

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of: )  
)  
All Star Recycling Inc. )  
Nashville, Tennessee, )  
Respondent. )  
\_\_\_\_\_ )

Docket No. *CAA-04-2015-1595*  
Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

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**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 Air, Pesticide, and Toxics Management Division, U.S. Environmental Protection Agency (EPA), Region 4.
3. Respondent is All Star Recycling Inc. (All Star), a sole proprietor doing business in Tennessee.
4. Where the Respondent and EPA 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. Respondent and EPA 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. Subchapter VI of the Act, 42 U.S.C. § 7671 et seq., provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of Class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners at 58 Fed. Reg. 28660 (May 14, 1993). These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

10. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances, motor vehicle air conditioners (MVACs), and MVAC-like appliances must either recover any remaining refrigerant in accordance with specific procedures or verify, including the use of signed statements or contracts, that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements or contracts are used, the scrap recycler must notify the suppliers of the small appliance, MVAC, or MVAC-like appliance of the

need to properly recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements and contracts on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

11. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define "person" to include any individual or legal entity, including an individual or corporation. See 40 C.F.R. § 82.152.

12. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define "disposal" as "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; or (3) the disassembly of any appliance for reuse of its component parts." See 40 C.F.R. § 82.152.

13. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a Class I or Class II substance used as a 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 and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

14. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define "MVACs" as mechanical vapor compression refrigeration equipment

used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

15. 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 violations that occurred between January 12, 2009, and December 6, 2013, and up to a total of \$320,000 for violations that occurred after December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

16. All Star owns and operates a scrap metal recycling facility at 460A Craighead Street, Nashville, Tennessee (the Facility).

17. All Star is a person doing business in Tennessee.

18. All Star is a "person," as defined by 40 C.F.R. § 82.152.

19. All Star is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

20. On May 5, 2014, EPA inspected the Facility to assess All Star's compliance with the CAA. During the May 5, 2014, inspection, EPA observed dismantled air conditioning units, compressors and refrigerators in a pile of scrap metal. In addition, EPA was told that the company accepts motor vehicles.

21. During the May 5, 2014, inspection, an All Star representative stated that All Star Recycling Inc. does not recover refrigerant. During the inspection, the inspectors did not see any refrigerant recovery equipment at the facility.

22. During the May 5, 2014, inspection, an All Star representative stated that All Star Recycling Inc. does not have contracts with or require written statements from its

suppliers verifying that refrigerant had been properly recovered prior to the delivery of small appliances or motor vehicles to its facility.

23. During the May 5, 2014, inspection, EPA observed dismantled air conditioning units, compressors and refrigerators in a pile of scrap metal. In addition, EPA was told that the company accepts motor vehicles.

24. All Star has accepted small appliances without either recovering refrigerant or obtaining verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances.

25. On September 15, 2014, EPA issued to All Star a Finding of Violation Alleging that it has violated 40 C.F.R. § 82.156(f) because it did not recover refrigerant from small appliances or did not obtain proper verification statements.

26. On February 5, 2015, All Star and EPA discussed the Finding of Violation.

#### **Civil Penalty**

27. 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 including cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$ 5,000.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$ 5,000 civil penalty by sending 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

Or, for checks sent by express mail (non-U.S. Postal Service will not deliver mail to P.O. Boxes), sending 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 the Respondent's name and the docket number of this CAFO.

29. 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-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303

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

31. 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.

32. 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 attorney's 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).

#### **Supplemental Environment Project**

33. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing energy use and, as a result, reducing the emissions of harmful air pollutants.

34. Respondent must complete the SEP by providing partial funding for the Energy Conservation and Indoor Air Quality Improvement Project at a school in the Metropolitan Nashville Public Schools based in Nashville, Tennessee included as Attachment A. The Metropolitan Nashville Public Schools will be responsible for selecting the equipment and installing it on the school grounds.

35. Respondent must provide at least \$15,000 towards the purchase of the equipment.

36. Respondent certifies as follows:

I certify that All Star Recycling, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that All Star Recycling, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that All Star Recycling, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

37. Respondent must submit a SEP completion report to EPA by December 31, 2015.

This report must contain the following information:

- a. Documentation that a payment was made by All Star to the Metropolitan Nashville Public Schools; and

38. Statement from the Metropolitan Nashville Public Schools certifying that the money was received and has been put towards the Energy Conservation and Indoor Air Quality Improvement Project

39. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 29, above.

40. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.



41. Following receipt of the SEP completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 43.

42. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$15,000.
- b. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$50	1 <sup>st</sup> through 14 <sup>th</sup> day
\$75	15 <sup>th</sup> through 30 <sup>th</sup> day
\$100	31 <sup>st</sup> day and beyond

44. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

45. Respondent must pay any stipulated penalties within 15 days of receiving EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraph 28, above, and will pay interest and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language: “All Star Recycling, Inc. undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against All Star Recycling, Inc. for violations of the Clean Air Act.”

47. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

**General Provisions**

48. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations Alleged in this CAFO.

49. 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.

50. 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 33, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Respondent certifies that it is complying fully with 40 C.F.R. §§ 82.156(f) and 82.166(i).

52. 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).

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

54. 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.

55. Respondent agrees to bear its own costs and attorney’s fees in this action.

56. This CAFO constitutes the entire agreement between Respondent and the EPA.

**All Star Recycling Inc., Respondent**

5/21/15  
Date

Annie Chen  
Annie Chen  
Owner  
All Star Recycling, Inc.

**United States Environmental Protection Agency, Complainant**

7-2-15  
Date



Beverly H. Banister  
Director  
Air, Pesticide, and Toxics Management Division  
U.S. Environmental Protection Agency, Region 4

**Consent Agreement and Final Order**  
**In the Matter of: All Star Recycling Inc.**  
Docket No. CAA-04-2015-1595

**Final Order**

This Consent Agreement and Final Order, as agreed to by Respondent and EPA, 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.

July 20, 2015  
Date

Tanya Floyd  
~~Carol E. Buscher~~ Tanya Floyd  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 4

Standard bcc's: Official file copy w/Attachment(s)  
Originating Organization Reading File w/Attachment(s)

DeLeon (C-14J)

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CAFO.docx

In the Matter of: All Star Recycling, Inc.  
Docket Number: CAA-04-2015-1595

**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 JUL 21 2015, this day in the following manner to the addressees:

Copy by Certified Mail  
Return Receipt Requested:

Annie Chen, Owner  
All Star Recycling, Inc.  
460 A Craighead Street  
Nashville, Tennessee 37204

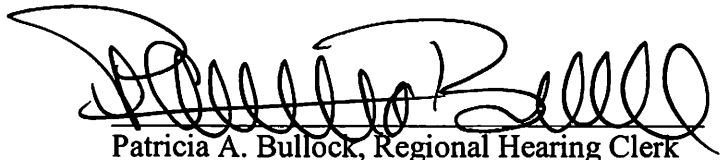
Copy by E-mail to  
Complainant:

Jose de Leon  
deleon.jose@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Tanya Floyd  
floyd.tanya@epa.gov

Dated: 7-21-15



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511

CERTIFIED MAIL RECEIPT NUMBER: \_\_\_\_\_