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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

US EPA - REGION IX  
HEARING CLERK

IN THE MATTER OF:	)	
	)	U.S. EPA Docket No.
AIR LOUVERS/ACTIVAR	)	CWA-09-2013-0002
CONSTRUCTION PRODUCTS	)	
GROUP, Inc.	)	
	)	
Respondents.	)	

ORDER GRANTING COMPLAINANT'S MOTION TO APPROVE FINAL ORDER

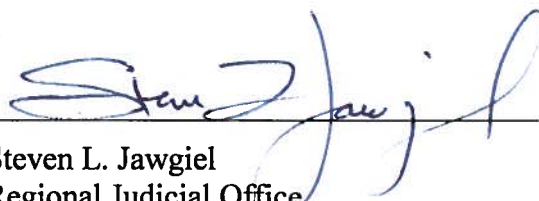
By motion submitted on February 25, 2014, Complainant seeks approval of the parties' Consent Agreement and Proposed Final Order.

Administrative proceedings for the assessment of civil penalty under Section 1319(g) § 1319(g) are subject to the supplemental rule at 40 C.F.R. § 22.45(b)(1), which requires Complainant to notify the public before assessing a civil penalty, and provides, in relevant part, that: "Such notice shall be provided... in the case of a proceeding proposed to be commenced pursuant to § 22.23(b), no less than 40 days before the issuance of an order assessing a civil penalty." Therefore, Complainant is subject to the mandatory notice and public comment requirements of 40 C.F.R. § 22.45. Complainant's Motion to Approval of Consent Agreement and Final Order establishes that Complainant complied with the 40 C.F.R. § 22.45 requirements. The record also shows that Complainant received no comments in response to its public notice.

IT IS THEREFORE ORDERED THAT:

Complaint's Motion To Approve Final Order is GRANTED.

Dated: March 3, 2014



Steven L. Jawgiel  
Regional Judicial Office  
U.S. EPA, Region IX

FILED

ROBERT MOYER  
Acting Regional Counsel

2014 MAR -3 PM 3:15

JULIA JACKSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3948

US EPA - REGION IX  
HEARING CLERK

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

In the matter of:	)	U.S. EPA Docket No.
	)	CWA-09-2013-0002
	)	
Air Louvers/Activar Construction	)	
Products Group, Inc.	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
	)	
	)	
<u>Respondent.</u>	)	

**I. CONSENT AGREEMENT**

**A. INTRODUCTION**

1. This civil administrative enforcement action was initiated pursuant Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §1319(g), and 40 C.F.R. Part 22, “Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits.”
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is Activar Construction Products Group, Inc., which does business as Air Louvers and has a facility in Commerce, California (“Respondent” or “Air Louvers”).
3. The United States Environmental Protection Agency, Region 9 (“EPA”) institutes this proceeding against Air Louvers for alleged violations of the CWA’s pretreatment requirements. CWA §307(d), 33 U.S.C. § 1317(d). This Consent Agreement and Final Order (“CA/FO”) simultaneously commences and concludes this matter in accordance with

40 C.F.R. §§ 22.13(b) and 22.18(b).

4. The Respondent agrees that settlement of this matter is appropriate. The Respondent and EPA seek approval of the Consent Agreement and move for issuance of the accompanying Final Order.
5. NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this Consent Agreement and Order, it is hereby AGREED, STIPULATED, and ORDERED:

**B. ADMISSIONS AND WAIVERS**

6. For purposes of this proceeding, Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.4 and 22.38. Further, for the purposes of this proceeding, Respondent admits to the jurisdictional allegations of facts and law set forth herein. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
7. Respondent neither admits nor denies any allegations of fact or law set forth herein. Respondent hereby waives any rights Respondent may have to contest the allegations set forth herein, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth herein, including without limitation a hearing pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.
8. This Consent Agreement contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8).

**C. STATUTORY AND REGULATORY AUTHORITY**

9. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. § 1251(a).

