



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

April 14, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL: No. 7011 1150 0000 8470

RETURN RECEIPT REQUESTED

Mr. Jack Hampton
Aluminum Recovery Technologies
2170 Production Road
Kendallville, Indiana 46755

Consent Agreement and Final Order In the Matter of
Aluminum Recovery Technologies, Inc. Docket No. EPCRA-05-2015-0015

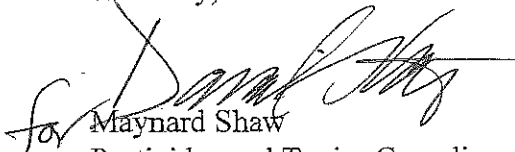
Mr. Hampton:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on April 14, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$20,372 is to be paid in the manner described in paragraphs 37 through 39. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,


Maynard Shaw
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) **Docket No. EPCRA-05-2015-0015**
)
Aluminum Recovery Technologies, Inc.) **Proceeding to Assess a Civil Penalty**
Kendallville, Indiana) **Under Section 325(c) of the Emergency**
) **Planning and Community Right-to-Know**
Respondent.) **Act of 1986, 42 U.S.C. § 11045(c)**
_____)

Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 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. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Aluminum Recovery Technologies, Inc., a corporation doing business in the State of Indiana.

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.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and the following: 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount of a toxic chemical manufactured or processed in a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic

chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for Aluminum (fume or dust), Lead, and Copper manufactured, processed or otherwise used at a facility is 25,000 pounds (Aluminum); 100 pounds (Lead); and 25,000 pounds (Copper), respectively, for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (199), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2170 Production Road, Kendallville, Indiana (facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 3341, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

20. During calendar year 2009, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, Aluminum (fume or dust), a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 225,000 pounds which is greater than threshold amount from 40 C.F.R. § 372.25, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of EPA and to the state of Indiana, a Form R for Aluminum (fume or dust) for calendar year 2009, by July 1, 2010.

22. Respondent did not submit to the Administrator of EPA and to the state of Indiana a Form R for Aluminum (fume or dust) for calendar year 2009 by July 1, 2010.

23. Respondent's failure to submit timely a Form R for Aluminum (fume or dust) to the Administrator of EPA and to the state of Indiana for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

24. During calendar year 2009, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, Lead, a chemical category of CAS No. listed under

40 C.F.R. § 372.65, in the amount of 5,700 pounds which is greater than threshold amount from 40 C.F.R. § 372.25, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

25. Respondent was required to report their releases to air on their 2009 Form R report for Lead. Respondent reported NA for both their fugitive and stack air releases when the reported value should have been 0 in both report categories.

26. Respondent was required to report their offsite transfers for Lead on their 2009 Form R. Respondent reported 0.488191 pounds transferred offsite when the value reported should have been 3.9 pounds.

27. Respondent was required to submit to the Administrator of EPA and to the state of Indiana, a completed Form R for Lead for calendar year 2009 by July 1, 2010.

28. Respondent submitted to the Administrator of EPA and to the state of Indiana a completed Form R for Lead for calendar year 2009 by July 1, 2010.

29. Respondent's failure to accurately report on its Form R its total releases of Lead for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.85(b).

Count 3

30. During calendar year 2009, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, Copper, a chemical category of CAS No. listed under 40 C.F.R. § 372.65, in the amount of 25,000 pounds which is greater than threshold amount from 40 C.F.R. § 372.25, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

31. Respondent was required to report their releases to air on their 2009 Form R report for Copper. Respondent reported NA for both their fugitive and stack air releases when the reported value should have been 0 for fugitive releases and 2 pounds for stack releases.

32. Respondent was required to report their offsite transfers for Copper on their 2009 Form R. Respondent reported NA for offsite transfers when the value reported should have been 18,000 pounds.

33. Respondent was required to submit to the Administrator of EPA and to the state of Indiana, a completed Form R for Copper for calendar year 2009 by July 1, 2010.

34. Respondent submitted to the Administrator of EPA and to the state of Indiana a completed Form R for Copper for calendar year 2009 by July 1, 2010.

35. Respondent's failure to accurately report on its Form R its total releases of Copper for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.85(b).

Civil Penalty

36. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$20,372. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001).

37. Respondent must pay a \$20,372 civil penalty for the EPCRA violation in four (4) installments with interest as follows: \$5,109.98 within 30 days of the effective date of this

CAFO; \$5,131.20 within 120 days of the effective date of this CAFO; \$5,118.47 within 210 days of the effective date of this CAFO; and \$5,105.73 within 300 days of the effective date of this CAFO.

38. For checks sent by regular U.S. Postal Service mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

For electronic funds transfer (EFT), the Respondent must send an EFT payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express, Respondent must submit an ACH electronic funds transfer, payable to "Treasurer, United States of America," to:

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 docket number of this CAFO.

For an on-line payment: In order to pay on-line, Respondent must go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

39. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mr. Maynard Shaw (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Tom Turner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

41. If Respondent does not pay any installment payment as set forth in paragraph 37, above, the entire unpaid balance of the civil penalties and any amount required by paragraph 42,

below, shall become due and owing, upon written notice by EPA to Respondent of the delinquency. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, 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 pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principle amount 90 days past due.

General Provisions

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

44. This 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.

45. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws.

46. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

48. Each person signing this 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.


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

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

In the Matter of Aluminum Recovery Technologies, Inc.
Docket No. EPCRA-05-2015-0015

Aluminum Recovery Technologies, Inc., Respondent

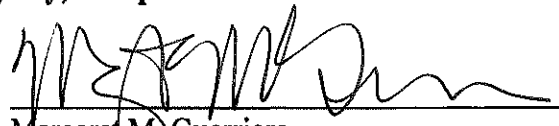
3/24/2015
Date



Jack Hampton – Environmental Director
Aluminum Recovery Technologies, Inc.

United States Environmental Protection Agency, Complainant

4/8/2015
Date




Margaret M. Guerriero
Director
Land and Chemicals Divisions

In the Matter of Aluminum Recovery Technologies, Inc.
Docket No. EPCRA-05-2015-0015

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.

4/10/15
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency

In the matter of: Aluminum Recovery Technologies, Inc.
Docket Number: EPCRA-05-2015-0015

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on April 14, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Jack Hampton
Aluminum Recovery Technologies
2170 Production Road
Kendallville, Indiana 46755

Copy by E-mail to
Attorney for Complainant:

Tom Turner
Turner.tm@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: April 14, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8470