



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 09 2009

4APT-AEEB
VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Consent Agreement and Final Order
Docket No. CAA-04-2009-1511(b)

Mr. Jonathan P. Hammond
McNair Law Firm, P. A.
Post Office Box 447
Greenville, South Carolina 29602

Dear Mr. Hammond:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV., Final Order for the terms and instructions regarding your client's final payment on the penalty due.

Also, enclosed is a copy of the Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings. This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

Should you have any questions, please do not hesitate to contact Mr. Floyd Ledbetter at (404) 562-9218.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg, Chief
Air & EPCRA Enforcement Branch
Air, Pesticides and Toxics
Management Division

Enclosure

Internet Address (URL) • <http://www.epa.gov>

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the Matter of:)
Mintz Scrap Iron and Metal Co., Inc)
Spartanburg, South Carolina)
)
Respondent.)
_____)

Docket No. CAA- 04-2009-1511(b)

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CONSENT AGREEMENT AND FINAL ORDER

1. Nature of the Action and Jurisdictional Statements

1. This is an administrative action for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), published in 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency (EPA), Region 4. Respondent is Mintz Scrap Iron and Metal Co., Inc. (Mintz).

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) 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 Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A dated March 25, 1992, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A, dated November 15, 1993, last updated on February 12, 2004. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business as a scrap metal recycling facility in South Carolina. As part of Respondent's business, Respondent owned and operated an aluminum sweat furnace.

5. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

6. Respondent's facility is an "area stationary source" as defined by 40 C.F.R. § 63.2, which includes an aluminum sweat furnace. Thus, the Mintz facility is subject to the requirements of 40 C.F.R. Part 63, Subpart RRR.

7. Respondent's facility is located at: 395 Magness Drive, Spartanburg, South Carolina 29303.

II. Overview of Applicable Law

8. Under Section 112 of the Clean Air Act (CAA), the Administrator of EPA promulgated the National Emission Standards for Hazardous Pollutants (NESHAPs) for Secondary Aluminum Production at 40 C.F.R. § 63.1500 *et seq.*

9. The South Carolina Code of Regulations Sections 48-1-30 through 48-1-60 provides authority for South Carolina to regulate sources subject to NESHAPs for source categories, including secondary aluminum facilities such as the Mintz facility. These rules are found at Chapter 61-62.63 of the South Carolina Code, which incorporates by reference the federal rules found at 40 C.F.R. Part 63, Subpart RRR, as last amended on March 23, 2000 (65 *Fed. Reg.* 15710).

10. Pursuant to 40 C.F.R. § 63.1500, the requirements of Subpart RRR apply to each secondary aluminum production facility defined in § 63.1503. Mintz owns and operates a scrap metal recycling facility in Spartanburg, South Carolina. The operations at Mintz's Spartanburg, South Carolina facility meet the definition of a secondary aluminum production facility.

11. Pursuant to 40 C.F.R. § 63.1500(c)(3), the requirements of Subpart RRR apply to all new and existing aluminum sweat furnaces. These requirements applied to the Mintz facility.

12. 40 C.F.R. § 63.1503, defines "residence time" as, "for an *afterburner*, the duration of time required for gases to pass through the *afterburner* combustion zone. *Residence time* is calculated by dividing the *afterburner* combustion zone volume in cubic feet by the volumetric flow rate of the gas stream in actual cubic feet per second." (emphasis added). These requirements are also embodied in the air permit issued to Mintz by the South Carolina Department of Health and Environmental Control (SC DHEC).

13. Pursuant to 40 C.F.R. § 63.1505(f)(1), a reclamation furnace of the type operated by Respondent must have an afterburner residence time of 0.8 seconds or greater at a temperature of 1600° F or greater. As an alternative to this design standard, an operator may choose to conduct a performance test to demonstrate compliance with Subpart RRR.

III. Factual Allegations

14. On or about September 28, 2001, Respondent submitted an air permit application to SC DHEC to operate an aluminum reclamation furnace for the purpose of reclaiming scrap

aluminum. The furnace was purchased new from the manufacturer, United Group, Inc., in Topeka, KS. The furnace was designated as a United Model AS-1000 Reclamation Furnace.

15. SC DHEC reviewed the permit application and granted Respondent a construction permit on December 28, 2001. The permit issued by SC DHEC expressly incorporated all the provisions of SC DHEC Regulation 61-62.1, Section II, Paragraph C and the applicable portions of 40 C.F.R. Part 63, Subpart A. The permit further provides that the reclamation furnace was subject to 40 C.F.R. Part 63, Subpart RRR.

16. On or about February 2, 2004, Respondent was issued air quality operating permit No. 2060-0226 by SC DHEC including the requirements of Subpart RRR.

