

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

SMM New England Corporation
15-17 Green Earth Avenue
Johnston, Rhode Island

Proceeding under Section
113(d) of the Clean Air Act

Docket No. CAA-01-2020-0056

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is an administrative penalty action brought pursuant to Section 113(d) of the Clean Air Act (“Act” or “CAA”), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22.
2. The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges SMM New England Corporation (“SMM” or “Respondent”) has violated CAA requirements as described below. The alleged violations concern SMM’s facility located at 15-17 Green Earth Avenue in Johnston, Rhode Island.
3. Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this action.

4. Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO.

II. JURISDICTION

5. This CAFO is issued pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

6. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

7. The Regional Judicial Officer is authorized to ratify the Consent Agreement, which memorializes a settlement between Complainant and Respondent. *See* 40 C.F.R. § 22.4(a) and 22.18(b).

III. GOVERNING LAW

8. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to prepare a SIP incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, the federal government may enforce the SIP's requirements and prohibitions pursuant to Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).

9. EPA has approved the Rhode Island SIP under Section 110 of the CAA, 42 U.S.C. § 7410. The SIP contains various federally-approved portions of the Rhode Island Air Pollution Control Regulations ("RI APC Regulations"), including but not limited to RI APC Regulation 9. These SIP approved regulations can be accessed at <https://www.epa.gov/sips-ri>.

10. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), requires that whenever EPA finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP, EPA shall notify the person of such finding.

11. Sections 113(a) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(a) and 7413(d)(1), provide, among other things, that EPA may commence an administrative penalty action against any person found in violation of CAA provisions and SIP regulations. Pursuant to Section 113(d)(1) of the Act, the Debt Collection Improvement Act of 1996 (as amended in 2015 by Section 701 of Pub. L. 114-74, 31 U.S.C. § 3701), and EPA regulations set out at 40 C.F.R. Part 19, EPA currently may assess penalties of up to \$37,500 per day for each violation of CAA regulations occurring on or before November 2, 2015, and penalties of up to \$48,192 per day for each violation occurring after November 2, 2015.

IV. FACTUAL BACKGROUND

12. SMM began construction of a scrap metal processing facility in Johnston, Rhode Island in 2012. This facility operates a metal shredder to process white goods, scrap automobiles and other scrap metal materials. SMM began operating the Johnston facility in October 2013.

13. At the Johnston facility, scrap materials are sorted and then loaded onto a conveyor that feeds materials into an electrically operated shredder.

14. The metal shredder at the Johnston facility emits VOCs and other air pollutants.

15. EPA conducted on-site inspections of the Johnston facility on September 5, 2014 and again on October 14, 2016.

16. On April 7, 2015, EPA issued to Sims Metal Management Limited a Clear Air Act Reporting Requirement under Section 114 of the Act. Based on information from SMM, EPA reissued the Reporting Requirement to SMM on June 19, 2015.

17. On April 7, 2015, EPA issued to Sims Metal Management Limited a Clean Air Act Testing Order under Section 114 of the Act, requiring emissions testing of the metal shredder at the Johnston facility. Following discussions with SMM, EPA issued a revised Clean Air Act Testing Order for the Johnston facility to SMM on October 11, 2016.

18. SMM conducted VOC and other air pollutant emissions testing of the metal shredder in Johnston in September 2017, and submitted a test report to EPA on November 6, 2017.

19. On February 16, 2018, EPA issued to SMM a Notice of Violation describing EPA's finding that SMM was in violation of Rhode Island SIP permit requirements under RI APC Regulations 9 and of Sections 502(a) and 503(c) of the CAA requirements for Title V operating permits. EPA provided a copy of the Notice of Violation to the Rhode Island Department of Environmental Management.

20. On August 9, 2019, the Rhode Island Attorney General issued to SMM a 60-Day Notice of Intent to File a Citizen's Suit, alleging violations that included those described in EPA's Notice of Violation dated February 16, 2018.

21. SMM has entered into, and is subject to, a Consent Judgment with the State of Rhode Island, captioned The State of Rhode Island v. SMM New England Corporation, CA No. PC20-05670, dated September 21, 2020 ("Consent Judgment"), which requires SMM to take actions that will resolve the violations alleged in EPA's Notice of Violation and in Section VI of this CAFO. The Consent Judgment also provides for SMM to pay penalties to the State of Rhode Island and to perform supplemental environmental projects.

22. SMM's metal shredder is not currently in operation. Under the terms of the Consent Judgment, SMM will either: a) shut down operations of the metal shredder in Johnston permanently; b) apply for a minor source permit for the metal shredder under RI APC Regulation

9 for VOC emissions (among other pollutants), and install and operate VOC emission controls, in accordance with the Consent Judgment; or c) apply for a minor source permit for a smaller metal shredder in accordance with RI APC Regulation 9.

23. Provided SMM either shuts down the metal shredder or obtains and operates in accordance with a minor source permit under RI APC Regulation 9, it will not be subject to the Rhode Island operating permit program or Sections 502(a) or 503(c) of the CAA, on account of the facility's potential to emit VOCs.

V. LEGAL BASIS

24. The Rhode Island SIP, at RI APC Regulation 9.4.2(a)(2) requires new major stationary sources of VOCs to obtain a Major Source permit and to meet an emission limitation determined to be the lowest achievable emission rate.

25. The SIP, at RI APC Regulation 9.4.1(b) defines a "major stationary source" to include any stationary source of air pollutants which emits or has the potential to emit 50 tons per year or more of volatile organic compounds.

26. Section 503(c) of the CAA and EPA regulations at 40 CFR § 70.5(a) require a major source to apply for a Title V operating permit within 12 months of becoming subject to a state's operating permit program.

27. The Title V operating permit program became effective in Rhode Island on July 5, 1996.

28. Under Section 502(a) of the CAA and EPA regulations at 40 CFR § 70.7(b), no person shall operate a major source after the date it was required to submit an application for a Title V operating permit, except in compliance with a permit issued under the state's operating permit program.

VI. ALLEGED VIOLATIONS

29. Based on the results of the September emissions testing, and on test results from comparable facilities, EPA alleges that the Johnston facility is a new stationary source with the potential to emit in excess of 50 tons per year of VOC.

30. To date, SMM has not applied for or obtained a permit under RI APC Regulation 9 for metal shredding operations in Johnston, and has not installed and implemented LAER or other VOC emission controls. Accordingly, EPA alleges that SMM has violated and continues to violate the SIP, at RI APC Regulation 9.

31. SMM did not apply for a Title V operating permit within 12 months of becoming subject to the Rhode Island operating permit program.

32. Accordingly, EPA alleges that SMM has violated and continues to violate the provisions of Sections 502(a) and 503(c) of the CAA, and of 40 CFR §§ 70.5(a) and 70.7(b).

VII. TERMS OF SETTLEMENT

33. Respondent admits, solely for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

34. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

35. Without admitting or denying the facts, legal allegations and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees for the purposes of settlement to the payment of a civil penalty to the United States Treasury. The provisions of

this CAFO shall be binding on Respondent and Respondent's officers, directors, agents, employees, successors and assigns.

36. Taking into account the particular facts and circumstances of this matter, including Respondent's agreement to enter into and comply with the Consent Judgment to address the alleged violations of the Clean Air Act and Rhode Island SIP, and with specific reference to the penalty factors set out in Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), including penalties assessed previously for the alleged violations by the State of Rhode Island, EPA has determined that, to settle this matter, it is fair and proper to assess a federal civil penalty for the violations alleged in this CAFO in the amount of \$ 250,000.00.

37. Within thirty (30) days after the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$ 250,000.00, payable to the order of the "Treasurer, United States of America." The check should be sent via regular mail to

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

or, Respondent may make payment via express mail to

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

38. Respondent shall include the case name and docket number ("In the Matter of SMM New England Corporation, Docket No. CAA-01-2020-0056") on the face of the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-6
Boston, MA 02109-3912

and

Thomas T. Olivier
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-3
Boston, MA 02109-3912

39. In the event that Respondent does not fully pay the civil penalty required by Paragraphs 36 and 37 of this CAFO when due, Respondent will be subject to an action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest on any unpaid portion of the civil penalty shall accrue at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2) beginning from the penalty’s original due date. An additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

40. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA for the violations alleged in Section VI of this CAFO. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the

CAA and CAA regulations, and other federal, state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit EPA's authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to public health, welfare or the environment.

41. Except as provided in Paragraph 39 of this CAFO, each Party shall bear its own costs and attorney's fees incurred in this proceeding, and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

42. The terms, conditions and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

43. Each of the Parties' undersigned representatives certifies that he or she is fully authorized by his or her respective Party to enter into the terms and conditions of this CAFO and to legally bind that Party to this CAFO.

44. The Parties agree that Respondent and Complainant may execute this CAFO by electronic signature. To ensure the validity of these signatures and legal enforceability of this CAFO, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. The Respondent's signature will comply with the EPA Region 1 Regional Judicial Officer's (RJO) June 1, 2020 Amended Standard Operating Procedures for Filing and Service of Part 22 CAFOs/ESAs, Answers, Motions and Complaints During U.S. EPA Region 1's 2020 COVID-19 Response (Amended SOP), which will be

provided to the Respondent by the EPA Case Attorney. The Respondent will deliver electronically signed documents by email to the EPA at Olivier.Tom@epa.gov.

45. After EPA's receipt of the electronically signed CAFO, the Complainant may electronically sign the CAFO and file and serve copies of the executed CAFO in accordance with the Amended SOP. After the CAFO is signed by all Parties, including the RJO, the document will be date stamped and locked by the EPA Region 1 Regional Hearing Clerk to prevent any further alteration of the document. An electronically signed CAFO delivered by email or in hard copy shall be deemed an original document, which shall be stored and managed in accordance with Federal recordkeeping requirements. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the Parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

46. In accordance with 40 C.F.R. § 22.13(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

FOR RESPONDENT:



Scott Miller, Secretary
SMM New England Corporation
1 Linden Avenue East
Jersey City, New Jersey 07305

September 23, 2020
Date

FOR COMPLAINANT:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1
(617) 918 1711
mcguire.karen@epa.gov

Date

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the forgoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent SMM New England Corporation is ordered to pay the civil penalty amount specified in the Consent Agreement in the matter indicated therein. The terms of the CAFO will become effective on the date that it is filed with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1

Date