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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of)	U.S. EPA Docket No.
)	RCRA-09-2011- 0006
AZZ Galvanizing Services-Arizona)	
)	CONSENT AGREEMENT AND
EPA ID No. AZ 0000068957)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is AZZ Galvanizing Services-Arizona, ("AZZ" or "Respondent").
2. Respondent owns and operates a hot dip galvanizing facility located at 15775 W. Elwood Street, Goodyear, Arizona, 85338 (the "Facility"). The Facility's EPA Identification Number is AZ0000068957.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that: (1) Respondent failed to label or mark clearly used batteries in violation of A.A.C. R18-8-273.A [40 C.F.R. § 273.14(a)]; (2) Respondent failed to close hazardous waste storage containers in violation of A.A.C. R18-8-262.A & R18-8-265A [40 C.F.R. § 262.34(c)(1)(i) & 265.173(a)]; (3) Respondent failed to minimize the release of hazardous waste in violation of A.A.C. R18-8-262.A & A.A.C. R18-8-265.A [40 C.F.R. § 265.31 as referenced by 40 C.F.R. § 262.34(a)(4)], and Respondent failed to comply with secondary containment and leak detection requirements for storage tanks in violation of R18-8-262.A & R18-8-265.A [40 C.F.R. § 262.34(a)(1)(ii) & 40 C.F.R. §§ 265.191(a) & 265.193]; (5) Respondent failed to have a training program in violation of A.A.C. R18-8-262.A & A.A.C. R18-8-265.A [40 C.F.R. § 265.16 (a)(1-3) as referenced by 40 C.F.R. § 262.34 (a)(4)], and Respondent failed to maintain training records in violation of A.A.C. R18-8-265A [40 C.F.R. § 265.16(d)(4)]; (6) Respondent stored or treated hazardous waste without a permit in violation of A.A.C. R18-8-270.A [40C.F.R. §270.1(c)] and (7) Respondent failed to label or mark clearly each container used to store

hazardous waste with an accumulation start date or the words, "Hazardous Waste," in violation of A.A.C. R18-8-262.A [40 C.F.R. § 262.34(a)(2)], Respondent failed to label or mark clearly used lamps in violation of A.A.C. R18-8-273 [40 C.F.R. § 273.13(e)], and Respondent failed to contain universal waste lamps in containers or packages in violation of A.A.C. R18-8-273.A & A.A.C. R18-8-273F [40 C.F.R. § 273.13(d)(1)]. Respondent's actions are alleged violations of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq., and state regulations adopted pursuant thereto.¹

B. JURISDICTION

4. On November 20, 1985, the State of Arizona received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926 and 40 C.F.R. Part 271, effective December 4, 1985. The authorized program is established pursuant to the Arizona Laws Relating to Environmental Quality, Title 49, (Arizona Revised Statutes ("A.R.S.") 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2. Effective October 7, 1991, the State of Arizona received authorization for revisions to A.R.S. 49-921, et seq. The State of Arizona has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in A.R.S. 49-921 and A.A.C. R18-8-260.F.6 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in A.A.C. R18-8-260.C and 270.A [*see also* 40 C.F.R. § 260.10].
7. Respondent's hazardous waste manifests indicate it is a large quantity "generator" of hazardous waste as defined in A.A.C. R18-8-260.C [40 C.F.R. § 260.10].
8. Respondent generates or has generated hazardous waste including, but not limited to wastes characterized as spent acids (D002), cadmium (D006), chromium (D007) and lead (D008) which are "hazardous wastes" as defined in A.R.S. 49-921(5), A.A.C. R18-8-260.C and 261.A [*see also* Section 1004(5) of RCRA, 42 U.S.C. §6903(5), 40 C.F.R. §§ 260.10 and 261.3].
9. On March 24, 2008, EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated A.R.S. 49-922, and regulations adopted pursuant thereto [*see also* Sections 3001, 3004 and 3005 of RCRA, 42 U.S.C. §§ 6921, 6924 and 6925].

