



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 02 2014

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John Fehrenbach  
Winston & Strawn LLP  
1700 K Street N.W.  
Washington, DC 20006-3817

RE: Wise Alloys, LLC  
Muscle Shoals, Alabama  
EPA ID # - ALD 095 687 679  
Consent Agreement and Final Order - Docket No. RCRA-04-2013-4015

Dear Fehrenbach:

Enclosed is a copy of the executed CA/FO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed is a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Wise Alloys, LLC on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact Susan Hansen, Chief, Office of RCRA, UST and OPA Legal Support, (404) 562-9700.

Sincerely,

A handwritten signature in black ink that reads "CÉSAR A. ZAPATA".

César A. Zapata  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2013-4015(b)
	)	
Wise Alloys, LLC	)	
4805 Second Street	)	Proceeding Under Section 3008(a) of the
Muscle Shoals, Alabama 35661-1282	)	Resource Conservation and Recovery Act,
EPA ID No.: ALD 095 687 679	)	42 U.S.C. § 6928(a)
	)	
Respondent	)	

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**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Alabama Hazardous Waste Management and Minimization Act of 1978 (AHWMMA), Ala. Code §§ 22-30-1 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at the Alabama Department of Environmental Management (ADEM) Administrative Code (ADEM Admin. Code) rr. 335-14-1 to 335-14-17 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273 and 279]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of the AHWMMA [Section 3005 of RCRA, 42 U.S.C. § 6925] and ADEM Admin. Code rr. 335-14-1 to 335-14-17 [40 C.F.R. Parts 260 through 270, 273, and 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

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## II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Wise Alloys, LLC, a Limited Liability Company organized under the laws of Delaware. Respondent is the owner and operator of an aluminum can recycling and sheet aluminum production facility located at 4805 Second Street, Muscle Shoals, Alabama (the Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at ADEM Admin. Code rr. 335-14-1 to 335-14-17.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 22-30-14 of the AHWMMMA, Ala. Code § 22-30-14 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at ADEM Admin. Code r. 335-14-3 [40 C.F.R. Part 262].

12. Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at ADEM Admin. Code r. 335-14-5 (permitted) and 335-14-6 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2)(a) [40 C.F.R. § 261.2(a)], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed, ADEM Admin. Code r. 335-14-2-.01(2)(b) [40 C.F.R. § 261.2(b)].
14. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in ADEM Admin. Code r. 335-14-2-.01(3)(a)2. [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste under ADEM Admin. Code r. 335-14-2-.01(4)(b) [40 C.F.R. § 261.4(b)].
15. Pursuant to ADEM Admin. Code r. 335-14-2-.04(1) [40 C.F.R. § 261.30], a solid waste is a listed “hazardous waste” if it is listed in ADEM Admin. Code r. 335-14-2-.04 [40 C.F.R. Part 261, Subpart D] and is not otherwise excluded from that list under ADEM Admin. Code r. 335-14-1-.03(2) [40 C.F.R. §§ 260.20 and 260.22].
16. Pursuant to ADEM Admin. Code r. 335-14-2-.03(1) [40 C.F.R. § 261.20], solid wastes that exhibit any of the characteristics identified in ADEM Admin. Code r. 335-14-2-.03 [40 C.F.R. §§ 261.12-24] are characteristic hazardous wastes and are provided with the EPA hazardous waste numbers D001 through D0043.
17. Pursuant to ADEM Admin. Code r. 335-14-2-.03(2) [40 C.F.R. § 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
18. Pursuant to ADEM Admin. Code r. 335-14-2-.04(2)(a) [40 C.F.R. § 261.31(a)], a solid waste that is a spent non-halogenated solvent identified as a solvent under the F005 listing is a F005 listed hazardous waste.
19. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)113.(i) [40 C.F.R. § 260.10], a “generator” is defined as any person, by individual generation site, whose act or process produces hazardous waste identified or listed in Chapter 335-14-2 [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.
20. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)101.(i) [40 C.F.R. § 260.10], a “facility” includes all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

21. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)191 [40 C.F.R. § 260.10], a “person” includes any and all persons, natural or artificial, including, but not limited to any individual, partnership, association, society, joint stock company, firm company, corporation, institution, trust, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.
22. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)185 [40 C.F.R. § 260.10], “operator” means the person responsible for the overall operation of a facility.
23. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)187, an “owner” means the person who owns in fee simple the property on which a facility or part of a facility is sited.
24. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)103 [40 C.F.R. § 260.10], a “facility owner” means a person who owns a facility.
25. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)253 [40 C.F.R. § 260.10], “storage” means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.
26. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)47 [40 C.F.R. § 260.10], a “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
27. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)260 [40 C.F.R. § 260.10], a “tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
28. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)261 [40 C.F.R. § 260.10], a “tank system” is defined as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
29. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)292 [40 C.F.R. § 260.10], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities.
30. Pursuant to ADEM Admin. Code rr. 335-14-1-.02(1)(a)145 and 335-14-3-.03(5)(a) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.-6 [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).

31. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) and (ii) [40 C.F.R. § 262.34(a)(1)(i) and (ii)], which is a condition of the LQG Permit Exemption, a generator is required to place its hazardous waste in containers or tanks.
32. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4 [40 C.F.R. § 262.34(a)(4)], which incorporates ADEM Admin. Code r. 335-14-6-.03(2) [40 C.F.R. § 265.31], and is a condition of the LQG Permit Exemption, a generator is required to maintain and operate a facility to minimize the possibility of an unpermitted release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment.
33. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(ii) [40 C.F.R. § 262.34(a)(1)(ii)], which incorporates ADEM Admin. Code r. 335-14-6-.28 [40 C.F.R. Part 265, Subpart BB], and is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks must comply with the RCRA 40 C.F.R. Part 265, Subpart BB Organic Air Emission Standards for Equipment Leaks, including, but not limited to, the recordkeeping requirements of ADEM Admin. Code r. 335-14-6-.28(15) [40 C.F.R. § 265.1064].
34. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(ii) [40 C.F.R. § 262.34(a)(1)(ii)], which incorporates ADEM Admin. Code r. 335-14-6-.29 [40 C.F.R. Part 265, Subpart CC], which is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks must comply with the RCRA 40 C.F.R. Part 265, Subpart CC Organic Air Emission Standards for Tanks, including, but not limited to, the tank requirements in ADEM Admin. Code r. 335-14-6-.29(6) [40 C.F.R. § 265.1085], and the recordkeeping requirements in ADEM Admin. Code r. 335-14-6-.29(11) [40 C.F.R. § 265.1090].
35. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4 [40 C.F.R. § 262.34(a)(4)], which incorporates ADEM Admin. Code r. 335-14-6-.04(3)(e) [40 C.F.R. § 265.52(e)], and is a condition of the LQG Permit Exemption, a generator is required to have a list of all emergency equipment at the Facility in its contingency plan.
36. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4 [40 C.F.R. § 262.34(a)(4)], which incorporates ADEM Admin. Code r. 335-14-6-.04(3)(d) [40 C.F.R. § 265.52(d)], and is a condition of the LQG Permit Exemption, a generator is required to have a list of the current emergency coordinators and their phone numbers and addresses in the Facility's contingency plan.
37. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4 [40 C.F.R. § 262.34(a)(4)], which incorporates ADEM Admin. Code r. 335-14-6-.04(4)(b) [40 C.F.R. § 265.53(b)], and is a condition of the LQG Permit Exemption, a generator is required to maintain at the Facility documentation that its contingency plan was submitted to all local police departments, fire departments, hospitals, state and local emergency response teams that may be called upon to provide emergency services.
38. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near

the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with ADEM Admin. Code r. 335-14-3-.03(5)(a) or (d) [40 C.F.R. § 262.34(a) or (d)], provided that the generator complies with the satellite accumulation area conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i)-(ii) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).

39. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
40. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
41. Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1. [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”
42. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)244. [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a universal waste handler, as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)285., who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
43. Pursuant to ADEM Admin. Code r. 335-14-11-.02(5)(a) [40 C.F.R. § 273.14(a)], a SQHUW must label or mark each universal waste battery or container or tank in which the batteries are contained clearly with one of the following phrases: “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
44. Pursuant to ADEM Admin. Code r. 335-14-11-.02(6)(a) and (c) [40 C.F.R. § 273.15(a) and (c)], a SQHUW may accumulate universal waste no longer than one year and must be able to demonstrate the length of time that the universal waste has accumulated from the date that it became a waste or was received.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