17. Pursuant to the permit issued by SC DHEC, Respondent alleges that it notified SC DHEC via letter of the actual date of startup of the reclamation furnace and that SC DHEC did not request any additional information from Respondent or notify Respondent of any remaining issues.

18. According to Respondent, the engineering firm that compiled the permit application for the reclamation furnace provided a calculation for residence time in the application which appeared to meet the 0.8 second requirement stated in 40 C.F.R. § 63.1505(f)(1). In reliance upon this calculation, Respondent alleges that it did not consider a performance test to be necessary.

19. In January 2008, Respondent ceased operation of the furnace on a permanent basis, and the furnace was subsequently sold and removed from Respondent's facility.

20. On March 10, 2008, after operation of the reclamation furnace ceased, representatives of EPA and SC DHEC inspected Respondent's facility and reviewed the permit for the reclamation furnace along with the permit application. Based upon this review, EPA alleges that the residence time calculation provided in the permit application incorrectly includes residence time in the stack attached to the afterburner chamber. EPA further alleges that only residence time in the afterburner chamber should be considered and, as a result of this alleged error, the residence time in the afterburner chamber is less than 0.8 seconds. EPA therefore alleges that the reclamation furnace as operated by Respondent did not comply with 40 C.F.R. § 63.1505(f)(1).

21. Based on the above-described information, EPA alleges that Respondent violated 40 C.F.R. § 63.1505(f)(1) and South Carolina Code 61-62.63 Subpart RRR, in that Respondent failed to operate its facility in compliance with the permit and failed to conduct a source test to demonstrate compliance with 40 C.F.R. § 63.1505(f)(2) and condition 12 of Respondent's air quality permit.

IV. Consent Agreement

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 13 above, but Respondent neither admits nor denies the factual allegations set out above.

23. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

24. Respondent consents to the assessment of and agrees to pay the civil penalties as set forth in this CAFO.

25. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the CAA.

26. Compliance with this CAFO shall resolve the allegations of violations contained herein and known to the EPA at this time, and EPA hereby releases Respondent from all liability therefor. EPA does not know of any violations not herein addressed and resolved. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against 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 for allegations of violations not contained in this CAFO.

27. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA. The following person is authorized to receive service relating to this proceeding on behalf of Complainant:

Floyd Ledbetter
Air and EPCRA Enforcement Branch - 12th floor
U.S. EPA - Region 4
61 Forsyth Street,
Atlanta, Georgia 30303

V. Final Order

28. Respondent shall pay a civil penalty of \$7,000 which is to be paid within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

US Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check shall reference on its face the name and the Docket Number of the CAFO.

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Floyd Ledbetter
Air Enforcement - 12th floor
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

31. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to Paragraph 28 of this CAFO.

32. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of 6 percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

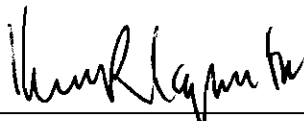
33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

34. This CAFO shall be binding upon the Respondent, its successors and assigns.

36. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

FOR COMPLAINANT:



Carol L. Kemker, Acting Director
Air Pesticides and Toxics
Management Division
U.S. Environmental Protection
Agency, Region 4

Date: 5/8/2009

FOR RESPONDENT:



GARVIN D. MINTZ JR. Pres
Print Name & Title

Mintz Scrap Iron and Metal Co., Inc.

Date: 6/16/09

APPROVED AND SO ORDERED this 8th day of July, 2009.



Susan B. Schub
Regional Judicial Officer
EPA, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Mintz Scrap Iron and Metal Co., Inc. Docket No. CAA-04-2009-1511(b), on the parties listed below in the manner indicated:

Mr. Floyd Ledbetter
U.S. EPA, Region 4
Air, Pesticides, and Toxics
Management Division
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

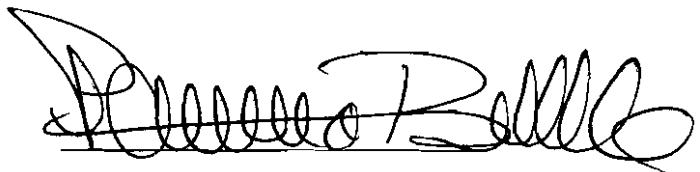
Ms. Vera S. Kornylak
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Jonathan P. Hammond
Associate
McNair Law Firm, P.A.
Post Office Box 447
Greenville, SC 29602

(Via Certified Mail - Return Receipt)

Date: 7-9-09
Patricia A. Bullock
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511



EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 6/26/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Mintz Scrap Iron & Metal Co, Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2009 1511 (b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |