





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 7  
 901 NORTH 5<sup>TH</sup> STREET  
 KANSAS CITY, KANSAS 66101**

**UNITED STATES  
 ENVIRONMENTAL  
 PROTECTION AGENCY -  
 REGION 7  
 2012 SEP 28 AM/PM 12:30**

**IN THE MATTER OF:** )  
 )  
**Hydro Aluminum North America, Inc.** )  
 )  
**808 County Road** )  
**Monett, Missouri 65708** )  
 )  
**RCRA I.D. NO. MOD007179823** )  
 )  
**Respondent.** )  
 )  
**Proceeding under Sections 3008(a) and (g) of** )  
**The Resource Conservation and Recovery Act,** )  
**as amended, 42 U.S.C. §§ 6928(a) and (g)** )

**CONSENT AGREEMENT  
 AND FINAL ORDER**

**Docket No. RCRA-07-2012-0030**

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region 7 and Hydro Aluminum North America, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

**II. ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice. The authority has been delegated by the Administrator of EPA to the Regional Administrator and further delegated to the Director of the Air and Waste Management Division.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, Section 390.1(1) of Chapter 260 of the Revised Statutes of Missouri (R.S.Mo.), and the regulations found in Title 10, Division 25 of the Missouri Code of State Regulations (10 CSR 25) at Section 20 of



Chapter 9, in 40 C.F.R. Part 262 as incorporated in 10 CSR 25 at Section 262 of Chapter 5, in 40 C.F.R. Part 265 as incorporated in 10 CSR 25 at Section 265 of Chapter 5, and in 40 C.F.R. Part 273 as incorporated in 10 CSR 25 at Section 273 of Chapter 16.

### **Parties**

3. The Complainant is the Chief of the Waste Enforcement Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of EPA.

4. The Respondent is Hydro Aluminum North America, Inc. (Hydro), a company incorporated under the laws of Maryland and licensed to do business in the state of Missouri.

### **Statutory and Regulatory Framework**

5. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6929. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in Title 10, Division 25 of the Missouri Code of State Regulations. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment rule, 40 C.F.R. Part 19, 20 that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order

### **General Factual Allegations**

7. Respondent is a Maryland corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).



8. Respondent owns an industrial facility located at 808 County Road, Monett, Missouri, 65708 (Facility), which conducts aluminum remelt, extrusion, fabrication, and finishing services for the building industry and other markets. Respondent employs 179 employees at this location.

9. At the time of the Inspection, as part of its operations, Respondent generated waste, including flammable spent xylene and still bottoms from xylene reclamation, flammable liquid paint waste, wet flammable waste solids, sludge from the facility's wastewater treatment system, caustic waste from a sodium hydroxide bath in the Die Shop, spent fluorescent lamps, spent batteries, solvent contaminated wipes/mop head, and aerosol can waste.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 CSR 25-4.261, which incorporates by reference the regulations at 40 C.F.R. Part 261. The regulations for determining whether a waste is a universal waste are set forth at 10 CSR 25-16.273, which incorporate by reference the regulations at 40 C.F.R. Part 273. Each of the wastes listed in paragraph 9 are a "solid waste" and all such wastes except the universal wastes are also "hazardous wastes" within the meaning of these regulations.

11. At the time of the Inspection, Respondent was a Large Quantity Generator (LQG) of hazardous waste by both monthly generation and accumulation (greater than 1000 kg per month). 10 CSR 25-5.262, incorporating by reference the regulations at 40 C.F.R. Part 262.

12. At the time of Inspection, Respondent was also a Small Quantity Handler (SQH) of universal waste by accumulation (less than 5000 kg at one time) as defined in 40 C.F.R. § 273.9, incorporated by reference at 10 CSR 25-16.273(1).

13. Respondent has been assigned a RCRA facility identification number of MOD007179823.

14. On or about February 24-26, 2009, an EPA representative (hereinafter the EPA inspector) conducted a RCRA Compliance Evaluation Inspection at Respondent's facility (Inspection), and issued a report detailing the findings of such inspection (the "Inspection Report"). EPA requested and received from Respondent additional information relevant to the issues identified by the EPA inspector during the Inspection.

