

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. <b>RCRA-10-2023-0049</b>
	)	
SRC WORLDWIDE, INC.,	)	<b>CONSENT AGREEMENT</b>
EPA ID No. ORD097004741	)	
	)	
Albany, Oregon,	)	
	)	
Respondent.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Oregon final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the Oregon federally approved hazardous waste program codified at Oregon Administrative Regulation (OAR) 340-100-0002.

1.4. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), EPA may issue

an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both,

1.5. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to State of Oregon.

1.6. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and SRC Worldwide, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Respondent, SRC Worldwide, Inc., is a Delaware corporation doing business in Oregon at 2920 Arnold Road, NE., Albany, Oregon 97321 (“Facility”).

3.2. Respondent's Facility has been assigned the following EPA RCRA ID Number: ORD097004741.

3.3. On May 27, 2021, EPA conducted a RCRA compliance evaluation inspection ("EPA's RCRA Inspection") at the Facility.

3.4. At all times relevant to the allegations set forth in this Consent Agreement, Respondent manufactured a variety of products using anhydrous magnesium chloride at the Facility.

3.5. At the time of EPA's RCRA Inspection, the Facility was in the business of grinding and resizing anhydrous magnesium chloride for resale.

3.6. During EPA's RCRA Inspection, EPA determined that Respondent purchased anhydrous magnesium chloride from TDY Industries, LLC, a California limited liability company doing business as ATI Specialty Alloys and Components in nearby Millersburg, Oregon (ATI), and that Respondent processed the anhydrous magnesium chloride by grinding and resizing the material. Respondent purchased two types of magnesium chloride from ATI. The first type was called "cake" anhydrous magnesium chloride by Respondent, which consisted of large pieces of anhydrous magnesium chloride. The second type was called "shredded" anhydrous magnesium chloride by Respondent, which consisted of smaller pieces and powders of anhydrous magnesium chloride from cake that was ground at ATI. Both types of anhydrous magnesium chloride were stored outdoors at the Facility on pallets covered in plastic.

3.7. Respondent's purchase agreement contract with ATI for anhydrous magnesium chloride entered into as of October 14, 2016, at Section 8.1(n), states that the material, if mixed

or dissolved in water, could generate a heat, steam, hydrogen and/or hydrogen sulfide gas hazard and/or insoluble magnesium or zirconium fines which (a) when moist, could ignite with explosive force, (b) should not be accumulated in any, quantity, and (c) if wasted, may be considered by EPA, the Oregon Department of Environmental Quality or similar governmental agency to be a reactive (D003) or ignitable (D001) hazardous waste.

### **B. Statutory and Regulatory Background**

3.8. The requirements of 40 C.F.R. Parts 260 - 266, 270 and 279 as enacted through June 30, 2015, are incorporated by reference at OAR 340-100-0002(1) and (2) and applicable in Oregon, except as otherwise modified or specified by Oregon Administrative Rule (OAR) 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142.

3.9. The RCRA definitions at 40 C.F.R. § 260.10 apply in Oregon, unless modified by a definition of the same term in OAR 340-100-0010 when used in Divisions 100 to 110 and 120 of OAR Chapter 340.

3.10. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are “hazardous wastes.” These regulations are set forth in 40 C.F.R. Part 261.

3.11. “Solid waste” is defined at 40 C.F.R. § 261.2(a)(1) to mean any discarded material that is not otherwise excluded by regulation. In Oregon, “residue” is defined at OAR 340-100-0010(2)(ee), to mean “solid waste” within the regulatory definition at 40 C.F.R. § 261.2.

3.12. “Discarded material” is defined at 40 C.F.R. § 261.2(a)(2)(i) to mean, among other things, any material which is abandoned.

3.13. Pursuant to 40 C.F.R. § 261.2(b) materials are solid wastes if, among other things, the solid wastes are abandoned by being disposed of; or burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

### **Count 1. Failure to Make a Hazardous Waste Determination**

3.14. Oregon regulations at OAR 340-102-0011, requires a person who generates a “residue” to make a determination as to whether that waste is a hazardous waste using the method specified therein.

3.15. Pursuant to OAR 340-100-0002, which incorporates by reference the requirements of 40 C.F.R. § 261.1(c)(8), a material is “accumulated speculatively” and a solid waste, within the meaning 40 C.F.R. § 261.2, if during the calendar year commencing on January 1, the amount of material that is recycled or transferred to a different site for recycling is less than 75 percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year.

3.16. During EPA’s May 2021 Inspection, EPA observed that Respondent was accumulating substantial quantities of unprocessed “shredded” anhydrous magnesium chloride in lieu of recycling it.

