



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 08 2016

Via Electronic Mail

Brooke Frankel Dickerson
Arnall Golden Gregory
17th Street NW
Suite 2100 Atlanta, GA 30363

Re: Consent Agreement and Final Order - Docket No. RCRA-04-2017-4001(b)
Steel Dust Recycling, LLC
Millport, Alabama

Dear Ms. Dickerson:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CA/FO was effective upon filing with the RHC and payment of the civil penalty is to be paid within thirty (30) calendar days of the effective date of the CA/FO.

In addition, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This puts Steel Dust Recycling, LLC on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U.S. Environmental Protection Agency, Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

If you have any questions, please feel free to contact Javier E. García, of my staff, at (404) 562-8616.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

cc: Chip Crockett, ADEM
Clethes Stallworth, ADEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Steel Dust Recycling, LLC)
13209 State Highway 96)
Millport, Alabama 35576)
EPA ID No.: ALR 000 042 754)
)
Respondent)
_____)

DOCKET NO.: RCRA-04-2017-4001(b)

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

2016 DEC - 8 PM 4: 25
HEARING CLERK
OFFICE OF REGIONAL
COUNSEL
REGION 4

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Alabama Hazardous Waste Management and Minimization Act of 1978 (AHWMMA), Ala. Code § 22-30-1 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at Rules 335-14-1 to 335-14-17 of the Alabama Department of Environmental Management (ADEM or Department) Administrative Code (ADEM Admin. Code) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, & 279]. This action seeks injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] and ADEM Admin. Code rr. 335-14-1 to 335-14-17 [40 C.F.R. Parts 260 through 270 and 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

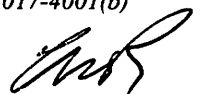


II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Steel Dust Recycling, LLC, a Limited Liability Corporation organized under the laws of Alabama. Respondent is the owner and operator of a facility that operates a High Temperature Metal Recovery unit for the treatment of industrial waste streams including electric arc furnace (EAF) dust (K061) captured at steel manufacturers' air pollution control systems to recover zinc oxide and iron-rich products. The facility is located at 13209 State Highway 96, Millport, Alabama (the Facility).

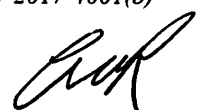
III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at AHWMMA, Ala. Code § 22-30-1 *et seq.* and ADEM Admin. Code rr. 335-14-1 to 335-14-17.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Alabama has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 22-30-14 of the AHWMMA, Ala. Code § 22-30-14 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at ADEM Admin. Code r. 335-14-3 [40 C.F.R. Part 262].
12. Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this



requirement are found at ADEM Admin. Code r. 335-14-5 (permitted) and ADEM Admin. Code r. 335-14-6 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations.
14. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in ADEM Admin. Code r. 335-14-2.01(3)(a)2. [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by ADEM Admin. Code r. 335-14-2-.01(4)(b) [40 C.F.R. § 261.4(b)].
15. Pursuant to ADEM Admin. Code rr. 335-14-2-.01(3)(a)2.(i) and 335-14-2-.03(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in ADEM Admin. Code r. 335-14-2-.03(2)-(5) [40 C.F.R. §§ 261.21-261.24] are characteristic hazardous waste.
16. Pursuant to ADEM Admin. Code rr. 335-14-2-.01(3)(a)2.(ii) and 335-14-2-.04(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in ADEM Admin. Code r. 335-14-2-.04 [40 C.F.R. Part 261, Subpart D].
17. Listed hazardous wastes include the K-Listed wastes from specific sources identified in ADEM Admin. Code r. 335-14-2-.04(3) [40 C.F.R. § 261.32], including “emission control dust/sludge from the primary production of steel in electric furnaces” (K061), which includes EAF dust.
18. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)115.(i) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in ADEM Admin. Code r. 335-14-2 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
19. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)104.(i) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
20. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)198. [40 C.F.R. § 260.10], a “person” includes a corporation.
21. Pursuant to ADEM Admin. Code rr. 335-14-1-.02(1)(a)192. and 194. [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility and an “operator” is “the person responsible for the overall operation of a facility.”
22. Pursuant to ADEM Admin. Code r. 335-14-2-.01(5)(c) [40 C.F.R. § 261.5(c)], when making the quantity determinations to calculate its generator status, the generator must count all hazardous waste that it generates, except certain hazardous wastes that are specifically listed in ADEM Admin. Code r. 335-14-2-.01(5)(c)1.-7. [40 C.F.R. § 261.5(c)(1) – (7)].
23. Pursuant to ADEM Admin. Code r. 335-14-3-.01(4)(a), a large quantity generator or small quantity generator must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current waste activities to the Department annually.



24. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)151. [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG).
25. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a) [40 C.F.R. § 262.34(a)], a Generator may accumulate regulated hazardous waste on-site for either 180 or 90 days or less (depending on the generator's status) without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.-6. [40 C.F.R. § 262.34(a)(1) - (4)] (hereinafter referred to as the "Generator Permit Exemption").
26. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1. [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of regulated hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with ADEM Admin. Code r. 335-14-3-.03(5)(a) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i)-(ii) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the "SAA Permit Exemption").
27. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)2. [40 C.F.R. § 262.34(a)(2)], which is a condition of the Generator Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container unless the waste is accumulated in a RCRA-compliant containment building, in a tank or on a drip pad.
28. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3. [40 C.F.R. § 262.34(a)(3)], which is a condition of the Generator Permit Exemption, a generator is required to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: "Hazardous Waste" unless the waste is accumulated in a RCRA-compliant containment building or on a drip pad.
29. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
30. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], which incorporates ADEM Admin. Code r. 335-14-6-.03(2) [40 C.F.R. § 265.31], and is a condition of the Generator Permit Exemption, a generator is required to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
31. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)], and is a

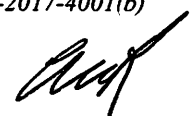


condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.

32. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1. [40 C.F.R. § 262.34(a)(1)], which is a condition of the Generator Permit Exemption, a generator is required to place its waste in either containers, tanks, drip pads, or containment buildings that comply with the requirements specified in this section.
33. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)47. [40 C.F.R. § 260.10], a “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
34. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)82. [40 C.F.R. § 260.10], a “drip pad” is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.
35. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)198. [40 C.F.R. § 260.10], a “tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
36. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)198. [40 C.F.R. § 260.10], a “containment building” means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 335-14-5-.30 or 335-14-6-.30 [Subpart DD of 40 C.F.R. Parts 264 or 265].
37. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(iv) [40 C.F.R. § 262.34(a)(1)(iv)], which is a condition of the Generator Permit Exemption, a generator may place its waste in a containment building where : (1) the generator complies with ADEM Admin. Code r. 33514-6-.30 [Subpart DD of 40 C.F.R. Part 265]; (2) the generator has placed its professional engineer certification that the building complies with the design standards specified in ADEM Admin. Code r. 335-14-6-.30(2) [40 CFR 265.1101] in the facility's operating record prior to operation of the unit, and (3) the owner or operator maintains the following records at the facility: (A) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or (B) documentation that the unit is emptied at least once every 90 days.
38. Pursuant to ADEM Admin. Code r. 335-14-3-.02(1)(a) [40 C.F.R. § 262.20(a)(1)], a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions in ADEM Admin. Code r. 335-14-3-Appendix I.



39. Pursuant to ADEM Admin. Code r. 335-14-3-.01(3)(d) [40 C.F.R. § 262.12(c)], a generator must not offer its hazardous waste to treatment, storage or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status pursuant to ADEM Admin. Code r. 335-14-8-.07.
40. Pursuant to ADEM Admin. Code r. 335-14-9-.01(7) [40 C.F.R. § 268.7(a)(2)], a generator must send with the initial shipment of a waste that does not meet the LDR treatment standards, a one-time written notice that complies with this section to each treatment, storage, or disposal facility receiving the waste.
41. Pursuant to ADEM Admin. Code r. 335-14-11-.02(1)(a)244. [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a Universal Waste handler who does not accumulate 5,000 kilograms or more of Universal Waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
42. Pursuant to ADEM Admin. Code r. 335-14-11-.02(4)(d) [40 C.F.R. § 273.13(d)], a SQHUW must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
43. Pursuant to ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. § 266.100(d)(1)], an owner or operator of a metal recovery furnace that processes hazardous waste solely for metal recovery is conditionally exempt from ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. §§ 266.102 through 266.111], provided the owner or operator provides a one-time written notice to the Director claiming this exemption, the waste is burned solely for metal recovery consistent with the provisions of ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. § 266.100(d)(2)], the waste contains recoverable levels of metals, and the owner or operator complies with the sampling and analysis and recordkeeping requirements of ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. § 266.100(d)(1)].
44. Pursuant to ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. § 266.100(d)(3)], an owner or operator of a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing is exempt from ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. §§ 266.102 through 266.111], provided the owner or operator provide a one-time written notice to the Director claiming the exemption, the baghouse bags contain recoverable levels of metal; the waste does not exhibit the Toxicity Characteristic of ADEM Admin. Code r. 335-142-.03(5) [40 C.F.R. § 261.24] for an organic constituent; the waste is not a hazardous waste listed in ADEM Admin. Code r. 335-14-2-.04 [Subpart D of 40 C.F.R. Part 261] for an organic constituent; and the owner or operator certifies that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements.
45. Pursuant to ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(6)] where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of ADEM Admin. Code r. 335-14-7-.03(1)(b) [40 C.F.R. § 266.20(b)] regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) must, for the initial shipment of waste, prepare a one-time certification described in ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(4)], and a one-time notice which includes the information in ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(3)] (except the manifest number). The certification and notification must be placed in the facility's on-site files.