15. Based on a review of the Inspection Report and the information provided during and following the Inspection by facility personnel, it was determined that Respondent was generating D001, D002, F003, F019 hazardous waste, and spent florescent lamps and spent battery universal waste.

16. On April 17, 2012, EPA issued to Respondent a letter providing notification of EPA's allegations of noncompliance and associated penalty calculations based on the Inspection Information, and offering Respondent an Opportunity to engage with EPA in pre-filing negotiations of the allegations of noncompliance and initial penalty assessment.

17. In response to the April 2012 Notice, Respondent requested the opportunity to engage in pre-filing negotiations with EPA concerning the allegations, and the parties thereafter conducted such negotiations and reached an agreement regarding the resolution of this matter.





**Violations**

18. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as follows:

**Count 1**

**Failure to Conduct Hazardous Waste Determinations**

19. The allegations stated in paragraphs 7 through 18 are realleged and incorporated as if fully set forth herein.

20. The regulations at 10 CSR 25-5.262(1) incorporating by reference 40 C.F.R. § 262.11, provide that a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

21. At the time of the February 2009 inspection, Respondent had been generating the following solid wastes at the facility that required hazardous waste determinations:

a. 1 drum of D001/F003 hazardous waste in the West Storage Area.

22. The container listed in Paragraph 21 was hazardous waste. The drum was characteristic for ignitability. Hydro arranged for the off-site transport and management of the drum as hazardous waste, with a waste code of D001/F003.

23. Respondent's failure to make a hazardous waste determination on the above referenced waste stream is a violation of 40 C.F.R. § 262.11 and 10 CSR 25-5.262(1).

**Count 2**

**Operation of a Hazardous Waste Treatment, Storage or Disposal Facility (TSDF) Without a Permit or Interim Status for Failure to Comply with Generator Requirements and Storage of a Hazardous Waste**

24. The allegations stated in Paragraphs 7 through 18 are realleged and incorporated as if fully set forth herein.

25. Section 3005 of RCRA, 42 U.S.C. § 6925; R.S.Mo. 260.390.1(1), and the regulations at 10 CSR 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

26. The regulations at 10 CSR 25-5.262(1), incorporating by reference 40 C.F.R. § 262.42(a), allow a generator to accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided the conditions listed in 40 C.F.R. §§ 262.34(a)(1)-(4) are met. These conditions include compliance with other hazardous waste regulatory requirements.



27. At the time of the February 2009 Inspection, Respondent was not complying with various hazardous waste regulatory requirements, described below.

28. At the time of the February 2009 Inspection, Respondent was storing hazardous waste without a Permit or Interim Status.

29. Respondent did not have a RCRA Permit or Interim Status to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, R.S.Mo. 260.390.1(1), and the regulations at 10 C.S.R. 25-7.270.

**Failure to Comply with Generator Requirements**

30. At the time of the February 2009 Inspection, Respondent was not complying with the following statutory requirements.

*Failure to close Hazardous Waste Storage Containers*

31. The regulations at 40 C.F.R. § 262.34(a)(1)(i), incorporated by reference at 10 CSR 25-5.262(a) and 10 CSR 25.5.262(2)(C)1, and referencing 40 C.F.R. § 265.173(a), state that containers holding hazardous waste must always be closed during storage, except when necessary to add or remove waste.

32. At the time of the February 2009 inspection, Respondent was storing the following hazardous wastes in satellite areas in containers which were not properly closed.

- a. An approximately half-full, cubic yard box of wet flammable waste solids dated 2/23/09 that was open in the paint storage room near Booth #1.

33. Respondent's failure to properly close the above containers of hazardous waste is a violation of 10 CSR 25-5.262(1), 10 CSR 25-5.262(2)(C)1, 40 C.F.R. § 265.173(a), and 40 C.F.R. § 262.34(a)(1)(i).