### Pretreatment Program

10. CWA section 307, 33 U.S.C. § 1317, establishes the federal pretreatment program for regulating the introduction of wastewater from non-domestic sources into publicly owned treatment works (“POTW”). For purposes of CWA section 307, the term POTW includes the municipal wastewater treatment plant or works and its tributary sewer or conveyance systems. 40 C.F.R. § 403.3(q).
11. CWA section 307(d), 33 U.S.C. § 1317(d), prohibits the introduction of industrial pollutants into a POTW in violation of any pretreatment standards established pursuant to CWA section 307(b), 33 U.S.C. § 1317(b).
12. CWA section 307(b), 33 U.S.C. § 1317(b), directs EPA to publish regulations to establish pretreatment standards governing the introduction of industrial pollutants into POTWs. Pursuant to CWA section 307(b), EPA promulgated categorical metal finishing pretreatment standards for copper and zinc at 40 C.F.R. Part 433.17.
13. A violation of the pretreatment standards at 40 C.F.R. § 433.17 is a violation of CWA section 307(d), 33 U.S.C. § 1317(d).

### **D. GENERAL ALLEGATIONS**

14. Air Louvers owns and operates a facility that manufactures louvers, access panels, door frames, metal cabinets and door frames (the “Facility”) at 6285 Randolph Street, Commerce, California, 94949.
15. Activar Construction Products Group, Inc. is incorporated in the State of Minnesota, and thus a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
16. The Facility discharged manufacturing process wastewater from overflow tank rinses from a washing/phosphating system, cooling tower blowdown, air compressor condensate and domestic wastewater, and therefore introduced pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), into the Los Angeles County Sanitation District’s (“LACSD”) domestic sewer system and the Joint Water Pollution Control Plant (“ POTW”).
17. The LACSD, POTW and its tributary sewer systems are all POTWs under 40 C.F.R. § 403.3(g) and CWA section 307(b).
18. The POTW discharges to the Pacific Ocean. The Pacific Ocean is a water of the United States under 40 C.F.R. § 122.2, which implements CWA section 502(7), 33 U.S.C. § 1362(7).
19. The Facility operates under a discharge permit issued by LACSD.

### Pretreatment Violations at the Facility

20. As part of its production processes, the Facility generates and discharged process wastewater which passed through a pH adjustment tank and a three stage clarifier.
21. A review of effluent data during the August 24, 2010 EPA inspection revealed that Air Louvers violated the categorical metal finishing pretreatment standards for copper and zinc at 40 C.F.R. Part 433.17 on ten occasions between May 2006 and January 2011.
22. Unauthorized discharges of pollutants to waters of the United States violates CWA section 307(d), 33 U.S.C. § 1317(d).

### E. CIVIL PENALTY

23. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation, up to a maximum penalty of \$137,500. Violations that occurred after March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation, up to a maximum penalty of \$157,500. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to CWA section 309(g)(3), 33 U.S.C. § 1319(g)(3), and the EPA Supplemental Environmental Project Policy (“SEP Policy”), EPA has determined that it is appropriate to assess, and Respondent has, without admission, agreed to pay to the United States, a civil administrative penalty in the amount of \$43,000.00.
24. Payment of penalty must be received in accordance with one of the acceptable methods of payment in Paragraph 25 on or before **thirty (30) calendar days** after the effective date of the CA/FO. The date by which payment must be received by the United States shall be the “due date” for the payment.
25. Respondent shall make payment under this CA/FO in accordance with any of the acceptable methods of payment listed in the attached “EPA Region 9 Collection Information” sheet (Attachment B), which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attach a photocopy of the penalty payment, via certified mail to each of the following:

Manager  
Water Section 1  
Enforcement Division  
U.S. EPA, Region IX  
75 Hawthorne St. (Mail Code: ENF-3-1)  
San Francisco, California 94105

Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne Street (Mail Code: ORC-1)  
San Francisco, CA 94105

26. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 25 above.
27. Failure by Respondent to pay the full penalty when due entitles EPA and the United States to bring a civil action to recover the amount assessed. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In such an action, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. CWA section 309(g)(9), 33 U.S.C. §1319(g)(9).
28. The civil penalty, and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's, or any affiliated entity's, federal, state or local taxes.

**F. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

29. As part of the settlement of this enforcement action, Respondent has completed a Supplemental Environmental Project ("SEP"). Performance of all of the tasks set forth in this Section shall constitute satisfactory performance of the SEP.
30. Respondent completed a SEP to eliminate all wastewater discharges through the installation of a zero-discharge system at the facility.
31. Respondent certifies that its good faith estimate of the costs to implement this SEP are \$25,350, and Respondent shall expend at least \$25,350 on the SEP.



