UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 29 2012

CERTIFIED MAIL 70113500000320640024
RETURN RECEIPT REQUESTED

Biltmore Iron and Metal Company, Incorporated
ATTN: Ms. Vonna Cloninger, Chief Executive Officer
One Meadow Road
Asheville, North Carolina 28802

Re: Consent Agreement and Final Order
Docket No. CWA-04-2012-4514(b)

Dear Ms. Cloninger:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note that you have met all of the provisions under this Final Order. We acknowledge receipt of full payment in the amount of $9,000.

Should you have any questions or concerns regarding this matter, please contact Ms. Susan Pope at (404) 562-9770 or via email at pope.susan@epa.gov.

Sincerely,

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Charles Wakild
Director, North Carolina Department of Environment and Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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EPA REGION IV
2012 MAY 29 PM 2:56
HEARING CLERK

IN THE MATTER OF:	)	
	)	CONSENT AGREEMENT AND
BILTMORE IRON AND METAL CO., INC.	)	FINAL ORDER
ASHEVILLE, NORTH CAROLINA	)	
	)	
RESPONDENT.	)	DOCKET NO. CWA-04-2012-4514(b)
	)	

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2) (A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g) (2) (A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Biltmore Iron and Metal Company, Inc. ("Respondent"), a corporation duly organized and existing under the laws of the State of North Carolina and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated a scrap metal facility located at 1 Meadow Road in Asheville, North Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National

Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System for Construction Activities*, Permit No. NCG20000 ("Permit"), establishments primarily engaged in assembling, breaking up, sorting and whole trade of scrap metal Standard Industrial Classification ("SIC") Code 5093 and areas at scrap metal recycling facilities which are used to process other scrap materials (plastic, paper, glass, rubber and textiles) or used for vehicle maintenance activities, in accordance with North Carolina General Statue 153-215.1 and the CWA. The Permit was effective January 1, 2010, and shall expire on December 31, 2014.

8. The NCDENR Division of Water Quality is responsible for the approval of coverage under the Permit upon receipt of a Notice of Intent ("NOI").

9. On February 11, 2010, the Respondent received coverage under the Permit from NCDENR. The Permit shall expire on December 31, 2014.

10. Part II.A.1 of the Permit requires the development of a Stormwater Pollution Prevention Plan ("SWPPP") which shall include:

A. a site plan which provides a description of the physical facility and the potential pollutant sources which may be expected to contribute to contamination of stormwater discharges;

B. a general location map showing the facility's location in relation to transportation routes and surface waters, the name of the receiving water, and accurate latitude and longitude of the point(s) of discharge;

C. a narrative description of storage practices, loading and unloading activities, outdoor process areas, dust or particulate generating or control processes, waste disposal practices and a description of the potential pollutants which could be expected to be present in the any stormwater discharge from each outfall; and

D. a site map depicting the site property boundary, the stormwater discharge outfalls, all on-site and adjacent surface waters and wetlands, industrial activity areas, site topography, all drainage features and structures, drainage areas for each outfall, direction of flow in each drainage area, industrial activities occurring in each drainage area, buildings, existing

Best Management Practices ("BMPs"), impervious surfaces and a distance legend indicating the percentage of each drainage area that is impervious.

11. Part II.A.2 of the Permit requires the SWPPP to include a Stormwater Management Plan which contains a narrative description of the materials management practices which control or minimize the exposure of significant materials to stormwater, including structural and nonstructural measures. The Stormwater Management Plant shall include:

A. a feasibility study to include a review of the technical and economic feasibility of changing the methods of operations and/or storage practices to eliminate or reduce exposure of materials and processes to stormwater. Wherever practical, RESPONDENT shall prevent exposure of all storage areas, material handling operations, and manufacturing or fueling operations. In areas where elimination of exposure is not practical, the stormwater management plan shall document the feasibility of diverting stormwater runoff away from areas of potential contamination; and

B. a listing of site structural and non-structural BMPs. A BMP Summary shall include a written record of the specific rationale for installation and implementation of the selected site BMPs and shall be reviewed and updated annually.

