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2011 MAY -3 PM 12:00

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

RECEIVED

In the matter of:	)	Docket No. CWA-09-2011-0002
)	
Alco Iron and Metal Company	)	[REDACTED] FINAL ORDER
2201 West Washington Street)	
Port Road 22)	
Stockton, California, 95203	)	Proceedings Under Section 309(g)(2)(B)
	)	of the Clean Water Act, as amended,
Respondent.	)	33 U.S.C. § 1319(g)(2)(B)
_____)	

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent Alco Iron and Metal Company is hereby ordered to comply with the Consent Agreement.


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

04/28/11
 Date

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

2011 MAR -3 PM 11:23

REGIONAL OFFICE OF CLEAN

In the matter of:	)	Docket No. CWA-09-2011-0002
)	
)	
Alco Iron and Metal Company	)	CONSENT AGREEMENT
2201 West Washington Street	)	AND PROPOSED FINAL ORDER
Port Road 22)	
Stockton, California, 95203	)	Proceedings Under Section 309(g)(2)(B)
	)	of the Clean Water Act, as amended,
Respondent.	)	33 U.S.C. § 1319(g)(2)(B)
_____)	

CONSENT AGREEMENT

A. INTRODUCTION

1. This is a class II civil administrative penalty proceeding under Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1319(g), and 40 C.F.R. Part 22, "Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits."
2. The United States Environmental Protection Agency, Region 9 ("EPA" or "Complainant") institutes this proceeding against Alco Iron and Metal Company ("Respondent") for alleged violations of the CWA Sections 301(a) and 308, 33 U.S.C. §§ 1311(a) & 1318. Complainant and Respondent are hereinafter collectively referred to as "the Parties."
3. This Consent Agreement and Final Order ("CA/FO") simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
4. The Parties agree that settlement of this matter is consistent with the provisions and objectives of the CWA and applicable regulations, that it is in the public interest, and that it is the most appropriate means of resolving this matter. The Parties seek approval of the Consent Agreement and move for issuance of the accompanying proposed Final Order.
5. NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this CA/FO, it is hereby AGREED, STIPULATED, and ORDERED:

B. ADMISSIONS AND WAIVERS

6. This Consent Agreement contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8).
7. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth herein, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.
8. Respondent neither admits nor denies the specific factual allegations contained herein.
9. Respondent consents to the assessment of the civil penalty stated herein.
10. Respondent waives any right to contest the allegations contained herein and any right to appeal the Final Order.
11. 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.

C. STATUTORY AND REGULATORY AUTHORITY

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant to any water of the United States by any person except in compliance with specific sections of the Act, including Section 402, 33 U.S.C. § 1342.
13. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System ("NPDES") permit program. Under Section 402, a State with an EPA-approved NPDES program may issue permits governing the discharge of pollutants from regulated sources.
14. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of stormwater associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge stormwater into waters of the United States. Pursuant to 40 C.F.R. §§ 122.21(a)(1), 122.26(c)(1) and 122.28(b)(2)(i), dischargers of stormwater associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

15. Scrap recycling and waste material facilities, Standard Industrial Classification (SIC) Code 5093, fall under SIC Major Group 50 and, pursuant to 40 C.F.R. § 122.26(b)(14)(vi), are industrial activities subject to the discharge and permitting requirements under Section 402(p) of the Act, 33 U.S.C. § 1342(p).
16. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to, *inter alia*, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
17. The State of California has an EPA-approved NPDES program, and issues permits, including stormwater permits, through its State Water Resources Control Board ("State Board") and nine Regional Water Quality Control Boards ("Regional Boards"). NPDES permits in California are issued in accordance with EPA's implementing regulations for the NPDES program (Cal. Code Regs. tit. 23, §§ 2235.1-2235.2). On April 17, 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ ("General Permit"), the current statewide NPDES permit for stormwater discharges associated with industrial activity.
18. All facility operators seeking coverage under the General Permit must submit a *Notice of Intent to Comply with the Terms of the General Permit for Stormwater Discharges Associated with Industrial Activity* ("NOI") to the State Board fourteen (14) days prior to commencing industrial operations. (General Permit Order Provision E(1), p. 6, and Attachment 3, p. 2; *see also* 40 C.F.R. §122.28(e)(1)).
19. The General Permit requires facility operators to develop and implement a stormwater pollution prevention plan ("SWPPP") prior to discharging stormwater from their industrial operations. (General Permit Section A(1)(a), p. 11). The purpose of the SWPPP is to identify sources of industrial stormwater pollution and identify site-specific best management practices ("BMPs"). The SWPPP must include, *inter alia*, a narrative description of the stormwater BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit Section A(8), p. 17).
20. The General Permit requires facility operators to reduce or prevent pollutants associated with industrial activity in their stormwater discharges and authorized non-stormwater discharges by implementing best available technology economically achievable ("BAT") for toxic and non-conventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. Development and implementation of a SWPPP that complies with the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement. (General Permit Order Provision B(3), p. 4).

