

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against **REAL ALLOY RECYCLING, LLC**
and **REAL ALLOY SPECIFICATION, LLC**,
corporations, organized under the laws of the
State of Delaware and doing business at 267
North Fillmore Road and 368 West Garfield
Avenue in the City of Coldwater, County of
Branch, State of Michigan

AQD No. 2019-29

SRN: N5957

STIPULATION FOR ENTRY OF FINAL ORDER

BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) against Real Alloy Recycling, LLC and Real Alloy Specification, LLC, limited liability companies organized under the laws of the State of Delaware and doing business at 267 North Fillmore Road and 368 West Garfield Avenue, respectively, in the City of Coldwater, County of Branch, State of Michigan, with State Registration Number (SRN) N5957. These two facilities share the same SRN. Real Alloy Recycling, LLC and Real Alloy Specification, LLC, are hereinafter referenced collectively as the Company. EGLE alleges that the Company is in violation of Mich Admin Code, R 336.1205, Mich Admin Code, R 336.2810, and Mich Admin Code, R 336.1225. Specifically, EGLE alleges that the Company has exceeded the permit limit for Nitrogen Oxides (NO_x), Particulate Matter less than 10 microns in diameter (PM₁₀), and Hydrochloric Acid (HCl) from the reverberatory melting furnace identified as EUIMREVERBFURN through associated flue SVIMREVFLUE; has exceeded the permit limit for Particulate Matter (PM) and PM₁₀ from the reverberatory melting furnace identified as EUALFURN1; has exceeded the permit limit for PM₁₀ from the flue of a reverberatory melting furnace identified as EUALFURN1 through associated flue SVALFURN1; has exceeded the permit limit for PM, PM₁₀, NO_x, and Sulfur Dioxide (SO₂) from the two reverberatory melting furnaces identified as EUALFURN7 and EUALFURN8; and has exceeded the permit limit for NO_x and PM from the reverberatory holding furnace EUALFURN2 through associated flue SVALFURN2, as cited herein and in Violation Notices dated June 1, 2018; August 14, 2018; and September 4, 2018. The Company and EGLE stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and EGLE stipulate as follows:

1. The Natural Resources and Environmental Protection Act (NREPA) MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in this State.

2. Article II, Pollution Control, Part 55 of the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.

3. Executive Order 2019-06 renamed the Michigan Department of Environmental Quality as EGLE, and EGLE has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.

4. The EGLE Director has delegated authority to the Director of the AQD (AQD Director) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55, MCL 324.5528, is proper and acceptable.

6. The Company and EGLE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Company that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Director.

8. The Company shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

Permit & Testing

9.A The Company shall comply with the NO_x, PM₁₀, and HCl emission limits for reverberatory melting furnace EUIMREVERBFURN-S2 through associated flue SVIMREVFLUE-S2 in PTI No. 64-19, as amended, and any subsequent incorporation of these limits into the Company's Renewable Operating Permit (ROP).

9.B The Company shall comply with the PM and PM₁₀ emission limits for EUALFURN1-S1 in PTI No. 63-19, as amended, and any subsequent incorporation of these limits into the Company's ROP.

9.C The Company shall comply with the PM₁₀ emission limit for reverberatory melting furnace EUALFURN1-S1 through associated flue SVALFURN1-S1 in PTI No. 63-19, as amended, and any subsequent incorporation of these limits into the Company's ROP.

9.D The Company shall comply with the PM, PM₁₀, NO_x, and SO₂ emission limits for reverberatory melting furnaces EUALFURN7-S1 and EUALFURN8-S1 in PTI No. 63-19, as amended, and any subsequent incorporation of these limits into the Company's ROP.

9.E The Company shall comply with the NO_x and PM emission limits for reverberatory holding furnace EUALFURN2-S1 through associated flue SVALFURN2-S1 in PTI No. 63-19, as amended, and any subsequent incorporation of these limits into the Company's ROP.

9.F The Company shall comply with the Testing/Sampling conditions associated with SVIMREVFLUE-S2, EUALFURN1-S1, SVALFURN1-S1, EUALFURN7-S1, and EUALFURN8-S1 in PTI Nos. 63-19 and 64-19, as amended, and any subsequent incorporation of these conditions into the Company's ROP.

Force Majeure

10.A The Company shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the Company's obligations under this Consent Order in accordance with this section.

10.B For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the Company, such as: an Act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the Company's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the Company's actions or omissions.

10.C The Company shall notify EGLE, by telephone, within 48 hours of discovering any event that may cause a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the Company to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Company shall adopt all reasonable measures to avoid or minimize any such delay.

10.D Failure of the Company to comply with the notice requirements and time provisions under paragraph 10.C shall render this paragraph 10 void and of no force and effect as to the

particular incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.C, above.

10.E If the parties agree that the delay or anticipated delay was beyond the control of the Company, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, EGLE is the final decision-maker on whether or not the matter at issue constitutes a force majeure. The burden of proving that any delay was beyond the reasonable control of the Company, and that all the requirements of this paragraph 10 have been met by the Company, rests with the Company.