32. Within 30 days after the Effective Date of this CA/FO, Respondent shall provide EPA an accounting showing the amount Respondent expended to date for the implementation of the SEP, and submit to EPA substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts. Respondent shall also submit a statement certifying that the zero discharge system is in place at the Facility. This certification statement is subsequently required to be submitted on an annual basis, starting October 1, 2014. The last certification statement will be due October 1, 2023. All submittals under this SEP shall include the following statement signed by Respondent or its duly authorized representative in accordance with 40 CFR Section 122.22:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

32. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to this SEP shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action In the Matter of: Air Louvers, Inc. Docket # CWA-09-2013-0002, taken on behalf of the United States Environmental Protection Agency, Region IX, under the Clean Water Act.
33. In signing this CA/FO, Respondent hereby certifies that it is not required by any federal, state or local law or regulation to perform or develop the SEP described above; nor is Respondent required by agreement, grant or as injunctive relief in this or any other case (other than in this CA/FO) to perform or develop this SEP. Respondent certifies that no federal funding has been received or used, or will be received or used, for the SEP. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP; nor will Respondent realize any profit attributable to this SEP. Respondent further certifies that no funds will be used for education or student volunteer activities in carrying out the SEP.

#### **G. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

34. In addition to the interest and per annum penalties described in Paragraph 26, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Paragraph 24, Respondent agrees to pay Complainant a stipulated penalty in the amount of up to \$100.00 for each day the default continues.
35. Except as provided in paragraph 39 immediately below, in the event that Respondent fails to satisfactorily complete the SEP as required by this CA/FO, Respondent shall pay a

stipulated penalty of \$25,350.00.

37. If Respondent fails to satisfactorily complete the SEP as required by this CA/FO, but Respondent (a) has made good faith and timely efforts to complete the SEP; and (b) certifies, with supporting documentation, that at least 90% of the estimated costs committed to be expended on the SEP by this CAFO were spent, then no stipulated penalty will apply.

38. If Respondent satisfactorily completes the SEP in accordance with the requirements of this CA/FO, but Respondent spent less than 90% of the estimated costs committed to be expended to date on the SEP by this CAFO, Respondent shall pay a stipulated penalty of \$10,054.00.

39. If Respondent satisfactorily completes the SEP in accordance with the requirements of this CA/FO, and spends at least 90% of the estimated costs committed to be expended on the SEP by this CAFO, no stipulated penalty will apply.

40. The determination of whether Respondent has satisfactorily completed the SEP set forth in Section F of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to implement the SEP for purposes of this Section, are within the sole discretion of the Director, Enforcement Division, EPA Region IX, subject to the terms of this CA/FO. Upon request, EPA may provide Respondent with an opportunity to confer with the Division Director prior to this determination; however, such conference shall not provide Respondent with any rights to challenge or appeal the decision.

41. All stipulated penalties shall begin to accrue on the date that performance is due or a violation occurs. Stipulated penalties under paragraphs 34-39 shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

42. All stipulated penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

43. Payment shall be made as described in paragraph 25. At the time payment is made, a copy of the check or payment documentation shall be sent to EPA as described above in paragraph 25.

44. All payments shall indicate the Respondent's name and address, and the EPA docket number of this action.

45. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.



46. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO. In any such an action, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) reasonable attorney fees, and costs for collection proceedings.

#### **H. PARTIES BOUND**

47. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section E has been paid and either (1) the SEP required under Section F has been satisfactorily completed, or (2) in the event of failure to satisfactorily complete the SEP in full, satisfactory good-faith compliance pursuant to paragraph 40 has been made, or stipulated penalties in accordance with Section G of this CA/FO have been paid. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

48. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

49. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of a substantial portion of Respondent's assets and shall notify EPA within seven (7) days prior to such transfer, until the termination of this CA/FO.

50. The undersigned representative of Respondent hereby certifies s/he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

#### **I. PUBLIC NOTICE**

51. This Consent Agreement is subject to the requirements of CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which provide for a thirty (30) day public notice of, and a reasonable opportunity for comment on, the Consent Agreement.

52. EPA reserves the right to withdraw from or withhold its consent to this Consent Agreement if public comment discloses material information that was not considered by EPA in entering into this Consent Agreement. In such case, Respondent's obligations under this document shall terminate, and EPA may pursue any and all enforcement options as provided by law. If no comment is timely received during the thirty (30) day comment period regarding the Consent Agreement, EPA shall file the Final Order.

53. This CA/FO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk, and shall terminate when Respondent has complied with this CAFO in full.