21. The General Permit requires facility operators to include a clear and understandable site map in the SWPPP that includes, *inter alia*, an identification of the location of municipal storm drain inlets, direction of stormwater flow, and areas of industrial activity, including the location of fueling areas, material handling and processing areas, waste treatment and disposal areas, and other areas of industrial activity which are potential pollutant sources. (General Permit Section A(4), pp. 12-14).
22. The General Permit requires facility operators to include a narrative description of the stormwater BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit Section A(8), pp. 17-21).
23. The General Permit requires facility operators to revise the SWPPP “whenever appropriate” and to ensure that it is readily available for review by facility employees or inspectors. (General Permit Section A(2), p. 12). Information gathered during monitoring and inspections should be used to determine appropriate revisions to the SWPPP. (General Permit Section B(3) & (4), pp. 25-26).
24. The General Permit requires facility operators to develop and implement a written monitoring program when the industrial activities begin. (General Permit Section B(1)(a), pp. 24-25). As part of this monitoring program, facility operators must conduct quarterly visual observations of non stormwater discharges, monthly visual observations of stormwater events, and prescribed stormwater sampling and analysis. (General Permit Section B(1), (3), (4) & (5), pp. 24-27). In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit Section B(14), p. 35). A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit Section B(13), p. 34).
25. The General Permit requires all facility operators to monitor for total suspended solids, pH, and total organic carbon (“TOC”) (oil and grease may be substituted for TOC). (General Permit Section (B)(5)(c)(i), p. 27). The General Permit also requires facility operators falling under SIC Code 5093 to monitor for iron, lead, aluminum, copper, zinc and chemical oxygen demand (“COD”). (General Permit Section (B)(5)(c)(iii), p. 27, and Table D, p. 43).

D. GENERAL ALLEGATIONS

26. Respondent is a California corporation and is thus a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
27. Respondent operated a scrap metal and waste material recycling and processing facility (“Facility”) at 2201 West Washington Street at the Port of Stockton in Stockton,

California. Respondent was primarily engaged in scrap and waste material recycling and handling, classified under SIC Code 5093 ("Scrap and Waste Materials"), at the Facility since at least July 2007. Prior to July 2007, Respondent used the Facility for the storage and resale of metal pipes and beams.

28. Stormwater discharges from scrap and waste material processing activities, SIC Code 5093, may contain the following pollutants: TSS, pH, TOC, iron, lead, aluminum, copper, zinc, organic pollutants, and other "pollutants," as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
29. Rainfall data from the Stockton Metro Airport Weather Monitoring Station, located approximately six miles north of the Facility, for the period of July 1, 2007 through January 22, 2010, indicate that the Facility experienced at least sixty-eight (68) days in which 0.1 inches or more of rainfall occurred, including fifteen (15) days in which rainfall exceeded 0.5 inches. At least seven (7) of the days with rainfall in excess of 0.1 inches occurred before Respondent obtained General Permit coverage on December 17, 2007.
30. Stormwater runoff discharges from the Facility into storm drains located on Port Road M that drain to a concrete conveyance channel (the "South Ditch") that flows to a retention basin, which discharges to the tidally-influenced Stockton Ship Channel. The Stockton Ship Channel is a direct tributary of the tidally-influenced San Joaquin River.
31. On or around December 4, 2007, Respondent submitted an NOI to the State Board seeking coverage under the General Permit for the Facility. On December 17, 2007, the Central Valley Regional Water Quality Control Board ("Regional Board") granted Respondent coverage under the General Permit and assigned it Waste Discharge Identification ("WDID") Number 5S39I021347 for the Facility. Prior to December 17, 2007, discharges from Respondent's industrial activities at the Facility were not authorized by the General Permit or an individual NPDES permit.
32. On March 20, 2008, representatives of EPA Region 9 and the Regional Board inspected the Facility to evaluate Respondent's compliance with the General Permit. EPA found that Respondent had failed to develop and implement an adequate SWPPP. Respondent's SWPPP, signed and dated February 4, 2008, did not contain BMPs to eliminate or reduce pollutants in stormwater runoff from all pollutant sources, including the vehicle and equipment fueling area, the material storage, handling and processing areas, the mechanics shop, and the hazardous materials storage area. EPA found that Respondent had not implemented necessary BMPs, including BMPs that were identified in the SWPPP. EPA also observed evidence of discharge from the Facility to offsite storm drains.

