



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 14 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. David Dai  
Spring Metal Recycling, LLC  
7468 Jonesboro Road #118  
Jonesboro, Georgia 30236

Re: Spring Metal Recycling, LLC  
Consent Agreement - Docket No. TSCA-04-2015-2901(b)

Dear Mr. Dai:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) in the above referenced matter. If you have any questions, please feel free to contact Brooke York, of my staff, at (404) 562-8025. Legal questions should be directed to Robert Caplan at (404) 562-9520.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
)  
Spring Metal Recycling, LLC )  
7468 Jonesboro Road #118 )  
Jonesboro, Georgia 30236 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No. TSCA-04-2015-2901(b)

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HEMINGWAY CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Restoration (RCR) Division, United States Environmental Protection Agency (EPA), Region 4. Respondent is Spring Metal Recycling, LLC.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of the RCR Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCR Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated rules in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring between March 15, 2004, and January 12, 2009, a penalty of up to \$32,500 may be assessed. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Brooke York  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-8025

### **III. EPA's Allegations of Violations**

6. Respondent owns and operates a facility at 7468 Jonesboro Road #118, Jonesboro, Georgia, that accepts, among other items, used and discarded electronic equipment and other metals for resale, scrapping and recycling. Respondent is a "person" as defined in 40 C.F.R. § 761.3.
7. On April 18, 2012, the EPA conducted a compliance evaluation inspection (CEI) at Respondent's facility. The purpose of the CEI was to determine the facility's compliance with the PCB regulations and RCRA regulations.
8. The term "PCB Container" is defined in 40 C.F.R. § 761.3 as any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
9. The term "PCB Article" is defined in 40 C.F.R. § 761.3 as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. PCB Article includes among other things, capacitors, transformers, and electric motors.
10. The term "PCB Item" is defined in 40 C.F.R. § 761 as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
11. The term "PCB Capacitor" is defined in 40 C.F.R. § 761.3 as any capacitor that contains  $\geq 500$  ppm PCB. Concentration assumptions applicable to capacitors appear under 40 C.F.R. § 761.2.
12. Pursuant to 40 C.F.R. § 761.2(4), any person must assume that a capacitor manufactured prior to July 2, 1979, whose PCB concentration is not established contains  $\geq 500$  ppm PCBs. If the date of manufacture is unknown, any person must assume the capacitor contains  $\geq 500$  ppm PCBs.

13. 40 C.F.R. § 761.20(c) prohibits any person from processing or distributing in commerce any PCB, or PCB Items regardless of concentration, for use within the United States or for export from the United States without an exemption. During and subsequent to the CEI, the EPA's inspectors obtained documentation which indicated that Respondent had sold and distributed in commerce PCB items including PCB-containing fluorescent light ballasts and PCB capacitors without an exemption. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.20(c).
14. 40 C.F.R. § 761.40(a)(1) requires that each container used to store PCBs must be marked with an M<sub>L</sub> as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the time of the CEI, the inspectors observed nine containers containing PCB-containing fluorescent light ballasts and/or PCB capacitors (PCB Containers) that were not marked with the required M<sub>L</sub> mark. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(1).
15. 40 C.F.R. § 761.40(a)(10) requires that each storage area used to store PCBs and PCB items for disposal be marked with an M<sub>L</sub> mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the time of the CEI, the areas being used to store PCB Containers inside the building at the facility were not marked with the required M<sub>L</sub> mark. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(10).
16. 40 C.F.R. Part 761, Subpart D requires both general and waste specific storage and disposal requirements to be met while PCBs are in storage for disposal. At the time of the CEI, inspectors observed PCB Items stored at the facility, some of which were leaking, as indicated by the oily residue on the contents of several PCB Containers and oil staining that had seeped through the PCB Containers and had become visible from the outside of the PCB Containers. Additionally, inspectors reviewed documentation indicating that the Respondent had failed to properly dispose of PCBs in its possession. Therefore, EPA alleges that Respondent violated applicable disposal requirements found in 40 C.F.R. Part 761 which include, but are not limited to, 40 C.F.R. §§ 761.50(b)(2)(i), 761.50(b)(2)(ii), 761.60, 761.60(b)(2)(ii), and/or 761.62(a)-(c).

17. 40 C.F.R. § 761.65(b) requires that any facility used for the storage of PCBs and PCB Items to have an adequate roof and walls, a floor that provides continuous curbing of at least a height of six-inches, capable of containing a volume equal to at least two times the volume of the largest PCB container, and is free of drain valves, floor drains, expansion joints, sewer lines, or other openings. At the time of the CEI, Respondent was storing PCB Containers in a building that did not meet these requirements. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(b).
18. 40 C.F.R. § 761.65(c)(5) requires that all PCB Items held in storage shall be checked for leaks at least once every thirty days and any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers. Respondent has produced no evidence proving that it inspected alleged PCB Containers for leaks at least once every thirty days. As described in Paragraph 16, leaks and staining were observed from PCB Items and on PCB Containers indicating that the contents of one or more leaking containers were not transferred to non-leaking containers. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(5).
19. 40 C.F.R. § 761.97(a) requires any person who exports PCBs or PCB Items to obtain an exemption. At the time of, and subsequent to the CEI, inspectors reviewed documentation that indicated the Respondent had sold and exported PCBs without an exemption. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.97(a).

