

1 B. STATUTORY AND REGULATORY FRAMEWORK

2 3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR §§ 370.40, .42 and .45 require
3 the owner or operator of a facility to submit an annual emergency and hazardous
4 chemical inventory form ("Inventory Form") if hazardous chemicals for which the owner
5 or operator of the facility is required to prepare or have available a material safety data
6 sheet ("MSDS") under the Occupational Safety and Health Act of 1970 ("OSHA"), 29
7 U.S.C. § 651 *et seq.*, are present at the facility during the preceding calendar year in
8 quantities above the threshold levels established in 40 CFR § 370.10. The Inventory
9 Form must be submitted by March 1 of each year to the State Emergency Response
10 Commission ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the
11 fire department(s) having jurisdiction over the facility. The State of California has
12 delegated authority to implement the EPCRA program to the Certified Unified Reporting
13 Agencies ("CUPAs") which have jurisdiction over each geographic area in the state. The
14 point of compliance for the Facility is the Orange County Fire Authority ("OCFA"), the
15 designated CUPA for facilities in Irvine, CA. In California, the requirement to submit an
16 annual chemical inventory is satisfied by submitting Hazardous Materials Business Plan
17 ("HMBP") forms to the CUPA.

18
19 C. GENERAL ALLEGATIONS

20 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties
21 for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

- 1 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the
2 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional
3 Administrator, EPA Region IX, in turn, has delegated the authority to enforce
4 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund
5 Division with delegation R9 1290.18.
- 6 6. Respondent owns and operates the facility located at: 1822 Deere Ave. in Irvine,
7 California ("the Facility").
- 8 7. Respondent acquired the Facility on July 25, 2011. Prior to this date Respondent was not
9 responsible for environmental compliance at the Facility.
- 10 8. The following hazardous chemicals were present at the Facility above the threshold levels
11 established in 40 CFR § 370.10: during the calendar year of 2010, a maximum amount of
12 carbon steel alloy and scrap at 31,868 pounds and nickel alloy and scrap at 11,132
13 pounds; during the calendar year of 2009, an estimated maximum amount of carbon steel
14 alloys and scrap at 79,448 pounds; and during the calendar year 2008, a maximum
15 amount of carbon steel alloys and scrap at 174,829 pounds and stainless steel alloys and
16 scrap at 12,124 pounds.
- 17 9. In a letter dated February 17, 2012, Respondent voluntarily disclosed to EPA that it had
18 not submitted Inventory Forms or HMBP forms for the chemicals described in paragraph
19 8 for the calendar years 2008 through 2010, as required by Section 312 of EPCRA, 42
20 U.S.C. § 11022.
- 21 10. On February 29, 2012, Respondent submitted HMBP forms containing information on
22 chemicals present at the Facility during calendar year 2011 to the OCFA which is the

1 point of compliance in Irvine, CA for EPCRA Section 312 reporting to the SERC, LEPC
2 and the local Fire Department.
3

4 D. ALLEGED VIOLATIONS

5 COUNT I

6 (Failure to Timely Submit Inventory Forms for the Facility for Calendar Years 2008 Through
7 2010)

8 11. Paragraphs 1 through 10 above are incorporated herein by this reference as if they were
9 set forth here in their entirety.

10 12. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.
11 § 11049(4).

12 13. From July 25, 2011, through the date of this CA/FO, Respondent has been responsible for
13 environmental compliance at the Facility.

14 14. At all times relevant to this CA/FO, Respondent has been a "person" as defined by
15 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16 15. Respondent is required to prepare or have available an MSDS under 29 CFR
17 § 1910.1200(g) because it is engaged in a business where chemicals are either used or
18 distributed, or are produced for use or distribution.

19 16. Carbon steel alloys and scrap, nickel alloys and scrap, and stainless steel alloys and scrap
20 are "hazardous chemicals" as defined under Occupational Safety and Health Act of 1970
21 ("OSHA"), 29 U.S.C. § 651 *et seq.*

22 17. During the calendar years 2008 through 2010, carbon steel alloys and scrap, nickel alloys
23 and scrap and/or stainless steel alloy and scrap were present at the Facility in quantities

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1 above the applicable thresholds established in 40 CFR § 370.20(b), as set forth in
2 paragraph 8.

- 3 18. Respondent's failure to timely submit Inventory Forms or HMBP forms containing
4 information on hazardous chemicals present at the Facility described in paragraphs 8 and
5 17 during the calendar years 2008, 2009 and 2010 to the OCFA is a violation of Section
6 312 of EPCRA, 42 U.S.C. § 11022.