10.F An extension of one compliance date based upon a particular incident does not necessarily mean that the Company qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

GENERAL PROVISIONS

11. This Consent Order in no way affects the Company's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Part 55, or their rules and regulations, or to the State Implementation Plan.

12. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

13. Within thirty (30) days after the effective date of this Consent Order, the Company shall pay to the General Fund of the State of Michigan, in the form of a check made payable to the "State of Michigan" and mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$200,000.00, which includes AQD costs for investigation and enforcement. This total settlement amount shall be paid within thirty (30) days after the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40221" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

14. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 9.A, 9.B, 9.C, 9.D, 9.E, or 9.F of this Consent Order, the Company is subject to a stipulated fine of up to \$4,000.00 per violation per day. The amount of the stipulated fines imposed

pursuant to this paragraph shall be within the discretion of EGLE. Stipulated fines submitted under this Consent Order shall be made by check, payable to the State of Michigan within thirty (30) days after written demand and shall be mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40221-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way the Company's obligation to comply with the terms and conditions of this Consent Order.

15. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or EGLE administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

16. To ensure timely payment of the settlement amount assessed in paragraph 13 and any stipulated fines assessed pursuant to paragraph 14 of this Consent Order, the Company shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest penalty shall be determined at a rate of twelve percent (12%) per year compounded annually, using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by the Company shall be made to the State of Michigan in accordance with paragraph 14 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by the Company before any remaining balance is applied to subsequent payment amount or interest penalty.

17. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 13. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 14 of this Consent Order but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by EGLE of stipulated fines is made. In addition, the Company agrees that said fines have not been assessed by EGLE pursuant to Section 5529 of Part 55, MCL 324.5529, and therefore are not reviewable under Section 5529 of Part 55.

18. This compliance program is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55, MCL 324.5538.

19. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, this Consent Order shall terminate only upon written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, the Company shall

submit a request, to the AQD Director at the Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Company has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Kalamazoo District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facilities with SRN N5957; and, (iv) such information as may be requested by the AQD Director.

20. In the event the Company sell or transfer one or both of the facilities with SRN N5957, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, the Company shall also notify the AQD Kalamazoo District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, the Company must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the AQD Kalamazoo District Supervisor within thirty (30) days after assuming the obligations of this Consent Order.

21. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, MCL 324.5511 and MCL 324.5528(3), the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

22. Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of the NREPA, MCL 324.1701 *et seq.*, and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

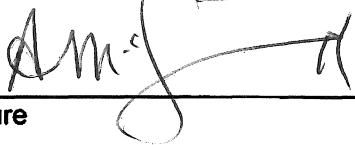
23. The Company hereby stipulates that entry of this Consent Order is a result of an action by EGLE to resolve alleged violations of its facilities located at 267 North Fillmore Road and 368 West Garfield Avenue, respectively, in the City of Coldwater, County of Branch, State of Michigan. The Company further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Company files for bankruptcy in the future, to the extent allowed by applicable bankruptcy law. The Company will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Company will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Company, during and after any future bankruptcy proceedings, will ensure that the


settlement amount and any future stipulated fines remain an obligation to be paid in full by the Company to the extent allowed by applicable bankruptcy law.

The undersigned certifies that he/she is fully authorized by Real Alloy Recycling, LLC and Real Alloy Specification, LLC to enter into this Consent Order and to execute and legally bind them to it.

REAL ALLOY RECYCLING, LLC

Andrew M. Jennings - Director HS&E
Print Name and Title


 Dated: 11-21-19
Signature

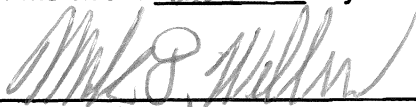
Subscribed and sworn to by the above signatory before me on this 21st day of
November, 2019. 
Notary Public Signature

Mark D. Weller, Attorney at Law
Notary Public – State of Ohio
My commission has no expiration date - Section 147.03 O.R.C.

REAL ALLOY SPECIFCIATION, LLC

Andrew M. Jennings - Director HS&E
Print Name and Title

 Dated: 11-21-19
Signature

Subscribed and sworn to by the above signatory before me on this 21st day of
November, 2019. 
Notary Public Signature

Mark D. Weller, Attorney at Law
Notary Public – State of Ohio
My commission has no expiration date - Section 147.03 O.R.C.

Approved as to Content:

Approved as to Form:



Mary Ann Dolehanty, Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES,
AND ENERGY



Neil Gordon, Section Head
ENVIRONMENTAL REGULATION SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

Dated: 11/26/2019


Dated: 11/26/2019

FINAL ORDER

The Director of the Air Quality Division having had opportunity to review this Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environment, Great Lakes, and Energy pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that this Consent Order is approved and shall be entered in the record of EGLE as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY



Mary Ann Dolehanty, Director
Air Quality Division

Effective Date: 11/26/2019