

causing a visible plume. Creating conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.a.

As a result of the aforementioned violation, Notice of Violation (NOV) No. NW-TAM-032411-001 was issued to Aleris.

- b. WVDEP personnel spoke with Mr. John Hirschfield, an Aleris representative, who informed WVDEP personnel that the contaminated run-off was emulsified cooling oil from the aluminum turnings. Mr. Hirschfield stated that he was knowledgeable of the discharge which occurred on March 23, 2011. Aleris failed to immediately report the discharge to the Office of Water Resources Emergency Notification Number, a violation of WV Legislative Rule 47CSR11 Section 2.2. As a result of the aforementioned violation, NOV No. NW-TAM-032411-002 was issued to Aleris.
 - c. Aleris failed to immediately take any and all measures necessary to contain the discharge, a violation of WV Legislative Rule 47CSR11 Section 2.5.
3. On October 18, 2011, WVDEP personnel conducted a Compliance Evaluation Inspection (CEI) at Aleris. WVDEP personnel observed and documented the following violations:
- a. NOV No. NW-TAM-101811-001 was issued to Aleris for the following violations of its WV/NPDES Permit Section B.17.B.
 - i. Groundwater quality information was not available, as required by Section B.17.B.5.
 - ii. Quarterly site inspections were not being conducted, as required by Section B.17.B.8.
 - b. NOV No. NW-TAM-101811-002 was issued to Aleris for the following violations of its WV/NPDES Permit Section B.17.A.
 - i. Spill reports were not documented, as required by Section B.17.A.a.1.E and Section B.17.A.a.2.J.
 - ii. An estimated area of impervious surfaces was not available, as required by Section B.17.A.a.1.B.
 - iii. The facility site map was incomplete and did not include drainage and discharge points, as required by Section B.17.A.a.1.A.
 - iv. A preventative maintenance program to inspect stormwater pollution devices was insufficient and did not include inspection and maintenance of stormwater ditches, catch basins and truck wash holding tanks, as required by Section B.17.A.a.2.C.
 - v. Areas where potential spills can occur and the associated drainage points were not clearly identified in the stormwater pollution prevention plan. Procedures for cleaning up spills were not identified in the plan. Necessary equipment to implement a cleanup was not available, as required by Section B.17.A.a.2.E.
 - vi. Visual inspections of material handling areas were not being conducted, as required by Section B.17.A.a.2.I.
 - vii. Annual site inspections were not being conducted, as required by Section B.17.A.b.
 - viii. Several used submerged absorbent booms were observed in the southwest corner of Lot B where stormwater drains to a three (3) feet deep manhole

