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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)

Nichols Aluminum)
1725 Rockingham Road)
Davenport, Iowa 52802)

CONSENT AGREEMENT
AND FINAL ORDER

RCRA I.D. No. IAD005264338)

And)

Nichols Aluminum Casting)
2101 J.M. Morris Boulevard)
Davenport, Iowa 52802)

RCRA I.D. No. IAD984599308)

Respondent.)

Docket No. RCRA-07-2012-0018

Proceeding under Sections 3008(a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. §§ 6928(a) and (g))

COMPLAINT AND
CONSENT AGREEMENT/FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Nichols Aluminum LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 40 C.F.R. § 262.

Section II

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of the EPA.

4. The Respondent is Nichols Aluminum LLC, a limited liability company formed under the laws of the State of Delaware and doing business in the State of Iowa.

Statutory and Regulatory Framework

5. When the EPA determines that any person has violated or is in violation of any RCRA requirement, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

General Factual Allegations

7. Respondent is a limited liability company formed in the State of Delaware and authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent's Nichols Aluminum Facility (NA Facility) is located at 1725 Rockingham Road in Davenport, Iowa and the Nichols Aluminum Casting Facility (NAC Facility) is located at 2101 J.M. Morris Boulevard in Davenport, Iowa. Respondent's NA Facility is a manufacturer of mill finish and painted aluminum coils and has approximately 118 employees. Respondent's NAC Facility is a secondary aluminum processor that manufactures aluminum coils from recycled scrap aluminum and has approximately 180 employees.

9. Respondent has been assigned RCRA facility identification numbers of IAD005264338 for the NA Facility and IAD984599308 for the NAC Facility.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261. Each of the wastes listed in paragraphs 12 and 13 is a "solid waste" and all of the wastes except the used oil and universal waste are also "hazardous wastes" within the meaning of these regulations.

11. On June 15, 2010, the EPA representatives conducted a Compliance Evaluation Inspection at Respondent's NA Facility (hereinafter the NA Inspection). On February 17, 2011, the EPA representatives conducted a Compliance Evaluation Inspection at Respondent's NAC Facility (hereinafter the NAC Inspection).

12. At the time of the NA Inspection, Respondent was identified as a large quantity generator (LQG), generating greater than 1,000 kilograms (kg) of hazardous waste per month, generating D001, D007, and F003, and F005 wastes. The NA Facility is also a used oil generator and a small quantity handler of universal waste lamps and universal waste batteries.

13. At the time of the NAC Inspection, Respondent was identified as a large quantity generator (LQG), generating greater than 1,000 kilograms (kg) of hazardous waste per month, generating D006, D007, D008, and D001 wastes. The NAC Facility is also a used oil generator and a small quantity handler of universal waste lamps and universal waste batteries.

Alleged Violations

14. Complainant hereby states and alleges that Respondent has violated RCRA and federal regulations promulgated thereunder, as follows:

Count 1

**Operation of a Treatment, Storage or Disposal Facility
Without a Permit or Interim Status for Storage Over 90 days
And Failure to Comply with Generator Requirements**

15. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

16. Section 3005 of RCRA, 42 U.S.C. § 6925, requires each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter III of RCRA to have a permit for such activities.

17. The regulations at 40 C.F.R. §262.34(a) allow a generator to accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status, provided that the conditions listed in 40 C.F.R. §262.34(a)(1)-(4) are met.

18. At the time of the NA Inspection and the NAC Inspection, Respondent was not complying with the various hazardous waste regulatory requirements described below.

19. Respondent does not have a RCRA Permit or Interim Status to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Storage Over 90 Days

20. At the time of the NA Inspection and the NAC Inspection, Respondent was not complying with the following regulatory requirements:

21. The regulations at 40 C.F.R. §262.34(a) allow a generator to accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status provided it meets certain conditions.

22. Based on a review of the analytical results and manifest records for the Delaq and #3 Melter baghouse dusts (D006, D007, D008) collected during the NAC Inspection, there were three instances where hazardous waste was stored on-site for more than 90 days: (1) between July 1, 2008, and October 8, 2008, (100 days), (2) between October 15, 2008, and January 30, 2009 (108 days), (3) between May 6, 2009, and August 10, 2009, (106 days), totaling 44 days that hazardous waste was stored beyond the 90 day time period.