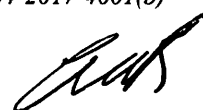
46. Pursuant to ADEM Admin. Code r. 335-14-3-.04(2)(a) [40 C.F.R. § 262.41(a)], a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Department by March 1 of each even numbered year. The Report must include, among other things, a description of each hazardous waste shipped off-site.

IV. EPA ALLEGATIONS AND DETERMINATIONS


47. Respondent is a “person” as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)198. [40 C.F.R. § 260.10].
48. Respondent is the “owner/operator” of a “facility” located at 13209 State Highway 96, Millport, Alabama, as those terms are defined in ADEM Admin. Code rr. 335-14-1-.02(1)(a)192. and 194. [40 C.F.R. § 260.10].
49. Respondent is a “generator” of “hazardous waste” as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)115.(i) [40 C.F.R. § 260.10] and ADEM Admin. Code r. 335-14-2.01(3) [40 C.F.R. § 261.3].
50. Respondent recycles K061 dust received from off-site facilities in two kilns for the recovery of zinc oxide and the production of iron-rich products.
51. Respondent has frequently been an episodic LQG of hazardous waste as that term is defined in ADEM Admin. Code r. 33514-1-.02(1)(a)151. [40 C.F.R. § 262.34(a)].
52. Respondent is a SQHUW as that term is defined in ADEM Admin. Code r. 335-14-11.02(1)(a)244. [40 C.F.R. § 273.9].
53. Respondent is the owner and operator of a metal recovery furnace within the meaning of ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. § 266.100].
54. Respondent recycles K061 into two materials: (1) an iron-rich material it refers to as “Waelz Iron Product” (“WIP”) and (2) a zinc-rich material it refers to as “Waelz Zinc Oxide” (“WZO”). When the WIP is sold for use constituting disposal, it is subject to the provisions of ADEM Admin. Code r. 335-14-7-.03(1)(b) [40 C.F.R. § 266.20(b)].
55. The WIP, oversized WIP, drag, and kiln clean out materials are all derived-from listed hazardous wastes unless excluded from regulation by meeting the applicable LDRs pursuant to ADEM Admin. Code r. 335-14-7-.03(1)(b) [40 C.F.R. § 266.20(b)], the generic exclusion levels in ADEM Admin. Code r. 335-14-2-.01(3)(c)2.(ii)(III)I. [40 C.F.R. § 261.3(c)(2)(ii)(C)(1)] or otherwise under applicable law or regulation.
56. On November 20, 2013, and December 1-2, 2014, the EPA conducted compliance evaluation inspections (CEIs) at Respondent’s facility (the 2013 CEI and the 2014 CEI). The findings of the 2013 CEI and the 2014 CEI were documented in separate Reports mailed to Respondent, dated August 1, 2014 and February 23, 2015, respectively.



