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Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HYDRO EXTRUSION USA, LLC,

Defendant.

Case No.: 3:22-cr-00299-MO

PETITION TO ENTER PLEA OF
GUILTY, CERTIFICATE OF
COUNSEL, AND ORDER ENTERING
PLEA

The defendant represents to the Court:

1. My name is Charles Straface. I am an adult. I am the Business Unit President of Hydro Extrusion USA, LLC (Hydro). I have been authorized by a written consent of the sole member of Hydro to act on behalf of Hydro in entering this plea. A copy of the written consent is attached as Exhibit A, hereto.

2. Hydro's attorneys in this matter are Per Ramfjord, Kristin Koehler, and Craig Dukin.

3. Hydro's attorneys and I have discussed Hydro's case fully. I have received a copy of the Information. I have read the Information and I have discussed the charges therein with Hydro's attorneys. Hydro's attorneys have counseled and advised me concerning the nature of each charge, any lesser included offense(s), and the possible defenses that Hydro might have in this case. I have been advised and understand that the elements of the charge of negligent endangerment by discharge of a hazardous pollutant, in violation of the Clean Air Act, Title 42, United States Code, Section 7413(c)(4) alleged against Hydro to which Hydro is pleading "GUILTY" are as follows:

- a. Hydro, a person, negligently released into the ambient air;
- b. a hazardous air pollutant (listed in 42 U.S.C. § 7412) or any extremely hazardous substance (listed pursuant to 42 U.S.C. § 11002(a)(2));
- c. and thereby negligently;
- d. placed another person in imminent danger of death or serious bodily injury.

4. I know that if Hydro pleads "GUILTY," I, as the designated corporate representative, will have to answer any questions that the judge asks me about the offense to which Hydro is pleading guilty. I also know that if I answer falsely, under oath, and in the presence of Hydro's attorney, my answers could be used against me in a prosecution for perjury or false statement.

5. I am not under the influence of alcohol or drugs. I am not suffering from any injury, illness, or disability affecting my thinking or my ability to reason. I have not taken any

drugs or medications within the past seven (7) days that have any impact on my thinking or my ability to reason.

6. I know that Hydro may plead "NOT GUILTY" to any crime charged against Hydro and that Hydro may persist in that plea if it has already been made. I know that if Hydro pleads "NOT GUILTY" the Constitution guarantees Hydro:

- a. The right to a speedy and public trial by jury, during which Hydro will be presumed to be innocent unless and until Hydro is proven guilty by the government beyond a reasonable doubt and by the unanimous vote of twelve jurors;
- b. The right to have the assistance of an attorney at all stages of the proceedings;
- c. The right to use the power and process of the Court to compel the production of evidence, including the attendance of witnesses in Hydro's favor; and
- d. The right to see, hear, confront, and cross-examine all witnesses called to testify against Hydro.

7. I know that if Hydro pleads "GUILTY," there will be no trial before either a judge or a jury, and that Hydro will not be able to appeal from the judge's denial of any pretrial motions Hydro may have filed concerning matters or issues not related to the Court's jurisdiction.

8. In this case Hydro is pleading GUILTY under Rule 11(c)(1)(C). Hydro's attorneys have explained the effect of Hydro's plea under Rule 11(c)(1)(C), to be as follows:

The Court must either accept the agreement and impose the sentence to which the parties stipulated herein or reject the agreement and thereby vitiate its terms, allowing the defendant to withdraw its plea and the government to pursue all lawful charges and to argue for any lawful sentence.

9. I know the maximum sentence that can be imposed on Hydro for each count of the crime of Negligent Endangerment in violation of the Clean Air Act to which Hydro is

pleading guilty is this offense is a fine of \$200,000 or twice the gross pecuniary gains or losses resulting from the offense, whichever is greater.

10. I know that the judge, in addition to any other penalty, will order a special assessment as provided by law in the amount of \$125 per count of conviction.

11. I know that if Hydro is ordered to pay a fine, and it willfully refuses to pay that fine, Hydro can be returned to Court, where the amount of the unpaid balance owed on the fine can be substantially increased by the Judge.