## **J. GENERAL PROVISIONS**

54. The Respondent knowingly and voluntarily enters into this Consent Agreement in full and final settlement of the civil administrative penalty liabilities for the specific alleged CWA violations alleged herein. Respondent has read the CA/FO, understands its terms and consents to its terms and issuance of the Final Order, without admission of any factual or legal allegations.

55. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between EPA and the Respondent to resolve EPA's civil penalty claim against Respondent for the specific CWA violations alleged herein.

56. This CA/FO, and Respondent's full compliance with it, shall in no way affect the right of EPA or the United States to pursue any and all injunctive or other equitable relief or criminal sanctions for any violations of law, including but not limited to the right to bring further actions for matters not specifically alleged herein.

57. This CA/FO is not a permit, and it does not constitute a waiver, suspension or modification of the requirements of any federal, state, or local permit, or statute, ordinance, regulation, or order, including but not limited to any CWA requirements, permits or orders.

58. This CA/FO shall in no way affect the right of EPA or the United States against any third party (person/entity not a party to this CA/FO) or the right of any third party against Respondent. This CAFO does not create any right in or grant any cause of action to any third party.

59. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, and the right to seek recovery of any costs and attorney's fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO.

60. Except as set forth in paragraphs 27 and 46, EPA and the Respondent shall each bear their own costs and attorneys fees incurred in this proceeding.

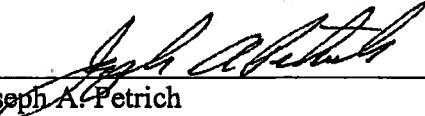
61. Respondent agrees not to contest the validity of any terms and conditions set forth in this CA/FO in any action to enforce, or arising from, the CA/FO. Respondent waives, without any admission, any right to contest any issue of fact or law herein, or to seek a hearing, judicial review, or appeal of the Final Order.

62. This CA/FO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk, and shall terminate when Respondent has complied with this CA/FO in full.

IT IS SO AGREED.

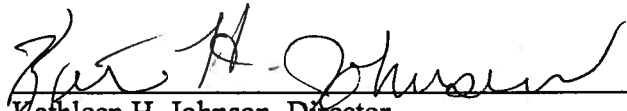
For, Air Louvers/Activar Construction Products Group:

12/13/13  
Date

  
Joseph A. Petrich  
Chief Financial Officer

For U.S. Environmental Protection Agency, Region IX:

1/13/14  
Date

  
Kathleen H. Johnson, Director  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

## II. FINAL ORDER

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18, U.S. EPA Docket No. CWA-09-2013-0002, be entered and that Respondent, Air Louvers/Activar Construction Products Group, complete the Supplemental Environmental Project required under this CA/FO (including, if applicable, the payment of any additional civil penalty which may become due under Section E of this CA/FO), and pay a civil penalty of **\$43,000.00**. Payment shall be made pursuant to **paragraph 25** of the CA/FO within thirty (30) days of the Effective Date. A copy of the check or payment documentation shall be sent to the EPA Region IX addresses specified in Section E of this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18 at such time as payment is made.

This Final Order shall be effective immediately.

03/03/14  
Date

  
Steven Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

1  
2 **CERTIFICATE OF SERVICE**

3 I certify that the original of the fully executed Consent Agreement and Final Order against AIR  
4 **LOUVERS/ACTIVAR CONSTRUCTION PRODUCTS GROUP (Docket #: CWA-09-**  
5 **2013-0002)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne  
6 Street, San Francisco, CA 94105, and that a true and correct copy of the Order Granting  
7 Complainant's Motion to Approve Final Order, and the Consent Agreement and Final Order was  
8 sent to the following parties:

9 A copy was mailed via CERTIFIED MAIL to:


10 Gary Roberts, Esq.  
11 SNR Denton US LLP  
12 601 South Figueroa Street, Suite 2500  
13 Los Angeles, California 90017-5704  
14 Phone: (213) 892-5005  
15 Email: gary.roberts@snrdenton.com

16 **CERTIFIED MAIL NUMBER: 7000 0520 0021 6108 1926**

17 An additional copy was hand-delivered to the following U.S. EPA case attorney:

18 Julia A. Jackson, Esq.  
19 Office of Regional Counsel  
20 U.S. EPA, Region IX  
21 75 Hawthorne Street  
22 San Francisco, CA 94105

23 March 3, 2014

24   
25 \_\_\_\_\_  
Name FOR: RHC  
\_\_\_\_\_  
Position