57. At the time of the 2013 and 2014 CEIs, SDR had notified as a conditionally exempt small quantity generator of hazardous waste (CESQG). However, during the 2013 and 2014 CEIs, the EPA observed the following hazardous waste streams generated at the facility that SDR had not counted towards its generator status: spent refractory bricks, ten (10) large garbage bags filled with spent baghouse filter media, and K061-contaminated waste streams generated in its maintenance shop, including K061 dust recovered from the shop vacuum cleaner, and two (2) containers and a wheel barrow of K061-contaminated personal protective equipment (PPE) and miscellaneous trash. None of these wastes is specifically listed in ADEM Admin. Code r. 335-14-2-.01(5)(c)1.-7. [40 C.F.R. § 261.5(c)(1)-(7)]. If all such wastes streams are counted towards its generator status, Respondent generated enough hazardous waste to be an LQG.
58. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-2-.01(5)(c) [40 C.F.R. § 261.5(c)] by failing to count towards its generator status all hazardous waste that it generated, except certain hazardous wastes that are specifically listed in ADEM Admin. Code r. 335-14-2-.01(5)(c)1.-7. [40 C.F.R. § 261.5(c)(1)-(7)].
59. In its 2013 and 2014 annual notifications of regulated waste activity to ADEM, Respondent identified itself on its ADEM 8700-12 Forms as a CESQG. As set forth in Paragraph 58, at the time of the 2013 and 2014 CEIs, Respondent had failed to count all hazardous waste streams generated at the facility towards its generator status.
60. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.01(4)(a), by failing to submit a correct and complete ADEM Form 8700-12 reflecting accurate waste activities to the Department annually.
61. At the time of the 2013 CEI, SDR had failed to clearly mark ten (10) containers of spent baghouse filter media with the date upon which accumulation of the waste began.
62. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the Generator Permit Exemption by not complying with the dating requirements of ADEM Admin. Code r. 335-14-3-.03(5)(a)2. [40 C.F.R. § 262.34(a)(2)].
63. At the time of the 2013 CEI, SDR had failed to label ten (10) containers of spent baghouse filter media with the words "Hazardous Waste" and at the time of the 2014 CEI, SDR had failed to label certain containers with the words "Hazardous Waste" or with other words that identify the contents of the containers, including the east drag collection bin used to collect oversized drag from kiln 1; the sweeper truck used to pick up K061 dust, drag, and WIP; and two (2) containers and a wheel barrow of K061-contaminated PPE and miscellaneous trash stored in maintenance shop.
64. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the Generator or the SAA Permit Exemptions by not complying with the labeling requirements of ADEM Admin. Code r. 335-14-3-.03(5)(a)3. [40 C.F.R. § 262.34(a)(3)] or ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)].

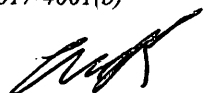


65. At the time of the 2013 CEI, the aerosol can puncturing unit was not equipped with a filter to capture the gas from the punctured aerosol cans. In addition, the EPA observed WIP material outside the WIP bins on the concrete driveway and on the ground on each side of the driveway from the bin area to the WIP building. . Also during the 2014 CEI, water was being added to the WIP bunkers to cool the WIP resulting in a release of WIP-contaminated water outside the bunkers.
66. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the Generator Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of ADEM Admin. Code r. 335-14-6-.03(2) [40 C.F.R. § 265.31].
67. At the time of the 2014 CEI, the following containers of hazardous waste were open while Respondent was not adding or removing waste: two (2) containers and a wheel barrow of K061-contaminated PPE and miscellaneous trash stored in the maintenance shop.
68. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)].
69. At the time of the 2014 CEI, Respondent was storing kiln cleanout material in the Cleanout Bunker and oversized WIP in the Oversized WIP Bunkers. The kiln cleanout material and oversized WIP that are used in a manner constituting disposal are solid wastes derived from the treatment of K061 and are, therefore, derived-from listed hazardous wastes pursuant to ADEM Admin. Code r. 335-14-2-.01(3)(c)(2)(i) [40 C.F.R. § 261.3(c)(2)(i)]. Approximately 95% of the oversized WIP and the kiln cleanout material that are used in a manner constituting disposal are not subject to hazardous waste regulation, however, because they meet Land Disposal Requirements of 40 C.F.R. Section 266.20 (“LDRs”). The Cleanout and Oversized WIP Bunkers are large concrete, three-sided structures that do not fully contain the waste placed inside. The Bunkers are neither a container, tank, drip pad, nor containment building.
70. The EPA therefore alleges that Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing the approximate 5% of the portion of oversized WIP and the kiln cleanout that are used in a manner constituting disposal and that did not meet LDRs (as described in Paragraph 69) and is therefore regulated as hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the Generator Permit Exemption by storing kiln cleanout material and oversized WIP in bunkers that do not fit the definition of either a container, tank, drip pad, or containment building.
71. At the time of the 2014 CEI, SDR was storing WIP and kiln cleanout material (K061-derived treatment residues) in the WIP Building. Pursuant to ADEM Admin. Code r. 335-14-7.03(1)(b) [40 C.F.R. § 266.20(b)], Respondent tests the WIP material to see if it passes the applicable land disposal restrictions. If the WIP fails, it is transferred to the Receiving/Processing Building to be



fed back into the kiln for further processing. The WIP fails approximately 5% of the time. The WIP Building has not been certified by a professional engineer as complying with the design standards in ADEM Admin. Code r. 335-14-6-.30(2) [40 C.F.R. § 265.1101] and, at the time of the 2014 CEI, SDR was not maintaining records demonstrating compliance with the 90-day storage limit.

