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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2024-0015**
	)	
American Iron and Metal	)	**Proceeding to Assess a Civil Penalty**
Colorado Springs, Colorado	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	
_____	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is American Iron and Metal (AIM), a corporation doing business in Colorado.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances. As specified at 40 C.F.R. § 82.150(a), the purpose of the regulations is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances.

10. Under 40 C.F.R. § 82.150(b), Subpart F applies to persons disposing of appliances, including small appliances, motor vehicle air conditioners (MVACs), and MVAC-like appliances.

11. Under 40 C.F.R. § 82.152, a "person" means, among other things, any individual or legal entity, including an individual corporation, partnership, association and any officer, agent, or employee thereof.

12. Under 40 C.F.R. § 82.152, "disposal" means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

13. Under 40 C.F.R. § 82.152, an “appliance” is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

14. Under 40 C.F.R. § 82.152, “recover” means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

15. Under 40 C.F.R. § 82.152, “class I substance” is a reference to an ozone-depleting substance that is listed in 40 CFR Part 82, Subpart A, Appendix B.

16. Under 40 C.F.R. § 82.152, “class II substance” is a reference to an ozone depleting substance that is listed in 40 CFR Part 82, Subpart A, Appendix B.

17. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant in replacement of a class I or II ozone-depleting substance. Examples include, but are not limited to, hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide and blends thereof. As used in 40 C.F.R. Part 82, Subpart F, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses as specified in 40 C.F.R. § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refer to all other substitutes and end-uses not so specified in § 82.154(a)(1).

18. Under 40 C.F.R. § 82.152, “refrigerant” means any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

19. Under 40 C.F.R. § 82.152, “MVAC” means an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

20. Under 40 C.F.R. § 82.152, “MVAC-like appliance” means a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

21. Under 40 C.F.R. § 82.152, “small appliance” means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

22. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

23. Under 40 C.F.R. § 82.155(a), persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must evacuate refrigerant to the levels in 40 C.F.R. §§ 82.156(b) through (d) using recovery equipment that meets the standards in 40 C.F.R. §§ 82.158(e) through (g), or 40 C.FR. 82 Subpart B, as applicable.

24. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

> (1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155 (a); or
>
> (2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.[1]

[1] In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: "EPA notes here that a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor." 81 Fed. Reg. 82,272, 82309 (Nov. 18, 2016).

25. Under 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

26. If the final processor is not recovering the remaining refrigerant from appliances pursuant to 40 C.F.R. § 82.155(b)(1), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility pursuant to 40 C.F.R. § 82.155(b)(2)(ii). The form of this notification may be signs, letters to suppliers, or other equivalent means.

27. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

28. Under 40 C.F.R. § 82.155(c), the final processor of a small appliance, MVAC, or MVAC-like appliance must keep a copy of all the signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy or in electronic format, for three years.

29. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $55,808 per day of violation up to a total of $446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

30. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action,

except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

31. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

32. AIM owns and/or operates scrap metal recycling facilities (Facilities) at several locations including 3315 Drennan Industrial Loop S., Colorado Springs, Colorado.

33. At the Colorado Springs Facility, AIM accepts for recycling and disposal, among other things, small appliances and MVACs within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone depleting substances or substitutes.

34. The ozone depleting substances or substitutes in the small appliances and MVACs AIM accepts for recycling are "refrigerants" within the meaning of 40 C.F.R. § 82.152.

35. AIM's recycling of small appliances and MVACs constitutes "disposal" within the meaning of 40 C.F.R. § 82.152.

36. As a person that disposes of small appliances and MVACs that contain refrigerants, AIM is subject to requirements at 40 C.F.R. Part 82, Subpart F.

37. AIM is a final processor in the disposal process for vehicles and appliances, including MVACs and small appliances, within the meaning of 40 C.F.R. § 82.155(b).

38. EPA conducted an unannounced inspection of the Colorado Springs Facility on June 22, 2022.

39. At the time of the inspection, AIM stated that it accepts vehicles and small appliances at its Colorado Springs Facility if the item no longer contains refrigerant.

40. At the time of the inspection, AIM did not recover refrigerant from small appliances or MVACs delivered to its Colorado Springs Facility.

41. At the Colorado Springs Facility, EPA inspectors observed at least one small appliance delivered for recycling from which the refrigerant had not been recovered.

42. At the Colorado Springs Facility, EPA inspectors observed at least one small appliance that had been delivered for recycling from which refrigerant had not been recovered, and that had cut refrigeration lines.

43. At the time of the inspection, AIM stated that it did not require documentation of refrigerant recovery for small appliances and MVACs arriving at the Colorado Springs Facility empty of refrigerant.

44. On November 18, 2022, EPA issued to AIM a finding of violation alleging that it violated 40 C.F.R. §§ 82.155(b)(1) and (2), by failing to recover refrigerant from appliances during scrap recycling or by failing to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances prior to delivery to the Colorado Springs Facility.

45. On December 20, 2022, representatives of AIM and EPA discussed the November 18, 2022 finding of violation.

46. By failing to recover refrigerants from appliances during scrap recycling, AIM violated 40 C.F.R. § 82.155(b)(1) at the Colorado Springs Facility.

47. By failing to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, AIM violated 40 C.F.R. § 82.155(b)(2) at the Colorado Springs Facility.

Civil Penalty

48. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $155,000.

49. Penalty Payment. Respondent agrees to:

a. pay the civil penalty of $155,000 within 30 days after the effective date of this CAFO.

b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking In the comment area of the electronic funds transfer, state Respondent's name and the CAFO docket number.
Wire transfers made through Fedwire	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.
Payments made through Pay.gov Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.	• Go to Pay.gov and enter "SFO 1.1" in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
Cashier's or certified check payable to "Treasurer, United States of America." Please notate the CAFO docket number on the check	For **standard delivery**: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000 For **signed receipt confirmation** (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045

50. Within 24 hours of the payment of the civil penalty, Respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Deborah Carlson
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
carlson.deborahA@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

54. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of a TIN issued by the IRS.

General Provisions

55. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carlson.deborahA@epa.gov (for Complainant), and cori@americaniron.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

57. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

58. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 56, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

59. Respondent certifies that it is complying fully with 40 C.F.R Part 82, Subpart F.

60. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

61. The terms of this CAFO bind Respondent, its successors and assigns.

62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorney's fees in this action.

64. This CAFO constitutes the entire agreement between the parties.

American Iron and Metal, Respondent

4·16·24
Date

Cori Warren, Manager
American Iron and Metal

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS

Digitally signed by MICHAEL HARRIS
Date: 2024.05.09 10:48:38 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN COYLE Date: 2024.05.09 13:38:28 -05'00'

_____ _____

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5