12. I know the sentencing judge, in determining the sentence to be imposed, must consider the facts set forth in Title 18, United States Code, Section 3553(a), including but not limited to: the nature and circumstances of the offense, Hydro's own history and characteristics, the goals of sentencing (punishment, deterrence, protection, and rehabilitation) and the sentencing range established by the advisory Guidelines. Hydro's attorneys have also discussed the Federal Sentencing Guidelines with me; however, I understand that those Guidelines are not applicable to this type of organizational offense. If Hydro's attorneys or any other person have calculated a potential sentence for me, I know that this is only a prediction and that it is the judge who makes the final decision as to what sentence will be imposed. I also know that a judge may not impose a sentence greater than the maximum sentence referred to in paragraph nine (9) above.

13. I know that in addition to or in lieu of any other penalty, the judge can order restitution payments to any victim of any offense to which Hydro pleads guilty. I am also informed that, for certain crimes of violence and crimes involving fraud or deceit, it is mandatory that the judge impose restitution in the full amount of any financial loss or harm caused by an offense. If imposed, the victim can use the order of restitution to obtain a civil judgment lien. A

restitution order can be enforced by the United States for up to twenty (20) years from the date of my release from imprisonment, or, if Hydro is not imprisoned, twenty (20) years from the date of the entry of judgment. If Hydro willfully refuses to pay restitution as ordered, a judge may resentence Hydro to any sentence that could originally have been imposed.

14. On any fine or restitution in an amount of \$2,500 or more, I know that Hydro will be required to pay interest unless that fine or restitution is paid within fifteen (15) days from the date of the entry of judgment.

15. Hydro's plea of "GUILTY" is based on a Plea Agreement that it has made with the prosecutor. That Plea Agreement is included with the consent attached hereto as Exhibit A and incorporated herein. I have read or had read to me the Plea Agreement, and I understand the Plea Agreement.

16. The Plea Agreement contains the only agreement between the United States government and Hydro. No officer or agent of any branch of government (federal, state, or local) or anyone else has promised or suggested that Hydro will receive a lesser term of imprisonment, or probation, or any other form of leniency if Hydro pleads "GUILTY" except as stated in the Plea Agreement. I understand that I cannot rely on any promise or suggestion made to Hydro by a government agent or officer which is not stated in writing in the Plea Agreement, or which is not presented to the judge in my presence in open court at the time of the entry of Hydro's plea of guilty.

17. Hydro's plea of "GUILTY" is not the result of force, threat, or intimidation.

18. I hereby request that the judge accept Hydro's plea of "GUILTY" to the following count(s): Count 1 of the Information filed in *United States v. Hydro Extrusion USA, LLC*, Case No. 3:22-cr-00299-MO.

19. I know that the judge must be satisfied that a crime occurred, and that Hydro committed that crime, before Hydro's plea of "GUILTY" can be accepted. With respect to the charge to which Hydro is pleading guilty, I represent that it did the following acts and that the following facts are true to the best of my knowledge and belief:

a. At all relevant times, Hydro operated a secondary aluminum processing facility in The Dalles, Oregon ("The Dalles Facility") that melted aluminum scrap (generally referred to as "charge") in induction furnaces to produce reusable aluminum generally in the form of logs or billets.

b. The Dalles Facility was subject to National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production (i.e., NESHAP RRR, 40 C.F.R. Part 63, Subpart RRR) under the Clean Air Act and operated under a Title V air permit issued by the Oregon Department of Environmental Quality ("DEQ"), a program approved by the U.S. Environmental Protection Agency ("EPA"). The induction furnaces at The Dalles Facility were Group 2 furnaces pursuant to the NESHAP RRR, which, along with the Title V air permit, required that only "clean charge" be melted in those furnaces.

c. The induction furnaces were open to the interior of the building in which they were located and where employees operated the furnaces; air emissions from those furnaces did not pass through any pollution control devices, and the building vented to the ambient air.

d. From not later than July 2018 and continuing through June 2019, The Dalles Facility processed, among other materials, scrap denominated as 1070 aluminum alloy as well as a blend containing 5000 and 6000 (or 5xxx and 6xxx) aluminum alloys

from a third-party aluminum recycling company based in West Oakland, California (“Supplier”). These materials constitute the “Relevant Scrap.”

e. Although The Dalles Facility’s purchase orders with the Supplier generally specified that the scrap to be received by The Dalles Facility must be clean charge, a mineral oil-based mixture had been used on some of the Relevant Scrap, and, therefore, it was not clean charge. Mineral oil, when combusted in an induction furnace, can create smoke containing 2,3,7,8-Tetrachlorodibenzo-p-dioxin and/or polycyclic organic matter, each a hazardous air pollutant.