23. Respondent's storage of hazardous waste for greater than ninety (90) days without complying with the requirements § 262.34 is a violation of the regulations at § 262.34(a).

Failure to Comply with Generator Requirements

Hazardous Waste Storage Containers

A. Failure to Label Hazardous Waste Storage Containers

24. The regulations at 40 C.F.R. § 262.34(a)(3) requires the generator to clearly mark each hazardous waste container with the words "Hazardous Waste" while they are being accumulated on-site.

25. At the time of the NA Inspection, the inspector observed one 55-gallon hazardous waste container of paint waste located in the paint mixing room that was not marked with the words "Hazardous Waste".

26. Respondent's failure to properly mark the hazardous waste container with the words "Hazardous Waste" is a violation 40 C.F.R. § 262.34(a)(3).

B. Failure to Date Hazardous Waste Storage Containers

27. The regulations at 40 C.F.R. § 262.34(a)(2) require that a generator clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

28. At the time of the NA Inspection, the inspector observed that the Respondent had failed to mark the accumulation start date on four 55-gallon hazardous waste containers of paint waste located in the paint mixing room.

29. Respondent's failure to label the hazardous waste containers with the date upon which the accumulation began is a violation of 40 C.F.R. § 262.34(a)(2).

C. Failure to Close Hazardous Waste Storage Containers

30. The regulations at 40 C.F.R. § 262.34(a)(1)(i), referencing § 265.173(a), require containers holding hazardous waste to always be closed during storage.

31. At the time of the NA Inspection, the inspector observed two 55-gallon containers of paint waste in the paint mixing room that were not closed.

32. Respondent's failure to close two hazardous waste storage containers is a violation of 40 C.F.R. § 262.34(a)(1)(i) and § 265.173(a).

Aisle Space

33. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.35, require owners or operators to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

34. During the NA Inspection, the inspector documented that she was unable to walk all the way around the containers in the paint room container accumulation area.

35. Respondent's failure to maintain adequate aisle space that allowed the unobstructed movement in the paint room container accumulation area is a violation of 40 C.F.R. §§ 262.34(a)(1)(4) and 265.35.

Weekly Inspections

36. The regulations at 40 C.F.R. § 262.34(a)(1)(i) reference and require compliance with Part 265. 40 C.F.R. § 265.174 requires that a generator, at least weekly, inspect areas where hazardous waste containers are stored. The generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

37. Following the NA Inspection, it was determined that Respondent was not performing weekly inspections in the less than 90 day Container Accumulation Area in the paint mixing room.

38. Respondent's failure to perform weekly inspections in the hazardous waste storage area is a violation of 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174.

Satellite Accumulation Containers

A. Failure to Label Satellite Accumulation Containers

39. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) state that a generator may accumulate as much as 55-gallons of hazardous waste in satellite accumulation areas provided the generator marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the container.

40. At the time of the NA Inspection, the inspector observed one 55-gallon satellite accumulation container containing hazardous waste in the rolling mill area that was not marked "Hazardous Waste" or with other words identifying the contents of the container.

41. Respondent's failure to label a satellite accumulation container with the words "Hazardous Waste" or with other words identifying the contents of the containers is a violation of 40 C.F.R. § 262.34(c)(1)(ii).

B. Failure to Close Satellite Accumulation Containers

42. The regulations at 40 C.F.R. § 262.34(c)(1)(i), which reference 40 C.F.R. § 265.173(a), state that a generator may accumulate as much as 55-gallons of hazardous waste in satellite accumulation areas provided the container holding hazardous waste is always closed during accumulation, except when it is necessary to add or remove waste.

43. At the time of the NA Inspection, the inspector observed one 55-gallon satellite accumulation container containing hazardous waste in the paint mixing room that was not closed.

44. At the time of the NAC Inspection, the inspector observed the aerosol can puncturing unit in the Fork Truck Garage, Bay B-7 and noted that the top of the aerosol can feed chamber on the 55 gallon container was not closed.

45. Respondent's failure to close satellite accumulation containers is a violation of 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a).

Contingency Plan

A. Failure to List Names, Addresses, and Phone Numbers

46. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.52(d), require that a generator have a contingency plan that lists the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and that the list must be kept up to date. It is further required that where more than one person is listed, one must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates.

