



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

**77 WEST JACKSON BOULEVARD**  
**CHICAGO, IL 60604-3590**

**July 1, 2021**

**ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

Mr. Jordan Breiner  
V.P. General Manager  
Steel Dynamics Inc., Flat Roll Group, Butler Division  
4500 County Road 59  
Butler, Indiana 46721  
[jordan.breiner@steeldynamics.com](mailto:jordan.breiner@steeldynamics.com)

Re: Consent Agreement and Final Order  
Steel Dynamics Inc., Flat Roll Group, Butler Division  
Docket No: **RCRA-05-2021-0034**

Dear Mr. Breiner:

Attached please find a copy of the signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed with the Regional Hearing Clerk on July 1, 2021.

Please pay the civil penalty in the amount of \$20,000 in the manner described in paragraph 37 of the CAFO, and reference electronic payment with the docket number RCRA-05-2021-0034. The payment is due within 30 calendar days of the effective date of the CAFO.

Thank you for your payment and for your cooperation in resolving this matter.

If you have any questions regarding this matter, please contact William Damico, of my staff, at (312) 353-8207 or [damico.william@epa.gov](mailto:damico.william@epa.gov).

Sincerely,

**Cunningham, Michael**  
Digitally signed by  
Cunningham, Michael  
Date: 2021.06.25  
09:50:45 -05'00'

Michael Cunningham, Chief  
RCRA Compliance Section 1

Attachment

cc: Jennifer Reno, Indiana Department of Environmental Management ([jreno@idem.in.gov](mailto:jreno@idem.in.gov))  
Bill Bougher, Steel Dynamics ([bougher@steeldynamics.com](mailto:bougher@steeldynamics.com))



5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

6. 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.

7. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

### **Jurisdiction and Waiver of Right to Hearing**

8. Jurisdiction for this action is conferred upon U.S. EPA by sections 3006(b) and 3008 of RCRA, 42 U.S.C. §§ 6926(b) and 6928.

9. Respondent admits the jurisdictional allegations set forth in this document and neither admits nor denies the factual allegations in this CAFO.

10. 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**

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil, pursuant to, among others, sections 3001 – 3007 and 2013 of RCRA, 42 U.S.C. §§ 6921 – 6927 and 6934.

12. On November 28, 2016, at 81 Fed. Reg. 85696, U.S. EPA promulgated updates to existing regulations addressing the import and export of hazardous wastes. In its preamble, U.S. EPA stated that, as a federal matter, these import and export rules would be administered solely by the federal government because they affect foreign affairs. Among requirements imposed by

this rule, 40 C.F.R. § 262.83 requires notification to U.S. EPA of impending shipments, completing internationally recognized forms regarding the shipment, ensuring proper documentation accompanies the shipment, and annual reports to U.S. EPA reflecting shipments in the previous year.

13. Pursuant to 40 C.F.R. § 262.83(b)(1), at least 60 days before the first shipment of hazardous waste is expected to leave the United States, an exporter must provide notification in English to U.S. EPA of the proposed transboundary movement.

14. Pursuant to 40 C.F.R. § 262.83(a)(6)(2), exports of hazardous waste are prohibited unless an exporter submits Electronic Export Information (EEI) for each shipment under the International Trade Data System (ITDS) in accordance with 15 C.F.R. § 30.4(b) and includes information listed in the regulation.

15. Pursuant to 40 C.F.R. § 262.83(d), all exporters of hazardous waste must ensure that a movement document accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility which contains the information listed in the regulation.

16. Pursuant to 40 C.F.R. § 262.83(g), primary exporters of hazardous waste must file with U.S. EPA, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year and containing the information listed in the regulation.

17. Any violation of regulations promulgated pursuant to subtitle C (sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

18. Under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$99,681 per day for each violation of subtitle C of RCRA that occurred after November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

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

19. Respondent was and is a “person” as defined by 40 C.F.R. § 260.10 and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent is an “owner” or “operator,” as those terms are defined under 40 C.F.R. § 260.10, of a facility located at 4500 County Road 59, Butler, Indiana (facility).

21. Respondent’s facility is a “facility,” as that term is defined in 40 C.F.R. § 260.10.

22. Respondent’s facility operates electric arc furnaces, which generate dust. Respondent’s electric arc furnace dust is listed as K061 hazardous waste at 40 C.F.R. § 261.32.

23. In November 2017, Respondent sent a shipment of electric arc furnace dust to Australia for a research and development project.

24. Respondent is a “generator” as that term is defined in 40 C.F.R. § 260.10.

25. Respondent is an “exporter” as that term is defined in 40 C.F.R. § 260.10.

26. Respondent is subject to, among other things, the requirements of 40 CFR Part 263 Subpart H, Transboundary Movements of Hazardous Waste for Recovery or Disposal, promulgated pursuant to subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e.

27. On March 27, 2018, the Indiana Department of Environmental Management (IDEM) conducted an inspection of Respondent’s facility and reviewed information Respondent

had already submitted to IDEM disclosing a shipment of electric arc furnace dust to Australia, with such dust being designated by Respondent as hazardous secondary material under applicable regulations.

28. On April 30, 2018, IDEM issued a violation letter to Respondent disagreeing with Respondent's hazardous secondary material designation for the dust, characterizing the dust as hazardous waste instead, and alleging certain violations of RCRA and state law. IDEM subsequently referred this matter to U.S. EPA.

