

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 Four Penn Center - 1600 John F. Kennedy Blvd  
 Philadelphia, Pennsylvania 19103**

<p>In the Matter of:</p> <p><b>TMS International LLC</b></p> <p><b>516 Delwar Road</b>  <b>West Mifflin, PA 15236</b></p> <p>Respondent.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p><b>U.S. EPA Docket No. CAA-03-2023-0079DA</b></p> <p><b>Proceeding under Sections 113(a)(1) and (4)</b>  <b>of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1)</b>  <b>and (4)</b></p>
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**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order on Consent (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(a) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a).
2. The Administrator of the EPA delegated the authority to issue this Order under the CAA to the Regional Administrators. The Regional Administrator of the EPA Region III has redelegated this authority to the Director of the EPA Region 3 Enforcement and Compliance Assurance Division, pursuant to EPA Delegation 7-6A.
3. TMS International LLC (“Respondent” or “TMS”) is a limited liability company registered in the State of Delaware and doing business in the Commonwealth of Pennsylvania. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Respondent signs this Order on Consent for purposes of reaching an amicable settlement with the EPA.
5. In satisfaction of the notice requirements of Section 113(a) of the CAA, 42 U.S.C.

§ 7413(a), EPA issued to Respondent a Notice of Violation and Opportunity to Confer (“NOV”) dated January 18, 2022, and provided a copy to the Allegheny County Health Department (“ACHD”), providing notice that the EPA found that Respondent committed the alleged violations described in Section C (Findings) of this Agreement and providing Respondent an opportunity to confer with the EPA. On March 15, June 2 and June 30, 2022, representatives of Respondent and the EPA discussed the NOV.

**B. STATUTORY AND REGULATORY BACKGROUND**

6. The EPA alleges and adopts the Findings set forth in Section C below.
7. The EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. This includes requirements promulgated by the EPA and those contained in federally enforceable State Implementation Plans (“SIPs”) or permits.
8. The term "applicable implementation plan" is defined in Section 302(q) of the Act, 42 U.S.C. § 7602(q).
9. The applicable implementation plan for the Commonwealth of Pennsylvania ("Pennsylvania SIP") is codified at 40 C.F.R. Part 52, Subpart NN.
10. The Pennsylvania SIP contains regulations from the Commonwealth of Pennsylvania’s Air Pollution Control Act (“APCA”), including, but not limited to, Subchapter F (Operating Permit Requirements), 25 Pa. Code §§127.401-127.464, and the ACHD’s Air Pollution Control Regulations governing the air resources in Allegheny County, known as Article XXI (hereinafter “Article XXI”), including, but not limited to, Part C (Operating Permits) Sections 2103.01-2103.15 and Section 2103.20.b.4. *See*, 40 C.F.R. § 52.2020(c)(2).

11. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.
12. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs under 40 C.F.R. Part 70.
13. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), directs each state to develop a permit program under state or local law that meets the requirements of Title V of the CAA for review and approval by EPA. Once approved by EPA, the state air pollution control agency is authorized to administer its own Title V operating permit program.
14. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.
15. EPA approved the Pennsylvania Department of Environmental Protection's ("PADEP's") request on behalf of the Allegheny County Health Department for ACHD to implement the operating permit program as the permitting authority and issue operating permits pursuant to 40 C.F.R. Part 70, for sources of air pollutants within its Allegheny County geographic jurisdiction, effective on December 17, 2001. *See*, 66 Fed. Reg. 55,112 (November 1, 2001).
16. Section 502(a) of the CAA, 42 U.S.C. § 7661a, and EPA's regulations at 40 C.F.R. § 70.7(b), prohibit the operation of a major source except in compliance with a permit issued by a permitting authority under Title V of the CAA. *See also*, 35 P.S. § 4006.1(b)(1).

17. Pursuant to ACHD Article XXI, Section 2103.10.b., no source located within Allegheny County may be operated or allowed to operate except in compliance with an Operating Permit issued under ACHD Article XXI, Part C, Subpart 1 (Sections 2103.01-2103.15).
18. “Title V facility” is defined, among other things, as “[a] major stationary source as defined in Title I, Part D of the Clean Air Act (42 U.S.C. §§ 7501-7515), including: (B) [f]or ozone transport regions established under section 184 of the Clean Air Act (42 U.S.C. § 7511c), sources with the potential to emit 50 tpy or more, of VOCs. . . .” 25 Pa. Code § 121.1.
19. “Major source” is defined to include “any stationary source, or any group of stationary sources, that is located on one or more contiguous or adjacent properties, is under common control of the same person . . . and . . . (e) [f]or ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit, including fugitive emissions, 50 tpy or more of volatile organic compounds.” ACHD Article XXI, Section 2101.20.
20. The Commonwealth of Pennsylvania is included within the ozone transport region established under CAA Section 184(a), 42 U.S.C. § 7511c(a).
21. Potential to emit (“PTE”) is defined as “the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by [EPA] and citizens under the Clean Air Act. . . .” ACHD Article XXI, Section 2101.20.