¹ All citations to the "A.A.C." refer to the Arizona Administrative Code, contained in Title 18, Chapter 8, Department of Environmental Quality Waste Management, Article 2, Hazardous Waste. Citations to "A.R.S." refer to Arizona Revised Statutes. EPA is enforcing Arizona hazardous waste management program requirements as approved and authorized by the United States on October 7, 1991. 40 C.F.R. Parts 124, 260 through 266, 268, 270 and 273, or parts thereof, are adopted by reference.

10. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
11. A violation of Arizona's authorized hazardous waste program (found at A.R.S. 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Arizona's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
12. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
13. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Label Universal Waste (Batteries)

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. Arizona regulation A.A.C. R18-8-273.A, by incorporating 40 C.F.R. § 273.14(a) by reference states that a battery or a container or package in which such batteries are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."
16. During the CEI, the EPA inspector observed two lead acid batteries that were not labeled as "waste" or as "used."
17. Therefore, EPA alleges that Respondent violated Arizona regulation A.A.C. R18-8-273. [see also 40 C.F.R. § 273.14(a)].

COUNT II

Failure to Close Containers of Hazardous Waste

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
19. A.A.C. R18-8-262.A provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator meets certain requirements, including A.A.C. R18-8-265.A, which incorporates 40 C.F.R. § 265.173(a) and requires that generators keep containers holding hazardous waste closed during transfer and storage, except when it is necessary to add or remove waste and mark the containers with either the words, "Hazardous Waste" or with other words that identify the contents of the containers.
20. During the CEI, the EPA Inspector observed sulfuric acid skimmings stored in open, unlabeled drums at a time when waste was not being added or removed.
21. Therefore, EPA alleges that Respondent has violated A.A.C. R18-8-265.A [*see also* 40 C.F.R. § 265.173(a)].

COUNT III

Failure to Minimize Release of Hazardous Waste

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
23. Arizona regulation A.A.C. R18-8-265.A, which incorporates 40 C.F.R. § 265.31, states that the facility must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
24. During the CEI, the EPA inspector observed evidence of leakage on the floor of the tank farm area from a nearby hazardous waste storage tank (empty at the time of the inspection) and a leaking valve on a sulfuric acid storage tank. There was also noticeable deterioration of the secondary containment floor surrounding the tank farm.
25. Therefore EPA alleges Respondent has violated A.A.C. R18-8-265.A [*see also* 40 C.F.R. § 265.31].

COUNT IV

Integrity of Tanks

26. Paragraphs 1-25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. Arizona regulation A.A.C. R18-8-262.A which incorporates 40 C.F.R. § 262.34(a)(1)(ii) states that "...a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that ...[t]he waste is placed . . . [i]n tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 C.F.R. part 265 . . . "
28. Section 265.191(a) of Subpart J of 40 C.F.R. Part 265 requires that for each existing tank system that does not have secondary containment the owner or operator must determine that the tank system is not leaking or is unfit for use.
29. Sections 265.193(a) and 265.193(c)(3) of Subpart J of 40 C.F.R. Part 265, state "In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided . . . To meet the requirements . . . of this section, secondary containment systems must be at a minimum: [p]rovided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours"

During the CEI, the EPA inspector observed that the containment structures beneath the dip tanks contained 2,800 gallons of liquid and were only emptied once annually and that there were no leak detection or secondary containment structures in place. Such failure to address solids and liquids that accumulate in the containment structures beneath the dip tanks requires that leak detection or secondary containment be in place.

30. Therefore, EPA alleges that Respondent has violated A.A.C. R18-8-262.A and A.A.C.R.18-8-265.A (*see also* 40 C.F.R. §§ 265.191(a) & 265.193(a)(3)). As part of this CA/FO, Respondent has provided EPA with an acceptable plan for addressing solids and liquids that accumulate in the containment structures beneath the dip tanks. *See* Attachment A.