72. The EPA therefore alleges that Respondent violated Section 22-30-12(b) of the AHWMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the containment building requirements of ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(iv) [40 C.F.R. § 262.34(a)(1)(iv)].
73. On December 5, 2011, SDR shipped without a hazardous waste manifest one 30-cubic yard roll-off container of spent refractory bricks to the Waste Management Prairie Bluff landfill in Houston, Mississippi. The spent refractory bricks exhibited the hazardous waste characteristic of toxicity for cadmium and was also a solid waste derived from the treatment of the K061, and therefore, a derived-from listed hazardous waste pursuant to ADEM Admin. Code r. 335-14-2-.01(3)(c)2(i) [40 C.F.R. § 261.3(c)(2)(i)].
74. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.02(1)(a) [40 C.F.R. § 262.20(a)(1)], by offering its hazardous waste for transport without preparing a hazardous waste manifest for the shipment of hazardous waste.
75. The landfill identified in Paragraph 73 had not obtained an EPA identification number or a Mississippi Hazardous Waste Permit.
76. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.01(3)(d) [40 C.F.R. § 262.12(c)] by offering its hazardous waste to a disposal facility that had not received an EPA identification number or a Mississippi Hazardous Waste Facility Permit.
77. The spent refractory bricks identified in Paragraph 73 may not have met the LDR treatment standard for cadmium. The Respondent failed to provide notice at any time to the landfill named in Paragraph 73 that the hazardous waste may not have met the LDR treatment standards for cadmium.
78. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-9-.01(7) [40 C.F.R. § 268.7(a)(2)], by failing to send with the initial shipment of a waste that may not have met the LDR treatment standards, a one-time written notice that complies with this section to each treatment, storage, or disposal facility receiving the waste.
79. At the time of the 2013 CEI, Respondent was storing spent fluorescent light bulbs in three open boxes.
80. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-11-.02(4)(d) [40 C.F.R. § 273.13(d)], by failing to manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
81. At the time of the 2013 and 2014 CEIs, EPA observed spent baghouse filter media and maintenance shop hazardous wastes (including two (2) containers and a wheel barrow of K061 dust, K061-



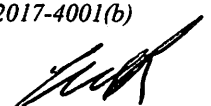
contaminated PPE, and miscellaneous K061-contaminated trash stored in the maintenance shop) destined for burning in the kiln. Respondent had not complied with any of the conditions for exemption set forth in ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. §§ 266.100(d)(1) or 266.100(d)(3)] that would allow those wastes to be burned in the kiln.

82. The EPA therefore alleges that Respondent violated the regulations in ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. §§ 266.102 through 266.111] by processing hazardous wastes and burning baghouse bags without meeting the conditions for exemption from those regulations set forth in ADEM Admin. Code r. 335-14-7-.08(1) [40 C.F.R. §§ 266.100(d)(1) or 266.100(d)(3)].
83. At the time of the 2013 CEI, Respondent did not have any records of the required certification and notification for WIP shipped off-site for use in a manner constituting disposal.
84. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(6)] by failing, for the initial shipment of the WIP sent for use constituting disposal, to prepare a one-time certification described in ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(4)], and a one-time notice which includes the information in ADEM Admin. Code r. 335-14-9(7) [40 C.F.R. § 268.7(b)(3)] and to place the certification and notification in the facility's on-site files.
85. At the time of the 2013 CEI, Respondent had failed to submit a Biennial Report to the Department reflecting the shipment of spent refractory kiln bricks described in Paragraph 73.
86. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.04(2)(a) [40 C.F.R. § 262.41(a)] by failing to submit a Biennial Report to the Department including a description of each hazardous waste shipped off-site.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

87. For the purposes of this CA/FO, Respondent admits only the jurisdictional allegations set out in the above Paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
88. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
89. Respondent waives any right to contest the allegations with respect to issuance or enforcement of this CA/FO, and its right to appeal the proposed Final Order accompanying the Consent Agreement.
90. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
91. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or



communication is to persuade such official to accept and issue this CA/FO. With respect to issuance or enforcement of this CA/FO, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

92. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
93. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program, except as contemplated in Sections VII and VIII hereinbelow.
94. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts and determinations stipulated to in this CA/FO.
95. Each party will pay its own costs and attorneys' fees.

