



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 27 2009

CERTIFIED MAIL NO. 7007-2560-0001-7660-6719  
RETURN RECEIPT REQUESTED

Mr. Brian Leibl  
Vice President and General Manager  
Ken's Spray Equipment, Inc., dba Alloy Processing  
1900 West Walnut Street  
Compton, CA 90220

Re: In the matter of Ken's Spray Equipment, Inc. dba Alloy Processing  
U.S. EPA Docket No. RCRA-09-~~08~~-2009-0004

Dear Mr. Leibl:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

Payment of the full penalty, as outlined in the Consent Agreement and Final Order, will close this case. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Rebecca Sugerman at (415) 972-3893.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director  
Waste Management Division

Enclosure

FILED

2009 MAR 27 AM 8:51

REGIONAL HEALTHS CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of	)	U.S. EPA Docket No.
	)	RCRA- <del>0</del> 2009- 0004
Ken's Spray Equipment, Inc. dba	)	09
Alloy Processing	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
EPA ID No. CAR 000191643	)	40 C.F.R. SECTIONS 22.13 AND
	)	22.18
<u>Respondent.</u>	)	

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 Ken's Spray Equipment, Inc. dba Alloy Processing. (Respondent or "Alloy Processing").
2. Respondent owns and operates a facility located at 1900 West Walnut Street, in Compton, California, 90220 (the "Facility"). The Facility's EPA Identification Number is CAR000191643. Respondent is a metal finishing company that performs a number of activities on aerospace parts including, but not limited to, non-destructive testing, cleaning and applying anodize finished, chemical conversion and paint coatings to aluminium, titanium, and/or stainless steel alloys for the aerospace industry.
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 Respondent failed to: (1) obtain an EPA identification number, a violation of 22 California Code of Regulations ("C.C.R.") § 66262.12(a) [*see also* 40 C.F.R. § 262.12(a)]; (2) submit biennial reports, a violation of 22 C.C.R. § 66262.41(b) and (b)(5)

[*see also* 40 C.F.R. § 262.41(a) and (a)(5)]; (3) perform waste determinations, a violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11]; (4) properly manage satellite accumulation waste, a violation of 22 C.C.R. § 66262.34(e)(1)(D), 22 C.C.R. § 66262.34(f)(1), (2), and (3), and 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 262.34(c)(1), (c)(i), and (c)(ii), and 40 C.F.R. § 265.173(a)]; (5) maintain and operate the facility to minimize the possibility of any unplanned release, a violation of 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31]; (6) prepare a manifest for transport or hazardous waste, a violation of 22 C.C.R. § 66262.20(a) [*see also* 40 C.F.R. § 262.20(a)(1)]; (7) develop and implement a personnel training program, a violation of 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.16]; (8) comply with hazardous waste storage tank requirements, a violation of 22 C.C.R. § 66265.192(a) and (g), 22 C.C.R. § 66265.193, 22 C.C.R. § 66265.194(b), 22 C.C.R. § 66262.34(f), and 22 C.C.R. § 66265.195 [*see also* 40 C.F.R. § 265.192(a) and (g), 40 C.F.R. § 265.193(c)(3), (d), and (f), 40 C.F.R. § 265.194(b), 40 C.F.R. § 262.34(f), and 40 C.F.R. § 265.195(a) and (c)]; and (9) properly store ignitable hazardous waste, a violation of 22 C.C.R. § 66265.176 [*see also* 40 C.F.R. § 265.176]. These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.<sup>1</sup>

## B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

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<sup>1</sup> All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992) and September 26, 2001 (66 FR 49118, September 26, 2001). Corresponding Federal citations are provided in brackets.