45. Respondent is a “person” as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)191. [40 C.F.R. § 260.10].

46. Respondent is the “owner”/“operator” of a “facility” located at 4805 Second Street, Muscle Shoals, Alabama, as those terms are defined in ADEM Admin. Code rr. 335-14-1-.02(1)(a)101.(i), 103, 185, and 187 [40 C.F.R. § 260.10].
47. Respondent is a “generator” of “hazardous waste” as those terms are defined in ADEM Admin. Code rr. 335-14-1-.02(1)(a)113.(i) and 335-14-2-.01(3) [40 C.F.R. §§ 260.10 and 261.3].
48. Respondent operates a large scale aluminum can recycling facility in which used aluminum cans are brought to the facility, melted, formed into aluminum ingots, and drawn and rolled into thin sheets of aluminum for the production of aluminum beverage cans.
49. On October 30, 2012, the ADEM and the EPA conducted a RCRA Compliance Evaluation Inspection (CEI) at the Respondent’s facility.
50. Respondent submitted a Hazardous Waste Generator notification on January 23, 2012, which characterized the Facility as an LQG of hazardous waste. The EPA inspector determined that Respondent was also a SQHUW and a generator of used oil at the time of the October 30, 2012, RCRA CEI.
51. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to place hazardous waste in containers or tanks within its Paint Mix Room, Coating Room, and in the area of the riser from the underground hazardous waste accumulation tank.
52. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet the conditions of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) and (ii) [40 C.F.R. § 262.34(a)(1)(i) and (ii)], by not placing hazardous waste in containers or tanks.
53. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to minimize the possibility of a release of hazardous waste due to its use of concrete sumps in the Paint Mix Room and the Coating Room; the metal secondary containment system for the water based paint mixers; and the conditions within its Paint Mix Room, and in the area of the riser of its underground hazardous waste accumulation tank.
54. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of ADEM Admin. Code r. 335-14-6-.03(2) [40 C.F.R. § 265.31].



55. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to comply with the applicable air emission requirements for managing hazardous waste in its underground hazardous waste accumulation tank.
56. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(ii) [40 C.F.R. § 262.34(a)(1)(ii)], by not complying with the Organic Air Emission Standards of ADEM Admin. Code rr. 335-14-6-.28 and 335-14-6-.29 [40 C.F.R. Part 265, Subparts BB and CC].
57. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to have a list of emergency equipment in its hazardous waste contingency plan.
58. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not having a list of all emergency equipment at the facility in its contingency plan as required by ADEM Admin. Code r. 335-14-6-.04(3)(e) [40 C.F.R. § 265.52(e)].
59. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to have a current list of emergency coordinators and their phone numbers and addresses in its hazardous waste contingency plan.
60. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not having a list of the current emergency coordinators and their phone numbers and addresses in the Facility's contingency plan as required by ADEM Admin. Code r. 335-14-6-.04(3)(d) [40 C.F.R. § 265.52(d)].
61. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to submit its contingency plan, or to have documentation that its contingency plan had been submitted, to local police departments, fire departments, hospitals, state and local emergency response teams that may be called upon to provide emergency services.
62. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not submitting its contingency plan or maintaining documentation at its facility that its contingency plan was submitted to all local police

departments, fire departments, hospitals, state and local emergency response teams that may be called upon to provide emergency services as required by ADEM Admin. Code r. 335-14-6-.04(4)(b) [40 C.F.R. § 265.53(b)].

63. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to label a 5-gallon container of paint filters within its Paint Mix Room and a 5-gallon container of paint waste near the secondary containment system for its water-based paint mixers.
64. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)].
65. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to keep one 55-gallon and one 5-gallon container in the Paint Mix Room, one 55-gallon container in the Coating Room, one 55-gallon container in the Wire and Bar Building, and one 5-gallon container near the water-based paint mixers closed when hazardous waste was not being added or removed from the containers.
66. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)].
67. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to label three tanks of used oil with the words "Used Oil."
68. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-17-.03(4)(c)1. [40 C.F.R. § 279.22(c)(1)], by storing used oil in containers that were not labeled or marked clearly with the words "Used Oil."
69. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to label its used batteries with the words "Universal Waste-Battery(ies)," or "Waste Battery(ies)" or "Used Battery(ies)."
70. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-11-.02(5)(a) [40 C.F.R. § 273.14(a)], by failing to label or mark each universal waste battery or container or tank in which the batteries are contained clearly with one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

71. During the October 30, 2012, RCRA CEI, ADEM and EPA observed that the Respondent had failed to mark its batteries with the earliest date that any of the batteries were received or to otherwise demonstrate the length of time that the waste had been accumulated.
72. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-11-.02(6)(a) and (c) [40 C.F.R. § 273.15(a) and (c)], by failing to demonstrate the length of time that the facility's universal waste had been accumulated from the date that the universal waste became a waste or was received.

