraph 126(a), Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its

decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 132.

128. Record Retention For a period of five years after U.S. EPA approval of the first Annual SEP Summary Report, Respondent shall maintain legible copies of documentation of underlying data for the SEP and all documents or reports submitted to U.S. EPA pursuant to this CAFO. Respondent shall provide such documentation to U.S. EPA within 21 calendar days of a U.S. EPA request for such information.

129. In each report that Respondent submits under this CAFO, Respondent 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.

130. Respondent must submit all notices and reports required by this CAFO by first class mail to Michael Valentino at the address specified in paragraph 116.

131. Following receipt of the SEP Completion Report, U.S. EPA will notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP;
- b. there are deficiencies in the SEP as completed or in the SEP Completion Report and U.S. EPA will give Respondent 30 days to correct the deficiencies. The parties may agree in writing to extend this 30 day period; or
- c. Respondent has not satisfactorily completed the SEP or the SEP Completion Report and U.S. EPA will seek stipulated penalties

under paragraph 132.

Stipulated Penalties

132. 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) immediately below, if the SEP has not been completed satisfactorily pursuant paragraphs 119-124, Respondent shall pay a stipulated penalty to the United States in the amount of \$242,142.00.
- b. If the SEP is not completed in accordance with paragraphs 119-124, but U.S. EPA determines that Respondent: i) made good faith and timely efforts to complete the project; and ii) certifies, with supporting documentation, that Respondent spent at least 90 percent of the amount of money required to be expended on the SEP by paragraph 121, Respondent shall not be liable for any stipulated penalty;
- c. If the SEP is completed in accordance with paragraphs 119-124 but Respondent spent less than 90 percent of the amount of money required to be expended on the SEP by paragraph 121, Respondent shall pay a stipulated penalty to the United States in the amount of \$24,214.00.
- d. If the SEP is completed in accordance with paragraphs 119-124 and Respondent spent at least 90 percent of the amount of money required to be expended for the SEP by paragraph 121, Respondent shall not be liable for any stipulated penalty; and
- e. For failure to timely submit any report required by paragraph 125 of this CAFO, Respondent shall pay a stipulated penalty as follows:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$ 100	1st through 14th day
\$ 250	15th through 30th day
\$ 500	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each deadline until it achieves compliance with the deadline.

133. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

134. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 112-114 and 116 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

135. Force Majeure

If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 business days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph (b), above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

SEP General Provisions

136. U.S. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

137. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

138. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of the Resource Conservation and Recovery Act."

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

OTHER MATTERS

140. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

141. This CAFO does not affect Respondent's responsibility to comply with RCRA and any other federal, state or local laws, statutes, regulations or permits.

142. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

144. Each person signing this 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.

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

146. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative.


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

148. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

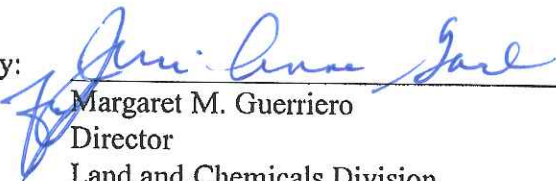
149. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Agreed to by:

Berkshire Investments, LLC

By:  _____ 5/9/12
Patrick Balson, President Date
Berkshire Investments, LLC (d/b/a Chicago Extruded Metals)


U.S. EPA Region 5

By:  _____ 6.27.12
Margaret M. Guerriero Date
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Berkshire Investments, LLC
Docket No. RCRA-05-2012-0009

FINAL ORDER

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: 
Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: 6-29-12

RECEIVED
JUL - 3 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CASE NAME: Berkshire Investments, LLC d/b/a Chicago Extruded Metals Company
DOCKET NO: RCRA-05-2012-0009

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Jack Ward
Director of Operations
Chicago Extruded Metals Co.
1601 South 54th Avenue
Cicero, Illinois 60804

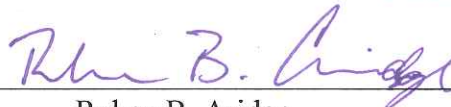
Certified Mail Receipt #

RECEIVED

JUL - 3 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: 7/3, 2012



Ruben B. Aridge
Administrative Program Assistant
United States Environmental Protection Agency
Region 5
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590