



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

September 29, 2020

**ELECTRONIC MAIL  
DELIVERY RECEIPT REQUESTED**

Mr. Michael LaPlante  
Plant Manager  
12450 Ironwood Circle  
Rogers, MN 55374  
[mikel@flamemetals.com](mailto:mikel@flamemetals.com)

Re: Consent Agreement and Final Order  
Flame Metals Processing Corporation  
Docket No: **RCRA-05-2020-0021**

Dear Mr. LaPlante:

Attached please find a copy of the signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed with the Regional Hearing Clerk on September 29, 2020.

Please pay the civil penalty in the amount of \$2,470 in the manner prescribed in paragraphs 35 through 40 of the CAFO, and in the comment or description field of the electronic funds transfer, state the case title and the docket number RCRA-05-2020-0021. Your payment is due within thirty (30) calendar days of the effective date of the CAFO.

Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Spiros Bourgikos, of my staff, at 312-886-6862.

Sincerely,

MICHAEL  
CUNNINGHAM

Digitally signed by  
MICHAEL CUNNINGHAM  
Date: 2020.09.28  
16:19:08 -05'00'

Michael Cunningham, Chief  
RCRA Compliance Section1

Attachment

cc: Brandon Finke, MPCA ([brandon.finke@state.mn.us](mailto:brandon.finke@state.mn.us)) (w/attachment)  
John Elling, MPCA ([john.elling@state.mn.us](mailto:john.elling@state.mn.us)) (w/attachment)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No. RCRA-05-2020-0021</b>
	)	
<b>Flame Metals Processing Corporation</b>	)	<b>Consent Agreement and Final Order</b>
<b>Rogers, Minnesota</b>	)	<b>Under Section 3008(a) of the Resource</b>
	)	<b>Conservation and Recovery Act,</b>
<b>U.S. EPA ID No.: MNR000034017</b>	)	<b>42 U.S.C. § 6928(a)</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Flame Metals Processing Corporation, doing business in the State of Minnesota.

4. U.S. EPA provided notice of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

10. Pursuant to Sections 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925, U.S. EPA promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

12. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous

waste program in lieu of the federal government's base RCRA program effective on February 11, 1985. 51 Fed. Reg. 3756 (January 28, 1985).

14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period, or both.

#### **Factual Allegations**

15. Respondent was and is a "person" as defined by Minn. R. 7045.0020 Subp. 66, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "owner" or "operator," as those terms are defined under Minn. R. 7045.0020 Subp. 64 and Minn. R. 7045.0020 Subp. 62 of a facility located at 12450 Ironwood Circle, Rogers, Minnesota (Facility).

17. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

18. Respondent's Facility is a "facility," as that term is defined under Minn. R. 7045.0020 Subp. 24.

19. Respondent's actions and processes at the facility cause the production of "hazardous waste," as that term is defined under Minn. R. 7045.0020 Subp. 33.

20. Respondent is a "generator" of hazardous waste, as that term is defined under Minn. R. 7045.0020 Subp. 31.

21. During the 2015 calendar year, Respondent generated 1000 kilograms or greater of hazardous waste in some calendar months (qualifying it as a "Large Quantity Generator"), which it shipped off-site to a treatment, storage or disposal facility within the United States.

22. On August 23, 2020, U.S. EPA sent to Respondent a Notice of Potential RCRA Violations and Opportunity for Settlement.

23. The Notice letter identified potential RCRA violations, and an option and timeline for resolution of the matter through a streamlined settlement process.

24. The goal of the streamlined settlement process is to quickly and efficiently assess and resolve the matter, bring the facility into compliance, and enter into an agreed upon CAFO.

25. Thereafter, Respondent engaged with U.S. EPA to expeditiously assess the matter agree to the entry of this CAFO.

### **Alleged Violations**

#### **Count I: Biennial Reporting**

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

27. Pursuant to Minn. R. 7045.0248 Subp. 1(B), a Large Quantity Generator must submit by March 1 of each even-numbered calendar year, a biennial report as required by 40 CFR 262.41, for each hazardous waste produced during preceding calendar year.

28. Pursuant to 40 CFR 262.41(a)(3), the biennial report must include, among other things the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the [calendar] year.