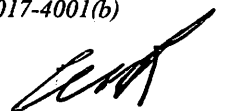
VI. PAYMENT OF CIVIL PENALTY

96. Respondent consents to the payment of a civil penalty in the amount of EIGHTY THOUSAND DOLLARS (\$80,000.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
97. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818



If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

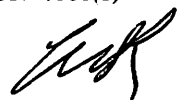
98. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk U.S.
EPA - Region 4 61 Forsyth
Street, S.W. Atlanta, Georgia
30303-8960

And to:

Javier García, Environmental Engineer
Hazardous Waste Enforcement and Section
Enforcement and Compliance Branch
Resource Conservation and Recovery Division, US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

99. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:



- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

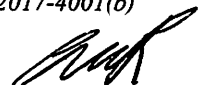
100. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. WORK TO BE PERFORMED

101. Within forty-five (45) days of the Effective Date, Respondent shall apply to the Department for a variance from classification as a solid waste for the WZO and the drag that is sold under ADEM Admin. Code r. 335-141-.03(10)(c) [40 C.F.R. § 260.30(c)] for hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, following the procedures for obtaining a variance in ADEM Admin. Code r. 335-14-1-.03(13) [40 C.F.R. § 260.33] and addressing the relevant criteria in ADEM Admin. Code r. 335-14-1-.03(11)(c) [40 C.F.R. § 260.31(c)]. Respondent shall concurrently provide EPA with a copy of the application.
102. Within forty-five (45) days of the Effective Date, or as required under Alabama law, whichever is later, Respondent shall file all notices, reports and fees, and implement all necessary practices as necessary to comply with generator requirements for 2016, in accordance with Alabama law. Respondent shall concurrently provide EPA with copies of all such submittals.
103. Within forty-five (45) days of the Effective Date, Respondent shall submit a Work Plan to EPA to: (1) modify the WIP Bunkers to contain the WIP material in accordance with ADEM Admin. Code r. 335-14-3-.03(5)(a)1. [40 C.F.R. § 262.34(a)(1)], and (2) to bring the WIP building into compliance with the containment building standards in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(iv) [40 C.F.R. § 262.34(a)(1)(iv)]. The Work Plan shall include a proposed schedule for implementing the modifications.

VIII. DOCUMENT APPROVAL AND WORK IMPLEMENTATION

104. The EPA will review all written proposals, work plans, reports, draft and final reports, and any other documents required to be submitted under Paragraph 103 of this CA/FO ("submissions"), and will notify Respondent in writing within ninety (90) days of receipt of the EPA's: (a)



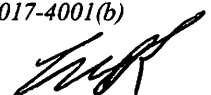
approval, (b) approval with conditions and/or modifications, or (c) disapproval, with comments and/or modifications, directing Respondent to resubmit the submission after incorporating the EPA's comments and/or modifications. The EPA may also approve, modify, or disapprove a portion of a submission. EPA may disapprove any submission or portion of a submission only to the extent it does not comply with applicable laws, regulations or this CA/FO.

105. Upon receipt of any written notice of EPA disapproval, Respondent shall revise and resubmit for EPA approval any submission in accordance with the requirements of this CA/FO and the EPA's notice of disapproval, within the due date reasonably specified therein. Revised submissions are subject to EPA approval, approval with conditions and/or modifications, or disapproval. If Respondent does not submit a revised submission by the due date, Respondent shall be in violation of this CA/FO as of the due date.
106. For purposes of Respondent's submissions, Section IX (Dispute Resolution) applies only to submissions disapproved and revised by the EPA, or that have been disapproved by the EPA, then revised and resubmitted by the Respondent, and again disapproved by the EPA.
107. Subject to Section IX (Dispute Resolution), if, after providing the Respondent with the opportunity to correct and resubmit any submission required by this CA/FO, the EPA determines that the submission still fails to meet the technical or administrative requirements of this CA/FO or applicable regulations, the EPA may modify the submission with the EPA's comments and finalize and approve the submission for implementation by the Respondent.
108. Upon receipt of the EPA's written approval, Respondent shall commence Work and implement any approved Work Plan in accordance with the schedule and provisions contained therein.
109. Any written EPA-approved submission shall be deemed incorporated into this CA/FO. Any noncompliance with such EPA-approved submission shall constitute noncompliance with this CA/FO. Prior to the EPA's written approval, no submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