33. On January 8, 2009, EPA issued Respondent a Findings of Violation and Order for Compliance, EPA Docket No. CWA 309(a)-09-016 (the "January 2009 Order"), that required Respondent to bring the Facility into compliance with the General Permit by, *inter alia*, implementation of adequate BMPs at the fueling and material storage areas, and implementation of interim perimeter controls until a permanent berm is constructed. The January 2009 Order also required Respondent to submit a revised SWPPP including, among other required elements, an accurate site map, a listing of all potential pollutant sources and appropriate BMPs for each, and a signed certification statement by Respondent's appropriate representative.
34. Respondent subsequently revised its SWPPP and Monitoring Plan. Respondent also implemented "interim measures," including: installation of a double-walled diesel fuel tank to replace its single-walled diesel tank; moving the scrap piles away from the facility perimeter; and constructing a 6,000 square foot covered warehouse for certain activities and materials.
35. On September 25, 2009, EPA representatives re-inspected the Facility to evaluate Respondent's compliance with the January 2009 Order and the General Permit and found that Respondent had failed to relocate its mechanics shop and hazardous materials storage area into the new warehouse as indicated on the Facility's revised site map. The inspection also found that Respondent's revised SWPPP failed to include, among other required elements, direction of stormwater flow and identification of all storm drains where the Facility's stormwater discharges may be received.
36. On November 30, 2009, EPA issued Respondent a second Findings of Violation and Order for Compliance, EPA Docket No. CWA 309(a)-10-004 (the "November 2009 Order"), that required Respondent to, *inter alia*: implement adequate BMPs to ensure that stormwater does not come in contact with potential pollutants used in the Facility's mechanics shop or hazardous materials stored on site; comply with the General Permit visual observation and sampling and analysis requirements; and revise the Facility's SWPPP to include, among other required elements, a site map that identifies all municipal storm drain inlets where the Facility's stormwater discharges may be received, the location of the Facility's stormwater collection and conveyance system and associated points of discharge, and a listing of all potential pollutant sources and appropriate BMPs.
37. On January 8, 2010, Respondent provided EPA with a revised SWPPP, in response to EPA's November 2009 Order. The revised SWPPP was signed and dated January 8, 2010.
38. On January 22, 2010, Respondent informed EPA that it had moved the mechanics shop and hazardous materials/waste storage area into its new warehouse.

E. FINDINGS OF VIOLATION

1. Discharges Without a Permit

39. The facts stated in Paragraphs 1 through 38 are re-alleged and incorporated herein.
40. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.
41. Respondent is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
42. Stormwater runoff from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
43. The storm drains on Port Road M, the "South Ditch" and the retention basin are "point sources," as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
44. Both the Stockton Ship Channel and the San Joaquin River are "waters of the United States," as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA's implementing regulations at 40 C.F.R. § 122.2.
45. Stormwater runoff from the Facility that discharges to the Stockton Ship Channel is a "stormwater discharge associated with an industrial activity," as defined by 40 C.F.R. § 122.26(b)(14)(vi).
46. Between the start of operations in July 2007, and the date of General Permit coverage on December 17, 2007, at least seven (7) days with rainfall in excess of 0.1 inches were recorded at the Stockton Metro Airport Weather Monitoring Station. Upon information and belief, each of these seven (7) rainfall events generated stormwater associated with industrial activity at the Facility that resulted in the "discharge of pollutants," as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
47. Upon information and belief, EPA alleges that each storm water discharge from the Facility between July 2007 and December 17, 2007, was an unauthorized discharge of pollutants and, together, the discharges constitute no fewer than seven (7) days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