#### **IV. Consent Agreement**

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
21. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying this consent agreement.

22. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
24. This CAFO constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged in this CAFO and in the Notice of Violation dated April 15, 2013. Except as specifically provided in this CAFO, the EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the Respondent's responsibility to comply with said laws and regulations.
25. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

#### V. Final Order

26. Respondent is assessed a civil penalty in the amount of **THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00)**. **Four payments will be made to complete payment of the entire civil penalty including interest.** The first payment is due within thirty (30) days of the effective date of this CAFO (which is the date the CAFO is filed with the Regional Hearing Clerk) and three subsequent payments shall be made in 90-day intervals thereafter in accordance with the schedule set out below. Including the civil penalty and interest (1% annual percentage rate), the total amount that will be paid upon the completion of all payments will be **\$35,350.00**.

a. Respondent shall make payments in accordance with the following schedule:

<b>Payment shall be made <i>no later than</i></b>	<b>Principle</b>	<b>Interest</b>	<b>Total Payment</b>
Thirty (30) calendar days following the effective date of this CA/FO.	U.S. \$8,750.00	U.S. \$87.50	U.S. \$8,837.50
One hundred and twenty (120) days following the effective date of this CA/FO.	U.S. \$8,750.00	U.S. \$87.50	U.S. \$8,837.50
Two hundred and ten (210) days following the effective date of this CA/FO.	U.S. \$8,750.00	U.S. \$87.50	U.S. \$8,837.50
Three hundred (300) days following the effective date of this CA/FO.	U.S. \$8,750.00	U.S. \$87.50	U.S. \$8,837.50

27. Respondent shall remit the civil penalty by either: (1) a cashier's or certified check made payable to the "Treasurer, United States of America;" or (2) wire transfer, in accordance with instructions provided below. If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

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

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight delivery service (U.S.P.S., Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency  
 Government Lockbox 979077  
 1005 Convention Plaza  
 Mail Station SL-MO-C2-GL  
 St. Louis, Missouri 63101  
 (314) 425-1818

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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.”**

28. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) to each of the following persons at the following addresses:

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

Larry Lamberth  
Chief, Hazardous Waste Enforcement and Compliance Section  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

29. If Respondent fails to make a payment in accordance with the schedule set forth above, the entire unpaid balance of the penalty and accrued interest shall be then due and payable. In such an event, Respondent's liability shall include the immediate payment of the entire remaining principal balance of the civil penalty along with any penalties and interest accrued up to the date payment is made. In the event of any such failure or default, Respondent agrees to pay and shall remain liable for administrative handling charges and late payment penalty charges as described below.

30. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
31. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may avoid the payment of interest by electing to pay the entire civil penalty of THIRTY-FIVE THOUSAND DOLLARS (US \$35,000.00) within thirty (30) calendar days after the effective date of this CAFO. In addition, at any time after making the initial payment Respondent may elect to pay the entire principal balance remaining together with any penalties and interest accrued up to the date such payment is made. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
32. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
34. This CAFO shall be binding upon the Respondent, its successors and assigns.

35. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**VI. Effective Date**

36. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent:** Spring Metal Recycling, LLC  
**Docket No.:** TSCA-04-2015-2901(b)

By:  (Signature) Date: 3/2/2015

Name: David D. M. (Typed or Printed)

Title: manager (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 3/24/2015  
G. Alan Farmer, Director  
RCR Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**Respondent:** Spring Metal Recycling, LLC  
**Docket No.:** TSCA-04-2015-2901(b)

**APPROVED AND SO ORDERED** this 13th day of April, 2015.

By:   
Carol Baschon  
Acting Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO) in the Matter of Spring Metal Recycling, LLC, Docket Number TSCA-04-2015-2901(b), on the parties listed below in the manner indicated:

David Dai  
Owner  
Spring Metal Recycling, LLC  
7468 Jonesboro Road #118  
Jonesboro, Georgia 30236

(Via Certified Mail - Return Receipt  
Requested)

Robert Caplan  
Senior Attorney  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

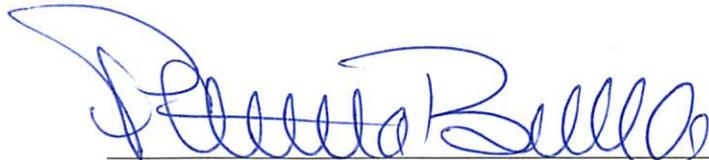
(via EPA's internal mail)

Tammye Cross  
Enforcement and Compliance Branch  
RCR Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(via EPA's internal mail)

Date:

4-14-15



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