



5. Upon the effective date of this CA/FO, Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.
6. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the parties to resolve EPA's civil penalty claim against Respondent for the specific CWA violations alleged in the Complaint. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged in the Complaint.
7. 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, statute, ordinance, regulation, or order, including but not limited to any CWA requirements, permits, or orders.
8. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in compliance with the requirements of Sections 301(a) of the CWA, 33 U.S.C. § 1311(a).
9. Except as set forth in Paragraphs 16 and 17, below, the Parties agree to bear their own costs and attorneys' fees.
10. 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 CA/FO does not create any right in or grant any cause of action to any third party.
11. This CA/FO shall apply to and be binding upon Respondent, its heirs, successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.
12. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the parties' intent that the remaining portions shall remain in full force and effect.
13. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and bind the Party for whom it is signing to the terms of the CA/FO.

#### Settlement Terms

14. Respondent consents to the assessment of and agrees to pay a civil penalty of **Five Hundred Dollars (\$500)**. The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's prior history of violations, Respondent's degree of culpability, any economic benefit or savings accruing to Respondent as a result of the violations, and was reduced in consideration of Respondent's demonstration of a limited ability to pay a penalty.

15. Payment of the civil penalty shall be made within thirty (30) days of 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. Respondent shall make the payment in accordance with any of the acceptable methods of payment listed in Attachment A, "EPA Collection Information," which is incorporated by reference as part of this CA/FO. Concurrent with payment, Respondent shall provide written notice, referencing the title and docket number of this case and attaching a photocopy of the payment, via certified mail to each of the following:

a) Bryan Goodwin  
Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

and

b) Brett Moffatt  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

16. If the payment is not received 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 30 day period (or any portion thereof) following the due date during which time the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with Paragraph 15 above.

17. 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. Pursuant to CWA section 309(g)(9), 33 U.S.C. § 1319(g)(9), the quarterly nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

18. The civil penalty, and any interest, late handling fees, or late penalty payments provided for in this CA/FO, shall not be deducted from Respondent's or any affiliated entity's federal, state or local taxes.

**Effective and Termination Dates**

19. 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 fully complied with its terms.

CONSENTING PARTIES:

For Respondent A Plus Materials Recycling:

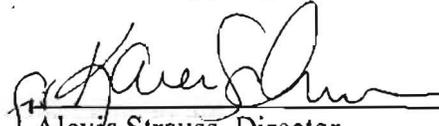
\_\_\_\_\_  
Date

\_\_\_\_\_  
Rod Lawley  
President

For Complainant U.S. Environmental Protection Agency, Region 9:

\_\_\_\_\_  
Date

8/a/11

\_\_\_\_\_  
  
Alexis Strauss, Director  
Water Division

**Effective and Termination Dates**

19. 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 fully complied with its terms.

**CONSENTING PARTIES:**

**For Respondent A Plus Materials Recycling:**

8/2/11  
Date

  
\_\_\_\_\_  
Rod Lawley  
President

**For Complainant U.S. Environmental Protection Agency, Region 9:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Alexis Strauss, Director  
Water Division



## ATTACHMENT A: EPA COLLECTION INFORMATION

The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### Regular Mail:

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

### Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

### Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

### ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17<sup>th</sup> Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 – checking

Environmental Protection Agency

Account 31006

CTX Format

### On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

In the matter of:	)	Docket No. CWA-09-2010-0003
	)	
<b>A Plus Materials Recycling,</b>	)	<b>[PROPOSED] FINAL ORDER</b>
	)	
Respondent	)	Proceedings Under Section 309(g)(2)(B)
	)	of the Clean Water Act, as amended,
_____	)	33 U.S.C. § 1319(g)(2)(B)

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent A Plus Materials Recycling is hereby ordered to comply with the Consent Agreement.