*Failure to Label Hazardous Waste Storage Containers*

34. The regulations at 40 C.F.R. § 262.34(a)(2), incorporated by reference at 10 CSR 25-5.262(1) and 10 CSR 25.5.262(2)(C)1, require a generator to clearly mark the date upon which each period of accumulation begins on each container of hazardous waste.

35. The regulations at 40 C.F.R. § 262.34(a)(3), incorporated by reference at 10 CSR 25-5.262(1) and 10 CSR 25-5.262(2)(C)1, require a generator of hazardous waste storing waste on-site for less than 90 days to clearly mark or label on each container and tank of hazardous waste the words, "Hazardous Waste."

36. At the time of the February 2009 inspection, Respondent failed to label and or date the following hazardous wastes:

- a. A full 55-gallon drum of spent xylene, generated the week of 2/16/09 that was not labeled or dated in the kitchen.



- b. Two full, 55-gallon drums of spent xylene, generated the week of 2/16/09 that were not labeled or dated located in the Reclaimed Solvent Storage Area.
- c. An approximately full, cubic yard box of wet flammable waste solids that was not dated, not labeled, and located in the West Storage Room.

37. Respondent's failure to label or clearly mark the date accumulation began and the word "Hazardous Waste" on each container of hazardous waste is a violation of 40 C.F.R. § 262.34(a)(2) and (3), 10 CSR 25-5.262(1) and 10 CSR 25-5.262(2)(C)1.

*Failure to Maintain a Current Emergency  
Coordinator Contact in Facility's Contingency Plan*

38. The regulations at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 CSR 25-5.262(2)(C)1 and referencing 40 C.F.R. § 265.52(d), require that a generator have a contingency plan that lists the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and that the list must be kept up to date.

39. At the time of the February 2009 inspection, Respondent's contingency plan identified as a primary emergency coordinator an individual who was no longer an employee at the facility.

40. Respondent's failure to maintain a contingency plan that identified a current emergency coordinator is a violation of 10 CSR 25-5.262(2)(C)1, 40 C.F.R. §§ 26234(a)(4) and 265.52(d).

*Failure to Include All Emergency Equipment in the Contingency Plan*

41. The regulations at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 CSR 25-5.262(2)(C)1 and referencing 40 C.F.R. § 265.52(e), require that a generator have a contingency plan that lists all emergency equipment at the facility which must be kept up to date and include the location, physical description, and brief outline of each item's capabilities.

42. At the time of the February 2009 inspection, Respondent provided to EPA inspector a contingency plan which omitted the following emergency equipment at the facility:

- a. A horn at all plant exists
- b. One pull alarm located in the Paint Room
- c. Spill kit contents

43. Respondent's failure to include all emergency equipment at the facility along with the location, physical description, and brief outline of each item's capabilities in their contingency plan is a violation of 10 CSR 25-5.262(2)(C)1, 40 C.F.R. §§ 262.34(a)(4) and 265.52(e).



*Failure to Specify an Evacuation Plan in the Contingency Plan*

44. The regulations at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 CSR 25-5.262(2)(C)1 and referencing 40 C.F.R. § 262.52(f), require that a generator have a contingency plan that includes an evacuation plan for facility personnel which must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes.

45. At the time of the February 2009 inspection, Respondent provided to the EPA inspector a contingency plan which lacked required information for an evacuation plan, such as alternative evacuation routes.

46. Respondent's failure to include required elements of an evacuation plan in their contingency plan is a violation of 10 CSR 25-5.262(2)(C)1, 40 C.F.R. §§ 262.34(a)(4) and 265.52(f).

*Failure to Provide Access to an Alarm or Emergency Communication Device*

47. The regulations at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 CSR 25-5.262(2)(C)1 and referencing 40 C.F.R. § 265.34(a), require all personnel involved in the pouring, mixing, spreading, or otherwise handling of hazardous waste to have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under § 265.32.

48. At the time of the February 2009 inspection, Respondent did not have an internal alarm or emergency communication device in the Plant Storage Room.

49. Respondent's failure to provide immediate access to an internal alarm or communication device is a violation of 10 CSR 25-5.262(2)(C)1, 40 C.F.R. §§ 262.34(a)(4) and 265.34(a).