7. Respondent's hazardous waste manifests indicate it is a large quantity "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, acetone and methylene chloride.
11. On March 31, 2008, an unannounced RCRA Compliance Evaluation Inspection ("CEI") was conducted by inspectors from the United States EPA. The purpose of the inspection was to determine compliance of Alloy Processing with hazardous waste regulations in 40 CFR Subtitle C, Parts 261-265, 268, 273 and 279, and the regulations adopted by the California authorized program under RCRA Subtitle C in the California Code of Regulations, Title 22, Division 4.5 and the California Health and Safety Code, Division 20. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
12. 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.
13. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California'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.
14. 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.*
15. 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 Obtain an EPA Identification Number

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66262.12(a) provides that a generator shall not treat, store, dispose of, transport or offer for transportation, hazardous waste without having received an identification number [*see also* 40 C.F.R. § 262.12(a)].
18. At the time of the inspection the facility had obtained an identification number from the California Department of Toxic Substances Control (DTSC) for non-RCRA, California-only hazardous waste (CAL 000 212 331), but had failed to obtain the necessary EPA ID Number for RCRA regulated hazardous waste.
19. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.12(a) [*see also* 40 C.F.R. § 262.12].

COUNT II

Failure to Submit Biennial Report

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 22 C.C.R. § 66262.41(b) requires large quantity generators who ship hazardous waste off-site to a treatment, storage, or disposal facility within the United States to prepare and submit a copy of the Biennial Report to DTSC [*see also* 40 C.F.R. § 262.41(a) and (a)(5)].
22. 22 C.C.R. § 66262.41(b)(5) requires that the Biennial Report include a description of each hazardous waste shipped off-site for shipments to a treatment, storage, disposal facility within the United States [*see also* 40 C.F.R. § 262.41(a)(5)].
23. Prior and subsequent to the inspection, the inspectors verified with the RCRAInfo database that Alloy Processing had not submitted the required Biennial Reports for the years of 2005 and 2007.
24. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.41(b) and (b)(5) [*see also* 40 C.F.R. § 262.41(a) and (a)(5)].

### COUNT III

#### Failure to Perform Waste Determination

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.
26. 22 C.C.R. § 66262.11 states that a facility which generates waste, as defined by 22 C.C.R. § 66261.2 (40 C.F.R. § 262.11) must determine if the waste is a hazardous waste [*see also* 40 C.F.R. § 262.11].
27. At the time of the EPA inspection, Alloy Processing had not determined if waste paint related items and paint booth filters and blankets were hazardous wastes.
28. After the inspection, at EPA's direction, Alloy Processing characterized the waste, and determined it was hazardous.
29. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

### COUNT IV

#### Failure to Properly Manage Satellite Accumulation Containers

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.
31. 22 C.C.R. §§ 66262.34(e)(1)(D) and 66265.173(a) provide that a satellite container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a)].
32. 22 C.C.R. § 66262.34(f)(1), (2), and (3) requires that a satellite container holding hazardous waste shall be marked/labeled with the words "Hazardous Waste" [*see also* 40 C.F.R. § 262.34(c)(1)(ii)] and with the following information: accumulation start date, composition and physical state of the waste, and statements which call attention to the particular hazardous properties of the waste (e.g., flammable). Failure to comply with the requirements of 22 C.C.R. §§ 66262.34(e)(1)(D), 66262.34(f)(1), (2), and (3), and § 66265.173(a) is a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].
33. On March 31, 2008 the EPA Inspector observed two 55-gallon containers of spent acetone, one 55-gallon container of spent paint stripper, one 5-gallon pail partially filled with spent acetone, and one 1-gallon container partially filled with spent acetone that were without lids or sealed lids (i.e., "open" containers) and without the required markings and/or label requirements.
34. 22 C.C.R. § 66262.34(e)(1) provides that a generator may accumulate as much as 55 gallons of hazardous waste, one quart of acutely hazardous waste (listed in section

66261.33(e)) or one quart of extremely hazardous waste at or near any point of generation [*see also* 40 C.F.R. § 262.34(c)(1)].

35. On March 31, 2008, the EPA Inspector observed two 55-gallon satellite containers of spent acetone at the paint shop.
36. Therefore, EPA alleges that Respondent has failed to comply with the requirements of 22 C.C.R. §§ 66262.34(e)(1)(D), 66262.34(f)(1), (2), and (3), and 66265.173(a) [*see also* 40 C.F.R. § 262.34(c)(1), (c)(i), and (c)(ii), and 40 C.F.R. § 265.173(a)], which is a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

#### COUNT V

##### Failure to Maintain and Operate the Facility to Minimize the Possibility of any Unplanned Release

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 provide that facilities 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 [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31].
39. On March 31, 2008, the EPA Inspector observed drag-out from the plating bath, which is a chromic acid solution, in the facility's secondary containment area and a crack of the secondary containment system.
40. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31].