f. From July 2018 through June 2019, The Dalles Facility failed to identify mineral oil on the Relevant Scrap and repeatedly melted the unclean charge in its Group 2 induction furnaces, in violation of its Title V permit. During this time period employees noticed that the Relevant Scrap was at times causing excessive smoke within The Dalles Facility.

g. Although The Dalles Facility began mixing the Relevant Scrap with clean scrap, it continued to melt the Relevant Scrap and failed to sufficiently investigate the source of the smoking or to determine that the Relevant Scrap was, in fact, unclean. Indeed, even after being told by EPA and DEQ inspectors that the charge they were using was not clean, and thus in violation of The Dalles Facility’s air permit, The Dalles Facility continued to melt the unclean charge.

h. In failing to identify the Relevant Scrap as being unclean due the mineral oil content and continuing to melt scrap that resulted in excessive smoking at times, The Dalles Facility negligently released a hazardous air pollutant to the ambient air. In so

doing, The Dalles Facility negligently placed individuals in imminent danger of death or serious bodily injury at times during the period from July 2018 through June 2019.

i. Defendant realized cost savings of approximately \$466,071 by purchasing the Relevant Scrap from the Supplier rather than purchasing actually clean scrap at market prices.

20. I offer Hydro's plea of "GUILTY" freely and voluntarily and of its own accord and with a full understanding of the allegations set forth in the Information, and with a full understanding of the statements set forth in this Petition and in the Certificate of Hydro's attorney that is attached to this Petition.

SIGNED by me in the presence of Hydro's attorney, after reading all of the foregoing pages and paragraphs of this Petition on the 24th day of January, 2023.



Charles Straface

**ACTION BY WRITTEN CONSENT
OF THE SOLE MEMBER OF
HYDRO EXTRUSION USA, LLC**

The undersigned, being the sole member and manager of Hydro Extrusion USA, LLC, a Delaware limited liability company ("*Company*"), pursuant to the provisions of the Delaware Limited Liability Company Act, as amended from time to time, and the limited liability company agreement of the Company, hereby consents to and adopts the following resolutions by written consent without a meeting, hereby waives all notice of a meeting and the holding of any meeting to act upon such resolutions, and directs the Secretary of the Company to file a copy hereof with the records of member proceedings of the Company, all effective as of August 22, 2022:

WHEREAS, the Company has been engaged in discussions with the United States Attorney's Office for the District of Oregon ("*United States*") regarding criminal environmental investigation into issues arising at the Company's facility in The Dalles, Oregon; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a plea agreement, in the form attached as Appendix A ("*Agreement*"), with the United States; and

WHEREAS, the Company's President, Charles J. Straface, together with outside counsel for the Company, have advised the sole member of the Company of its rights, possible defenses, the proposed fine and other conditions, and the consequences of entering into the Agreement with the United States;

Therefore, the sole member has **RESOLVED** that:

1. The Company acknowledges the statements and obligations in the Agreement and the related one-count Criminal Information (attached as Appendix B), including the misdemeanor charge of negligent endangerment in violation of the Clean Air Act, Title 42, United States Code, Section 7413(c)(4), the agreed upon fine and fee assessment totaling \$550,125, and the requirement for restitution to any victims, among other obligations in the Agreement;
2. The Company accepts the terms and conditions of the Agreement and understands that the Agreement and the Criminal Information will be filed publicly in federal court in Oregon;
3. The President of the Company, Charles J. Straface, is hereby authorized, empowered, and directed, on behalf of the Company, to execute the Agreement substantially in such form as reviewed by the sole member in connection with this Consent with such changes as the President of the Company, Charles J. Straface, may approve;
3. The President of the Company, Charles J. Straface, is hereby authorized, empowered, and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms, or provisions of the Agreement and any other agreement or document as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions and to address the consequences of the Agreement; and
4. All of the actions of the President of the Company, Charles J. Straface, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.
5. This Consent may be executed and returned by facsimile, electronic transmission, or electronic signature which, when so executed and returned, shall be deemed to be an original.

IN WITNESS WHEREOF, the undersigned, being the Sole Member, has executed this Consent with the same force and effect as if adopted at a duly noticed and held meeting of the Sole Member of the Company.

