



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 17 2017

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Hruskovsky
President
Alton Steel, Inc.
5 Cut Street
Alton, Illinois 62002

Re: Consent Agreement and Final Order
Alton Steel, Inc. – Alton, Illinois
Docket No: **CWA-05-2017-0004**

Dear Mr. Hruskovsky:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed with the Regional Hearing Clerk on

January 17, 2017

The civil penalty in the amount of \$19,929 is to be paid in the manner prescribed in paragraphs 43 through 50 of the CAFO. Please be certain to reference your check and transmittal letter with docket number CWA-05-2017-0004. Your payment is due by *February 16, 2017*.

Please feel free to contact Joseph Ulfig at (312) 353-8205 if you have any questions regarding the enclosed document. Please direct any legal questions to Robert M. Peachey, Associate Regional Counsel, at (312) 353-4150. Thank you for your assistance in resolving this matter.

Sincerely,

Jason H. El-Zein, Chief
Emergency Response Branch 1

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2017-0004
)	
Alton Steel, Inc.)	Proceeding to Assess a Class I Civil
5 Cut Street)	Penalty under Section 311(b)(6)(B)(i) of
Alton, Illinois,)	the Clean Water Act, 33 U.S.C.
Respondent.)	§ 1321(b)(6)(B)(i)
)	
)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (EPA).
3. Respondent is Alton Steel, Inc. ("Respondent" or "Alton"), a corporation doing business in the State of Illinois and, therefore, a "person" under the Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President of the United States shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities . . . and to contain such discharges”

10. Initially by Executive Order 11,548 (July 20, 1970), 35 Fed. Reg. 11,677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12,777 (October 18, 1991), 56 Fed. Reg. 54,757 (October 22, 1991), the President delegated to the EPA his authority under

Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

11. EPA subsequently promulgated the Spill Prevention, Control, and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.* The SPCC regulations, codified at 40 C.F.R. Part 112, established certain procedures, methods, and requirements for each owner or operator of a non-transportation-related onshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as the EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.

12. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

13. The regulation at 40 C.F.R. § 112.8 requires that the owner or operator of an SPCC-regulated facility meet the specific discharge prevention and containment procedures listed in that section.

14. Specific regulatory requirements applicable to the Facility are set forth in more detail below.

15. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the regulation at 40 C.F.R. § 19.4, authorize EPA to assess a civil penalty for violations of the SPCC regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C),

of up to \$17,816 per day for violations that occurred after August 1, 2016, up to a maximum of \$44,539.

Factual Allegations and Alleged Violation

16. Respondent is a corporation organized under the laws of Illinois with a place of business located at 5 Cut Street, Alton, Illinois.

17. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore bulk oil storage facility located on the Respondent's place of business (the "Facility").

18. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow east towards Wood River Creek, a tributary of the Mississippi River, or to the Mississippi River directly.

19. The Facility has above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

20. Wood River Creek and the Mississippi River are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

21. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

22. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

23. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

24. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112, Subparts A and B (“an SPCC-regulated facility”).

25. Respondent commenced operations at the Facility in 2003.

26. Pursuant to the Act, Executive Order 12,777, and 40 C.F.R. § 112.1, as the owner and operator of an SPCC-regulated facility, Respondent is subject to the SPCC regulations.

27. As set forth above, the regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

28. In August 25-28, 2014, EPA inspected the Facility and evaluated the Alton’s SPCC Plan, which was prepared on March 4, 2013.

29. The regulation at 40 C.F.R. § 112.3 requires owners or operators of facilities subject to 40 C.F.R. Part 112 to implement their SPCC Plan. At the time of the inspection, Alton had not provided secondary containment for several fixed aboveground storage tanks and drum storage areas as required by its March 2013 SPCC Plan, in violation of 40 C.F.R. § 112.3(d).

30. The regulation at 40 C.F.R. § 112.5 requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to amend the facility’s SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. Respondent did not amend its SPCC Plan within six months of adding an additional tank (SBQ-1) in 2013, in violation of 40 C.F.R. § 112.5.

31. The regulation at 40 C.F.R. § 112.7(a)(3) and 112.7(a)(3)(i) require an owner or

operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that describes the physical layout of the facility and includes a diagram that identifies the location and contents of all regulated fixed oil storage containers, storage areas where mobile or portable containers are located, transfer stations, and connecting pipes. During the inspection of the Facility, EPA observed that Alton's SPCC Plan did not describe nor contain a diagram that identifies the location and contents of all regulated fixed oil storage containers, in violation of 40 C.F.R. § 112.7(a)(3) and 112.7(a)(3)(i), and 40 C.F.R. § 112.7(a)(1).

32. The regulation at 40 C.F.R. § 112.7(a)(3)(iv) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that addresses countermeasures for discharge discovery, response and cleanup available from both the facility and its contractors. Alton's SPCC Plan did not address its contractor's countermeasures for discharge discovery, response, and cleanup at the Facility, in violation of 40 C.F.R. § 112.7(a)(3)(iv) and 40 C.F.R. § 112.7(a)(1).

33. The regulation at 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. Alton's SPCC Plan did not include an adequate prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b) and 40 C.F.R. § 112.7(a)(1).

