

JOHN P. HAGOOD
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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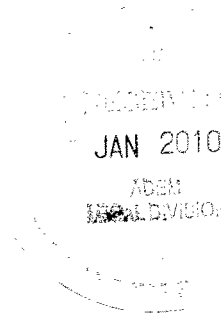
BOB RILEY
GOVERNOR

JAN - 5 2010

CERTIFIED MAIL 91 7108 2133 3936 6516 7977
RETURN RECEIPT REQUESTED

Earl McGuire
Vice President - Risk Management
Wise Alloys, LLC
4805 East Second Street
Muscle Shoals, AL 35661

RE: Final Consent Order
NPDES Permit No. AL0000035
Colbert County (033)



Dear Mr. McGuire:

Please find enclosed ADEM Consent Order which requires you to take certain actions at Wise Alloys, LLC. in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Wise Alloys, LLC. and the Department. Please note that the assessed civil penalty is due within 45 days.

If you have questions regarding this matter, please contact Jarret Goddard (334) 270-5622.

Sincerely,

James E. McIndoe, Chief
Water Division

File: ECO/13730

Enclosure: Consent Order

Cc: Olivia H. Rowell, Office of General Counsel
James H. Carlson, ADEM
Jarret Goddard, ADEM



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (Fax)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (Fax)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (Fax)

Mobile - Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Wise Alloys, LLC
4805 East Second Street
Muscle Shoals, AL
NPDES PERMIT AL0000035

CONSENT ORDER NO. 10-045-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the Wise Alloys, LLC (hereinafter “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates an aluminum manufacturing facility (hereinafter the “Facility”) located in Colbert County, Alabama. The Facility discharges pollutants from a point source into Pond Creek, a water of the state.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).
4. The Department issued National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit Number AL0000035 (hereinafter “Permit”) to the Permittee on May 21, 2007, establishing limitations on the discharge of pollutants from a point source at the Facility into

Pond Creek. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. On October 19, 2007, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for discharging wastewater that did not comply with the Permittee's Permit for the parameters of Biochemical Oxygen Demand (hereinafter "BOD"), Total Suspended Solids (hereinafter "TSS"), and Oil and Grease (hereinafter "O&G"). The Permittee was required to submit an Engineering Report within forty-five days of receipt of the NOV detailing the steps that would be taken to correct the violations.

6. On November 26, 2007, Garver Engineers, on behalf of the Permittee, submitted an Engineering Report detailing the steps that the Permittee was taking to meet the requirements specified in their Permit.

7. On December 11, 2007, the Department issued a letter to the Permittee for discharging wastewater that did not comply with the Permittee's Permit for the parameters of Total Residual Chlorine, Available Cyanide and Fecal Coliform. The Permittee was required to submit a written explanation within fourteen days of receipt of the letter detailing the steps that would be taken to correct the violations.

8. On December 21, 2008, the Permittee submitted a written response to the letter dated December 11, 2007, detailing the causes and steps that were being taken to achieve compliance with the Permit.

9. On January 14, 2008, the Department issued a letter to the Permittee for discharging wastewater that did not comply with the Permittee's Permit for the parameters of failure to submit discharge monitoring reports for all parameters required in the Permit and Fecal Coliform. The Permittee was required to submit a written explanation within fourteen days of receipt of the letter detailing the steps that would be taken to correct the violations.

10. On December 21, 2008, the Permittee submitted a written response to the letter dated December 11, 2008, detailing the causes and steps that were being taken to achieve

compliance with the Fecal Coliform discharge. In this response, they indicated that they would continue to be in noncompliance for the November DMR reporting period and stated the steps that were being taken to achieve compliance.

11. The Permittee has violated the terms, conditions, and limitations of its NPDES Permit as follows:

Date	Parameter	Violation	Limit	Reported Value
Sep 07	Total Chlorine Residual	Daily Max	0.019	<0.05
	Total Chlorine Residual	Mo. Avg.	0.011	<0.05
Dec 07	Total Chlorine Residual	Daily Max	0.019	0.02
	Total Chlorine Residual	Mo. Avg.	0.011	0.02
	Oil and Grease	Daily Max	15	76.1
Feb 08	BOD	Mo. Avg.	30	30.8
Mar 08	Total Chlorine Residual	Daily Max	0.019	0.02
Apr 08	Total Chlorine Residual	Daily Max	0.019	0.13
May 08	Total Chlorine Residual	Daily Max	0.019	0.10
	Total Chlorine Residual	Mo. Avg.	0.011	0.03
	Oil and Grease	Daily Max	15	19.2
July 08	Total Chlorine Residual	Daily Max	0.019	0.029
	Total Chlorine Residual	Mo. Avg.	0.011	0.017
Aug 08	Total Chlorine Residual	Daily Max	0.019	0.029
	Total Chlorine Residual	Mo. Avg.	0.011	0.022
Sept 08	Total Chlorine Residual	Mo. Avg.	0.011	0.012
Oct 08	Total Chlorine Residual	Daily Max	0.019	0.026
	Total Chlorine Residual	Mo. Avg.	0.011	0.018
Nov 08	Total Chlorine Residual	Daily Max	0.019	0.021
	Total Chlorine Residual	Mo. Avg.	0.011	0.016
Dec 08	Total Chlorine Residual	Daily Max	0.019	0.090
	Total Chlorine Residual	Mo. Avg.	0.011	0.033
Jan 09	Total Chlorine Residual	Daily Max	0.019	0.03
	Total Chlorine Residual	Mo. Avg.	0.011	0.02
Feb 09	Total Chlorine Residual	Daily Max	0.019	0.054
	Total Chlorine Residual	Mo. Avg.	0.011	0.026
Mar 09	Total Chlorine Residual	Daily Max	0.019	0.02
	Total Chlorine Residual	Mo. Avg.	0.011	0.02
Apr 09	Total Chlorine Residual	Daily Max	0.019	0.027
	Total Chlorine Residual	Mo. Avg.	0.011	0.02
May 09	Total Chlorine Residual	Daily Max	0.019	0.02
	Total Chlorine Residual	Mo. Avg.	0.011	0.02
Jun 09	BOD	Daily Max	45	66.5
Jul 09	Total Chlorine Residual	Daily Max	0.019	0.046
	Total Chlorine Residual	Mo. Avg.	0.011	0.025

12. On March 26, 2009 the Department was notified by the Permittee that

approximately fifty gallons of sulfuric acid, H₂SO₄ (hereinafter acid), had spilled at the Facility and was discharging into Pond Creek.

CONTENTIONS

13. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The violations consisted of failure to achieve compliance with the monthly average and daily maximum permit limitations for BOD, O&G and Total Chlorine Residual and unpermitted discharges to a water of the state. The Department has no evidence of any irreparable harm to the environment or any threat to human health or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: In, consideration of this factor, the Department noted that the Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit to the Permittee as a result of these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations as noted in the findings.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: Generally the violations fell into two broad categories of 1) discharge limitation violations, 2) unpermitted discharges which have historically received penalty amounts of 1) \$100.00 to \$3,000.00, and 2) \$250.00 to \$2,000.00, respectively.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay the Department a civil penalty in the amount of \$14,500.00 to settle the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee shall submit an Engineering Report that identifies the potential causes of noncompliance and that summarizes an investigation of the changes necessary for the Permittee to implement to achieve compliance with the Permit. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan). At a minimum, the Permittee's Engineering Report must address the need for changes in maintenance and operating procedures, the need for modification of existing treatment works and collection system components, and the need for new or additional treatment works and collection system components. The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the NPDES Permit, then the Permittee must modify the Engineering Report so that it does accomplish compliance. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments.

D. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report within 548 days from the effective date of this Consent Order.

E. The Permittee agrees that, not later than 548 days from the date of issuance of this Order, it shall submit to the Department a certification letter stating that all recommendations made in the Engineering Report required by this Order have been implemented, and that compliance with the Permit has been achieved.

F. The Permittee agrees to prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental DMR Reporting System Program (hereinafter, "E2 Program"), so that it is received by the Department not later than thirty days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they

are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

G. The Permittee agrees to prepare and submit detailed Quarterly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with items presented in the Compliance Plan. The Progress Reports shall be submitted so that they are received by the Department no later than three months after the effective date of this Consent Order and continuing every three months thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, the Permittee shall submit a written notice of noncompliance with each applicable imposed requirement. The notice of noncompliance shall be submitted so that it is received by the Department no later than fourteen days following each applicable due date contained in this Consent Order. Notices of noncompliance shall state the cause of noncompliance and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

H. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C and D contained herein. The stipulated civil penalties for failure to meet each milestone outlined herein or for failure to meet any milestone date presented in the accepted Compliance Plan or any other requirement date, except for *Force Majeure* acts, hereinafter defined as acts that occur beyond the Permittee's control, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1 st to 30 th day	\$100.00
31 st to 60 th day	\$200.00
After 60 days	\$300.00

If the Permittee fails to meet any milestone or any assigned date for a period of ninety days after any required date described in paragraphs A, C and D, then the Department reserves the right to file a new action against the Permittee.

I. The parties agree that the cumulative stipulated penalties described in paragraph E above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the timeframe listed in the Engineering Report, then the Department shall be free to issue additional orders or to file suit against the Permittee in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

J. The Permittee agrees to submit to the Department, payment of stipulated penalties due for failure to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C and D contained herein. Furthermore, the Permittee agrees to submit payment of stipulated penalties to the Department so that they are received by the Department no later than thirty days following the completion of the milestone or requirement. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

K. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

L. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

M. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

O. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the

future concerning the facility that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by other Orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

P. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Q. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

R. The Department and the Permittee agree that final approval and entry into this Consent Order is subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

S. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or by the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

T. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

U. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

WISE ALLOYS, LLC

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By: Earl McQuinn

By: Mandy Elliott

Its: VICE PRESIDENT - RISK
MANAGEMENT

Its: Deputy Director

Date: 10/28/09

Date: Jan. 5, 2010