

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

7. This CAFO is issued by the EPA, Region 6 pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority of jurisdiction of the Regional Administrator of EPA, Region 6 to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
PARTIES BOUND

9. This CAFO shall apply to and be binding upon EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all

persons, including but not limited to, contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of the Facility. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CAFO.

10. Respondent shall provide a copy of this CAFO to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Facility is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this CAFO, regardless of whether there has been a transfer of ownership or control of the Facility or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent shall provide a copy of this CAFO within seven (7) days of the Effective Date of this CAFO, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the work to be performed that will ensure Respondent's compliance with this CAFO.
11. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this CAFO, on compliance with the terms of this CAFO. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this CAFO.
12. Not later than sixty (60 days) prior to any voluntary transfer by Respondent of any interest in the Facility or the operation of the Facility, Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify EPA, Region 6 within 24 hours of the decision to transfer property. Respondent shall notify EPA, Region 6 of

any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary transfer. Not later than three (3) days after any transfer, Respondent shall submit copies of the transfer documents to EPA, Region 6.

IV.
STATEMENT OF PURPOSE

13. This CAFO provides for the resolution of EPA, Region 6's inspection at Respondent's Facility that was conducted on February 13, 2008 and followed by further investigation by and through the issuance of a Section 3007 RCRA, 42 U.S.C. § 6927 information request and Respondent's response.
14. In entering into this CAFO, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to ensure that the injunctive relief that Respondent has or will complete as described in Section VI, Compliance Order, is protective of human health and/or the environment.

V.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. On February 13, 2008, EPA, Region 6, conducted a RCRA Inspection ("Inspection") at the EBAA plant in Eastland, Texas, and on October 7, 2008, EPA issued an Information Request ("Request") pursuant to Section 3007 of the RCRA, 42 U.S.C. § 6927. EBAA provided EPA with a response to the Request on or about November 7, 2008 and December 9, 2008 ("Response"), which provided EPA with additional information for its investigation of EBAA.

16. During the Inspection, EPA obtained a representative sample of the Bag-house dust from one of the units located at the Facility and conducted a Toxicity Characteristic Leaching Procedure test as is required by 30 Texas Administrative Code (" 30 TEX.ADMIN.CODE ") § 335.504 and 40 C.F.R. § 261.24. The analytical results concluded that the content of the unit exhibited the characteristic of toxicity for cadmium and lead with respective levels of 2.03 mg/L and 6.99 mg/L, D006 and D008 hazardous waste.
17. During the Inspection, EPA provided EBAA with split samples and EBAA's analytical results exhibited the characteristic for cadmium and lead with respective levels at 2 mg/L and 10.1 mg/L, D006 and D008 hazardous waste.
18. Respondent is a corporation in the State of Texas, incorporated on August 20, 1970.
EBAA's headquarters is located at 702-30 CR 442, Eastland, TX 70448.
19. EBAA owns and operates a Plant in Eastland, Texas that operates as a ductile iron foundry using various casting molds to form ductile iron joint restraints.
20. EBAA's Eastland Plant is located at 702-30 CR 442, Eastland, TX 70448.
21. EBAA is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); 40 C.F.R. § 260.10; and 30 TEX.ADMIN.CODE §§ 3.2(25) and 335.1.

Claim i. - Failure to Make Hazardous Waste Determination

22. EBAA generates an estimated two hundred and sixty (260) gallons of Bag-house dust at least every three (3) weeks. The Bag-house dust is solid waste because it is discarded as is defined in TEX.ADMIN.CODE § 335.1(138) and 40 C.F.R. § 261.2(a)(i).

23. Pursuant to 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
24. EBAA failed to make a hazardous waste determination on its solid waste generated from at least eleven (11) Bag-house units in violation of 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11(c).

Claim ii. - Storage of Hazardous Waste without a Permit

25. Pursuant to 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b), the storage of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited.
26. Pursuant to 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 262.34, a generator is allowed to operate a hazardous waste storage unit without a RCRA permit for up to ninety (90) days, if the generator complies with all applicable requirements set forth in 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 262.34.
27. EBAA managed a hazardous waste storage unit, a Bag-house unit, which did not meet the applicable requirements set forth in 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 262.34.
28. EBAA does not have a RCRA permit for its hazardous waste storage unit.

29. EBAA stored hazardous waste in its storage unit prior to and during the Inspection, in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b).

Claim iii. - Disposal, Treatment, and/or Storage of Hazardous Waste without a Permit

30. Pursuant to the 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b), the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited.

31. EBAA does not have a RCRA permit for its Sand Yards.

32. EBAA disposed, treated, and/or stored hazardous waste in or on its Sand Yards for at least five (5) years prior to the Inspection, in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b).

Claim iv. - Land Disposal Restrictions Violation

33. Pursuant to 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.1(c)(4)(iv), a restricted hazardous waste may be land disposed if the waste no longer exhibits a prohibited characteristic at the point of land disposal.

