

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Dameron Alloy Foundries, Inc.
927 South Santa Fe Avenue
P.O. Box 8000
Compton, California 90224

EPA ID No. CAD 008502155

Respondent

Docket HWCA 2009-1977

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Dameron Alloy Foundries, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent is the Importer of Record for scrap metal, including fine metal powders, generated in Mexico. Fine metal powders are defined as a California hazardous waste when imported into the United States for recycling, unless the Department has granted exclusion under California Health and Safety Code section 25143.2. Under federal law, fine metal powders are managed as a secondary material or by-product exhibiting a characteristic of a hazardous waste. Respondent operates metal foundry facilities located in the City of Compton, California and in the City of Mexicali, Baja California, Mexico.

2. On October 3, 2008, the Department conducted an inspection of a shipment of twenty 55-gallon metal drums that contained "fine metal powder", a California hazardous waste, at the United States Customs and Border Protection Calexico East Port of Entry.

3. Based on this inspection the Department alleges the following violations:

3.1. Respondent violated California Code of Regulations, title 22, section 66262.11(a); in that on or about October 3, 2008, Respondent failed to

characterize a shipment of “fine metal powders” (residual material) as a California hazardous waste; Respondent declared the fine metal powder as “scrap metal”. Analytical sample results of the fine metal powder showed chromium, copper, nickel and molybdenum above the State Regulatory Levels. Under State hazardous waste laws and regulations, fine metal powders are not defined as “scrap metal” and must be managed as a hazardous waste.

3.2. Respondent violated California Health and Safety Code section 25160(b) (1) and California Code of Regulations, title 22, section 66262.20(a) in that on or about October 3, 2008, Respondent offered for transport a shipment of twenty 55-gallon metal drums that contained “fine metal powders”, a California hazardous waste, without preparing a Uniform Hazardous Waste Manifest.

3.3. Respondent violated California Health and Safety Code section 25163(a) in that on or about October 3, 2008, Respondent transferred a shipment of twenty 55-gallon metal drums that contained “fine metal powders”, a California hazardous waste, to a transporter without valid registration issued by Department.

3.4. Respondent violated California Code of Regulations, title 22, section 66265.173 (a) (b) in that on or about October 3, 2008, Respondent failed to keep containers of hazardous waste closed. Respondent imported a shipment of twenty 55-gallon metal drums that contained “fine metal powders”, a California hazardous waste with no lids and two drums had holes and fissures. The holes were from 2-4 inches wide, which resulted in releases of hazardous waste to the truck floor.

3.5. Respondent violated California Code of Regulations, title 22, section 66265.31 in that on or about October 3, 2008, Respondent failed to label or mark all hazardous waste containers per Department of Transportation requirements. A total twenty (20) 55-gallon metal drums that contained “fine metal powders”, a California hazardous waste, were missing the required labels.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondent waives any right to a hearing in this matter.
8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.
9. Respondent admits the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:
 - 10.1.1. Respondent shall accurately characterize all hazardous waste and manage said wastes in accordance with the applicable provisions of the Hazardous Waste Control Laws and implementing regulations.
 - 10.1.2. Effective immediately, Respondent shall not transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by Department..
 - 10.1.3. Effective immediately, Respondent shall not import hazardous waste, including fine metal powders, without a complete Uniform Hazardous Waste Manifest. The manifest shall be completed as required by State law and regulations.
 - 10.1.4. Effective immediately, Respondent shall not store and transport fine metal powders, a Non-RCRA hazardous waste in containers that are not structurally sound. Respondent shall use leak proof and structurally sound containers to store and transport hazardous in accordance with the applicable provisions of the Hazardous Waste Control Laws and implementing regulations.
 - 10.1.5. Effective immediately, Respondent shall mark and label all containers holding Non-RCRA hazardous waste with Hazardous Waste labels in accordance with the applicable provisions of the Hazardous Waste Control Laws and implementing regulations.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Mr. Alfredo Rios, Unit Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further

implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order.

Respondent shall preserve all such data, reports, and other documents for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS:

11. Respondent shall pay the Department a total penalty of \$10,000.00. Of the total due, \$2,000.00 is a penalty; \$4,000.00 shall be a credit for attending

California Compliance School and \$4,000.00 shall be a credit for a Supplemental Environmental Project (SEP).

11. 1. The penalty shall be submitted within 30 days of the effective date of this Consent Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number (HWCA 2009-1977) on the check. Respondent shall transmit the penalty payments to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Alfredo Rios, Unit Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11.2. Respondent hereby agrees to send two employees to specified California Compliance School (Modules I-IV). Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 180 days of the date of this Order. In recognition of this educational investment, Respondent has received a credit of \$4,000.00, if the employee(s) satisfactorily completes the specified modules. If Respondent fails to submit the certificate as required, the penalty is due and payable within 30 days after the 180-day period expires.

11.3. Supplemental Environmental Projects: The Department shall give Respondent a credit of \$ 4,000.00 for a Supplemental Environmental Project (SEP). Respondent shall complete the proposed SEP within 180 days of the effective date of this Order. In addition, Respondent shall within 30 days of the effective date of this Order, submit a SEP Proposal that shall describe the specific actions to be performed by the Respondent, and provide for a reliable and objective means to verify that the Respondent has timely completed the project.

In the event that Respondent shall fails to submit such a Proposal or complete the required SEP, the penalty is due and payable within 30 days after the 180-day period expires.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: May 7, 2009

Original signed by Oscar Espinosa

Mr. Oscar Espinosa, Plant Manager
DAFMEX, S. de R.L. de C.V. and/or
Dameron Alloy Foundries, Inc.

Dated: May 13, 2009

Original signed by Jose Alfredo Rios

Mr. Alfredo Rios, Unit Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control