Hydro Holding North America, Inc.,
as Sole Member

By: Charles J. Straface
Name: Charles J. Straface
Title: President

APPENDIX 4

PORTLAND MAIN OFFICE
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204
(503) 727-1000
www.usdoj.gov/usao/or



EUGENE BRANCH
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Ryan W. Bounds
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Reply to Portland Office

U.S. DEPARTMENT OF JUSTICE
United States Attorney's Office
District of Oregon
Natalie K. Wight
United States Attorney

MEDFORD BRANCH
310 West Sixth Street
Medford, Oregon 97501
(541) 776-3564

August 5, 2022

Kristin Graham Koehler, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: *United States v. Hydro Extrusion USA, LLC*
Revised Pre-Charge Plea Offer

Dear Ms. Koehler:

Our offer dated July 27, 2022, has been revised as requested.

1. **Parties/Scope:** This revised plea agreement is between this United States Attorney's Office (USAO) and defendant Hydro Extrusion USA, LLC ("Hydro" or "defendant") and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement applies neither to any charges other than those specifically mentioned herein nor to any civil remedy that the Environmental Protection Agency or any other regulatory agency may seek.
2. **Charges:** Defendant agrees to plead guilty to the Information to be filed in this case, which is transmitted herewith and charges defendant with negligent endangerment by discharge of a hazardous pollutant, in violation of the Clean Air Act, Title 42, United States Code, Section 7413(c)(4).
3. **Penalties:** The maximum sentence for an organization found guilty of this offense is a fine of \$200,000 or twice the gross pecuniary gains or losses resulting from the offense, whichever is greater. Defendant must also pay a mandatory fee assessment of \$125 by the time of entry of its guilty plea. See 18 U.S.C. § 3013(a)(1)(B)(iii).
4. **Dismissal/No Prosecution:** The USAO agrees not to bring additional charges against defendant in the District of Oregon arising out of this investigation, insofar as all the material facts underlying such charges are known to the USAO at the time this agreement is tendered to defendant.

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5. **Elements of the Offense:** For defendant to be found guilty of Negligent Endangerment in violation of the Clean Air Act as alleged in the Information, the government must prove the following elements beyond a reasonable doubt:

- a. Hydro, a person, negligently released into the ambient air;
- b. A hazardous air pollutant (listed in 42 U.S.C. § 7412) or any extremely hazardous substance (listed pursuant to 42 U.S.C. § 11002(a)(2));
- c. and thereby negligently;
- d. Placed another person in imminent danger of death or serious bodily injury.

Defendant stipulates that uncontested and admissible evidence of its relevant conduct as summarized in paragraph 6, *infra*, establishes each of the foregoing elements beyond any reasonable doubt.

6. **Factual Basis and Relevant Conduct:** Defendant stipulates that the following is a true and accurate summary of its offense conduct. Defendant further agrees and avers that every statement herein and every allegation in the Information is true and correct and that the government could prove every statement beyond a reasonable doubt at trial, including through evidence of these admissions.

- A. At all relevant times, Hydro operated a secondary aluminum processing facility in The Dalles, Oregon ("The Dalles Facility") that melted aluminum scrap (generally referred to as "charge") in induction furnaces to produce reusable aluminum generally in the form of logs or billets.
- B. The Dalles Facility was subject to National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production (i.e., NESHAP RRR, 40 C.F.R. Part 63, Subpart RRR) under the Clean Air Act and operated under a Title V air permit issued by the Oregon Department of Environmental Quality ("DEQ"), a program approved by the U.S. Environmental Protection Agency ("EPA"). The induction furnaces at The Dalles Facility were Group 2 furnaces pursuant to the NESHAP RRR, which, along with the Title V air permit, required that only "clean charge" be melted in those furnaces.
- C. The induction furnaces were open to the interior of the building in which they were located and where employees operated the furnaces; air emissions from those furnaces did not pass through any pollution control devices, and the building vented to the ambient air.
- D. From not later than July 2018 and continuing through June 2019, The Dalles Facility processed, among other materials, scrap denominated as 1070 aluminum alloy as well as a blend containing 5000 and 6000 (or 5xxx and 6xxx) aluminum alloys from a third-party

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aluminum recycling company based in West Oakland, California ("Supplier"). These materials constitute the "Relevant Scrap."