29. On June 8, 2018, Respondent submitted to U.S. EPA a written response to the letter of violation issued by IDEM.

30. On or around November 3, 2017, Respondent shipped electric arc furnace dust from its facility to Adelaide, Australia, via Wilmington, California.

31. During the IDEM inspection on March 27, 2018, Respondent could not produce evidence that it notified EPA of the shipment of electric arc furnace dust to Australia as required by 40 C.F.R. § 262.83(b)(1).

32. During the IDEM inspection on March 27, 2018, Respondent could not produce evidence that it had submitted EEI for each shipment under the ITDS and including information listed in the regulation as required by 40 C.F.R. § 262.83(a)(6)(2).

33. During the IDEM inspection on March 27, 2018, Respondent could not produce evidence that it had ensured that a movement document accompanied the transboundary movement of electric arc furnace dust from the initiation of the shipment until it reached the foreign receiving facility which contained the information listed in the regulation. However, Respondent did produce a bill of lading that accompanied the shipment to Australia. Respondent explained in their response to the violation letter that all of the dust was shipped in sealed

containers that reached the intended destination without any loss or disposal of any dust, that Respondent spent more on shipping the dust to the research facility in Australia than it would have spent to have the dust recycled or disposed of at a permitted U.S. facility, and that Respondent shipped the dust to Australia as part of a research and development project that held the promise of reducing waste generation.

34. During the IDEM inspection on March 27, 2018, Respondent could not produce evidence that it had submitted an annual report listing the November 2017 shipment of electric arc furnace dust as hazardous waste. However, Respondent had submitted its annual report to IDEM designating the November 2017 shipment as hazardous secondary material and asserted that such shipment was allowable under one or more exemptions found at 40 C.F.R. § 261.4.

35. Respondent's shipment of hazardous waste across a transnational boundary without notifying U.S.EPA according to 40 C.F.R. § 262.83(b)(1), without submitting EEI for each shipment under the ITDS in accordance with 40 C.F.R. § 262.83(a)(6)(2)), without ensuring that a movement document accompanied the transboundary movement of electric arc furnace dust from the initiation of the shipment until it reached the foreign receiving facility, and without submitting an annual report listing the shipment of electric arc furnace dust as hazardous waste by March 1, 2018, are violations of regulations promulgated pursuant to Subtitle C of RCRA, and authorize U.S. EPA to seek a penalty under 3008(a) of RCRA, 42 U.S.C. § 6928(a).

#### **Civil Penalty**

36. Pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle the RCRA counts of this action is \$20,000. In determining the penalty amount, Complainant took into account the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and the nature,

circumstances, extent and gravity of the violations. Complainant also considered Respondent's U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

37. Within 30 days after the effective date of this CAFO, Respondent must pay \$20,000 as a civil penalty for the RCRA violations. Respondent must pay the 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, MO 63197-9000

The check must state: *In re: Steel Dynamics, Inc.*, and the docket number of this CAFO.

38. A transmittal letter, stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3511

William Damico (ECR-17J)  
RCRA Enforcement Branch  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
damico.william@epa.gov

Robert S. Guenther (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
guenther.robert@epa.gov

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



40. If Respondent does not timely pay this civil penalty, U.S. 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. Respondent agrees that the validity, amount and appropriateness of these civil penalty are not reviewable in a collection action.

41. 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 amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). 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 principal amount 90 days past due.

#### **General Provisions**

42. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant), and bill.bougher@steeldynamics.com and david.hatchett@h2lawyers.com (for Respondent).

43. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

44. Respondent certifies that it is in compliance with the hazardous waste exportation provisions under Subtitle C of RCRA, 42 U.S.C. §§ 3001-3023, and its implementing regulations, as applicable.

45. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

47. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

48. The terms of this CAFO bind the parties, their successors, and assigns.

49. 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.


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

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

**Steel Dynamics, Inc. – Flat Roll Group, Butler Division, Respondent**

6-14-21  
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Date

  
\_\_\_\_\_  
Jordan Breiner  
V.P., General Manager

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2021.06.29  
17:09:41 -05'00'

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Date

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Michael D. Harris, Director  
Enforcement and Compliance Assurance Division

**In the Matter of:**  
**Steel Dynamics, Inc.,**  
**Docket No. RCRA-05-2021-0034**

**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.

ANN COYLE Digitally signed by ANN  
COYLE  
Date: 2021.06.30  
16:44:56 -05'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Steel Dynamics, Inc. – Flat Roll Group, Butler Division  
Docket Number: **RCRA-05-2021-0034**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2021-0034** , which was filed on **July 1, 2021** , in the following manner to the following addressees:

Copy by e-mail to  
Respondents:

Jordan Breiner  
V.P. General Manager  
Steel Dynamics, Flat Roll Group, Butler Division  
[jordan.breiner@steeldynamics.com](mailto:jordan.breiner@steeldynamics.com)

Bill Bougher  
Steel Dynamics, Flat Roll Group, Butler Division  
[bill.bougher@steeldynamics.com](mailto:bill.bougher@steeldynamics.com)

Copy by e-mail to  
Attorney for Respondent:

David Hatchett  
[david.hatchett@h2lawyers.com](mailto:david.hatchett@h2lawyers.com)

Copy by e-mail to  
Technical Contact for  
Complainant:

William Damico  
[damico.william@epa.gov](mailto:damico.william@epa.gov)

Copy by email to  
Attorney for Complainant:

Robert Guenther  
[guenther.robert@epa.gov](mailto:guenther.robert@epa.gov)

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

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