12. Part II.A.3 of the Permit requires the SWPPP to contain a Spill Prevention and Response Plan ("SPRP") which incorporates an assessment of potential pollutant sources based on a materials inventory of the facility. The SPRP team shall be identified in a written list incorporated into the SPRP signed and dated by each individual acknowledging their responsibilities for the SPRP. An oil Spill Prevention Control and Countermeasure Plan "SPCC") may be a component of the SPRP.

13. Part II.A.4 of the Permit requires the SWPPP to include a preventative maintenance and good housekeeping program which shall list all stormwater control systems, stormwater discharge outfalls, on-site and adjacent surface waters and wetlands, industrial activity areas, drainage features and structures and existing BMPs. The program shall establish schedules of inspections, maintenance and housekeeping activities of stormwater controls systems, facility equipment, facility areas and facility systems that present a potential for stormwater exposure or pollution. Inspection of material handling areas and regular cleaning schedules of these areas shall be incorporated into the program. Timely compliance with the established schedules for inspections, maintenance and housekeeping shall be recorded in writing and maintained in the SWPPP.

14. Part II.A.5 of the Permit requires the SWPPP to contain a training program that provides, at a minimum, annual training for facility personnel with responsibilities for: spill response and cleanup, preventative maintenance activities and for any of the facility's operations that have the potential to contaminate stormwater runoff. Facility personnel responsible for implementing the training shall be identified and their annual training shall be documented by the signature of each employee trained.

15. Part II.A.7 of the Permit requires amendment to the SWPPP whenever there is a change in design, construction, operation or maintenance which has a significant effect on the potential for the discharge of pollutants to surface waters. All aspects of the SWPPP shall be reviewed and updated on an annual basis. The annual update shall include: an updated list of significant spills or a statement that no spills have occurred; written re-certification that the stormwater outfalls have been evaluated for the present of non-stormwater discharges; and a documented re-evaluation of the effectiveness of the BMPs listed in the BMP Summary of the Stormwater Management Plan.

16. Part II.A.8 of the Permit requires inspections of the facility and all stormwater systems as part of the Preventative Maintenance and Good Housekeeping Program on at least a semi-annual schedule; once during the first half of the year (January to June) and once in the second half of the year (July to December), with at least sixty (60) days separating inspection dates (unless performed more frequently than semi-annually).

17. Part II.B of the Permit requires analytical monitoring of stormwater discharges at least twice per year via grab samples for pH, Chemical Oxygen Demand ("COD"), Total Suspended Solids ("TSS"), Oil and Grease, Total Recoverable Cadmium, Total Recoverable Copper, Total Recoverable Iron, Total Recoverable Lead, Total Recoverable Zinc and Total Rainfall. All analytical monitoring shall be performed during a representative storm event at each stormwater discharge outfall and shall not exceed the benchmark values contained in Table 3 of the Permit. Exceedance of the benchmark values require the permittee to increase monitoring, increase management actions, increase recordkeeping, and/or install stormwater BMPs as required in the tiered program contained in the Permit.

18. Part II.C of the Permit requires qualitative monitoring which includes visual inspection of each stormwater outfall regardless of representative status at least twice per year during a representative storm event. If the qualitative monitoring indicates either that the existing stormwater BMPs are ineffective, or that significant stormwater contamination is present, the permittee shall investigate potential courses, evaluate the feasibility of corrective actions, and implement those corrective actions appropriate. A written record of the investigation, evaluation and response actions shall be kept in the SWPPP.

19. Part III.C.1 of the Permit requires proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

20. Part III.D of the Permit contains the requirements for monitoring and sampling, recording sampling results, test procedures and records retention.

21. On March 2, 2011, representatives of the EPA, in conjunction with NCDENR, performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at Respondent to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 Code of Federal Regulations ("C.F.R.") § 122.26 and the Permit.

22. As a result of the CSWEI, the EPA, Region 4 determined that stormwater associated with industrial activity was discharged from Respondent within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into an unnamed tributary of the Swannanoa River, a water of the United States.