*Failure to Include Written Description of Job Duties in Job Descriptions*

50. The regulations at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 CSR 25-5.262(2)(C)1 and referencing 40 C.F.R. § 265.16(d)(2), require that a generator maintain a written job description for each position at the facility related to hazardous waste management which includes the duties of facility personnel assigned to that position.

51. At the time of the February 2009 inspection, four (4) of Respondent's employees handled hazardous waste. These positions included the Paint Line Manager, Paint Operator, Paint Line/Packing Supervisor, and Waste Water Treatment Operator.

52. The job descriptions Respondent provided for the Wastewater Treatment System Operator only stated generally stated the operator "know hazardous waste management."

53. The job descriptions Respondent provided for the Paint Line Manager, Paint Operator, and Paint Line/Packing Supervisor did not list their specific hazardous waste duties.





54. Respondent's failure to include written job descriptions which describe the hazardous waste duties of the facility personnel assigned to those positions is a violation of 10 CSR 25-5.262(2)(C)1, 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(2).

*Failure to Close Satellite Accumulation Containers*

55. The regulations at 40 C.F.R. § 262.34(c)(1), incorporated by reference at 10 CSR 25-5.262(2)(C)3, allow a generator to store up to 55 gallons of hazardous waste in a satellite area without complying with the requirements in 40 C.F.R. §§ 262.34(a)(1)-(4) provided the generator complies with the regulations at 40 C.F.R. § 262.34(c), referencing 40 C.F.R. § 265.173(a).

56. The regulations at 40 C.F.R. § 265.173(a) state that containers holding hazardous waste must always be closed during storage, except when necessary to add or remove waste.

57. At the time of the February 2009 inspection, Respondent was storing the following hazardous wastes in satellite areas in containers which were not properly closed.

- a. An approximately one-third full, 55 gallon drum of xylene pump line flush/disc cleaning solvent in the kitchen was open.
- b. An approximately one-third full, 55-gallon drum of still bottoms dated 2/20/09 at the still was open because the lid was not secured to the drum.

58. Respondent's failure to properly close the above containers of hazardous waste is a violation of 10 CSR 25-5.262(2)(C)3, 40 C.F.R. §§ 265.173(a) and 262.34 (c)(1)(i).

*Failure to Label Satellite Accumulation Containers*

59. The regulations at 40 C.F.R. § 262.34(c)(1)(ii), modified and incorporated by reference at 10 CSR 25-5.262(2)(C)3, allow a generator to store up to 55 gallons of hazardous waste in a satellite area without complying with the requirements in 40 C.F.R. §§ 262.34(a)(1)-(4) provided the containers are marked with either the words "Hazardous Waste" or with other words that identify the contents of the containers and the beginning date of satellite storage.

60. At the time of the February 2009 inspection, Respondent was storing the following hazardous wastes in satellite areas without proper labeling or dating.

- a. A drum with about 14 gallons of xylene paint booth line flush at Booth #1 that was not labeled or dated.
- b. A drum with about 14 gallons of xylene paint booth line flush at Booth #2 that was not labeled or dated.
- c. An approximately one-third full, 55-gallon drum of xylene pump line flush/disc cleaning solvent in the kitchen was not labeled or dated.



61. Respondent's failure to label or clearly mark each container of hazardous waste is a violation of 10 CSR 25-5.262(2)(C)3 and 40 C.F.R. § 262.34(c)(1)(ii).

### **Count 3**

#### **Failure to Comply With Universal Waste Requirements**

62. The allegations stated in Paragraphs 7 through 18 are realleged and incorporated as if fully set forth herein.

63. The regulations at 10 CSR 25-16.273(1), incorporating by reference 40 C.F.R. Part 273, require a Small Quantity Handler (SQH) of universal waste to comply with the requirements in Subpart B of Subchapter I of RCRA.

64. At the time of the February 2009 inspection, Respondent was not complying with the various universal waste regulatory requirements, as described below.