#### COUNT VI

##### Failure to Prepare a Manifest for Transport or Hazardous Waste

41. Paragraphs 1 through 40 above are incorporated herein by this reference as if they were set forth here in their entirety.
42. 22 C.C.R. § 66262.20(a) states that a generator who transports, or offers for transportation, hazardous waste for off-site transfer, treatment, storage, or disposal shall prepare a Manifest, DTSC Form 8022 A (4/97), and if necessary, the EPA continuation Form 8700-22A [*see also* 40 C.F.R. § 262.20(a)(1)].
43. On March 31, 2008, the EPA Inspector observed that waste paint related materials (e.g., paint filters, masking tape, brushes, etc.) and paint booth filters and blankets coated with paint were being disposed of in the general trash.

44. After the inspection, as EPA's direction, Alloy Processing characterized the wastes described above, and determined the wastes were hazardous waste, with concentrations of barium and/or chromium above the toxicity levels set out in 40 C.F.R. § 261.24.
45. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.20(a) [*see also* 40 C.F.R. § 262.20(a)(1)].

#### COUNT VII

##### Failure to Develop and Implement a Personnel Training Program

46. Paragraphs 1 through 45 above are incorporated herein by this reference as if they were set forth here in their entirety.
47. 22 C.C.R. § 66262.34(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 22 C.C.R. § 66265.16(a), which requires that facility personnel 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 general facility standards set forth in the regulations [*see also* 40 C.F.R. §§ 262.34(a)(4)]. 22 C.C.R. § 66265.16(c) requires that facility personnel must take part in an annual review of initial training required by 22 C.C.R. § 66265.16(a) [*see also* 40 C.F.R. §§ 265.16(a) and 265.16(c)]. 22 C.C.R. § 66265.16(d) requires owners or operators to maintain records that document that the training or job experience required have been given to and completed by facility personnel.
48. EPA found that Respondent lacked records documenting the type and amount of training given to each person filling a position listed in the regulations.
49. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.16].

#### COUNT VIII

##### Failure to Comply with Hazardous Waste Storage Tank Requirements

50. Paragraphs 1 through 49 above are incorporated herein by this reference as if they were set forth here in their entirety.
51. 22 C.C.R. § 66265.192(a) states that the owner or operator shall obtain a written assessment reviewed and certified by an independent, qualified, professional engineer, registered in California in accordance with section 66270.11(d) attesting that the system has sufficient structural integrity, is acceptable for the transferring, storing and treating of hazardous waste, and that the tanks and containment system are suitably designed to achieve the requirements of this article. The assessment shall be obtained prior to placing the tank system in service and shall be kept on file at the facility [*see also* 40 C.F.R. § 265.192(a)].



52. 22 C.C.R. § 66265.192(g) provides that the owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (b) through (f) of this section to attest that the tank system was properly installed and that repairs, pursuant to subsections (b) and (d) of this section were performed. These written statement shall also include the certification statement as required in section 66270.11(d) of this division [*see also* 40 C.F.R. § 265.192(g)].
53. On March 31, 2008, Respondent was unable to provide the EPA Inspector with the above information for the hazardous waste storage tank.
54. 22 C.C.R. § 66265.193 states that secondary containment systems must be provided with a leak detection system to detect a failure of a primary or secondary containment structure [*see also* 40 C.F.R. § 265.193(c)(3)].
55. On March 31, 2008, the EPA Inspector confirmed that the hazardous waste storage tank and ancillary equipment is not equipped with a leak detection system.
56. 22 C.C.R. § 66265.193 requires that secondary containment (e.g., liner, vault, double-walled tank or equivalent device) be provided to tanks [*see also* 40 C.F.R. § 265.193(d)].
57. On March 31, 2008, the EPA Inspector determined that secondary containment had not been provided for the hazardous waste storage tank.
58. 22 C.C.R. § 66265.193 says that ancillary equipment shall be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) [*see also* 40 C.F.R. § 265.193(f)].
59. On March 31, 2008, the EPA Inspector observed that the facility's ancillary equipment (e.g., piping) did not have secondary containment.
60. 22 C.C.R. § 66265.194(b) states that the owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems, including at a minimum: spill prevention controls (e.g., check valves, dry discount couplings) and overflow prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank) [*see also* 40 C.F.R. § 265.194(b)].
61. On March 31, 2008, the EPA Inspector determined that the facility's hazardous waste storage tank was not equipped with these required controls.
62. 22 C.C.R. § 66262.34(f) requires generators who accumulate hazardous waste on site without a permit or a grant of interim status to comply with the following requirements: the date the applicable accumulation period specified in subsection (a) or (d) of this section begins, for purposes of subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each container and tank, and each container and

