

**ENVIRONMENTAL PROTECTION AGENCY**

[Docket ID Number EPA-HQ-OECA-2009-0563; FRL-9107-4]

**Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment, and Opportunity To Comment Regarding Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, wholly owned subsidiaries of Norsk Hydro Aluminum North America, Inc.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a Consent Agreement with Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, wholly owned subsidiaries of Norsk Hydro Aluminum North America, Inc. (Hydro) to resolve violations of the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations at 16 facilities listed below:

249 South 51st Avenue, Phoenix, AZ 85043;

100 Gus Hipp Blvd., Rockledge, FL 32955-4701;

200 Riviera Blvd., St. Augustine, FL 32086;

Henry Street, North Liberty, IN 46554; 400 South Main Street, North Liberty, IN 46554;

5801 Riverport Road, Henderson, KY 42420;

1607 East Maumee Street, Adrian, MI 49221;

5375 North Riverview Drive, Kalamazoo, MI 49004;

Sale Barn Road, Cassville, MO 65625;

808 County Road, Monett, MO 65708;

401 North Stolle Avenue, Sidney, OH 45365;

2490 Ross Street, Sydney, OH 45363; 9 Aluminum Drive, Ellenville, NY 12428;

117 Blake Dairy Road, Belton, SC 29627; 171 Industrial Blvd., Fayetteville, TN 37334;

200 Economic Drive, Commerce, TX 75248.

The Administrator is hereby providing public notice of this proposed Consent Agreement and Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, EPCRA, RCRA, and CAA portions of this Consent Agreement, in

accordance with CWA sections 309(g)(4)(A) and 311(b)(6)(C)(i), 33 U.S.C. 1319(g)(4)(A), and 1321(b)(6)(C)(i).

**DATES:** Comments are due on or before March 1, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2009-0563, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), Attention Docket ID No. EPA-HQ-OECA-2009-0563.

- *Fax:* (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2009-0563.

- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OECA-2009-0563.

- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0563. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

**FOR FURTHER INFORMATION CONTACT:** Michael Calhoun, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-6031; fax: (202) 564-9001; e-mail: [calhoun.michael@epa.gov](mailto:calhoun.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In July 2005, Hydro voluntarily disclosed violations of the CWA, CAA, RCRA, and EPCRA at 16 of its North American facilities pursuant to EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Final Policy Statement* (Audit Policy), 65 FR 19618 (Apr. 11, 2000). Hydro also provided supplemental audit reports in 2006 and 2007. EPA and Hydro have signed an administrative Consent Agreement,

following the Consolidated Rules of Practice, 40 CFR 22.13(b) (In Re: Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, Docket Nos. CWA-HQ-2009-8002, CAA-HQ-2009-8002, EPCRA-HQ-2009-8002, RCRA-HQ-2009-8002). In the settlement agreement, Hydro will pay a civil penalty of \$119,365.

#### *CWA Violations*

Respondents had inadequate and/or failed to prepare and implement Spill Prevention, Control, and Countermeasure (SPCC) plans at four facilities listed below in violation of CWA section 311(j) and 40 CFR Part 112:

5801 Riverport Road, Henderson, KY 42420;  
5375 North Riverview Drive, Kalamazoo, MI 49004;  
808 County Road, Monett, MO 65708;  
117 Blake Dairy Road, Belton, SC 29627.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is March 1, 2010. All comments will be transferred to the Environmental Appeals Board (EAB) of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Hydro also disclosed that it had an inadequate Stormwater Pollution Prevention Plan (SWPPP) and/or failed to prepare and implement a SWPPP at the six facilities listed below in violation of federal/state Multi-Sector General Stormwater Permits (MSGP) and 40 CFR Part 122.41:

249 South 51st Avenue, Phoenix, AZ 85043;  
5801 Riverport Road, Henderson, KY 42420;

1607 East Maumee Street, Adrian, MI 49221;  
5375 North Riverview Drive, Kalamazoo, MI 49004;  
117 Blake Dairy Road, Belton, SC 29627;  
171 Industrial Blvd., Fayetteville, TN 37334.

Hydro also failed to obtain coverage under an MSGP at four facilities below in violation of 40 CFR Part 122.26:

Henry Street, North Liberty, IN 46554;  
400 South Main Street, North Liberty, IN 46554;  
Sale Barn Road, Cassville, MO 65625;  
401 N. Stolle Avenue, Sidney, OH 45365.

Hydro also failed to prepare and submit annual operating reports, and did not submit timely quarterly monitoring reports for the Monett, MO facility as required by the state MSGP.

Hydro also failed to comply with pretreatment regulations found at 40 CFR 403.12(e), 40 CFR 467.35 and 40 CFR 467.53 at the Ellenville, NY facility by failing to submit semi-annual compliance reports since 1997 and failing to document baseline or initial compliance reports. All of the above CWA violations are described in detail in Attachments A and B of the proposed Consent Agreement.