2. Failure to Submit Information for NPDES Permit Coverage

48. The allegations stated in paragraphs 1 through 47 are incorporated herein.
49. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. §§ 122.21(a)(1), 122.26(e)(1) and 122.28(b)(2)(i), require dischargers of stormwater associated with

industrial activity to submit information in an NOI or an application for a NPDES permit prior to commencing industrial activity.

50. Respondent's failure to submit an NOI for coverage under the General Permit or an application for an individual NPDES permit before commencing industrial activities at the Facility constitutes a violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. §§ 122.21(a)(1) and 122.26(e)(1).

3. Failure to Comply with NPDES Permit Requirements

51. The facts stated in Paragraphs 1 through 50 are re-alleged and incorporated herein.
52. Following receipt of permit coverage on December 17, 2007, Respondent failed to comply with the requirements of the General Permit as follows:

Failure to Develop and Implement an Adequate SWPPP

53. The General Permit (Section A, pp. 11-23) requires Respondent to develop and implement a complete and adequate SWPPP to minimize the discharge of pollutants in stormwater runoff and to maintain compliance with the conditions of the General Permit.
54. During EPA's March 20, 2008 inspection of the Facility, EPA reviewed Respondent's SWPPP. The SWPPP did not contain an adequate site map, as required by the General Permit. The site map failed to identify BMPs to eliminate or reduce pollutants in stormwater runoff from various pollutant sources, including the Facility's vehicle and equipment fueling area, material handling and processing areas, mechanics shop, and hazardous materials storage area.
55. On March 12, 2009, Respondent provided EPA with a copy of the Facility's revised SWPPP in response to the January 2009 Order. This SWPPP did not include an adequate site map, as required by General Permit. Specifically, the site map failed to identify all municipal storm drain inlets where the Facility's stormwater discharges may be received, the location of the Facility's stormwater collection and conveyance system and associated points of discharge, and all potential pollutant sources and appropriate BMPs.
56. On December 24, 2009 and January 8, 2010, respectively, Respondent provided EPA with a revised SWPPP site map and a revised complete SWPPP, in response to EPA's November 2009 Order. The revised SWPPP was signed and dated January 8, 2010.
57. Upon information and belief, EPA alleges that Respondent's failure to develop and implement an adequate SWPPP for operations at the Facility between December 17, 2007 and January 8, 2010, constitutes at least 753 days of violation of the General Permit (Section A, pp. 11-23). Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Implement BMPs

58. The General Permit (Order Provision B(3), p. 4; Section A(8), pp. 17-21) requires facility operators to implement a SWPPP which includes BMPs that achieve BAT/BCT, to minimize the discharge of pollutants.
59. As of March 20, 2008, Respondent's incomplete SWPPP, signed and dated February 4, 2008, included the following BMPs:
 - a. a berm around the entire perimeter of the Facility;
 - b. grading of the Facility yard to contain stormwater onsite; and
 - c. gravel pads at the Facility gates to control track-out.
60. During its March 20, 2008 inspection, EPA observed the following violations of the requirement to implement BMPs that achieve BAT/BCT:
 - a. failure to adequately cover and contain the fueling area;
 - b. failure to adequately cover the hazardous materials storage and a mechanics work areas;
 - c. failure to adequately cover material stockpiles;
 - d. placement of material stockpiles along perimeter fences;
 - e. failure to construct the berm along any part of the Facility perimeter;
 - f. failure to place gravel pads at the Facility gates; and
 - g. a lack of other controls to prevent or minimize the discharge of polluted stormwater from the Facility to perimeter storm drains.
61. During its September 25, 2009 inspection, EPA observed the following violations of the requirement to implement BMPs that achieve BAT/BCT:
 - a. inadequate coverage of the hazardous materials storage and mechanics work areas, and failure to move these activities to a new warehouse as indicated in the revised SWPPP;
 - b. inadequate capacity for storage of collected stormwater in the event of heavy rains; and
 - c. materials stockpiled against the northern perimeter fence, rather than in the center of the yard as indicated in the revised SWPPP.
62. On January 22, 2010, Respondent informed EPA that it had implemented the BMP for the mechanics shop and hazardous materials storage area by moving these activities into the new warehouse.
63. Respondent's failure to implement all BMPs necessary to achieve BAT and BCT while engaged in industrial activity at the Facility from at least December 17, 2007, until at least January 22, 2010, constitutes at least 767 days of violation of the General Permit

