



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 20 2018

REPLY TO THE ATTENTION OF:

VIA E-MAIL
RETURN RECEIPT REQUESTED

Mark LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street
Suite 2810
Chicago, Illinois 60601
Email: mlarose@laroseboscoblaw.com

Dear Mr. LaRose:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Metal Management Midwest, Inc., d/b/a Sims Metal Management, docket no. CAA-05-2019-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 12/20/2018.

Pursuant to paragraph 46 of the CAFO, Metal Management Midwest, Inc., d/b/a Sims Metal Management must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Nidhi O'Meara, Associate Regional Counsel, at (312) 886-0568.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank", written over a horizontal line.

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Nidhi O'Meara/C-14J
Julie Armitage/via electronic mail

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2019-0006
)	
Metal Management Midwest, Inc.)	Proceeding to Assess a Civil Penalty
d/b/a Sims Metal Management)	Under Section 113(d) of the Clean Air Act,
2500 South Paulina Street)	42 U.S.C. § 7413(d)
Chicago, Illinois)	
)	
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 (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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Metal Management Midwest, Inc., d/b/a Sims Metal Management (MMMI), a corporation doing business in Illinois.

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 and violations alleged in this CAFO. Neither this CAFO nor anything herein constitutes or shall be construed as an admission of liability on the part of MMMI.

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. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS).

10. The administrator of the EPA approved Illinois' plan for the attainment and maintenance of the NAAQS under Section 110 of the CAA. See 40 C.F.R. § 52.722 and 55 Fed. Reg. 40661 (October 4, 1990).

11. On May 31, 1972, EPA approved Part 201.122 of Title 35 of the Illinois Administrative Code (IAC) as part of the federally enforceable Illinois SIP. 37 Fed. Reg. 10862.

12. 35 IAC § 201.122 states that evidence that specified air contaminant emissions, as calculated on the basis of standard emission factors or other factors generally accepted as true by those persons engaged in the field of air pollution control, exceed the limitations prescribed under 35 IAC, Chapter 1, shall constitute adequate proof of a violation, in the absence of a showing that actual emissions are in compliance.

13. On September 9, 1994, and through subsequent SIP amendment approvals, EPA approved Part 211 of the IAC as part of the federally enforceable Illinois SIP. 59 Fed. Reg. 46567.

14. 35 IAC § 211.3690 defines “maximum theoretical emissions” as the quantity of volatile organic material (VOM) emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year.

15. 35 IAC § 211.4970 defines “potential to emit” as the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design.

16. On February 21, 1980, EPA approved Part 212 of the IAC as part of the federally enforceable Illinois SIP. 45 Fed. Reg. 11493.

17. 35 IAC § 212.301 states that no person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

18. On March 12, 1997, EPA approved 35 IAC § 218.980, as part of the federally enforceable SIP. 62 Fed. Reg. 11327.

19. 35 IAC § 218.980(a)(1) states that a source is subject to 35 IAC Part 218, Subpart TT, if it contains process emission units not regulated by the Subparts identified in 35 IAC § 218.980(a)(1), which as a group both have maximum theoretical emissions of 100 tons or more per calendar year of VOM and are not limited to less than 100 ton of VOM emissions per calendar year in the absence of air pollution control equipment through production or capacity limitations contained in a federally enforceable permit or SIP revision.

20. 35 IAC § 218.980(b)(1) states, in pertinent part, that a source is subject to 35 IAC Part 218, Subpart TT, if it has the potential to emit 25 tons or more of VOM per year, in aggregate, from emission units, that are not regulated by the Subparts identified in 35 IAC § 218.980(b)(1)(A) and not included in the categories listed in 35 IAC § 218.980(b)(1)(B).

21. On October 21, 1996, EPA approved 35 IAC §§ 218.986 and 987, as part of the federally enforceable SIP. 61 Fed. Reg. 54556.

22. 35 IAC § 218.986 states that every owner or operator of an emission unit subject to 35 IAC Part 218, Subpart TT shall comply with the requirements of 35 IAC § 218.986.

23. 35 IAC § 218.987 requires every owner or operator of an emissions unit which is subject to 35 IAC Part 218, Subpart TT to comply with the requirements of 35 IAC Part 218, Subpart TT, on and after March 25, 1995.

Federal Enforcement

24. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009, through December 6, 2013; \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013, through November 2, 2015; and \$45,268 per day of violation up to a total of \$362,141 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.

25. 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.

26. 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

Factual Allegations

27. MMMI owns and operates a metal shredding and recycling facility at 2500 South Paulina Street, Chicago, Illinois (Paulina Street Facility).