IX. DISPUTE RESOLUTION

110. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this CA/FO.
111. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by the EPA pursuant to this CA/FO, Respondent shall notify the EPA of the dispute (Notice of Dispute) in writing within fourteen (14) business days of Respondent's receipt of the Initial Written Decision. The Notice of Dispute shall be mailed to:

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, Georgia 30303



lamberth.larry@epa.gov
(404) 562-8590

112. Respondent and the EPA shall attempt to resolve the dispute informally. The period for informal negotiations shall not exceed twenty-one (21) business days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the dispute (Negotiation Period). The EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period. The Negotiation Period may be modified by written agreement of the parties to the dispute.
113. If the parties cannot resolve the dispute informally under Paragraph 112, then the position advanced by the EPA shall be considered binding unless, within twenty-one (21) business days after the conclusion of the informal Negotiation Period, Respondent invokes the formal dispute resolution procedures by serving on the EPA at the address specified in Paragraph 111 above, and to the Director of the RCR Division, EPA Region 4, a written Statement of Position on the matter in dispute, including, but not limited to, the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this CA/FO, the basis for Respondent's position, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue.
114. Within fourteen (14) calendar days after receipt of Respondent's Statement of Position, the EPA will serve on Respondent and to the Director of the RCR Division, EPA Region 4, its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the EPA.
115. Following receipt of both Statements of Position, the Director of the RCR Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. Such decision shall not be appealed further, and shall be incorporated into and become an enforceable element of this CA/FO.
116. During the pendency of the dispute resolution process, unless there has been a written modification by the EPA of a compliance date, or excusable delay as defined in Section XI (Force Majeure and Excusable Delay), the existence of a dispute as defined in this Section and the EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CA/FO which is not in dispute. However, payment of Stipulated Penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, Stipulated Penalties shall accrue in accordance with Paragraphs 117 and 118, unless Respondent prevails on the disputed issue, or the final decision maker, at his or her discretion, reduces the amount of the accrued penalty upon a finding that Respondent had a good faith basis for invoking the dispute resolution process. Stipulated Penalties shall be assessed and paid as provided in Section X (Delay in Performance/Stipulated Penalties).



X. DELAY IN PERFORMANCE/STIPULATED PENALTIES

117. If Respondent fails to comply with the provisions of this CA/FO, Respondent shall pay Stipulated Penalties as indicated below for each violation for each calendar day during which the violation occurs:

<u>Period of Failure to Comply</u>	<u>Penalty Per Calendar Day Per Violation</u>
1st through 6th day	\$ 100
7th through 30th day	\$ 250
31st through 60th day	\$ 500
61st day and beyond	\$ 1,000

118. Subject to the other Paragraphs in this CA/FO, all Stipulated Penalties begin to accrue on the day that complete performance is due, or a violation occurs, and continue to accrue through the final day of correction of the noncompliance, or the day the EPA submits its Statement of Position to the Director, RCR Division, EPA Region 4, pursuant to Section IX (Dispute Resolution) of this CA/FO, whichever occurs first. Nothing herein shall prevent the simultaneous accrual of separate Stipulated Penalties for separate violations of this CA/FO which derive from Respondent's independent and distinguishable acts and/or omissions. Issuance and receipt of a notice of noncompliance is not a condition precedent to the accrual of Stipulated Penalties.
119. Accrued Stipulated Penalties shall become due and payable thirty (30) calendar days after demand by the EPA for their payment. Stipulated Penalties shall be paid by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818



If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court

Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

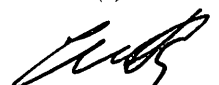
120. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk U.S.
EPA, Region 4 61 Forsyth
Street, S.W. Atlanta, Georgia
30303-8960

and to:

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, Georgia 30303
lamberth.larry@epa.gov
(404) 562-8590

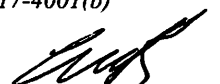
121. If any payment is not received within thirty (30) calendar days of being due, interest, handling charges and late-payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c).