- E. Although The Dalles Facility's purchase orders with the Supplier generally specified that the scrap to be received by The Dalles Facility must be clean charge, a mineral oil-based mixture had been used on some of the Relevant Scrap, and, therefore, it was not clean charge. Mineral oil, when combusted in an induction furnace, can create smoke containing 2,3,7,8-Tetrachlorodibenzo-p-dioxin and/or polycyclic organic matter, each a hazardous air pollutant.¹
 - F. From July 2018 through June 2019, The Dalles Facility failed to identify mineral oil on the Relevant Scrap and repeatedly melted the unclean charge in its Group 2 induction furnaces, in violation of its Title V permit. During this time period, employees noticed that the Relevant Scrap was at times causing excessive smoke within The Dalles Facility.
 - G. Although The Dalles Facility began mixing the Relevant Scrap with clean scrap, it continued to melt the Relevant Scrap and failed to sufficiently investigate the source of the smoking or to determine that the Relevant Scrap was, in fact, unclean. Indeed, even after being told by EPA and DEQ inspectors that the charge they were using was not clean, and thus in violation of The Dalles Facility's air permit, The Dalles Facility continued to melt the unclean charge.
 - H. In failing to identify the Relevant Scrap as being unclean due the mineral oil content and continuing to melt scrap that resulted in excessive smoking at times, The Dalles Facility negligently released a hazardous air pollutant to the ambient air. In so doing, The Dalles Facility negligently placed individuals in imminent danger of death or serious bodily injury at times during the period from July 2018 through June 2019.
 - I. Defendant realized cost savings of approximately \$466,071 by purchasing the Relevant Scrap from the Supplier rather than purchasing actually clean scrap at market prices.
7. **Waiver of Discovery:** As a material term of this offer and agreement, defendant expressly accepts the USAO's offer to make available the evidence gathered in the investigation of this matter for on-site inspection and the USAO's production of limited discovery as of the date of this agreement in full satisfaction of the government's discovery obligations in this case. Defendant knowingly, intelligently, and voluntarily waives its rights to further production of evidence or information from the government, even though it may be entitled to such production pursuant to the Federal Rules of Criminal Procedure, the discovery orders of the Court, and any prior demands for discovery.
8. **Acceptance of Responsibility:** Defendant must demonstrate to the Court that it fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for its unlawful conduct in this case.

¹ The U.S. Congress and EPA have identified a list of substances determined to be hazardous air pollutants under the Clean Air Act, 42 U.S.C. § 7412.

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The USAO reserves the right to change its sentencing recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

9. **Stipulated Sentence of \$550,000 Fine:** The parties will jointly recommend that the Court sentence defendant to pay a criminal fine of \$550,000 and stipulate that such a sentence satisfies the criteria of 18 U.S.C. §§ 3553(a) and 3572.

10. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that the sentence imposed exceeds the statutory maximum. Should defendant seek an appeal, despite this waiver, the USAO may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

Defendant expressly agrees that this waiver shall remain effective in the event that the USAO alters its sentencing recommendation because defendant breaches this agreement as described in paragraph 13, *infra*.

11. **Court Bound to Impose Stipulated Sentence:** The parties have entered this agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Court must either accept the agreement and impose the sentence to which the parties stipulated herein or reject the agreement and thereby vitiate its terms, allowing the defendant to withdraw its plea and the government to pursue all lawful charges and to argue for any lawful sentence.

12. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

13. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea or challenge or rescind the waiver of appeal as provided in paragraph 10, *supra*.

If defendant believes that the government has breached the plea agreement, it must raise any such claim before the district court, either prior to or at sentencing. If defendant fails to raise a breach claim in district court, it has waived any such claim and is precluded from raising a breach claim for the first time on appeal.

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14. **Restitution**: The Court shall order restitution to each victim in the full amount of each victim's losses as determined by the Court. Defendant agrees to the entry of an order of restitution for all losses suffered by victims of defendant's relevant conduct, including Hydro employees adversely affected by the emissions described in paragraph 6, *supra*. See 18 U.S.C. §§ 3663(a)(3); 3663A.