  
\_\_\_\_\_  
Steven Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 9

08/19/11  
\_\_\_\_\_  
Date



## Pacific Southwest, Region 9

Serving: Arizona, California, Hawaii, Nevada, Pacific Islands, Tribal Nations

# Notice of Issuance of Administrative Complaint, Assessment of Clean Water Act Class II Administrative Penalty, and Opportunity to Comment

Publication Date: September 30, 2010

Public Comment Closes: October 30, 2010

## In the Matter of A Plus Materials Recycling

Docket No. CWA-09-2010-0003

The United States Environmental Protection Agency, Region IX ("EPA"), is authorized under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), to assess civil penalties after providing the persons subject to the penalty notice of the proposed penalty and an opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under Section 309(g), any person who, without authorization, discharges a pollutant to a navigable water, as those terms are defined in Section 502 of the Act, 33 U.S.C. § 1362, may be administratively assessed a civil penalty of up to \$177,500 for a Class II penalty by EPA. Class II proceedings for Section 309(g) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, Revocation/Termination or Suspension of Permits," ("Part 22") 40 C.F.R. Part 22, 64 Fed Reg 40138 (July 23, 1999).

EPA hereby gives notice that it has filed an Administrative Complaint, Notice of Proposed Penalty, and Notice of Opportunity for a Hearing ("Complaint") in the following matter:

In the Matter of A Plus Materials Recycling - Docket CWA-09-2010-0003

Respondent: A Plus Materials Recycling, 250 Port Road 23, Stockton, California, 95203

Description of Business or Activity Conducted by the Respondents. Scrap Material Recycling

**Allegations in the Complaint:** EPA alleges that Respondent violated CWA Section 301(a), 33 U.S.C. Section 1311(a), by discharging pollutants to a water of the United States in violation of its National Pollutant Discharge Elimination System (NPDES) permit. In particular, EPA alleges that Respondent failed to comply with the terms of the State of California's General Permit for Storm Water Discharges Associated with Industrial Activities when it discharged stormwater associated with industrial activities into the Stockton Ship Channel.

Proposed Penalty Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g): Up to \$177,500

Date Filed with Regional Hearing Clerk: September 30, 2010

Name, Mailing Address, Telephone Number, and email of Regional Hearing Clerk:

Steven Armsey ([r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov))

U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street (ORC-1)

San Francisco, CA 94105

(415) 972-3919

**Instructions for Submitting Comments:**

Please provide the following information along with your comments and submit them in accordance with Part 22.

Your full name, mailing address, telephone number, email, the Docket Number (CWA-09-2010-0005), and a concise statement of the basis for and relevant facts supporting any comment. Persons wishing to comment on this matter, including comments on the amount or basis of the proposed penalty, are invited to submit a statement to the EPA Regional Administrator, attention of the Regional Hearing Clerk (address above), within 30 days of the date of this public notice. All comments received within this 30 day period will be considered by EPA before it issues the final order. If the 30th day of the comment period falls on a Saturday, Sunday, or federal holiday, the deadline for commenting shall be extended to the next business day. See 40 C.F.R. 22.7(a). In order to provide opportunity for public comment and in accordance with 40 C.F.R. 22.45(b), EPA will not take final action in this proceeding prior to forty (40) days after issuance of this notice.

### For More Information

Persons wishing to receive a copy of Part 22 or review the proposed Complaint may contact the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne, ORC-1, San Francisco, CA 94105, (415) 972-3871, or by email at [r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov). During the comment period, the Complaint may also be inspected during business hours at the office of the Regional Hearing Clerk.

**CERTIFICATE OF SERVICE**

**In the Matter of A Plus Materials Recycling**

**Docket No. CWA-09-2010-0003**

I hereby certify that the foregoing **CONSENT AGREEMENT AND FINAL ORDER** was filed with the Regional Hearing Clerk for EPA Region IX, and that a copy was sent in the following manner to the addresses listed below:

By pouch mail to:

Hon. Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mailcode 1900L  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

By regular mail to: CERTIFIED #: 7010-1060-0002-0242-7556

John H. McKinley, Esq.  
Brown, Hall, Shore and McKinley, LLP  
3031 W. March Lane, Suite 230W  
Stockton, CA 95219-6568

Dated August 23, 2011, San Francisco, California



Beatrice Plack  
Office of Regional Counsel