23. During the CSWEI, the EPA inspectors provided a copy of an "NPDES Inspection Observation Form" to Respondent representatives. The NPDES Inspection Observation Form and in the CSWEI Report, documented the following observations:

A. Respondent failed to develop and implement a SWPPP in accordance with Part II.A.1 of the Permit. Specifically, Respondent failed to: sign and date the SWPPP; develop a site plan; develop a general location map; provide a narrative description of storage practices, loading and unloading activities, outdoor process areas and waste disposal areas; and develop a site map.

B. Respondent failed to develop and implement a Stormwater Management Plan in accordance with Part II.A.2 of the Permit. The Stormwater Management Plan should have included a narrative description of the materials management practices; a feasibility study; and a BMP Summary.

C. Respondent failed to develop and implement SPRP and SPCC Plan in accordance with Part II.A.3 of the Permit.

D. Respondent failed to include and implement a preventative maintenance and good housekeeping program in its SWPPP as required by Part II.A.4 of the Permit.

E. Respondent failed to provide and implement a training program in the SWPPP as required by Part II.A.5 of the Permit.

F. Respondent failed to review and update its SWPPP on an annual basis as required by Part II.A.7 of the Permit.

G. Respondent failed conduct inspections on a semi-annual basis as required by Part II.A.8 of the Permit. Specifically, the inspections for 2009 were not available to the EPA inspectors.

H. Respondent failed to conduct all analytical monitoring as required by Part II.B of the Permit. Specifically, the data for 2009 was not available to the EPA inspectors. A review of the data available revealed that only one sample was collected for 2010. For that one 2010 sample, the benchmark values for COD, Total Recoverable

Cadmium and Total Recoverable Lead were exceeded. No samples were analyzed for pH, Oil and Grease, Total Recoverable Copper and Total Recoverable Zinc in the one 2010 analysis.

I. Respondent failed to conduct all qualitative monitoring and visual inspections required by Part II.C of the Permit.

24. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the NCDENR Permit.

25. On July 6, 2011, the EPA issued Administrative Order ("AO") No. CWA 04-2011-4771 and AO No. CWA 04-2012-4759 on December 16, 2011, requiring compliance with the Permit. The AOs requirements included modification to the Stormwater Pollution Prevention Plan ("SWPPP"), institution of an inspection and monitoring program, and Tier One and Two Evaluations. Respondent has undertaken corrective actions which addressed the conditions noted above.

III. Stipulations and Findings

26. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

27. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

28. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

29. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

30. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

31. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

32. Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

33. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Nine Thousand dollars ($9,000) is an appropriate civil penalty to settle this action.

34. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, Missouri 63197-9000

35. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

36. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

37. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

38. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

39. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

40. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

41. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

42. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

43. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

44. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

45. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Rolando E. Bascumbe
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9545

For the Respondent:

Vonna Cloninger
Chief Executive Officer
Biltmore Iron and Metal Company, Incorporated
One Meadow Road
Asheville, North Carolina 28802

46. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

48. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 5/29/12

For RESPONDENT: Biltmore Iron and Metal Company, Incorporated

NAME: Vonna Cloninger
TITLE: Chief Executive Officer

Date: 3/29/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	**CONSENT AGREEMENT AND**
BILTMORE IRON AND METAL CO., INC.	)	**FINAL ORDER**
ASHEVILLE, NORTH CAROLINA	)	
	)	
RESPONDENT.	)	**DOCKET NO. CWA-04-2012-4514(b)**
	)	

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits,* including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 29, 2012

Susan B. Schub
Regional Judicial Officer

Docket No. CWA **04-2012-4514(b)**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Biltmore Iron and Metal Company, Incorporated, **Docket No. CWA-04-2012-4514(b)** (filed with the Regional Hearing Clerk on MAY 29 2012, 2012, was served on MAY 29 2012 2012, in the manner specified to each of the persons listed below.

By hand-delivery:

Rolando Bascumbe
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Vonna Cloninger
Chief Executive Officer
Biltmore Iron and Metal Company, Incorporated
One Meadow Road
Asheville, North Carolina 28802

Charles Waklid
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Ms. Patricia A. Bullock
Regional Hearing Clerk
Sam Nunn Federal Center
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511