29. The biennial report submitted by Respondent, for waste shipped during the 2015 calendar year, did not include the EPA identification numbers, names, and addresses for EQ of Illinois (ILD000666206) and Environmental Enterprises Inc. (OHD083377010) in violation of 40 CFR 262.41(a)(3).

**Compliance Order**

30. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Respondent is hereby ordered to comply with the following requirements as expeditiously as possible and no later than 30 days from the effective date of this CAFO.

31. Respondent shall correct and file with the Minnesota Pollution Control Agency the biennial report covering the 2015 calendar year.

32. Respondent shall submit the following certification to U.S. EPA that is has complied with the requirements in paragraph 31, above:

I certify under the penalty of law that based on my review of all relevant information and documents, and inquiring of those individuals immediately responsible for providing all relevant information and documents, Flame Metals Processing Corporation is in compliance with the requirements of this Compliance Order. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date \_\_\_\_\_ Signature and Title

33. If unable to certify compliance in paragraph 32, Respondent shall submit notification explaining why it is unable to comply, the actions it is taking to comply, and a proposed date that it will comply.

34. Respondent shall submit all certifications and notifications required under the Compliance Order to:

Spiros Bourgikos (ECR-17J)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Or via email to [bourgikos.spiros@epa.gov](mailto:bourgikos.spiros@epa.gov)

### Civil Penalty Order

35. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$2,470. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,470 civil penalty for the RCRA violations by:

*For checks sent by regular U.S. Postal Service mail*, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

*For checks sent by express mail*, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CAFO.

*For electronic funds transfer*, sending funds electronically, payable to "Treasurer, United States of America," and to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

37. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Or via email at [whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

Spiros Bourgikos (ECR-17J)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Or via email at [bourgikos.spiros@epa.gov](mailto:bourgikos.spiros@epa.gov)

Eaton Weiler (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Or via email at [weiler.eaton@epa.gov](mailto:weiler.eaton@epa.gov)

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

41. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

42. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: weiler.eaton@epa.gov (for Complainant), and mikel@flamemetals.com (for Respondent).

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

44. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. Payment of the civil penalty does not affect Respondent's continuing obligation to comply with RCRA and other applicable federal, state, local laws or permits.

46. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

47. The terms of this CAFO bind Respondent, its successors, and assigns.

48. Each person signing this agreement certifies that he or she has the authority to sign

for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorney's fees in this action.

50. This CAFO constitutes the entire agreement between the parties.

**Flame Metals Processing Corporation, Respondent**

9-28-2020

Date



Mike LaPlante  
General Manager  
Flame Metals Processing Corporation

**United States Environmental Protection Agency, Complainant**

MICHAEL  
HARRIS

Digitally signed by  
MICHAEL HARRIS  
Date: 2020.09.29  
12:07:08 -05'00'

Date

Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance  
Division

**In the Matter of:**  
**Flame Metals Processing Corporation**  
**Docket No. RCRA-05-2020-0021**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2020.09.29  
12:38:15 -05'00'

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Flame Metals Processing Corporation  
U.S. EPA ID No.: MNR000034017  
Docket Number: **RCRA-05-2020-0021**

**CERTIFICATE OF ELECTRONIC MAILING**

I certify that I served a true copy of the foregoing Consent Agreement and Final Order, docket number **RCRA-05-2020-0021**, which was filed on September 29, 2020 in the following manner to the following addresses:

Copy by E-mail to  
Respondent:

Mr. Michael LaPlante  
General Manager  
Flame Metals Processing Corporation  
[mikel@flamemetals.com](mailto:mikel@flamemetals.com)

Copy by E-mail to  
RCRA CS1 Contact:

Spiros Bourgikos  
[bourgikos.spiros@epa.gov](mailto:bourgikos.spiros@epa.gov)

Copy by E-mail to  
Attorney for Complainant:

Eaton Weiler  
[weiler.eaton@epa.gov](mailto:weiler.eaton@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Copy by E-mail to contacts at the  
Minnesota Pollution Control Agency:

John Elling  
[johmn.elling@state.mn.us](mailto:johmn.elling@state.mn.us)

Brandon Finke  
[brandon.finke@stae.mn.us](mailto:brandon.finke@stae.mn.us)

Dated: September 29, 2020

LADAWN WHITEHEAD Digitally signed by LADAWN  
WHITEHEAD  
Date: 2020.09.29 14:27:13 -05'00'

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5