22. A “Synthetic Minor source” is an air contamination source subject to federally enforceable conditions limiting the source’s potential to emit to less than the major source thresholds specified in the definition of ‘major source,’ including, but not limited to, 50 TPY for VOCs. *See*, ACHD Article XXI, Section 2101.20; 25 Pa. Code § 121.1.
23. Pursuant to ACHD Article XXI, Section 2103.20.b.4., a facility whose PTE exceeds the major source threshold for a regulated pollutant such as the 50 tons per year (“TPY”) threshold for VOCs may, in lieu of applying for and obtaining a Title V operating permit, properly submit to ACHD a Synthetic Minor permit application with enforceable conditions as a restriction on its PTE, provided that the facility must be in compliance at all times, during the review of the permit application and the term of the permit, with such enforceable conditions.

### **C. FINDINGS**

24. Respondent is and was, at all times relevant to the violations alleged herein, the owner and operator of a metal scrap shredding facility (SIC Code 5093), located at 516 Delwar Avenue, West Mifflin, Allegheny County, Pennsylvania 15236 (hereinafter “the Facility”).
25. Metal shredding operations began at the Facility in approximately 1974.
26. At all times relevant to the violations alleged herein, the Facility operations have included the use of a hammer-mill shredder to process ferrous materials, including scrap vehicles, appliances and other scrap metal, for recycling and ultimate resale to steel manufacturers.
27. A Minor Source Operating Permit #0359 was issued for the Facility by ACHD on June 4, 2018 (“Minor Source Permit #00359”) and currently remains in effect. Minor Source

Permit #0359 does not include any enforceable limitation on the shredder's allowable annual hours of operation or annual tonnage of scrap material shredded.

28. On August 8, 2018, EPA conducted a CAA inspection ("Inspection") at the Facility to verify its compliance with applicable state and federal regulations.
29. By letter dated October 31, 2019, EPA issued to Respondent a Notice of Noncompliance/Opportunity to Show Cause ("NON"), describing potential violations of the PA SIP and the CAA at the Facility identified by EPA after further investigation of the Facility's operations following the Inspection.
30. The EPA has collected performance test data from scrap metal shredding facilities located across the United States, with feedstocks and feed rates comparable to the Respondent's Facility.
31. The EPA has identified that scrap metal shredding facilities such as Respondent's Facility can generate excess VOC emissions, which can contribute to the formation of ground level ozone and violations of the National Ambient Air Quality Standards ("NAAQS") for ozone, established pursuant to CAA Section 109, 42 U.S.C. § 7409.
32. The EPA received a Freedom of Information Act ("FOIA") request from TMS on March 16, 2020, for performance test data from similar metal shredding facilities used by EPA to evaluate the Facility's compliance. Subsequently, by email on July 30, 2020, the EPA provided TMS with the performance test data it used to evaluate the Facility's potential to emit VOCs and compliance with applicable CAA requirements, in FOIA number EPA-R3-2020-003297.
33. Based on these performance tests' data and Respondent's maximum operational capacity of the Facility's shredder, the EPA has determined that without federally enforceable

operational limitations such as the Shredder Operational Limitations described in Section D (Order) of this Order, the Facility has a PTE more than the 50 TPY major source threshold for VOC.

34. On September 10 and December 8, 2020, EPA and TMS met by conference call to discuss the NON. During the meeting, TMS presented its analysis of the emissions values and performance test data provided in July 2020 by EPA to TMS.
35. Between approximately December 2020 and July 2021, EPA requested and TMS submitted additional information to determine an appropriate VOC emissions factor for the Facility's shredder operations.
36. The Facility is subject to ACHD's Mon Valley Air Pollution Episode Rule ("Mon Valley Rule"), pursuant to ACHD Article XXI, Section 2106.06, which requires it to submit to ACHD and comply with a Mon Valley Air Pollution Mitigation Plan ("Episode Mitigation Plan") identifying procedures and measures the Facility will undertake to reduce emissions of particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>) during Mon Valley Air Pollution Watch and Warning Phases.
37. While the Mon Valley Rule addresses days on which excess PM concentrations are a concern, Air Quality Action Days<sup>1</sup> may be issued by ACHD when ozone or other pollutants contribute to high air pollution.
38. TMS submitted to ACHD an Episode Mitigation Plan for the Facility in December 2021, which ACHD disapproved and ordered TMS to resubmit, in a notice dated January 28,