28. MMMI receives, handles, stockpiles and/or otherwise stores, processes, otherwise recycles, and ships ferrous and non-ferrous recyclable metallic materials such as end-of-life vehicles (ELVs), major appliances and other post-consumer sheet metal and metal clips received directly from manufacturers, and/or the specification-grade recyclable metals resulting from such processing and recycling, at the Paulina Street Facility.

29. ELVs and other recyclable metallic materials are processed in a hammermill shredder at the Paulina Street Facility.

30. During an EPA off site surveillance of the Paulina Street Facility conducted on September 7, 2016, EPA observed fugitive particulate matter emitted from the hammermill shredder crossing the property line.

31. On or about December 2, 2016, EPA conducted an onsite inspection at the Paulina Street Facility.

32. During the December 2, 2016 inspection, EPA observed and recorded hydrocarbons exiting the hammermill shredder with a FLIR infrared camera.

33. On or about December 2, 2016, EPA again observed fugitive particulate matter emitted from the hammermill shredder crossing the property line of the Paulina Street Facility.

34. On or about February 24, 2017, EPA issued a Section 114 Information Request (2017 Information Request) to MMMI regarding the Paulina Street Facility.

35. On or about March 31, 2017, MMMI provided a response to the 2017 Information Request.

36. Based on the March 31, 2017 response provided by MMMI, the hammermill shredder at the Paulina Street Facility has a maximum theoretical emissions rate of more than 100 tons per calendar year of VOM.

37. Based on the March 31, 2017 response provided by MMMI, the hammermill shredder alone has the potential to emit 25 tons or more of VOM per year.

38. On or about August 10, 2017, EPA issued a Notice of Violation (NOV) to MMMI alleging that it violated provisions of the Illinois SIP.

39. MMMI will submit an application for a federally enforceable state operating permit for the metal shredder at the Paulina Street Facility which will: (a) limit the quantity of ELVs and other recyclable metallic material it will feed into and process in the metal shredder at the Paulina Street Facility to 344,000 net tons per year, (b) limit the potential to emit VOM at the Paulina Street Facility to below 25 tons per year, and (c) incorporate an updated Fugitive Dust Plan for the Paulina Street Facility.

Alleged Violations

40. The preceding paragraphs are incorporated by reference.

41. MMMI allowed fugitive particulate matter from the hammermill shredder that was visible by an observer looking generally toward the zenith to cross the property line of the

Paulina Street Facility on at least September 7, 2016 and December 2, 2016, in violation of 35 IAC § 212.301.

42. Respondent's violation of 35 IAC § 212.301 subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

43. To date, MMMI has not complied with 35 IAC § 218.986.

44. Respondent's violation of 35 IAC § 218.986 subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

Civil Penalty

45. 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 agreement to enter into an Administrative Consent Order under Section 113(a) and 114(a) to bring the facility into compliance with the CAA, Complainant has determined that an appropriate civil penalty to settle this action is \$225,000.00.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$225,000.00 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent 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:
"D68010727 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.

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

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

49. 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.

50. 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).

General Provisions

51. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: omeara.nidhi@epa.gov (for Complainant), and mlarose@laroseboscolaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the related Notice of Violation.

53. 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 violations of the law.

54. 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 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

55. Except as otherwise provided for herein, Respondent certifies based upon information and belief formed after reasonable inquiry that it is complying at the Paulina Street Facility with the CAA.

56. With respect to the subject matter hereof, 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).

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

58. 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.

59. Each party agrees to bear its own costs and attorneys' fees in this action.

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

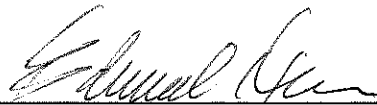
Metal Management Midwest, Inc. d/b/a Sims Metal Management, Respondent

12/7/2018
Date

P. Bird
Peter Bird
President, Metal Management Midwest, Inc.

United States Environmental Protection Agency, Complainant

12/18/18
Date


Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Metal Management Midwest, Inc., d/b/a Sims Metal Management

Docket No. CAA-05-2019-0006

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.

December 19, 2018

Date

Ann L. Coyle

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

Consent Agreement and Final Order

In the matter of: Metal Management Midwest, Inc. d/b/a Sims Metal Management

Docket Number: CAA-05-2019-0006

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA0520190006, which was filed on 12/20/2018, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Nidhi O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Attorney for Respondent: Mark A. LaRose
mlarose@laroseboscolaw.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: 12/20/2018



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