- and is subsequently pumped to the truck wash holding tank. This deficiency is a violation of Section B.17.A.a.2.D.
- ix. An excessive amount of small aluminum pieces and turnings were present in various areas of the facility. These pieces were migrating from asphalt surfaces onto the ground and into drainage areas, increasing the risk of contaminating groundwater and surface water. This deficiency is a violation of Section B.17.A.a.2.D.
 - x. Pallets of bulk aluminum were improperly stored on Lot B and were partially placed on the grass, increasing the risk of contaminating groundwater and surface water. This deficiency is a violation of Section B.17.A.a.2.D.
- c. NOV No. NW-TAM-101811-003 was issued to Aleris for the following violation of its WV/NPDES Permit Appendix A.I.
 - i. Outfall marker 001 could not be located, a violation of Appendix A.I.13.
 - d. NOV No. NW-TAM-101811-004 was issued to Aleris for the following violations of its WV/NPDES Permit Appendix A.II.
 - i. Lots A and B had severe cracks in the pavement, allowing potential conduits of stormwater to flow into groundwater, violating Appendix A.II.1.
 - ii. Large holes were present in the walls of the Salt Cake Building. A large area in the floor of the Salt Cake Building was busted and missing. Failure to maintain all facilities is a violation of Appendix A.II.1.
 - iii. The pavement beside the Salt Cake Building and the Rotary Building had severe cracks, allowing for potential groundwater contamination from stormwater. This deficiency is a violation of Appendix A.II.1.
 - iv. Secondary containment for Tank No. 6 contained approximately 1 1/2" of petroleum product (hydraulic oil). This is a violation of Appendix A.II.1.
 - e. NOV No. NW-TAM-101811-005 was issued to Aleris for the following violation of its WV/NPDES Permit Appendix A.III.
 - i. Aleris did not have records dating past one (1) year, a violation of Appendix A.III.6.
 - f. NOV No. NW-TAM-101811-006 was issued to Aleris for the following violation of its WV/NPDES Permit Section B.
 - i. From June 11, 2009 to April 8, 2011, eight (8) exceedances of Aleris' Benchmark Values were observed and documented. Exceedances included those for manganese, lead, zinc, copper, aluminum and iron. Benchmark value excursions necessitate that the Stormwater Pollution Prevention Plan (SWPPP) and Groundwater Protection Plan (GPP) be updated within thirty (30) days of finding the previous year's sampling results over the cut-off value. These plans are required to be reviewed and revised annually; however, Aleris' SWPPP and GPP had not been updated since 2009.
- 4. On June 6, 2012, WVDEP personnel and representatives of Aleris met to discuss the terms and conditions of this Order.
 - 5. On July 19, 2012, WVDEP personnel and a representative of Aleris conducted a phone meeting to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Aleris shall immediately initiate quarterly and annual site inspections, as specified in its WV/NPDES Permit.
2. Within twenty (20) days of the effective date of this Order, Aleris shall ensure that all spill kits are complete and located in all areas where potential spills may occur.
3. Within twenty (20) days of the effective date of this Order, Aleris shall generate and initiate a preventative maintenance program.
4. Within twenty (20) days of the effective date of this Order, Aleris shall submit an updated SWPPP and GPP.
5. Within twenty (20) days of the effective date of this Order, Aleris shall submit a housekeeping plan addressing how migration of small aluminum pieces and turnings will be controlled.
6. Within thirty (30) days of entry of this Order, Aleris shall make necessary alterations, repairs and/or revisions to its loose aluminum turnings storage area to prevent, control and mitigate all unauthorized discharges. The activity shall include efforts to repair all cracks and fissures within the storage pad that will result in off-site migration and/or groundwater infiltration.
7. Within twenty (20) days of the effective date of this Order, Aleris shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Aleris will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan shall include, but not be limited to, the following:
 - a. a strategy to segregate stormwater from mixing with potential pollutants.
 - b. a strategy to prevent groundwater infiltration from all storage areas.
 - c. a letter affirming completion of Order For Compliance Nos. One (1), Two (2), and Three (3).

The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road, Suite #1
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

8. Because of Aleris' WV Legislative Rule and permit violations, Aleris shall be assessed a civil administrative penalty of twenty-three thousand four hundred thirty dollars (\$23,430) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Aleris hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Aleris agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Aleris does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Aleris other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Aleris shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after

Aleris becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Aleris intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Aleris (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Aleris of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Aleris to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Aleris, its successors and assigns.
7. This Order shall terminate upon Aleris' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Fred Ackerman
Acting Plant Manager

8/14/12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

RECEIVED

AUG 16 2012

ENVIRONMENTAL
ENFORCEMENT

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Aleris Recycling Bens Run, LLC Receiving Stream: UT of Ohio River

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	3a	3b	3c	3d	3e	3f				
a)	Amount of Pollutant Released	1 to 3	2	1	1	1	2	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	0	1	0	1	0	1	0	0				
c)	Sensitivity of the Environment	0 to 3	1	0	1	0	1	0	1	0	0				
d)	Length of Time	1 to 3	1	2	2	1	1	1	1	1	3				
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	0	1	0	1	0	0				
Average Potential for Harm Factor			1.2	0.6	1.2	0.4	1.2	0.4	1	0.4	0.8	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	3	3	3				

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Moderate	Major	\$4,200	1	\$4,200
2b	Minor	Major	\$1,800	1	\$1,800
2c	Moderate	Major	\$4,200	1	\$4,200
3a	Minor	Major	\$1,700	1	\$1,700
3b	Moderate	Major	\$4,200	1	\$4,200
3c	Minor	Major	\$1,700	1	\$1,700
3d	Minor	Major	\$2,000	1	\$2,000
3e	Minor	Major	\$1,700	1	\$1,700
3f	Minor	Major	\$1,900	1	\$1,900
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$23,400

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$23,430

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	