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<sup>1</sup> Air Quality Action Day is defined as: "a day for which a forecast, for Allegheny County, has been issued by the Pennsylvania Department of Environmental Protection, the Allegheny County Health Department or the Southwest Pennsylvania Air Quality Partnership indicating that ambient concentrations of ozone, particulate matter, carbon monoxide, sulfur dioxide, or nitrogen dioxide might reach unhealthful levels or exceed the National Ambient Air Quality Standards." Article XXI, Section 2101.20. Air Quality Action Day alerts from ACHD can be requested at [www.alleghenycounty.us/alerts](http://www.alleghenycounty.us/alerts).

2022. TMS revised and resubmitted the plan in March 2022, which was thereafter approved by ACHD (“Final Episode Mitigation Plan”).

39. The Final Episode Mitigation Plan requires TMS to take action at the Facility, including, but not limited to, reducing shredding operations to 20 tons/hour or 16.67%<sup>2</sup> when a Mon Valley Air Pollution Warning is issued for PM<sub>2.5</sub>.
40. By letter dated January 18, 2022, EPA issued to Respondent an NOV describing violations identified by EPA, including Respondent’s operation of the Facility without a Title V Operating Permit.
41. On March 15, June 2, and June 30, 2022, EPA met with Respondent to discuss the NOV and options to resolve the alleged violations described therein. During these meetings, EPA outlined its methodology for review of previous and recent stack tests at comparable scrap shredding facilities across the country. During the June 30, 2022 meeting, TMS outlined its methodology for review of those stack tests and its position on an appropriate emissions factor for the Facility.
42. The EPA asserts that Respondent’s Facility has a PTE more than 50 TPY VOCs and that Respondent was required to either (1) apply for and obtain a Title V Operating Permit in accordance with Section 502 of the CAA, 42 U.S.C. § 7661a and 25 Pa. Code § 127.502, or (2) apply for and obtain a Synthetic Minor Operating Permit, in accordance with ACHD Article XXI, Section 2103.20.b.4, with enforceable conditions on its Facility operations, including, but not limited to, the use of an appropriate VOCs emission factor with which to calculate its VOCs PTE from the Facility.

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<sup>2</sup> EPA understands this to be the percentage of the shredder’s maximum throughput of 120 tons/hour indicated in TMS’s December 2, 2022 Operating Permit Renewal Application.



43. On December 2, 2022, Respondent submitted to the ACHD an Installation Permit Application for a Synthetic Minor Source and an Operating Permit #0359 Renewal Application (“2022 Permit Applications”) covering the Facility’s shredder operations. Respondent’s 2022 Permit Applications included some federally enforceable conditions, which EPA determined were insufficient to restrict Respondent’s operations as a Synthetic Minor Source. Based on EPA’s review of the performance test data referenced in Paragraphs 30, 32, and 33 above, EPA determined that additional federally enforceable conditions should be added to restrict Respondent’s operations as a Synthetic Minor Source.
44. As of the date of this Order, Respondent continues to operate the Facility without a Title V Operating Permit or an appropriate Synthetic Minor Operating Permit in the alternative.
45. The EPA alleges that Respondent’s failure to comply with Section 502 of the CAA, 42 U.S.C. § 7661a, 35 P.S. § 4006.1(b)(1), and 25 Pa. Code § 127.502 constitutes a violation of the CAA that is subject to enforcement by EPA pursuant to Sections 113 of the CAA, 42 U.S.C. § 7413.
46. Respondent is subject to an administrative order under Section 113(a) of the CAA, 42 U.S.C. § 7413(a) for failing to comply with the CAA.
47. Based on the information currently available to the EPA, the Agency believes that operational limitations in the Facility’s Synthetic Minor Operating Permit, as required in Paragraph 48 herein, will ensure that the Facility maintains its potential to emit VOCs under the 50 TPY major source threshold pursuant to the CAA.