#### *Failure to Document the Length of Storage of Universal Waste*

65. The regulations at 40 C.F.R. § 273.15(c), incorporated by reference at 10 CSR 25-16.273(1), require a SQH of universal waste to demonstrate the length of time that the universal waste had accumulated from the date it became a waste or was received.

66. At the time of the February 2009 inspection, the EPA inspector observed that the length of time the following universal wastes had accumulated was not demonstrated:

- a. Eight (8) 8-foot boxes of lamps which were all partially full.
- b. Taped group of un-containerized 4-foot lamps which contained four (4) non-green tip and two (2) green lamps.
- c. Taped group of un-containerized 4-foot lamps which contained three (3) non-green tip and seven (7) green lamps.
- d. Nine (9) spent lead-acid batteries.
- e. Nine (9) small lead-acid, nickel-cadmium, and lithium batteries.

67. Respondent's failure to record the date of accumulation for the above universal wastes is a violation of 10 CSR 25-16.273(1) and 40 C.F.R. § 273.15(c).

#### *Failure to Label Universal Waste Lamps*

68. The regulations at 40 C.F.R. § 273.14(e), incorporated by reference at 10 CSR 25-16.273(1), require a SQH of universal waste to label or clearly mark universal waste lamps or containers of universal waste lamps with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."



69. At the time of the February 2009 inspection, the EPA inspector observed the following universal waste lamps which were not labeled:

- a. Taped group of un-containerized 4-foot lamps which contained four (4) non-green tip and two (2) green lamps.
- b. Taped group of un-containerized 4-foot lamps which contained three (3) non-green tip and seven (7) green lamps.

70. The Respondent's failure to properly label the universal waste lamps is a violation of 10 CSR 25-16.273(1) and 40 C.F.R. § 2273.14(e).

*Failure to Containerize Universal Waste Lamps*

71. The regulations at 40 C.F.R. § 273.13(d)(1), incorporated by reference at 10 CSR 25-16.273(1), require a SQH of universal waste to contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

72. At the time of the February 2009 inspection, the EPA inspector observed the following universal waste lamps which were not containerized:

- a. Seven (7) 8-foot boxes of lamps which were all partially full.
- b. Taped group of un-containerized 4-foot lamps which contained four (4) non-green tip and two (2) green lamps.
- c. Taped group of un-containerized 4-foot lamps which contained three (3) non-green tip and seven (7) green lamps.

73. Respondent's failure to properly containerize their universal waste lamps is a violation of 10 CSR 25-16.273(1) and 40 C.F.R. § 273.13(d)(1).

*Accumulation of Spent Batteries*

74. The regulations at 40 C.F.R. § 273.15(a), incorporated by reference at 10 CSR 25-16.273(1), prohibit a SQH of universal waste from accumulating universal waste for greater than one (1) year unless the sole purpose of accumulation is to accumulate such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. 40 C.F.R. § 273.15(b), incorporated by reference at 10 CSR 25-16.273(1), places the burden of demonstrating accumulation solely for proper recovery, treatment, or disposal on the SQH.

75. At the time of the February 2009 inspection, Respondents informed the EPA inspector that the following universal waste batteries had been stored for longer than one (1) year:

- a. Nine (9) spent lead-acid batteries.



- b. Nine (9) small lead-acid, nickel-cadmium, and lithium batteries.

76. When the EPA inspector requested documentation on how long the universal waste batteries were accumulated, Respondent informed the EPA inspector they did not have documentation on how long the universal waste had been stored. In addition, the EPA inspector was not provided with documentation stating that the sole purpose of accumulation of the universal waste for more than one year was necessary to facilitate proper recovery, treatment, or disposal.

77. Respondent's accumulation of spent universal waste batteries in excess of one (1) year without demonstration such accumulation was necessary to facilitate proper recovery, treatment, or disposal is a violation of 10 CSR 25-16.273(1), and 40 C.F.R. § 273.15(a).

#### *Failure to Label Universal Waste Batteries*

78. The regulations at 40 C.F.R. § 273.14(a), incorporated by reference at 10 CSR 25-16.273(1), require a SQH of universal waste to label or clearly mark universal waste batteries or containers of universal waste batteries with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

79. At the time of the February 2009 inspection, the EPA inspector observed the following universal waste batteries were not labeled:

- a. Nine (9) spent lead-acid batteries.
- b. Nine (9) small lead-acid, nickel-cadmium, and lithium batteries.