47. At the time of the NA Inspection, the inspector reviewed Respondent's contingency plan and documented that the plan failed to identify a primary emergency coordinator and the plan did not include an office or home address or phone numbers for the emergency

coordinators.

48. At the time of the NAC Inspection, the inspector reviewed Respondent's contingency plan and documented that the plan failed to identify a primary emergency coordinator and the plan did not include both office and home address and phone numbers for the emergency coordinators. The inspector also documented that the list of emergency coordinators in the plan was not kept up to date.

49. Respondent's failure to maintain a contingency plan that identified a primary emergency coordinator and included an office and home address and phone numbers for the emergency coordinators is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(d).

B. Failure to Submit Copies of Contingency Plan

50. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.53(b), require the facility to submit a copy of the facility's contingency plan, and all revised copies, to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

51. At the time of the NA Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not identify, and the NA Facility could not show, that a copy of the contingency plan, and all revisions, had been 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.

52. At the time of the NAC Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not identify, and the NAC Facility could not show, that a copy of the contingency plan, and all revisions, had been 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.

53. Respondent's failure to submit a copy of the NA Facility and NAC Facility contingency plan 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 is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.53(b).

C. Failure to Describe Arrangements

54. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.52(c), require a facility's contingency plan to describe arrangements agreed to by local police departments, fire

departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services

55. At the time of the NA Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not provide a description of the arrangements agreed to by the local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.

56. At the time of the NAC Inspection, the inspector reviewed the Respondent's contingency plan and documented that a description of the arrangements agreed to by the local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services was not included in the facility's contingency plan.

57. Respondent's failure to maintain a contingency plan that describes the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(c).

D. Failure to Include Evacuation Plan

58. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.52(f), require a facility's contingency plan to include a complete evacuation plan. The plan must describe signals to be used to begin evacuation, evacuation routes, and all alternative evacuation routes.

59. At the time of the NA Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not describe signals to be used to begin evacuation, evacuation routes, and all alternative evacuation routes.

60. At the time of the NAC Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not describe primary or alternate evacuation routes to be used by facility evacuation.

61. Respondent's failure to include a complete evacuation plan in the facility's contingency plan is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(f).

E. Failure to List Emergency Equipment

62. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.52(e), require a facility's contingency plan to list all emergency and decontamination equipment. This list must

be kept up to date and include the location and a physical description of each item on the list and a brief outline of the equipment's capabilities.

63. At the time of the NAC Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not include lists or descriptions of fire protection, communication, alarm system, and decontamination equipment.

64. Respondent's failure to include a list of all emergency and decontamination equipment, including the location and a physical description of each item on the list and a brief outline of the equipment's capabilities in the facility's RCRA contingency plan is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(e).

F. Failure to Name Emergency Coordinator

65. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.55, require a facility to, at all times, have at least one employee either on the facility premises or on call with the responsibility for coordinating all emergency response measures.

66. At the time of the NAC Inspection, the inspector reviewed the Respondent's contingency plan and documented that the plan did not indicate that the facility had, at all times, at least one employee either on the facility premises or on call with the responsibility for coordinating all emergency response measures.

67. Respondent's failure to, at all times, have at least one employee either on the facility premises or on call with the responsibility for coordinating all emergency response measures is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.55.

Training

A. Hazardous Waste Job Descriptions

68. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.16(d)(2), require that a facility owner/operator maintain a written job description for each position at the facility related to hazardous waste management including the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position.

69. At the time of the NA Inspection, the inspector reviewed job descriptions and documented that the written job descriptions did not specify the requisite skill, education, qualifications, or duties of facility personnel assigned to each position of hazardous waste management.

70. Respondent's failure to specify the requisite skill, education, qualifications, or duties of facility personnel assigned to each position of hazardous waste management is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(2).

B. Failure to Maintain Written Description

71. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.16(d)(3), require that a facility owner/operator maintain a written description of the type and amount of both introductory and continuing training that will be given to each person whose position at the facility is related to hazardous waste management.

72. At the time of the NA Inspection, the inspector reviewed the job description information provided by the facility and determined that the facility failed to provide a written description of specific waste handling training provided to each employee who manages hazardous waste.

73. Respondent's failure to maintain a description of the type and amount of both introductory and continuing training that will be given to each person whose position at the facility is related to hazardous waste management is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(3).