7
8 E. CIVIL PENALTY

- 9 19. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt
10 Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up
11 to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For
12 violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500
13 per day is authorized. For violations that occur on or after January 12, 2009, a civil
14 administrative penalty of \$37,500 per day is authorized.

- 15 20. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*
16 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit
17 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially
18 reduce the gravity component of a penalty if it determines that a respondent has satisfied
19 the nine conditions set forth in the Audit Policy.

- 20 21. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic
21 discovery of the violation through an environmental audit or a compliance management
22 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure
23 independent of government or third party plaintiff; (5) correction and remediation; (6)

1 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)
2 cooperation.

3 22. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
4 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but
5 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties
6 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the
7 violation disclosed.

8 23. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions
9 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.

10 24. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
11 Management System. Respondent discovered the violations in January 2012 during an
12 internal environmental compliance audit of the Facility.

13 25. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did
14 not result from any legally mandated monitoring or sampling requirement prescribed by
15 statute, regulation, permit, judicial or administrative order, or consent agreement.

16 26. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it
17 discovered the violations had, or may have, occurred, advised that the process of
18 verifying its EPCRA Section 312 reporting thresholds for the prior three years was
19 ongoing and advised that there may be additional violations discovered. The initial
20 violations were discovered on January 31, 2012, and were reported to the EPA 17 days
21 later in a letter dated February 17, 2012.

22 27. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

23 Respondent discovered and disclosed the violations to EPA prior to any federal, state, or
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1 local agency inspection or investigation, notice of citizen suit, the filing of a third-party
2 complaint, the reporting of the violations by a "whistle-blower," or imminent discovery
3 by a regulatory agency.

4 28. Correction and Remediation. Respondent provided the chemical hazard information and
5 submitted the Inventory Forms for calendar year 2011 to the OCFA by letter on February
6 29, 2012.

7 29. Prevent Recurrence. Respondent has informed EPA that it plans to take the following
8 steps to prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C.
9 § 11022: Respondent has committed that company environmental compliance staff will
10 work with the Facility to ensure that it successfully implements Respondent's EPCRA
11 compliance programs; and Respondent will also ensure that training is provided to
12 Facility staff responsible for future EPCRA compliance.

13 30. Repeat Violations. Respondent has not had any other occurrence of these specific
14 violations at the Facility within the past three years or at any other facility owned or
15 operated by Respondent within the past five years.

16 31. Other Violations Excluded. The violations did not result in serious actual harm, present
17 an imminent and substantial endangerment to public health or the environment, or violate
18 the specific terms of any judicial or administrative order or consent agreement.

19 32. Cooperation. Respondent has fully cooperated with EPA in determining the applicability
20 of the Audit Policy.

21 33. In signing this CA/FO, Respondent certifies under penalty of law that the information
22 submitted to EPA in the letter dated February 17, 2012, disclosing violations of
23 EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 24 – 32 of
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1 this CA/FO are based upon true, accurate, and complete information that the signatory
2 can verify personally, or regarding which the signatory has inquired of the person or
3 persons directly responsible for gathering the information.

4 34. EPA has determined that the violations resulted in an insignificant amount of economic
5 benefit.

6 35. For the reasons set forth above, all penalties based on the gravity of the violations and the
7 savings of economic costs related to the failure to timely submit the Inventory Forms are
8 waived.

9
10 F. ADMISSIONS AND WAIVERS

11 36. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
12 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction
13 and authority over the subject matter of the action commenced in this CA/FO and over
14 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4
15 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction and
16 authority to enter into and issue this CA/FO and to enforce its terms. Further,
17 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
18 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
19 impose sanctions for violations of this CA/FO.

20 37. Respondent admits any allegations of fact or law set forth in Section C and D of this
21 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set
22 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating
23 to the factual allegations or legal conclusions set forth in this CA/FO, including without

1 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent
2 hereby consents to the issuance of this CA/FO without adjudication and waives any rights
3 it may have to appeal the Final Order attached to this Consent Agreement and made part
4 of this CA/FO.

5
6 G. PARTIES BOUND

7 38. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,
8 and assigns and upon all persons acting under or for Respondent. This CA/FO shall
9 constitute full settlement of the violations alleged herein.

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

12 40. The undersigned representative of Respondent hereby certifies that he or she is fully
13 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
14 Respondent to it.

15
16 H. PAYMENT OF CIVIL PENALTY

17 41. Because EPA has concluded that Respondent has, as described herein, satisfied the nine
18 conditions set forth in the Audit Policy, Complainant has not sought gravity-based
19 penalties for the violations alleged.