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

73. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
74. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
75. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
76. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
77. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
78. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
79. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
80. The parties agree that compliance with the terms of this CA/FO shall fully resolve the violations alleged and the facts stipulated to in this CA/FO.
81. Each party will pay its own costs and attorneys' fees.

## VI. WORK TO BE PERFORMED

82. Within seven (7) days of bringing its underground hazardous waste tank into compliance with the ADEM Admin. Code r. 335-14-6-.29 [40 C.F.R. Part 265, Subpart CC] requirements, and no longer than thirty (30) days following the effective date of this CA/FO, Respondent shall submit to the EPA a certificate of compliance statement, signed by Respondent, certifying that Respondent is in compliance with RCRA and the authorized State hazardous waste program, including ADEM Admin. Code r. 335-14-6-.29 [40 C.F.R. Part 265 Subpart CC]. The certificate of compliance statement shall be submitted to:

Larry L. Lamberth, Chief  
South Compliance and Enforcement Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division, US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

## VII. PAYMENT OF CIVIL PENALTY

83. Respondent consents to the payment of a civil penalty in the amount of One Hundred Eleven Thousand Three Hundred DOLLARS (\$111,300.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
84. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance  
Center P.O. Box  
979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri  
63101 (314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

85. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Larry L. Lamberth, Chief  
South Compliance and Enforcement Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division,  
US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

86. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above.

Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

87. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

#### **VIII. PARTIES BOUND**

88. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
89. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
90. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

#### **IX. RESERVATION OF RIGHTS**

91. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

92. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations, and to enforce the terms and conditions of this CA/FO.
93. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

#### **X. OTHER APPLICABLE LAWS**

94. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XI. SERVICE OF DOCUMENTS**

95. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Marirose Pratt  
Assistant Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W. Atlanta,  
Georgia 30303-8960  
(404) 562-9023

96. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

John Fehrenbach  
Winston & Strawn LLP  
1700 K Street, N.W.  
Washington, DC 20006-3817

#### **XII. SEVERABILITY**

97. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held

by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

### XIII. EFFECTIVE DATE

98. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

*In the matter of Wise Alloys, LLC, Docket No. RCRA-04-2013 4015(b):*

#### AGREED AND CONSENTED TO:

For Wise Alloys, LLC

By: Earl McGuire Dated: 2/6/14

Name: EARL MCGUIRE

Title: SENIOR VICE PRESIDENT - EHS & P&K MANAGEMENT

For United States Environmental Protection Agency

By: César A. Zapata Dated: 3/24/14  
César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2013-4015(b)  
)  
Wise Alloys, LLC )  
4805 Second Street )  
Muscle Shoals, Alabama 35661-1282 ) Proceeding Under Section 3008(a) of the  
EPA ID No.: ALD 095 687 679 ) Resource Conservation and Recovery Act,  
) 42 U.S.C. § 6928(a)  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 1<sup>st</sup> day of April, 2013<sup>4</sup>.

BY: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Wise Alloys, LLC, Docket Number: RCRA-04-2013-4015(b), and have served the parties listed below in the manner indicated:

Marirose Pratt  
Assistant Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

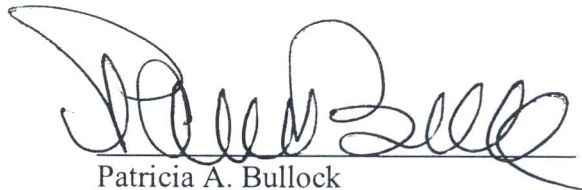
(Via EPA's electronic mail)

John Fehrenbach  
Winston & Strawn LLP  
1700 K Street, N.W.  
Washington, DC 20006-3817  
jfehreb@winston.com

(Via Email and Certified Mail  
- Return Receipt Requested)

Date:

4-2-14



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511