Defendant understands and agrees that the total amount of any monetary judgment that the Court orders defendant to pay will be due. Defendant further understands and agrees that pursuant to 18 U.S.C. § 3614, defendant may be resentenced to any sentence which might have originally been imposed if the court determines that defendant has knowingly and willfully refused to pay a fine or restitution as ordered or has failed to make sufficient bona fide efforts to pay a fine or restitution. Additionally, defendant understands and agrees that the government may enforce collection of any fine or restitution imposed in this case pursuant to 18 U.S.C. §§ 3572, 3613, and 3664(m), notwithstanding any initial or subsequently modified payment schedule set by the court. Defendant understands that any monetary debt defendant owes related to this matter may be included in the Treasury Offset Program to potentially offset defendant's federal retirement benefits, tax refunds, and other federal benefits.

Pursuant to 18 U.S.C. § 3612(b)(1)(F), defendant understands and agrees that until a fine or restitution order is paid in full, defendant must notify the USAO of any change in the mailing address within 30 days of the change. Further, pursuant to 18 U.S.C. § 3664(k), defendant shall notify the Court and the USAO of any material change in defendant's economic circumstances that might affect defendant's ability to pay restitution, including, but not limited to, new or changed employment, increases in income, inheritances, monetary gifts, or any other acquisition of assets or money.

15. **Prepayment of Stipulated Fine and Mandatory Fee Assessment**: Defendant agrees to deliver, before entry of its guilty plea, a certified check or money order to the USAO in the amount of \$550,125, payable to the "Clerk, U.S. District Court," to be deposited into the court registry until the date of sentencing and, thereafter, to be applied to satisfy the financial obligations of defendant pursuant to the judgment of the Court. If the Clerk of the Court will accept pre-judgment wire transfers, defendant may alternatively satisfy this condition by stipulating to an order for the lodging of a pre-judgment payment in the amount of \$550,125 and wiring that amount to the account designated by the Clerk upon entry of said order.

16. **Memorialization of Agreement**: No promises, agreements, or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

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17. **Deadline:** This revised plea offer expires if not accepted by August 12, 2022, at noon.

Sincerely,

NATALIE K. WIGHT
United States Attorney



RYAN W. BOUNDS
Assistant United States Attorney
KARLA GEBEL PERRIN
Special Assistant United States Attorney

Defendant Hydro Extrusion USA, LLC, through its responsible agents and representatives, has carefully reviewed every part of this agreement with its attorney. Defendant understands and voluntarily agrees to the terms of this agreement. The corporation expressly waives its rights to appeal as outlined in this agreement. The corporation pleads guilty because, in fact, it is guilty.

Date

For Hydro Extrusion USA, LLC, Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

Date

Kristin Graham Koehler, Esq.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

3:22-cr-_____

v.

INFORMATION

HYDRO EXTRUSION USA, LLC,

42 U.S.C. § 7413(c)(4)

Defendant.

THE UNITED STATES ATTORNEY CHARGES:
FACTUAL AND REGULATORY BACKGROUND

1. **HYDRO EXTRUSION USA, LLC** (“**HYDRO**”), defendant herein, is a Delaware limited liability company having its principal place of business in Rosemont, Illinois; it has had authority to conduct business within the State of Oregon since 2018.

2. **HYDRO** operated a secondary aluminum processing facility in The Dalles, Oregon (“**The Dalles Facility**”) that melted aluminum scrap (generally referred to as “charge”) in induction furnaces to produce reusable aluminum generally in the form of logs or billets.

3. The Dalles Facility was subject to National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production (i.e., NESHAP RRR, Title 40, Code of Federal Regulations, Part 63, Subpart RRR) under the Clean Air Act and operated under a Title V air permit issued by the Oregon Department of Environmental Quality (DEQ), under a

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program approved by the U.S. Environmental Protection Agency (EPA). Title 42, United States Code, Section 7661 *et. seq.* The induction furnaces at The Dalles Facility were Group 2 furnaces which, pursuant to the NESHAP RRR, Title 40, Code of Federal Regulations, Section 63.1503, and the Title V air permit, were required to melt only “clean charge.”

4. Under the Clean Air Act, Title 40, Code of Federal Regulations, Section 63.1503, the term “clean charge” is defined as, *inter alia*, “aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants.”

5. The Group 2 induction furnaces were open to the interior of the building in which they were located and where employees operated the furnaces. Air emissions from those furnaces did not pass through any pollution control devices, and the building vented to the ambient air.