122. Respondent may dispute the EPA's assessment of Stipulated Penalties by invoking the dispute resolution procedures under Section IX (Dispute Resolution). Except as provided in Section IX (Dispute Resolution), the Stipulated Penalties in dispute shall continue to accrue in accordance with Section X, but need not be paid, during the dispute resolution period. Respondent shall pay Stipulated Penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to the EPA within seven (7) business days of receipt of such resolution in accordance with Paragraph 98 of this CA/FO. The EPA in its discretion may waive or reduce any Stipulated Penalties assessed.
123. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this CA/FO.
124. The Stipulated Penalties set forth in this Section do not preclude EPA from pursuing any other injunctive remedies or sanctions which may be available to the EPA by reason of Respondent's failure to comply with any of the terms and conditions of this CA/FO. However, all Stipulated Penalties which are paid by Respondent shall be off-set against any and all penalties for the same violation which the EPA may be entitled to collect as a result of other enforcement actions.
125. No payments under this Section shall be tax deductible for federal tax purposes.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

126. Force majeure, for purposes of this CA/FO, is defined as any event arising from causes not reasonably foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors that delays or prevents the timely performance of any obligation under this CA/FO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the Work to be performed under this CA/FO; financial inability to complete the Work; minor precipitation events; or changed circumstances arising out of sale, lease, or transfer of Respondent's interest in any and/or all portions of the Facility.
127. If any event occurs or has occurred that may delay the performance of any obligation under this CA/FO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, his or her Section Chief or, in the event both of EPA's designated representatives are unavailable, the Director of RCR Division, EPA Region 4, within seventy-two (72) hours of when Respondent first knew or should have known that the event might cause a delay. Within seven (7) business days thereafter, Respondent shall provide to the EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event, unless such failure is waived by the EPA at



its discretion. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

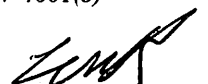
128. If the EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CA/FO that is affected by the force majeure event will be extended by the EPA for such time as the EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If the EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will promptly notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.
129. If the EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section IX (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by the EPA for such time as is necessary to complete such obligation.

XII. PARTIES BOUND

130. This CA/FO shall be binding on the EPA and Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
131. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
132. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

XIII. RESERVATION OF RIGHTS

133. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
134. Complainant reserves the right to take enforcement action against Respondent for any future actions not addressed in this CA/FO that violate RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.



135. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.
136. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

XIV. OTHER APPLICABLE LAWS

137. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XV. SERVICE OF DOCUMENTS

138. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

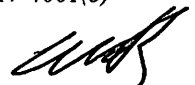
Joan Redleaf Durbin
Senior Attorney
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9544
redleaf-durbin.joan@epa.gov

139. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Brooke Frankel Dickerson
Arnall Golden Gregory LLP
171 17th Street NW, Suite 2100
Atlanta, GA 30363
(404) 873-8632
brooke.dickerson@agg.com

XVI. SEVERABILITY

140. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such



provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

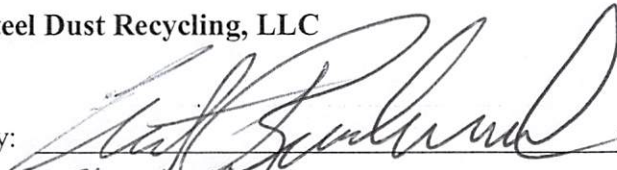
XVII. EFFECTIVE DATE

141. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

In the matter of Steel Dust Recycling, LLC, Docket No. RCRA-04-2017-4001(b):

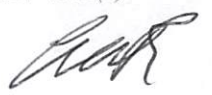
AGREED AND CONSENTED TO:

Steel Dust Recycling, LLC

By:  Dated: 12-7-2016
Title: *Plant Manager*
Name: *Art Rowland*

United States Environmental Protection Agency

By:  Dated: 12/8/16
Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) DOCKET NO.: RCRA-04-2017-4001(b)
)
Steel Dust Recycling, LLC)
13209 State Highway 96) Proceeding Under Section 3008(a) of the
Millport, Alabama 35576) Resource Conservation and Recovery Act,
EPA ID No.: ALR 000 042 754) 42 U.S.C. § 6928(a)
)
Respondent)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 8th day of December, 2016.

BY: Tanya Floyd
Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Steel Dust Recycling, LLC, Docket Number: RCRA-04-2017-4001(b), and have served the parties listed below in the manner indicated:

Joan Redleaf Durbin (Via EPA's electronic mail)
Senior Attorney
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA's electronic mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Javier García, Environmental Engineer (Via EPA's electronic mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration
Division US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Brooke Frankel Dickerson (Via Certified Mail - Return Receipt
Amall Golden Gregory LLP Requested)
171 17th Street NW, Suite 2100
Atlanta, Georgia 30363

Art Rowland (Via Certified Mail - Return Receipt
Plant Manager Requested)
Steel Dust Recycling, LLC
P.O. Box 819
Millport, Alabama 35576

Date: December 8, 2016 

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511