EPA, as authorized by CWA 311(b)(6), 33 U.S.C. 1321(b)(6), and CWA 309(g)(2)(B), 33 U.S.C. 1319(g)(2)(B), has assessed a civil penalty for the CWA violations described above.

#### *EPCRA Violations*

Hydro also disclosed that it had failed to comply with EPCRA section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR Parts 355.30 and 370.25, when it failed to prepare and submit emergency and chemical inventory forms (Tier II) to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and/or the fire department with jurisdiction over each facility for the five facilities listed below:

100 Gus Hipp Blvd., Rockledge, FL 32955-4701;  
400 South Main Street, North Liberty, IN 46554;  
1607 East Maumee Street, Adrian, MI 49221;  
5375 North Riverview Drive, Kalamazoo, MI 49004;  
401 N. Stolle Avenue, Sidney, OH 45365.

Hydro also disclosed that it had failed to comply with EPCRA section 313, 42 U.S.C. 11023, and the regulations found at 40 CFR 372.22 and 40 CFR 372.30, when it failed to report the annual estimated releases of various chemicals

and/or metals in Form R reports in a timely manner for the five facilities listed below:

100 Gus Hipp Blvd., Rockledge, FL 32955-4701;  
200 Riviera Blvd., St. Augustine, FL 32086;  
1607 East Maumee Street, Adrian, MI 49221;  
808 County Road, Monett, MO 65708;  
117 Blake Dairy Road, Belton, SC 29627.

The specific EPCRA violations above are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Under EPCRA section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR Part 22.

#### *RCRA Violations*

Hydro also disclosed that it had failed to comply with RCRA and the regulations found at 40 CFR Parts 262 and 265 when it failed to perform inspections, maintain records, develop contingency plans, and conduct training with regard to stored hazardous wastes for the three facilities listed below. The specific violations are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by RCRA sections 3008(a) and (g), 42 U.S.C. 6928(a) and (g), has assessed a civil penalty for these violations:

5801 Riverport Road, Henderson, KY 42420;  
5375 North Riverview Drive, Kalamazoo, MI 49004;  
9 Aluminum Drive, Ellenville, NY 12428.

#### *CAA Violations*

Hydro also failed to comply with CAA section 112, 42 U.S.C. 7412, and 40 CFR Part 63, by having inadequate operation and maintenance plans, late submission of operation and maintenance plans, failure to have a startup, shutdown and malfunction plan, late submission of performance tests, lack of process monitoring, failure to keep records, failure to calibrate scales, and no documentation of an initial applicability determination for a boiler and process heater at three facilities listed below. The specific violations are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by CAA sections 113(a)(3) and (d), 42 U.S.C.

7413(a)(3) and 7413(d), has assessed a civil penalty for these violations:  
 249 South 51st Avenue, Phoenix, AZ 85043;  
 808 County Road, Monett, MO 65708;  
 200 Economic Drive, Commerce, TX 75248.

EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: January 20, 2010.

**Bernadette Rappold,**  
*Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 2010-1741 Filed 1-27-10; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9107-3, EPA-HQ-OW-2008-0238]

**Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated With Construction Activities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are modifying the 2008 National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges associated with construction activity in order to extend by one year the expiration date of the permit. Hereinafter, these NPDES general permits will be referred to as “permit” or “2008 construction general permit” or “2008 CGP.” The 2008 CGP was originally issued for a period of two (2) years. Today, EPA is modifying the CGP in order to extend the 2 year term of the 2008 CGP by one year so that it expires on June 30, 2011, instead of June 30, 2010, resulting in a permit that will be in effect for a total period of three (3) years. By Federal law, no NPDES permit may be issued for a period that exceeds five (5) years.

**DATES:** EPA is modifying its 2008 Construction General Permit by extending the permit by one year. This permit modification is effective on January 20, 2010. The 2008 Construction General Permit will now

expire on midnight June 30, 2011, instead of June 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564-0721; fax number: (202) 564-6431; e-mail address: *schaner.greg@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

If a discharger chooses to apply for coverage under the 2008 CGP, the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry .....	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities: Building, Developing and General Contracting ..... Heavy Construction .....	233 234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding “**FOR FURTHER INFORMATION CONTACT**” section.

Eligibility for coverage under the 2008 CGP is limited to operators of “new projects” or “unpermitted ongoing projects.” A “new project” is one that

commences after the effective date of the 2008 CGP. An “unpermitted ongoing project” is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. This permit is effective only in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the 2008 CGP.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2008-0238. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington,

DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *http://www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at *http://www.epa.gov/fedrgstr/*. Electronic versions of the final permit and fact sheet are available at EPA’s stormwater Web site *http://www.epa.gov/npdes/stormwater*.