C. Failure to Maintain Training Records

74. The regulations at 40 C.F.R. § 262.34(a)(4), referencing §§ 265.16(d)(4) and 265.16(e), require that a facility owner/operator maintain training records that document that the training or job experience required under 40 C.F.R. § 265.16(a), (b), and (c) has been given to, and completed by, facility personnel, and that training records on current personnel be kept until closure of the facility.

75. At the time of NAC Inspection, the inspector requested employee training records for the last three years and the facility representative could not provide the requested training records.

76. Respondent's failure to maintain training records documenting that the training has been given and completed by facility personnel and failure to maintain training records on current personnel is a violation of 40 C.F.R. §§ 262.34(a)(4), 265.16(d)(4), and 265.16(e).

D. Failure to Perform Annual RCRA Training

77. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.16(c), require that facility personnel must take part in an annual review of the initial RCRA training program.

78. At the time of the NA Inspection, the inspector reviewed training records and documented that annual refresher training for hazardous waste personnel was not given to two employees that managed hazardous waste.

79. Respondent's failure to perform annual refresher training for all hazardous waste personnel is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(c).

E. Failure to Provide Emergency Training

80. The regulations at 40 C.F.R. § 262.34(a)(4), referencing § 265.16(a)(3), require, at a minimum, a training program designed to ensure that facility personnel are able to respond effectively to emergencies.

81. At the time of the NA Inspection, the inspector documented that the facility was unable to provide documentation to show that the facility had provided a training program designed to ensure that facility personnel are able to respond effectively to emergencies.

82. Respondent's failure to provide a training program designed to ensure that facility personnel are able to respond effectively to emergencies is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(a)(3).

Count 2

Failure to Include Hazardous Waste Codes

83. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

A. Waste Manifest

84. The regulations at 40 C.F.R. § 262.20(a)(1) require that a generator who transports, or offers for transport a hazardous waste for off-site treatment, storage, or disposal must prepare a manifest which includes all hazardous waste codes.

85. Following the NAC Inspection, the inspector's review of analytical results and manifest records indicated that the reviewed manifests did not identify the D007 characteristic hazardous waste code for chromium.

86. Respondent's failure to include all hazardous waste codes on hazardous waste manifests is a violation of 40 C.F.R. § 262.20(a)(1).

B. Land Disposal Notifications

87. The regulations at 40 C.F.R. § 268.7(a)(2), require that all hazardous waste codes must be placed on land disposal restriction (LDR) notifications.

88. Following the NAC Inspection, the inspector's review of analytical results and manifest records indicated that the LDR notifications did not identify the D007 characteristic hazardous waste code for chromium.

89. Respondent's failure to include all hazardous waste codes on LDR notifications is a violation of 40 C.F.R. § 268.7(a)(2).

Count 3

Failure to Complete Biennial Report

90. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

A. Failure to include EPA Identification Number, Name, and Address

91. The regulations at 40 C.F.R. §262.41(a)(3), require a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the U.S. to prepare and submit a Biennial Report to the Regional Administrator. The report must include the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the U.S. to which waste was shipped during the year.

92. During Records Review, the inspector's review of the 2009 Biennial Report for the NAC Facility indicated that the report did not list the EPA identification number, name, and address for each off-site treatment facilities receiving hazardous waste in 2009 and that the information reported in the 2009 Biennial Report did not match the manifest information obtained during the NAC Inspection.

93. Respondent's failure to list the EPA identification number, name, and address for each off-site treatment facility receiving hazardous waste in the 2009 Biennial Report is a violation of 40 C.F.R. § 262.41(a)(3).

B. Failure to include EPA Identification Number for Transporter

94. The regulations at 40 C.F.R. § 262.41(a)(4), require a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the U.S. to prepare and submit a Biennial Report to the Regional Administrator. The report must include the EPA identification number for each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the US.

95. During Records Review, the inspector's review of the 2009 Biennial Report for the NAC facility indicated that the report did not list the EPA identification number for each transporter that shipped hazardous waste to off-site treatment facilities in 2009 and that the information reported in the 2009 Biennial Report did not match the manifest information obtained during the NAC Inspection.

96. Respondent's failure to list the EPA identification number for each transporter that shipped hazardous waste to an off-site treatment facility in 2009 in the 2009 Biennial Report is a violation of 40 C.F.R. § 262.41(a)(4).

