

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
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REGIONAL AIR QUALITY CENTER
EPA REGION VI

IN THE MATTER OF:

SOUTHERN METAL
PROCESSING CO. INC
Baytown, Texas 77521

RESPONDENT
EPA ID TX0000846881

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2014-0910

CONSENT AGREEMENT AND FINAL ORDER

I.

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, Southern Metal Processing Co, Inc. (“SMP” or “Respondent”), and concerns the facility located at 4750 West Cedar Bayou Lynchburg Road, Baytown, Texas 77521 (the “Facility”).
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. The CAFO resolves only those violations which are alleged herein.
6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

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

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is an authorized corporation in the State of Texas, authorized on August 6, 1984, and is located at 4750 West Cedar Bayou- Lynchburg Road, Baytown, Texas 77521.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 260.10].
11. Respondent's Registered Agent for service in the State of Texas is Scott Austill,

4750 West Cedar Bayou- Lynchburg Road, Baytown, Texas 75221.

12. SMP owns and/or operates the Facility at which it engages in commercial and industrial equipment cleaning, repair, and maintenance.
13. During the period of January 2014 through April 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of SMP’s performance as a generator of hazardous waste.
14. During the Investigation, EPA discovered that SMP, at a minimum, generated the following waste:
 - i. Multiple hazardous waste streams with chrome, including chrome contaminated sand filter media sludge with salts, with the hazardous waste toxicity characteristic for chromium and the corresponding waste code D007;
 - ii. Hazardous waste stream(s) with the characteristic for ignitability and the corresponding waste code D001; and
 - iii. Hazardous waste stream(s) with the hazardous waste characteristic for corrosivity and the corresponding waste code D002.
15. The waste streams identified in Paragraph 14 are hazardous waste as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. § 261.24].
16. From the Investigation, EPA determined that during the period of 2009 through 2011, SMP generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, which qualifies SMP for the large quantity generator status as established under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262].

17. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10]; and a “hazardous waste management facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(71), [40 C.F.R. § 260.10].
18. SMP is a “ generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
19. As a generator of hazardous waste, SMP is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C and F, [40 C.F.R §§ 262 and/or 270].

Claim i. Notification Requirements

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
21. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, SMP is a “generator” of hazardous waste.
22. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.
23. At the time of the investigation, SMP had not filed with the Administrator or with the authorized State an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Operate within Its Stated Generator Status

24. The allegations in Paragraphs 1-23 are realleged and incorporated herein by reference.
25. During the Investigation, EPA determined that SMP declared its generator status as a small quantity generator ("SQG").
26. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d) and 40 C.F.R. § 262.34(d), as long as the SQG complies with the requirements set forth therein, the SQG can operate without a permit or interim status.
27. Further, 30 TEX.ADMIN.CODE §§ 335.69 (d)&(f) and 40 C.F.R. §§ 262.34(d)&(f), require that the quantity of waste accumulated on-site by a SQG must never exceeds 6,000 kilograms.
28. During the periods of 2009 through 2011, SMP on several occasions exceeded its declared SQG status and operated as a large quantity generator in violation of the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335. Subchapters C and/or F and 40 C.F.R. §§ 262.34 and/or 270.

Claim iii. Failure to file Annual and Biennial Reports

29. The allegations in Paragraphs 1-28 are realleged and incorporated herein by reference.
30. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41], a generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA's Regional Administrator, and to the Texas Commission on Environmental Quality (TCEQ), by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9.
31. At all times relevant to this CAFO, the EPA and/or the TCEQ did not receive the requisite

number of Annual and Biennial Reports that SMP was required to file in violation of 30 TEX.ADMIN.CODE §§ 335.9 and 335.71, [40 C.F.R. § 262.41].

IV.
COMPLIANCE ORDER

32. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures (“SOP”) to ensure that SMP is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; and (c) reporting, transporting, and disposing of hazardous waste;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

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

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

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.

TERMS OF SETTLEMENT

i. Penalty Provisions

34. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent’s good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of \$42,510.00.
35. The total penalty shall be paid within one hundred and eighty (180) calendar days of the effective date of this CAFO, made payable to the Treasurer United States, in the manner, and within the prescribed time period set forth in Paragraph 36 below.
36. The first payment of \$12,510.00 shall be paid within thirty (30) calendar days of the effective date of this CAFO. There shall be five (5) subsequent payments, each of \$6000.00 that shall be paid on or before the last business day of each successive month until the total payment of \$42,510.00 is paid in full.
37. The following are Respondent’s options for transmitting the penalties:

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

Mail, the check should be remitted to:

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

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

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

Wire Transfer:

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

The case name and docket number (In the Matter of Southern Metals Processing Co. Inc.,

Docket No. RCRA-06-2014-0910) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

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

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

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Costs

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

iii. Termination and Satisfaction

41. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 33. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.


iv Effective Date of Settlement

42. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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


FOR THE RESPONDENT:

Date: 6-30-14


Southern Metal Processing Co., Inc.
James B. Ulrey Jr.
President + CEO

FOR THE COMPLAINANT:

Date: 7.1.14


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

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

Date: 7/2/14



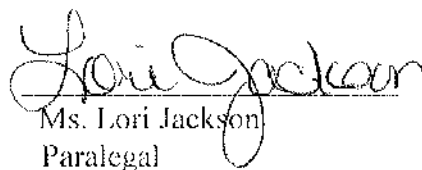
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 2 day of July, 2014, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7012305000165001737

James B. Ulrey, Jr.
SOUTHERN METAL PROCESSING CO., INC
130 Allred Lane
Oxford, AL 36203
1-252-282-6923


Ms. Lori Jackson
Paralegal