34. The regulation at 40 C.F.R. § 112.7(c) requires that appropriate containment, diversionary structures, or equipment be provided to prevent a discharge as described in 40

C.F.R. § 112.1(b). Alton's SPCC Plan did not adequately describe the appropriate containment and/or diversionary structures or equipment in place at the Facility to prevent a discharge as described in 40 C.F.R. § 112.1(b) for all of its bulk oil storage containers and oil-filled operational equipment, in violation of 40 C.F.R. § 112.7(c) and 40 C.F.R. § 112.7(a)(1).

35. The regulation at 40 C.F.R. § 112.7(e) requires that inspections and tests are conducted in accordance with written procedures, that records of inspections or tests are signed by a supervisor or inspector, and that records are kept with the SPCC Plan for at least three years. At the time of the inspection, Alton had not maintained records of inspections for each of its transformers and parts washers, in violation of 40 C.F.R. § 112.7(e).

36. The regulation at 40 C.F.R. § 112.7(k) requires that the owner or operators of facilities with oil-filled operational equipment provide secondary containment for this equipment pursuant to 40 C.F.R. § 112.7(c), or undertake the alternate requirements of paragraph 40 C.F.R. § 112.7(k)(2), if qualified. Alton's SPCC Plan omitted oil-filled transformers, including TC-33, TC-55, TC-64 through TC-68, TC-80 through TC-82, TC-131, and TC-153, as well as several parts washers. Alton's SPCC Plan failed to address its method of compliance for its oil-filled operational equipment pursuant to 40 C.F.R. § 112.7(k). These are violations of 40 C.F.R. § 112.7(c) or 112.7(k), and 40 C.F.R. § 112.7(a)(1).

37. The regulation at 40 C.F.R. § 112.8(a) sets forth specific requirements for owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7. For the reasons stated in paragraphs 31 to 36, above, Alton's SPCC Plan did not meet the general requirements of 40 C.F.R. § 112.7, in violation of 40 C.F.R. § 112.8(a).

38. The regulation at 40 C.F.R. § 112.8(c)(2) requires that all bulk storage tank installations be constructed with secondary containment to hold the capacity of the largest container with sufficient freeboard for precipitation, and that diked areas are sufficiently impervious to contain an oil discharge or that discharges will be safely confined in a facility catchment basin or holding pond. At the time of the inspection, Alton's SPCC Plan failed to provide detailed information regarding secondary containment for each of its oil storage containers, in violation of 40 C.F.R. § 112.8(c)(2) and 112.8(a).

39. The regulation at 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each aboveground container for integrity on a regular schedule, and whenever material repairs are made. The SPCC Plan must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Alton's SPCC Plan did not address the appropriate qualifications for personnel performing tests and inspections, nor did it address all of the required information related to integrity testing in accordance with industry standards, in violation of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.8(a).

40. The regulation at 40 C.F.R. § 112.8(c)(11) requires that the owner or operator of an onshore facility position or locate mobile or portable containers to prevent a discharge as described in 40 C.F.R. § 112.1(b), and that a secondary means of containment sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation is provided. The Facility's SPCC Plan did not provide accurate information

on how mobile or portable containers are positioned at the Facility, nor the secondary containment available for these containers, in violation of 40 C.F.R. § 112.8(c)(11) and 40 C.F.R. § 112.8(a).

41. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$17,816 per day for violations that occurred after August 1, 2016, up to a maximum of \$44,539.

Civil Penalty

42. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case and information submitted by Respondent, including steps that Respondent has taken to resolve the identified violations, Complainant has determined that an appropriate civil penalty to settle this action is \$19,929. Respondent agrees to pay this amount as a civil penalty.

43. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$19,929 by cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If Respondent sends payment by check, the payment shall be addressed to:

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

If paying by EFT, Respondent shall transfer \$19,929 to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

44. This civil penalty is not deductible for federal tax purposes.

45. The Respondent shall submit copies of the check (or, in the case of an EFT

transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Joseph Ulfig, P.E. (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Robert M. Peachey
Associate Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

46. Failure by Respondent to pay timely this civil penalty may subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

48. This CAFO does not affect the rights of the Administrator or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

49. This CAFO does not affect Respondent's responsibility to comply with the Act, 40 C.F.R. Part 112, and any other applicable federal, state and local laws.

50. Respondent certifies that it is now complying at the Facility with the Act and the regulations cited above.

51. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

52. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

53. The CAFO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder.

54. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

55. Each party shall bear its own costs and attorney's fees in connection with the

action resolved by this CAFO.

56. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.


57. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

58. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of: Alton Steel, Inc.

Alton Steel, Inc., Respondent


Date: 12/19/2016



Jim Hruskovsky
President
Alton Steel, Inc.

U.S. Environmental Protection Agency, Complainant

Date: 01/11/2017



Doug Ballotti
Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Alton Steel, Inc.
Docket No. CWA-05-2017-0004

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

Date: 1/13/17



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the matter of: Alton Steel, Inc.
Docket Number: CWA-05-2017-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on January 17, 2017, this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Jim Hruskovsky
President
Alton Steel, Inc.
5 Cut Street
Alton, Illinois 62002

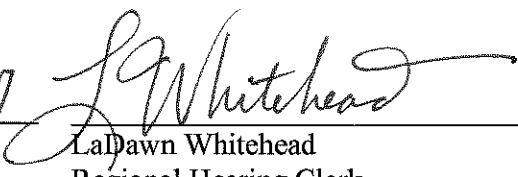
Copy by E-mail to
Attorney for Complainant:

Robert M. Peachey
peachey.robert@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann L. Coyle
coyle.ann@epa.gov

Dated:

January 17, 2017 
Lal Dawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7032