34. Pursuant to 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. §§ 268.40(a), D006 and D008 hazardous waste are prohibited hazardous waste that cannot be land disposed unless the generator treats the waste in accordance with the treatment standards set forth at 30 TEX.ADMIN.CODE § 335.431(c) (1) and 40 C.F.R. § 268.40.

35. EBAA disposed of D006 and D008 hazardous waste on or into its Sand Yards for at least five(5) years prior to the Inspection, in violation of 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.40.

Claim v. - Notification Requirements

36. Within the meaning of 30 TEX.ADMIN.CODE § 335.1(65) and 40 C.F.R. § 260.10, EBAA is a “generator” and has been engaged in the “treatment”, “storage”, and/or “disposal” of hazardous waste.
37. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.
38. At the time of the Inspection, EBAA did not file with the Administrator or with the authorized State an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

VI.

COMPLIANCE ORDER

39. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) days of the effective date of the settlement agreement, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed the nature and extent of the contamination in all areas of its property where Respondent placed hazardous waste, including dust from the melt shop bag-house furnace;
 - B. Respondent shall certify that it has taken the necessary steps to ensure that no hazardous waste (above regulatory limits) remains on and in areas of the Facility that the

Respondent has identified and/or designated as its "Sand-Yard(s)" and/or into which Respondent has placed bag-house dust, and that there has been no migration of hazardous waste on-site and off-site from its Sand-Yards; and

C. Respondent shall provide with its certification a copy of Respondent's hazardous waste management practices, including the procedures for: (a) making a hazardous waste determination; (b) the treatment of its hazardous bag-house dust waste; and (c) its compliance with the land disposal restrictions.

D. Once EBAA has submitted its certifications and documents as are required by this Section VI, Compliance Order, then for purposes of this CAFO, EBAA has complied with Section VI of this CAFO.

40. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of EBAA and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Corrective Action and Compliance Inspections Section (6EN-HC)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Dr. H. Troy Stuckey, Ph.D.

VII.
TERMS OF SETTLEMENT

i. Penalty Provisions

1. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of One Hundred and Fifteen Thousand Dollars (\$115,000).
2. The penalty shall be paid within thirty (30) days of the effective date of this CAFO.
3. The following are Respondent's options for transmitting the penalties:

Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express.

Mail: the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail (non-U.S. Postal Service): the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of EBAA Iron, Inc., Docket No. RCRA-06-2014-0905) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

4. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Dr. H. Troy Stuckey, Ph.D.

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

5. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the

CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**ii. General Provisions
Stipulated Penalties**

1. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 5,000.00
16th through 30th day	\$ 7,000.00
31st day and beyond	\$ 10,000.00

2. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA, Region 6.
3. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection i. (Penalty Provisions) of Section VII of this CAFO.
4. The Respondent shall send simultaneous notices of such payments to the following.

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Dr. H. Troy Stuckey, Ph.D.

5. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section VII.i.5, concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.
6. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of the Respondent's failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under Section 3008 of RCRA, 42 U.S.C. § 6928.
7. If the Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that dispute resolution is ongoing. Invoking

dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

Dispute Resolution

1. If the Respondent objects to any decision or directive of EPA, Region 6 in regard to Section VI (Compliance Order) or VII (Stipulated Penalties), the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director, Hazardous Waste Enforcement Branch (6EN-II)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Chief, RCRA Legal Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

2. The RCRA Enforcement Associate Director or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.
3. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division ("Division Director") or his/her designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an

agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

4. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Subsection on Modification, below.

Notification

Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:

Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Dr. H. Troy Stuckey, Ph.D.

Respondent:

Mr. Earl T. Bradley
President/CEO
EBAA Iron, Inc.
702-30 CR 442
Eastland, TX 70448

Modification

The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

Retention of Enforcement Rights

1. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.
2. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

Indemnification

Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

Record Preservation

The Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors, which in any way relate to this CAFO regardless of any document retention policy to the contrary.

Cost

Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

Termination and Satisfaction

Within thirty (30) days after EPA determines that Respondent has submitted the certifications required by Section VI and has paid the penalties in the manner required by Section VII, EPA will notify Respondent that Respondent has satisfied its obligations under this CAFO and that the CAFO is terminated.

Effective Date of Settlement

This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**


FOR THE RESPONDENT:

Date: 2-20-14


EBA Iron, Inc.

FOR THE COMPLAINANT:


Date: 2-27-14


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 2/27/14


Regional Judicial Officer

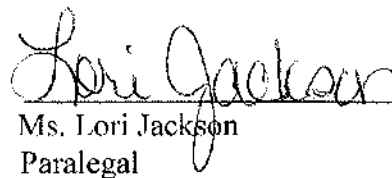
CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of Feb., 2014, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Suite 1200 Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7012.3050000165204523

Mr. Earl T. Bradley
President/CEO
EBAA Iron, Inc.
Box 877
Eastland, TX 70448

McCord Wilson
Rader & Campbell, P.C.
A Professional Corporation
Attorneys
Stemmons Place, Suite 1125
2777 North Stemmons Freeway
Dallas, TX 75207


Ms. Lori Jackson
Paralegal