**D. ORDER**

48. Within thirty (30) days following the effective date of this Order, Respondent shall submit to the ACHD (for review and approval) and to EPA (for the Agency's information) an amendment or revision of the Installation Permit Application and/or the Operating Permit #0359 Renewal Application referenced in Paragraph 43 above, which requests the issuance of a CAA Synthetic Minor Operating Permit containing all of the following limitations and conditions:

Shredder Operational Limitations:

- a. Shredder operations shall be limited to 20 tons/hour or 16.67% of the shredder's maximum hourly feed rate on any Air Quality Action Day, as defined in Paragraph 37 above, issued for ozone, in addition to the actions Respondent is required to undertake in its Final Episode Mitigation Plan referenced in Paragraph 39, above;
- b. The total shred feed per day shall contain no more than 30% by weight of automobiles, including whole vehicles, engine blocks, and engines;
- c. Maximum shred feed rate of 120 ton/hour at any time;
- d. Maximum throughput rate of 188,000 tons per year of shred feed;
- e. Maximum shredder annual hourly operating limit, such that the Facility will not exceed a PTE of 50 TPY VOCs, including all other VOC emitting sources located at the Facility;
- f. An emission factor of 0.50 lbs VOC per ton of shred feed (lb VOC/ton) shall be used for all VOC emissions calculations related to VOC emissions generated by the Facility shredder;

Requirement to Record Hours of Operation, Shred Feed, and VOC emissions:

- g. The total number of hours per day in which the Facility shredder operates shall be recorded; and

Requirement to Document and Record Shredder Feed:

- h. A daily written record of the Facility's shredder feed shall be maintained, using both its scale house and product classification process, as assessed upon receipt of all materials arriving at the Facility. Such daily written record shall include the composition of the shredder feed, by percentage of automobiles (including whole vehicles, engine blocks, and engines), and percentage of white goods (including all other metallic shred feed such as household appliances, light iron, household scrap, and construction scrap).
49. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Paragraph 48 is restitution, remediation, or required to come into compliance with the law.

**E. OTHER TERMS AND CONDITIONS**

50. Respondent admits the jurisdictional allegations contained in this Order.
51. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.
52. In the event that a force majeure event impacts the ability of Respondent to comply with the terms of the Order, Respondent shall contact the EPA at the earliest sign of potential non-compliance. For purposes of this Order, "force majeure" is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the compliance of the terms of this Order despite Respondent's best efforts to fulfill its obligations. Increased costs or expenses associated with compliance, or a change in Respondent's economic circumstances does not constitute force majeure. Respondent shall identify how a force majeure was the cause of the non-compliance, and the decisions and actions taken in response, including best efforts to comply with the Order. The EPA and Respondent shall work cooperatively to mutually agree to a reasonable modification to the terms of the

Order. Respondent shall act responsibly under the circumstances in order to minimize the duration of any non-compliance with the Order caused by a force majeure.

**F. GENERAL PROVISIONS**

53. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$117,468 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), which reflects the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation. Additionally, any violations of the Order may result in criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
54. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
55. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
56. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order (Paragraph 60) until the

Termination Date of this Order (Paragraph 62), Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

57. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

For EPA

Kim Laufenberg, Air Inspector & Compliance Officer  
U.S. EPA, Region III, Enforcement and Compliance Assurance Division (3ED21)  
Laufenberg.Kim@epa.gov

Humane Zia, Senior Assistant Regional Counsel  
U.S. EPA Region III, Office of Regional Counsel (3RC30)  
Zia.Humane@epa.gov

For TMS International, LLC

Caitlin R. Gifford  
Senior Vice President and General Counsel  
TMS International, LLC  
[cgifford@tmsinternational.com](mailto:cgifford@tmsinternational.com)  
with a copy to: [notices@tmsinternational.com](mailto:notices@tmsinternational.com)

Jerimi Yost  
Director Global Health, Safety & Environmental  
[jyost@tmsinternational.com](mailto:jyost@tmsinternational.com)

All notices and submissions shall be considered effective upon receipt. Notices, documents, or submissions due to the EPA shall be sent via email to [Laufenberg.Kim@epa.gov](mailto:Laufenberg.Kim@epa.gov) unless arrangements are otherwise made by contacting Ms. Laufenberg via email.

58. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
59. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

**G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

60. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

## **H. JUDICIAL REVIEW**

61. 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 Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

## **I. TERMINATION**

62. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
BEFORE THE ADMINISTRATOR

In the Matter of:

**TMS International LLC**

**516 Delwar Road  
West Mifflin, PA 15236**

Respondent.

Administrative Compliance Order on Consent  
EPA Docket No. CAA-03-2023-0079DA

For United States Environmental Protection Agency, Region III:

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*[digitally signed and dated]*

Karen Melvin, Director

Office of Enforcement and Compliance Assurance Division

U.S. EPA, Region III (3ED00)

Philadelphia, PA 19103



For TMS International LLC:

Signature Mark Whalen

Date JUNE 23, 2023

Printed Name: MARK WHALEN

Title: EXECUTIVE VICE PRESIDENT

Address: SOUTHSIDE WORKS, BUILDING ONE, THIRD FLOOR  
2835 EAST CARSON STREET, PITTSBURGH PA 15203