(Order Provision B(3), p.4). Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Comply with General Permit Requirement to Sample and Analyze Stormwater Samples

64. The General Permit (Section B(5)(a), p. 26) requires facility operators to collect stormwater samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event of the wet season. Sample collection is only required of stormwater discharges that occur during scheduled facility operating hours and that are preceded by at least three working days without stormwater discharge.
65. Data from the Stockton Metro Airport Weather Monitoring Station indicate there were at least three storm events in which rainfall exceeded 0.5 inches between October 1, 2007 and May 31, 2008 (the 2007/2008 wet season), and at least two storm events in which rainfall exceeded 0.5 inches between October 1, 2008 and May 31, 2009 (the 2008/2009 wet season) that occurred during scheduled Facility operating hours preceded by at least three working days without stormwater discharge.
66. Respondent's failure to collect and analyze stormwater discharge samples during the 2007/2008 and 2008/2009 wet seasons constitutes no fewer than 4 days of violation of the General Permit (Section B(5)(a), p. 26). Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

F. CIVIL PENALTY

67. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, administrative assessment of civil penalties may not exceed \$16,000 per day for each day during which the violation continues, up to a maximum penalty of \$177,500. (*See also* 73 Fed. Reg. 75340 (December 11, 2008) (2008 Penalty Inflation Rule)).
68. Respondent consents to the assessment of and agrees to pay a civil penalty of Fifty Thousand Dollars (\$50,000). The penalty was calculated based on the nature, circumstances, extent and gravity of the violations; Respondent's ability to pay, Respondent's prior history of violations, Respondent's degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.
69. 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. A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

- a) Steve Armsey
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
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, California 94105

- 70. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 69 above.
- 71. 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.
- 72. 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.

G. GENERAL PROVISIONS

73. 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 herein. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.
74. 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.
75. 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.
76. 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.
77. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and bind Respondent to the terms of the CA/FO.
78. Except as set forth in Paragraphs 70 and 71, Respondent and EPA each agree to bear their own costs and attorneys' fees.

H. EFFECTIVE AND TERMINATION DATES

79. 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.

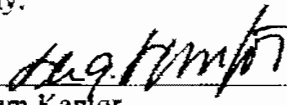
I. PUBLIC NOTICE

80. EPA's consent to this Consent Agreement is subject to the requirements of CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which provide for a thirty (30) day public notice of and a reasonable opportunity for comment on the Consent Agreement.
81. EPA reserves the right to withdraw from or withhold its consent to this CA/FO if public comment discloses material information that was not considered by EPA in entering into this Consent Agreement. In such case, Respondent's obligations under this document shall terminate, and EPA may pursue any and all enforcement options as provided by law. If no comment is timely received during the thirty (30) day comment period regarding the Consent Agreement, EPA shall file the Final Order.

IT IS SO AGREED.

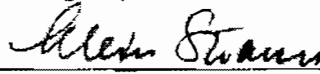
For Respondent Alco Iron and Metal Company:

2-11-2011
Date


Ken Kantor
President

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

1 March 2011
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 17th 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

Enter "sf01.1" 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.

CERTIFICATE OF SERVICE

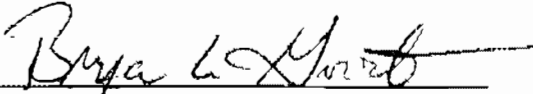
I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. CWA-09-2011-0002) against the Alco Iron and Metal Company, was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

CERTIFIED MAIL NUMBER: 7010-1060-0002-0242-7518

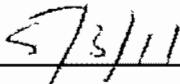
Mr. Michael Bercovich, Esq.
In-House Counsel
Alco Iron and Metal Company
1091 Doolittle Drive
San Leandro, CA 94577

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

Brett Moffatt, 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



Date