6. From at least July 2018 and continuing through June 2019, The Dalles Facility processed, among other materials, scrap denominated as 1070 aluminum alloy as well as a blend containing 5000 and 6000 (or 5xxx and 6xxx) aluminum alloys. **HYDRO** procured this aluminum alloy scrap, the “Relevant Scrap,” from a third-party aluminum recycling company based in West Oakland, California (“Supplier”) for amounts totaling at least \$466,071 less than equivalent clean scrap would have cost at market prices.

7. Although **HYDRO**’s purchase orders with the Supplier generally specified that the scrap to be received by The Dalles Facility had to be clean charge, a mineral oil-based mixture had been used on some of the Relevant Scrap, rendering it not clean charge. Mineral oil, when combusted in an induction furnace, can create smoke containing 2,3,7,8-Tetrachlorodibenzo-p-dioxin, polycyclic organic matter, or both. Each of these substances is

considered a hazardous air pollutant under the Clean Air Act, Title 42, United States Code, Section 7412(b).

8. From July 2018 through June 2019, The Dalles Facility failed to identify the mineral oil on the Relevant Scrap and repeatedly melted unclean charge in its Group 2 induction furnaces, in violation of its Title V permit. During this time period, employees noticed that the Relevant Scrap was at times causing excessive smoke within The Dalles Facility. Although The Dalles Facility mixed the Relevant Scrap with clean charge, it continued to melt the Relevant Scrap and failed to sufficiently investigate the source of the smoking or determine that the Relevant Scrap was, in fact, unclean. Indeed, even after being told by EPA and DEQ inspectors that the charge they were using was not clean and melting it was in violation of The Dalles Facility's air permit, The Dalles Facility continued to melt the unclean charge.

9. In failing to identify the Relevant Scrap as being unclean due the mineral oil content and continuing to melt scrap that resulted in excessive smoking at times, The Dalles Facility negligently released a hazardous air pollutant to the ambient air. In so doing, The Dalles Facility negligently placed individuals in imminent danger of death or serious bodily injury at times during the period from July 2018 through June 2019.

COUNT 1
Clean Air Act Negligent Endangerment
(42 U.S.C. § 7413(c)(4))

10. From a date not later than July 2018 through a date in or about June 2019, in the District of Oregon, **HYDRO EXTRUSION USA, LLC**, defendant herein and a person in charge of The Dalles Facility, at times negligently released a hazardous air pollutant, namely 2,3,7,8-

Tetrachlorodibenzo-p-dioxin and polycyclic organic matter, into to the ambient air, thereby negligently placing another person in imminent danger of death or serious bodily injury.

All in violation of Title 42, United States Code, Section 7413(c)(4).

Dated: _____, 2022

Respectfully submitted,

NATALIE K. WIGHT
United States Attorney

RYAN W. BOUNDS, OSB #000129
Assistant United States Attorney
KARLA GEBEL PERRIN
Special Assistant United States Attorney

CERTIFICATE OF COUNSEL

The undersigned, as attorney for defendant Hydro Extrusion USA, LLC, hereby certifies:

1. Along with Kristin Koehler and Craig Dukin, I have fully explained to the defendant the allegations contained in the Information in this case, any lesser-included offense(s), and the possible defenses which may apply in this case.
2. I have personally examined the attached Petition to Enter Plea of Guilty and Order Entering Plea, explained all of its provisions to the defendant, and discussed fully with the defendant all matters described and referred to in the Petition.
3. I have explained to the defendant the maximum penalty and other consequences of entering a plea of guilty described in the Petition, and I have also explained to the defendant the relevant sentencing considerations.
4. I recommend that the Court accept the defendant's plea of "GUILTY."

SIGNED by me in the presence of the above-named defendant, and after full discussion with the defendant of the contents of the Petition to Enter Plea of Guilty, and any Plea Agreement, on this 24th day of January, 2023.

STOEL RIVES LLP



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Attorneys for Defendant

ORDER ENTERING PLEA

I find that the defendant's plea of GUILTY has been made freely and voluntarily and not out of ignorance, fear, inadvertence, or coercion. I further find the defendant has admitted facts that prove each of the necessary elements of the crime to which the defendant has pled guilty.

IT IS THEREFORE ORDERED that the defendant's plea of GUILTY be accepted and entered as requested in this Petition and as recommended in the Certificate of defendant's attorney.

DATED this 24th day of January 2023, in open court.



Michael W. Mosman
U.S. District Court Judge