80. Respondent's failure to properly label their universal waste batteries is a violation of 10 CSR 25-16.273(1) and 40 C.F.R. § 273.14(a).

#### **CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. The EPA and Respondent expressly acknowledge that the provisions of Paragraph 2 shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.

4. Respondent neither admits nor denies the factual allegations and legal conclusion set forth in this Consent Agreement and Final Order.





5. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

6. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

7. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. This Consent Agreement and Final Order address all civil administrative claims for the RCRA violations identified or referenced herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

9. The effect of settlement described in Paragraph 8 above is conditioned up on the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 10, below, of this Consent Agreement and Final Order.

10. By signing this Consent Agreement and Final Order, Respondent certifies that, to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

11. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

12. In full and final settlement and resolution of the specific violations referenced in the attached Inspection Report Notice of Violation dated February 24-26, 2009, the attached February 23, 2012 Notice of Violation, and the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of forty-four thousand five-hundred fifty dollars (\$44,550), as set forth in Paragraph 1 of this Final Order.

13. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

14. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 12.

#### **Effective Date**

15. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless other stated, all time periods stated herein shall be calculated in calendar days from such date.



### **Reservation of Rights**

16. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-two Thousand Five Hundred Dollars (\$37,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

17. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

18. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any persons, 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 or any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

19. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

20. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

21. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

### **FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of forty-four thousand five-hundred fifty dollars (\$44,550). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:



US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

2. As an alternative to the payment of the civil penalty by certified or cashier's check pursuant to Paragraph 1 of the Final Order, Respondent may elect to pay the civil penalty by wire transfer. Any such wire transfers should be directed to the Federal Reserve Bank of New York:

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"

3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

And to:

Jennifer Trotter  
Office of Regional Counsel  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

### **B. Compliance Actions**

5. Respondent shall take the following actions within the time periods specified according to the terms and conditions specified below:

6. Within one hundred eighty (180) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit documentation to EPA, in accordance with Paragraph 7 below:



- a. Identifying the hazardous waste generator status of the facility following discontinuation of certain process operations within the facility; and
  - b. Evidencing the transmittal to the State of any revised notice of hazardous waste generator status for the facility, if necessary.
7. Respondent shall submit all documentation set forth in this section of the Final Order to the following address:

Deborah Bredehoft, AWMD/WEMM  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

### **C. Parties Bound**


8. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.






FOR COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/28/12  
Date

  
Donald Toensing  
Chief, Waste Enforcement and Material Management  
Branch  
Air and Waste Management Division  
U.S. Environmental Protection Agency  
Region 7

9/28/12  
Date

  
Jennifer Trotter  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7



FOR RESPONDENT  
HYDRO ALUMINUM NORTH AMERICA, INC.

9/28/12  
Date

Carole Henrich  
Signature

Caroline Henrich  
Printer Name

Director of Legal Affairs  
Title



IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

Sept 28, 2012  
Date

Robert Patrick  
Robert Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7



**List of Violations Documented at Hydro Aluminum North America  
in Monett, Missouri on February 24-26, 2009**

1. Title 10 Code of State Regulations (10 CSR) 25-5.262(1) incorporating Title 40 Code of Federal Regulations (40 CFR) 262.11 – Failure to conduct a hazardous waste determination on the following:
  - a. Two inches of beige color material in the containment area of the used oil storage tank;
  - b. Two unknown drums in the West Storage Room;
  - c. Ten drums of caustic in the West Storage Room;
  - d. Four drums of hydrochloric acid in the West Storage Room;
  - e. Spent Caustic entering 7200 gallon tank; and
  - f. Aluminum Dross stored in piles.
  
2. 10 CSR 25-5.262(2)(C)2.D(III)(a) – Failure to maintain a containment system base that is impervious and free of cracks or gaps.
  