20 42. Based on Complainant's determination that any economic benefit derived from the
21 violations was insignificant, Complainant has not sought to collect any economic benefit
22 penalty for the violations alleged.

1 43. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
2 amount of **ZERO DOLLARS (\$0)** in settlement of the violations set forth in Section D
3 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims
4 of the United States for the violations of Section 312 of EPCRA specifically alleged in
5 Section D above.

6 44. The effect of the settlement described above is conditional upon the accuracy of
7 Respondent's representations to EPA as memorialized in paragraphs 24- 32 of this
8 CA/FO and Respondent's self-disclosure dated January 31, 2012.

9
10 I. RESERVATION OF RIGHTS

11 45. EPA expressly reserves all rights and defenses that it may have.

12 46. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
13 remedies, both legal and equitable, including without limitation, the right to require
14 Respondent to perform tasks in addition to those required by this CA/FO and the right to
15 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other
16 appropriate action, in the event that Respondent fails to comply with any of the
17 requirements of this CA/FO.

18 47. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or
19 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has
20 under EPCRA or any other statutory, regulatory, or common law enforcement authority
21 of the United States, except as otherwise set forth herein.

22 48. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
23 preclude EPA from taking additional enforcement actions should EPA determine that
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1 such actions are warranted, except as they relate to Respondent's liability for federal civil
2 penalties for the specific alleged violations set forth in Section D of this CA/FO.

3 49. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO
4 does not relieve Respondent of any obligation to obtain and comply with any local, state,
5 or federal permits.

6 50. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
7 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
8 its right to seek reimbursement from Respondent for any response costs incurred by the
9 United States that may result or arise from the alleged counts set forth in Section D.

10
11 J. OTHER CLAIMS

12 51. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
13 cause of action, or demand in law or equity by or against any person, firm, partnership,
14 entity, or corporation for any liability it may have arising out of or relating in any way to
15 the generation, storage, treatment, handling, transportation, release, or disposal of any
16 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
17 contaminants found at, taken to, or taken from the Facility.

18
19 K. MISCELLANEOUS

20 52. This CA/FO may be amended or modified only by written agreement executed by both
21 EPA and Respondent.

22 53. The headings in this CA/FO are for convenience of reference only and shall not affect
23 interpretation of this CA/FO.

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1 54. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
2 proceeding.

3 55. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
4 the date that the Final Order contained in this CA/FO, having been approved and issued
5 by either the Regional Judicial Officer or Regional Administrator, is filed.

6 **IT IS SO AGREED,**

7 **FOR RESPONDENT PCC ROLLMET, INC.:**

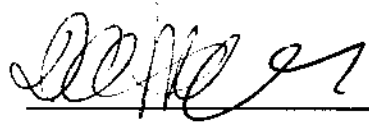
8 09/19/12
Date



Tony Wong
Operations Manager
PCC Rollmet, Inc.

9
10 **FOR COMPLAINANT EPA:**

11 29 September 2012
Date



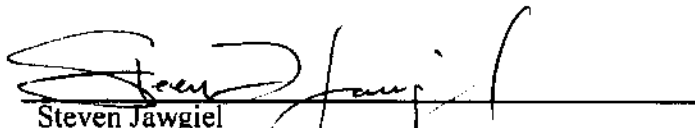
for Jane Diamond
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA(312)-09-2012-0010) be entered and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0)**.

09/26/12

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of PCC ROLLMET, INC. (Docket #: EPCRA-09-2012-0010) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

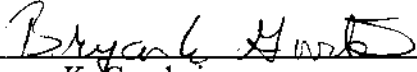
A copy was mailed via CERTIFIED MAIL to:

Tony Wong
Operations Manager
PCC Rollmet, Inc.
1822 Deere Avenue
Irvine, CA 92606

CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 7425

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

Thanne Cox, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/28/12

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No.: 7011 0470 0002 9197 7425
Refer to: PCC Rollmet, Inc., Irvine, CA

Tony Wong, Operations Manager
PCC Rollmet, Inc.
1822 Deere Ave.
Irvine, California 92606

Re: Consent Agreement and Final Order, Settlement of Audit Policy Disclosures


Dear Mr. Dahlin:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and PCC Rollmet, Inc. concerning the facility located in Irvine, CA.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between PCC Rollmet, Inc. and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at PCC Rollmet, Inc., or which concern the proceedings terminated by the enclosed documents, please contact Elizabeth Cox at (415) 972-3908.

Sincerely,


Jane Diamond
Director
Superfund Division

Enclosures

cc (w/enclosures):

J. Johnstone, EPA Region IX
T. Cox, EPA Region IX
G. Tichenor, Stoel Rives LLP