COUNT V

Training

31. Paragraphs 1-31 above are incorporated herein by this reference as if they were set forth here in their entirety.

32. Arizona regulation A.A.C. R18-8-262.A, incorporates 40 C.F.R. § 262.34(a)(4), which in turn requires compliance with 40 C.F.R. § 265.16 (a)(1-3) and requires that “[f]acility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section. . . . This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. . . .At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems”
33. During the CEI, the EPA inspector found that the hazardous waste handlers did not have adequate knowledge and training regarding the relevant hazardous waste regulations regarding the signing of hazardous waste manifests.
34. Arizona regulation A.A.C. R18-8-262.A incorporates 40 C.F.R. § 262.34(a)(4), which in turn requires compliance with 40 C.F.R. § 265.16 (d)(4) and requires the Facility to maintain training records concerning Facility personnel.
35. During the CEI, the Respondent was unable to provide the EPA inspector with training records for its employees.
36. Therefore EPA alleges that Respondent has violated A.A.C. R-18-8-262.A [*see also* 40 C.F.R. § 265.16].

COUNT VI

Treatment of Hazardous Waste Without a Permit

37. Paragraphs 1-37 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. A.A.C. R18-8-270.A which incorporates 40 C.F.R. § 270.1(c) requires a permit for the treatment, storage and disposal of any hazardous waste.
39. During the CEI, the EPA inspector observed open 5-gallon paint buckets containing more than one inch of paint drying in outdoor uncovered area, presumably to be disposed of once the paint had dried. This activity constituted treatment of a hazardous waste.
40. Therefore, EPA alleges that Respondent has violated A.A.C. R-18-270.A [*see also* 40 C.F.R. § 270.1(c).]

COUNT VII

Illegal Storage

42. Paragraphs 1 through 41 above are incorporated herein by this reference as if they were set forth here in their entirety.
43. A.A.C. R18-8-262.A, by incorporating 40 C.F.R. § 262.34 by reference, provides that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator meets certain conditions, including that generators label containers with the words "hazardous waste" and with the date accumulation of the waste begins. Large quantity generators who fail to label containers of hazardous waste appropriately fail to meet the requirements of A.A.C. R18-8-262.A, and are subject to the permitting requirements of A.A.C. R18-8-270.A [see also 40 C.F.R. § 270.1].
44. A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)] and A.R.S. 49-922 [*see also* RCRA Section 3005(e) (42 U.S.C. § 6925(e))] require that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste.
45. During the CEI, the EPA Inspector observed an unlabeled hazardous waste storage roll-off bin.
46. Arizona regulation A.A.C. R18-8-262.A, which incorporates 40 C.F.R. § 262.34(a)(1)(ii), states that "...a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that ... [t]he waste is placed . . . [i]n tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 C.F.R. part 265"
47. During the CEI, the EPA inspector found that hazardous wastes had been stored in the containment structures below the dip tanks in excess of 90 days.
48. Arizona regulation A.A.C. R18-8-273 [40 C.F.R. § 273.14(e)] states that a lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."
49. During the CEI, the EPA inspector observed several loose fluorescent light tubes that were not labeled as "waste" or as "used."
50. Arizona regulation A.A.C. R18-8-273 by incorporating 40 C.F.R. § 273.13(d)(1) states that a handler of universal waste must contain any lamp in containers or packages that are structurally sound, and adequate to prevent breakage. Such containers must remain closed.

51. During the CEI, the EPA inspector found several loose fluorescent light tubes in the maintenance room.
52. Respondent's failure to meet the requirements set forth or referenced by A.A.C. R18-8-262.A subject it to the permit requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. §§ 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)].

D. CIVIL PENALTY

53. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to \$37,500 per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009 (74 Fed. Reg. 626 (Jan. 7, 2009)). Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed SEVENTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$79,700.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

E. ADMISSIONS AND WAIVERS OF RIGHTS

54. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
55. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing to contest the factual allegations or legal conclusions set forth in this CA/FO,

including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

56. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any stipulated penalties have been paid. At such time as those amounts are paid, this CA/FO shall automatically terminate and constitute full settlement of the violations alleged herein. Upon request by the Respondent, EPA will provide Respondent with written confirmation of termination of this CA/FO.
57. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
58. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

59. Respondent consents to the assessment of and agrees to pay a civil penalty of SEVENTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$79,700.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
60. Respondent shall submit payment of the SEVENTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$79,700.00) within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. 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 "sfo1.1" in the search field

Open form and complete required fields

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

61. At the time payment is made, a copy of the check or evidence of wire transfer payment shall be sent to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)

U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Estrella Armijo (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

62. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

63. In the event Respondent fails to pay any amount required by this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.

64. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
65. All penalties shall be made payable by certified or cashier's check or wire transfer to "Treasurer of the United States" and shall be remitted as described in Paragraph 60.
66. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

67. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

68. Except as otherwise provided in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). Except as otherwise provided in this CA/FO, this CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
69. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
70. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as follows: Respondent's liability for federal civil penalties for violations and facts as alleged in this CA/FO is hereby resolved.
71. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

72. Except as otherwise provided in this CA/FO, nothing in this CA/FO shall constitute or be construed as a release from any other claim, 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 the Facility.

K. MISCELLANEOUS

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

74. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
75. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

2/7/2011
Date



Tim Pendley
Sr. Vice President & COO
AZZ incorporated for
AZZ Galvanizing Services-Arizona

3/3/11
Date




Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9



DATE: December 22, 2010

TO: Plant Managers, Regional Managers, Area Vice Presidents

FROM: Tim Pendley, Senior Vice President and Chief Operating Officer 

RE: Standard Operating Procedure for Management of the Process Containment Structures

The process containment structure is an integral part of our galvanizing operation and as such is designed to capture and contain process fluid drag-out, overflow and potential releases caused by upset conditions from the individual process tanks.

The fluids that accumulate in the process containment area are to be returned to the process tanks as make-up water for the acid tanks when the fluids reach a volume that can be pumped and must be removed within 24 hours of reaching a level that can be pumped. A pumpable level is defined as a level of fluid that is of sufficient volume and height that it can be removed by use of an air-diaphragm or submersible pump.

As with any aqueous process, salts contained in the solution may be left behind as a result of evaporation. These salt residues will typically accumulate on the bottom and sides of the containment structure. A documented inspection of the containment structure for the build-up of metallic salt residues will occur quarterly and any accumulation of such residue will be removed from the structure quarterly.

During the pickling process, residue removed from the steel maybe released into the pickle bath and float on top of the solution. This floating residue is impairment to the process and is to be removed from the process tank by skimming the surface of the process tank. The skimmed pickling residue is deposited into waste collection drums located at the end of the process tanks. Collection drums must be closed unless adding or removing the residue and under the direct control of the operator. Applicable Local, State and Federal laws regarding the handling and on-site accumulation of hazardous wastes must be observed at all times.

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-2011-~~0006~~) be entered and that AZZ Galvanizing Services, Arizona pay a civil penalty of SEVENTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$79,700.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

03/03/11

Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE


I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Tim Pendley
Sr. Vice President & COO
AZZ Galvanizing Services - Arizona
One Museum Place
3100 West 7th Street, Ste 500
Fort Worth, Texas 76107

and

Robert T. Stewart, Esq.
Kelly Hart & Hallman, LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701

03/07/11
Date



FOR : Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel, Region IX



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

MAR 07 2011

CERTIFIED MAIL NO. 7000 1670 0009 3120 7966
RETURN RECEIPT REQUESTED

Tim Pendley
Sr. Vice President & COO
AZZ Galvanizing Services - Arizona
One Museum Place
3100 West 7th Street, Ste 500
Fort Worth, Texas 76107
EPA Identification Number: AZ0000068957

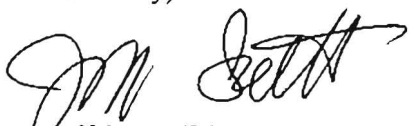
Re: **In the matter of AZZ Galvanizing Services - Arizona.** -- U.S. EPA Docket No. RCRA-
9-2011- 0006

Dear Mr. Pendley:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) contains the terms of the settlement reached with the United States Environmental Protection Agency. Also enclosed is the Funds Transfer Deposit Form for payment of the penalty.

Your payment of the penalty identified in the CA/FO will close this case. If you have any questions regarding the rules, regulations and statutes governing your operations which are implemented by EPA or which govern the proceedings terminated by the enclosed document, please contact Ms. Estrella Armijo of my staff at (415) 972-3859.

Sincerely,


Jeff Scott, Director
Waste Management Division

Enclosure

cc: Mel P. Bunkers, ADEQ