3. 10 CSR 25-16.273(1) incorporating 40 CFR 273.14(e), 40 CFR 273.15(c) and 40 CFR 273.13(d)(1) – Failure to label, close, and/or document length of storage time for the following universal waste lamp containers:
  - a. Four, eight-foot boxes that were all partially full, opened and undated;
  - b. Four, four-foot boxes that were all partially full and undated, three were also open;
  - c. Taped group of un-containerized four-foot lamps that contained four non-green tip and two green tip lamps were unlabeled, and were undated;
  - d. Taped group of un-containerized four-foot lamps that contained three non-green tip and seven green tip lamps, were unlabeled, and undated; and
  - e. Taped group of un-containerized four-foot lamps that contained nine green tip lamps, were unlabeled, and were undated.
  
4. 10 CSR 25-16.273(1) incorporating 40 CFR 273.15(a) – Accumulation for greater than one year and failure to document the length of storage time for nine large spent lead-acid batteries and nine small spent lead-acid, nickel-cadmium, and lithium batteries located at the Remelt Maintenance Shop.
  
5. 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(1)(i) referencing 40 CFR 265.173(a), and 10 CSR 25-5.262(2)(C)3 – Failure to label, date, and/or close the following hazardous waste satellite accumulation containers:
  - a. One drum with about 14 gallons of xylene paint booth line flush at Booth #1 that was not labeled and not dated;
  - b. One drum with about 14 gallons of xylene paint booth line flush at Booth #2 that was not labeled and not dated;
  - c. One, approximately one-third full drum of xylene pump line flush/disc cleaning solvent in the kitchen that was not labeled, not dated, and open; and
  - d. One approximately one-third full drum of still bottoms dated 2/20/09 at the still that was open due to the lid not being secured to the drum.

6. 10 CSR 25-5.262(2)(C)1 incorporating 40 CFR 262.34(a)(i) referencing 40 CFR 265.173(a), and 10 CSR 25-5.262(2)(C)1 incorporating 40 CFR 262.34(a)(2) and (3) – Failure to label, date, and/or close the following storage containers of hazardous waste:
  - a. One, full drum of spent xylene, waiting to be reclaimed in the still, generated the week of 2/16/09, was not labeled and not dated (cited as a storage drum, because it was not moved within three days of being full);
  - b. Two, full drums of spent xylene, waiting to be reclaimed in the still, generated the week of 2/16/09, that were not labeled and not dated, that were located in the Reclaimed Solvent Storage Area;
  - c. One, approximately half full box of wet flammable waste solids dated 2/23/09 that was open in the Paint Storage Room near Booth #1; and
  - d. One, approximately full box of wet flammable waste solids that was not dated, not labeled, and located in the West Storage Room.
7. Revised Statutes of Missouri (RSMo) Section 260.390.1(1) – Failure to obtain a permit for the accumulation of hazardous waste in a waste pile.
8. 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 265.52(d) through (f) – Failure to include the following in the contingency plan:
  - a. An updated list of the emergency coordinators;
  - b. A list of all emergency equipment;
  - c. The location and capabilities of the emergency equipment; and
  - d. An evacuation plan.
9. 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 265.34(a) – Failure to provide employees handling hazardous waste with immediate access to an alarm or an emergency communication device, either directly or through visual or voice contact.
10. 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 265.16(d)(2) – Failure to provide written job descriptions that include the current hazardous waste duties of employees that handle hazardous waste.
11. 10 CSR 25-9.020(1)(A)3 – Failure to obtain a Missouri Department of Natural Resources (MDNR) Resource Recovery Certificate.



**Notice of Violation Pursuant to Requirements  
of the Resource Conservation and Recovery Act (RCRA)**

TO: Facility Name: Hydro Aluminum  
 Address: 808 County Road  
Monett, MO 65708  
 EPA ID Number: MO047179823 Date: 2/24-26/09

This notice is provided to call your attention to the following areas of noncompliance with state and federal regulations. This notice does not constitute a compliance order (Administrative Civil Complaint) pursuant to Section 3008 of RCRA and may not be a complete listing of all violations resulting from the the inspection.

<u>Citation</u>	<u>Description of Violation</u>
① 10 CSR 25-5.262(1) → 40 CFR 262.11	Make a hazardous waste determination
	(a) Waste water in Used Oil Containment Area
	(b) 2 unknown drums in Storage Room East of HW Stg Area
	(c) 10 drums of caustic " " " " " " " " (verify qty)
	(d) 4 " " HCl " " " " " " " " ( " "
② 10 CSR 25-5.262(2)(C) 2, D(III)(a)	HW storage area not free of cracks
③ 10 CSR 25-16.273(1) → 40 CFR 273.13(d)(1) and 40 CFR 273.14(e)	Contain UW lamps in containers, keep them closed, and label them as required
④ 10 CSR 25-16.273(1) → 40 CFR 273.15(a) and (c)	Accumulating UW batteries over 1yr and no documentation to show length of storage time.

You are requested to submit a written response within 14 calendar days of receipt of this notice. Your response should include a description of all corrective actions taken and/or a schedule for completing the necessary corrective actions. The response should be submitted to:

U. S. Environmental Protection Agency, Region VII  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ATTN. \_\_\_\_\_

If you have any questions about this Notice or wish to discuss your response, you may call me at \_\_\_\_\_, or \_\_\_\_\_ (Compliance Officer) at \_\_\_\_\_.

This Notice prepared by AW Date: 2/26/09

The undersigned person acknowledges that he/she has received a copy of this Notice and has read same.

Printed Name: \_\_\_\_\_ Date: 2-26-09  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_



**Notice of Violation Pursuant to Requirements  
of the Resource Conservation and Recovery Act (RCRA)**

TO: Facility Name: Hydra Aluminum  
Address: \_\_\_\_\_

EPA ID Number: \_\_\_\_\_ Date: 2/24-26/09

This notice is provided to call your attention to the following areas of noncompliance with state and federal regulations. This notice does not constitute a compliance order (Administrative Civil Complaint) pursuant to Section 3008 of RCRA and may not be a complete listing of all violations resulting from the the inspection.

<u>Citation</u>	<u>Description of Violation</u>
⑦ Section 260.390.1(1) RSMo	Accumulating F019 waste in an unpermitted waste pile
⑧ 10CSR 25-5.262(1) → 40CFR 265.52(e)	Update Contingency Plan to include all emergency equipment and its locations + capabilities and the Emerg Coord list.
⑨ 10 CSR 25-5.262(1) → 40CFR 265.34(G)	No device in HW Stg Area to summon emergency assistance
⑩ 10CSR 25-5.262(1) → 40CFR 265.16(d)(2)	Update Job descriptions to include HW duties
⑪ 10CSR 25-9.026(1)(A)(3)	Apply for and operate in accordance with the Resource Recovery facility certificate.
⑫ Request For Info	(a) Urethane Resin Analysis (b) <sup>FW</sup> Training Doc for Mike, Randy, Marvin + Chris for '08, '07, + '06 (c) Dross A.I. Test + shipping document (the latest)

You are requested to submit a written response within 14 calendar days of receipt of this notice. Your response should include a description of all corrective actions taken and/or a schedule for completing the necessary corrective actions. The response should be submitted to:

U. S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> St.  
Kansas City, KS 66101  
 ATTN: Dedriel Newsome

If you have any questions about this Notice or wish to discuss your response, you may call me at 913-551-7049, or Deborah Finger (Compliance Officer) at 913-551-7614.

This Notice prepared by Dedriel Newsome Date: 2/26/09

The undersigned person acknowledges that he/she has received a copy of this Notice and has read same.

Printed Name: Jennifer B. Wright Date: 2-26-09  
 Signature: [Signature]  
 Title: VP/ENR Central Region



IN THE MATTER OF Hydro Aluminum North America, Inc., Respondent  
Docket No. RCRA-07-2012-0030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Orders were sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Jennifer Trotter  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Bart E. Cassidy  
Attorney at Law  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 500  
Bala Cynwyd, Pennsylvania 19004

Dated: 9/28/12



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7