tank used for onsite accumulation of hazardous waste shall be labeled or marked clearly with the words "Hazardous Waste" [*see also* 40 C.F.R. § 262.34(f)].

63. On March 31, 2008 the EPA Inspector confirmed that the facility's hazardous waste storage tank was not marked with the required information.
64. 22 C.C.R. § 66265.195 provides that the owner or operator inspect, where present, at least once each operating day: (1) overflow/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order, (2) the aboveground portions of the tank system, if any, to detect corrosion or releases of waste, (3) data gathered from monitoring equipment and leak-detection equipment (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design, and (4) the construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation) [*see also* 40 C.F.R. § 265.195(a)].
65. 22 C.C.R. § 66265.195 additionally mandates that the owner or operator shall document in the operating record of the facility an inspection of those items in subsections (a) and (b) of this section [*see also* 40 C.F.R. § 265.195(c)].
66. On March 31, 2008, the EPA Inspector noted that the facility was not conducting or documenting these required inspections for the hazardous waste storage tank.
67. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.192(a) and (g), 22 C.C.R. § 66265.193, 22 C.C.R. § 66265.194(b), 22 C.C.R. § 66262.34(f), and 22 C.C.R. § 66265.195 [*see also* 40 C.F.R. § 265.192(a) and (g), 40 C.F.R. § 265.193(c)(3), (d), and (f), 40 C.F.R. § 265.194(b), 40 C.F.R. § 262.34(f), and 40 C.F.R. § 265.195(a) and (c)].

#### COUNT IX

##### Failure to Properly Store Ignitable Hazardous Waste

68. Paragraphs 1 through 67 above are incorporated herein by this reference as if they were set forth here in their entirety.
69. 22 C.C.R. § 66265.176 provides that a container holding ignitable waste must be located at least 15 meters (50 feet) from the facilities property line [*see also* 40 C.F.R. § 265.176].
70. On March 31, 2008, the EPA Inspector noted that three 55-gallon containers of ignitable hazardous waste were located along the property boundary line.
71. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.176 [*see also* 40 C.F.R. § 265.176].

D. CIVIL PENALTY

72. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), and the Civil Monetary Penalty Inflation Adjustment Rule, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day 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 issued in February 2004 authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) for violations that occur after March 15, 2004. 69 Fed. Reg. 7121 (Feb. 13, 2004). 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 ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) 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, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

73. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO 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.
74. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO, and this CA/FO and Respondent's compliance with it shall not be construed as an admission by Respondents of any wrongdoing or liability. Notwithstanding the foregoing, 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 on any issue relating to 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

- 75. 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 delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
- 76. 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.
- 77. 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

- 78. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
- 79. Respondent shall submit payment of the ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) in accordance with the payment plan specified in Paragraph 80 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. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent to:

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

At the time payment is made, a copy of the check shall be sent to:

Danielle Carr  
Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

and

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

80. The first payment is \$51,125.00 due within 90 days of the effective date of this CA/FO (\$50,000 plus accrued interest for 90 days). Subsequent payments are \$14,717.49, due quarterly after the date of the first payment. Payments are detailed in the following table:

Payment	Principal	Interest	Total Due	Principle Balance
1	50,000	1,125.00	51,125	100,000
2	13967.49	750.00	14,717.49	86032.51
3	14072.25	645.24	14,717.49	71960.26
4	14177.79	539.70	14,717.49	57782.47
5	14284.12	433.37	14,717.49	43498.35
6	14391.25	326.24	14,717.49	29107.10
7	14499.19	218.30	14,717.49	14607.91
8	*14607.91	109.56	14,717.47	0.00

\*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

81. 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

82. In the event Respondent fails to meet any requirement set forth in 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.