C. Failure to include EPA Hazardous Waste Number, DOT Hazard Class, and Quantity of Each Hazardous Waste

97. The regulations at 40 C.F.R. § 262.41(a)(5), require a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the U.S. to prepare and submit a Biennial Report to the Regional Administrator. The report must include the EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the U.S.

98. During Records Review, the inspector's review of the 2009 Biennial Report for the NAC Facility indicated that the report did not list the EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the U.S. in 2009 and that the information reported in the 2009 Biennial Report did not match the manifest information obtained during the NAC Inspection.

99. Respondent's failure to list the EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the U.S. in 2009 in the 2009 Biennial Report is a violation of 40 C.F.R.

§ 262.41(a)(5).

CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

3. Respondent neither admits nor denies the factual allegations set forth in this CAFO.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

6. This CAFO resolves the Complainant's civil administrative claims for the allegations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of \$53,078.00 as set forth in Paragraph 1 of the Final Order.

10. Respondent understands that failure to complete the Payment and Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.

11. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on

debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil 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). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

12. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. By signing this CAFO, Respondent certifies that, to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

14. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this CAFO.

15. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice that all requirements hereunder have been satisfied.

Reservation of Rights

16. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$32,500 per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

17. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

18. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, 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.

19. Notwithstanding any other provisions of the CAFO, 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 future 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 and the environment.

20. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

21. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of \$53,078.00. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to:

Jennifer Trotter, CNSL
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. On a quarterly basis, for one year provide a written report to EPA that contains copies of all hazardous waste manifests and LDRs associated with Delaq and #3 Melter dusts during the quarter to illustrate that all waste codes are included on the manifests and LDRs for the NAC Facility.

5. On a quarterly basis, for one year provide a written report to EPA that contains photographic documentation showing all hazardous waste accumulation containers are closed, labeled, dated and managed according to the regulations at the NA and NAC Facilities.

6. Provide documentation to EPA, in the first quarterly report, that documents updated written descriptions of initial and continuing training for each employee who manages hazardous waste at the NA and NAC Facilities.

7. Provide documentation to EPA, in the first quarterly report, that documents training plans (including training records management) for the NA and NAC Facilities that comply with 40 CFR § 265.16.

8. Provide documentation, such as an improved SOP, to EPA in the first quarterly report that demonstrates how the NA and NAC Facilities have improved their hazardous waste inspections and container management practices to eliminate container and storage violations in

the future.

9. Reporting to the EPA: All documents required under this CAFO shall be submitted to:

Nicole Moran
AWMD/WEMM
U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

C. Parties Bound

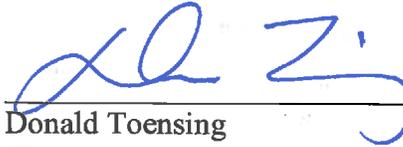
10. This Final Order portion of this CAFO shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall take steps to ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

IN THE MATTER OF:
NICHOLS ALUMINUM AND NICHOLS
ALUMINUM CASTING
CONSENT AGREEMENT AND FINAL ORDER
Docket No. RCRA-07-2012-0018
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FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

7-17-12

Date



Donald Toensing
Chief

Waste Enforcement and Materials Management Branch
Air and Waste Management Division

7-12-12

Date



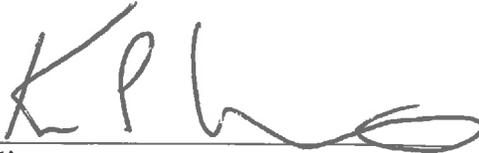
Jennifer Trotter

Assistant Regional Counsel
Office of Regional Counsel

IN THE MATTER OF:
NICHOLS ALUMINUM AND NICHOLS
ALUMINUM CASTING
CONSENT AGREEMENT AND FINAL ORDER
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FOR RESPONDENT
NICHOLS ALUMINUM LLC

7/10/12
Date


Signature

Kevin P Delaney
Printed Name

Vice President-Secretary
Title

IN THE MATTER OF:
NICHOLS ALUMINUM AND NICHOLS
ALUMINUM CASTING
CONSENT AGREEMENT AND FINAL ORDER
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IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

July 23, 2012
Date



Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Nichols Aluminum, Respondent
Docket No. RCRA-07-2012-0018

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ms. Heather Corken
Attorney at Law
Fulbright & Jaworski, LLP
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010

Dated: 7/23/12


Kathy Robinson
Hearing Clerk, Region 7