3.17. Respondent had last received a shipment of shredded anhydrous magnesium chloride from its supplier, ATI, on or about November 2018.

3.18. Respondent’s documents obtained by EPA demonstrated that, on January 1, 2019, Respondent had accumulated approximately 3,196,805 pounds of “shredded” anhydrous

magnesium chloride salt at the Facility. Further, Respondent's documents demonstrated that Respondent had accumulated 1,768,202 pounds of shredded anhydrous magnesium chloride at the end of calendar year 2019.

3.19. During calendar year 2019, Respondent recycled less than 75% of the approximately 3,196,805 pounds of the "shredded" anhydrous magnesium chloride salt that Respondent had accumulated at the beginning of calendar year 2019.

3.20. Pursuant to 40 C.F.R. § 261.1(c)(8), as of January 1, 2020, the "shredded" anhydrous magnesium chloride salt accumulated by Respondent on that date was speculatively accumulated, therefore a solid waste.

3.21. Respondent's documents obtained by EPA demonstrated that on January 1, 2020, the beginning of calendar year 2020, Respondent had accumulated approximately 1,768,202 pounds of "shredded" anhydrous magnesium chloride salt at the Facility. Further, the documents demonstrated that Respondent had accumulated 623,373 pounds of shredded anhydrous magnesium chloride at the end of calendar year 2020.

3.22. During calendar year 2020 Respondent processed less than 75% of the approximately 1,768,202 pounds of the "shredded" anhydrous magnesium chloride salt that Respondent had accumulated at the beginning of calendar year 2020.

3.23. Pursuant to 40 C.F.R. §261.1(c)(8), as of January 1, 2021, the "shredded" anhydrous magnesium chloride accumulated by Respondent on that date continued to be speculatively accumulated and was a solid waste.

3.24. Because the “shredded” anhydrous magnesium chloride salt Respondent speculatively accumulated beginning on January 1, 2020, was a solid waste, Respondent was required, pursuant to OAR 340-102-0011 to determine if that solid waste was a hazardous waste. Respondent did not determine if that solid waste was a hazardous waste.

3.25. Respondent’s failure to make a hazardous waste determination for the speculatively accumulated shredded anhydrous magnesium chloride was a violation of OAR 340-100-0011.

## **Count 2. Storage of Hazardous Waste without a Permit or Interim Status**

3.26. OAR 340-100-002, which incorporates the requirements of 40 C.F.R. § 270.1(c), requires that any person who treats, stores, or disposes of hazardous waste have a permit or interim status.

3.27. The shredded anhydrous magnesium chloride salt speculatively accumulated by Respondent was a solid waste that exhibited the characteristic of reactivity as defined in 40 C.F.R. § 261.23. The shredded anhydrous magnesium chloride was therefore a D003 hazardous waste.

3.28. From at least January 1, 2020, through May 27, 2021, Respondent stored D003 hazardous waste shredded magnesium chloride salt in containers in an outdoor storage area at the Facility. At no time relevant to this matter did the Respondent have a permit or interim status authorizing the treatment, storage, or disposal of any hazardous waste.

3.29. From January 1, 2020, through May 27, 2021, Respondent violated the requirements of OAR 340-100-002, which incorporates the requirements of 40 C.F.R. § 270.1(c).

3.30. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$117,468 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$261,499 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.



4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Kevin Schanilec  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
schanilec.kevin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraphs 4.8 each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

June 13, 2023

FOR RESPONDENT:



\_\_\_\_\_  
BRIAN KUCIA, Chief Executive Officer  
SRC Worldwide, Inc.

DATED:

\_\_\_\_\_

FOR COMPLAINANT:

\_\_\_\_\_  
EDWARD J. Kowalski, Director  
Enforcement & Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-Docket #
	)	
SRC WORLDWIDE, INC.,	)	<b>FINAL ORDER</b>
EPA ID No. ORD097004741	)	
	)	
Albany, Oregon,	)	
	)	
Respondent.	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: SRC Worldwide, Inc., Docket No.: RCRA-10-2023-0049**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered by electronic mail to:

Shirin Gallagher  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Gallagher.shirin@epa.gov

and:

Christopher W. Peer (No. 0076257)  
E-mail CPeer@WickensLaw.com  
Malorie A. Alverson (No. 0089279)  
E-mail MAlverson@WickensLaw.com  
Docket E-mail Docket@WickensLaw.com  
WICKENS HERZER PANZA  
35765 Chester Road  
Avon, OH 44011-1262  
(440) 695-8000 (Main)  
(440) 695-8098 (Fax)

Attorneys for Respondent SRC Worldwide, Inc.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Regional Hearing Clerk  
EPA Region 10