83. 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.
84. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 79.
85. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
86. 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. CERTIFICATION OF COMPLIANCE

87. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has, to the best of its knowledge and belief, fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921-6939e, and the federally authorized California hazardous waste management program, including 22 C.C.R. § 66262.12(a) [40 C.F.R. § 262.12], 22 C.C.R. § 66262.41(b) and (b)(5) [40 C.F.R. § 262.41(a) and (a)(5)], 22 C.C.R. § 66262.11 [40 C.F.R. § 262.11], 22 C.C.R. § 66262.34(e)(1)(D), 22 C.C.R. § 66262.34(f)(1), (2), and (3), and 22 C.C.R. § 66265.173(a) [40 C.F.R. § 262.34(c)(1), (c)(i), and (c)(ii), and 40 C.F.R. § 265.173(a)], 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 [40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31], 22 C.C.R. § 66262.20(a) [40 C.F.R. § 262.20(a)(1)], 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.16 [40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.16], 22 C.C.R. § 66265.192(a) and (g), 22 C.C.R. § 66265.193, 22 C.C.R. § 66265.194(b), 22 C.C.R. § 66262.34(f), and 22 C.C.R. § 66265.195 [40 C.F.R. § 265.192(a) and (g), 40 C.F.R. § 265.193(c)(3), (d), and (f), 40 C.F.R. § 265.194(b), 40 C.F.R. § 262.34(f), and 40 C.F.R. § 265.195(a) and (c)], and 22 C.C.R. § 66265.176 [40 C.F.R. § 265.176], that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
88. At the time of the final payment required above in Paragraph 80, Respondent will certify to EPA that to the best of its knowledge and belief it is in compliance with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921-6939e, and the federally authorized California hazardous waste management program, which formed the basis for the violations alleged in this CA/FO. The certification may be submitted in the form of a letter to John Schofield, at the address set out above in Paragraph 79.

J. RESERVATION OF RIGHTS

89. 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, except as to those civil penalties for the violations and facts alleged herein. 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). 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 (except as to those civil penalties for the violations and facts alleged herein); 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.
90. 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.
91. 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 they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
92. 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.

K. OTHER CLAIMS

93. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of 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.

L. MISCELLANEOUS

94. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
95. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

96. 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.

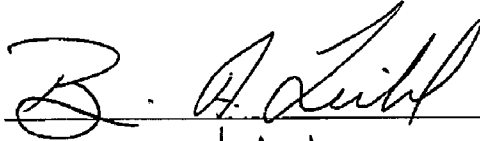
IT IS SO AGREED.

3-5-2009

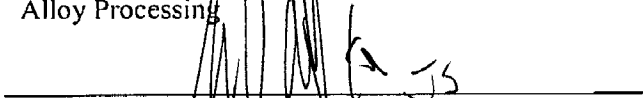
Date

32509

Date



Brian Leibl, Vice President and General Manager  
Alloy Processing



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



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-~~9~~<sup>09</sup>2009- 0004 ) be entered and that Alloy Processing pay a civil penalty of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) due in accordance with the payment plan specified in Paragraph 80 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.

03/26/09

Date

  
\_\_\_\_\_

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

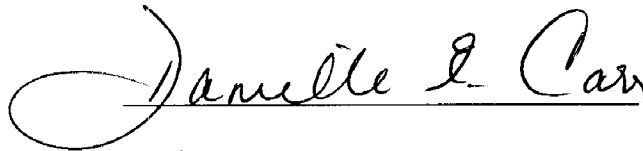
**CERTIFICATE OF SERVICE**

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:

Mr. Brian Leibl  
Vice-President and General Manager  
Ken's Spray Equipment, Inc. dba Alloy Processing  
1900 West Walnut Street  
Compton, CA 90220

3/27/09

Date



Danielle Carr  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX