

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
S.D. Richman Sons, Inc.	:	U.S. EPA Docket No. CAA-03-2021-0124DA
	:	
2435 Wheatsheaf Lane Philadelphia, PA 19137	:	Proceeding under Section 113(a)(1) and (4) of the Clean Air Act, 42 U.S.C. 7413(a)(1) and (4)
	:	
Respondent.	:	
	:	

ADMINISTRATIVE ORDER ON CONSENT

A. PRELIMINARY STATEMENT

1. This Administrative Order (“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” or “CAA”), 42 U.S.C. § 7413(a) with agreement of the parties.
2. The Administrator of the EPA delegated this authority 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 by EPA Delegation 7-6A.
3. Respondent is a corporation organized in 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), on January 14, 2021, the EPA issued to Respondent a Notice of Violation and

Opportunity to Confer (“NOVOC”) letter and provided a copy of the NOVOC to Pennsylvania and City of Philadelphia, providing notice that the EPA found that Respondent committed the alleged violations described in Section C of this Agreement and providing Respondent an opportunity to confer with the EPA.

B. STATUTORY AND REGULATORY BACKGROUND

6. The EPA alleges and adopts the Findings set forth immediately 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 includes Section 3-103 in Title 3 of the Philadelphia Code ("Air Management Code") which provides that any person who violates any provision of the Air Management Code, any regulation adopted thereunder, any order of Philadelphia's Air Management Services ("AMS"), or any condition of any required permit or license shall be subject to sanctions, in addition to any other sanction or remedial procedure imposed by the statutes of the Commonwealth of Pennsylvania or Acts of the United States Government.
11. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements

of Title V.

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 at 40 C.F.R. Part 70.
13. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit. See also, 35 P.S. § 4006.1(b)(1).
14. On August 20, 1996, the EPA approved Pennsylvania's Title V Operating Permits Program. 61 Fed. Reg. 39597 (July 30, 1996).
15. On July 1, 1998, the Pennsylvania Department of Environmental Protection approved the Philadelphia County Air Pollution Control Program, which provides for the implementation of the CAA Title V Operating Permits Program to be executed by Philadelphia pursuant to Section 12(b) of the Pennsylvania Air Pollution Control Act, 35 P.S. § 4012(b). See 40 C.F.R. § 52.2020(c)(3).
16. The Philadelphia County, Department of Health, AMS is the Permitting Authority for purposes of Title V, as that term is defined in Section 501(4), 42 U.S.C. § 7661(4).
17. A "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: (A) For ozone nonattainment areas, sources with the potential to emit . . . 25 TPY or more in areas classified as 'severe.'" 25 Pa. Code § 121.1.
18. Any stationary source located in Philadelphia County that emits or has the potential to emit ("PTE") at least 25 TPY of Volatile Organic Compounds ("VOC") is considered a major source facility and is subject to the requirements applicable to a major source located in a

severe nonattainment area for ozone. 25 Pa. Code § 121.1.

19. 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 or the effect it would have on emissions is federally enforceable.” 40 C.F.R. § 52.21(b)(4).
20. A facility whose PTE exceeds the Title V applicability threshold of 25 TPY may, in lieu of applying for and obtaining a Title V operating permit, impose physical or operational limitations in order to reduce the emissions of that pollutant to below 25 TPY, in accordance with 40 C.F.R. § 52.21(b)(4), under a State Synthetic Minor Operating Permit in accordance with 25 Pa. Code § 127.402.

C. FINDINGS

21. Respondent is and, at all times relevant to the violations alleged herein, was the owner and operator of a metal scrap shredding facility (SIC Code 5093), located at 2435 Wheatsheaf Lane, Philadelphia, PA 19137 (herein after “the Facility”).
22. Respondent began operating the scrap metal shredder at the Facility in August 2018. The Facility recycles by shredding white goods, demolition scrap from infrastructure, remodeling and construction, automobiles, non-engine vehicles and industrial material scrap then separates out the clean ferrous and non-ferrous end-product to sell to aluminum and steel mills as well as other recycling customers.
23. The Facility is located in Philadelphia, Pennsylvania and has a PTE, as the term is defined in 40 C.F.R. § 52.21(b)(4), more than 25 TPY of VOC and/or Hazardous Air Pollutants (“HAPs”) because, at the date of this Order, it does not have federally enforceable physical

or operational limitations on its capacity to emit VOCs and/or HAPs.

24. As described in the paragraphs above, Respondent is a “Title V Facility” as that term is defined in 25 Pa. Code § 121.1.
25. Respondent obtained Original Plan Approval (No. 13154) from the City of Philadelphia AMS on October 29, 2013 with the First Extension Approval (No. 13154A) on October 13, 2015, the Second Extension Approval (No. IP-00008) on April 6, 2017, and the Third Extension Approval (No. IP18-000202) on October 3, 2018. At the start of the shredder commencing work on August 16, 2018, S.D. Richman was operating under the Second Extension Approval (No. IP-00008) dated April 6, 2017.
26. The Facility received a Natural Minor Operating Permit (No. OP19-000003) from AMS on April 29, 2019.
27. In 2019, the Respondent’s shredder operated 4 days per week with a maximum of 8 hours per day (typically less than 4 hours per day) with a maximum throughput rate of 25 tons per hour and the feedstock contained a maximum of 11.4% automobiles. In 2020, the Respondent’s shredder operated 4 days per week with a maximum of 8 hours per day (typically less than 4 hours per day) with a maximum throughput rate of 25 tons per hour and the feedstock contained a maximum of 12.9% automobiles.
28. On June 19, 2019, the EPA conducted a CAA inspection (“Inspection”) at the Facility to verify compliance with applicable State and Federal regulations.
29. On July 31, 2019, the EPA sent S.D. Richman an Air Compliance Inspection Report, summarizing the EPA’s Inspection at the Facility, which described the EPA’s observations from its inspection of the Facility.
30. By a letter dated January 22, 2020, the EPA sent S.D. Richman a “Notice of Noncompliance/Opportunity to Show Cause” letter (“NON/Opp. to Show Cause”)

describing potential violations of the Pennsylvania SIP and provisions of the CAA found during the EPA's Inspection.

31. On January 31, 2020, Respondent responded to the EPA's NON/Opp. to Show Cause requesting additional information regarding the allegations made in the NON/Opp. to Show Cause.
32. The EPA has collected performance test data for scrap metal shredding facilities located across the United States with comparable¹ feedstock ratios to S.D. Richman's facility. Based on these performance tests' data, the EPA has determined that based on the information currently available to the EPA, the Facility, without the federally enforceable operational limitations described in Section D of this Order or a Synthetic Minor Operating Permit issued by AMS, has a PTE more than 25 TPY VOC.
33. On August 3, 2020, the EPA provided Respondent with the above referenced performance test data used by the EPA in its evaluation of the Facility's compliance with applicable CAA requirements.
34. On December 21, 2020, Respondent submitted an application for a Synthetic Minor Operating Permit to AMS pursuant to 35 P.S. § 4006.1(b)(1) and 25 Pa. Code § 127.402.
35. On January 14, 2021, the EPA issued to Respondent the NOVOC described in paragraph 5 above.
36. On February 26, 2021, representatives of Respondent and the EPA discussed the January 14, 2021 NOVOC.
37. The EPA asserts that Respondent's Facility has a PTE more than 25 TPY VOCs and that, as a result, it was required, at the time of its construction, to either (1) apply for and obtain a Major Source Operating Permit in accordance with Section 502 of the CAA, 42 U.S.C. § 7661a(a)

¹ Taking into consideration the size of the shredder, maximum rated throughput, and average operational feedstock ratio of white goods to automobiles.

and 25 Pa. Code § 127.502, or (2) apply for and obtain a Synthetic Minor Operating Permit, in accordance with 25 Pa. Code § 127.402.

38. At the time of construction of the Facility in 2018, Respondent did not apply for either a Major Source Operating Permit or a Synthetic Minor Operating Permit.
39. As of the date of this Order, Respondent continues to operate the Facility without a Major Source Operating Permit or a Synthetic Minor Operating Permit in the alternative.²
40. 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), 25 Pa. Code § 127.502, and 25 Pa. Code § 127.402 constitutes a violation of the CAA including Sections 113 and 502 of the CAA, 42 U.S.C. §§ 7413 and 7661a.
41. In failing to comply with the CAA, Respondent is subject to an administrative order under Section 113(a) of the CAA, 42 U.S.C. § 7413(a).
42. Based on the information currently available to the EPA, the Agency believes that additional time and information is needed to determine the appropriate physical or operational limitations for the Facility's Synthetic Minor Operating Permit to ensure that the Facility will maintain its PTE for VOCs under the 25 TPY threshold pursuant to the CAA.

D. ORDER

43. Respondent is ordered to conduct the compliance program described in paragraphs 44 through 46 below.

² In an email to Julie Kurz, consultant for S.D. Richman, from Ashraf Ahmed Environmental Engineer for AMS, AMS is allowing S.D. Richman to continue to operate its facility under its current Natural Minor Operating permit (No. OP19-000003) while its Synthetic Minor Operating Permit application is on hold by the Agency.

44. Respondent shall comply with the operational limitations described below:
- a. Total annual hours of operation shall not exceed 2,400 per year, including the following limitations:
 - i. Maximum hours of operation of 48 hours per week (not to exceed 8 hours/day during Air Quality Action Days³ or 10 hours in a 24-hour period),
 - ii. Maximum days of operation of 6 days per week, and
 - iii. Maximum weeks of operation of 50 weeks per year;
 - b. Throughput rate of scrap shall not exceed 112,800 TPY, with no more than an average throughput of 20% automobiles scrap feed per day (and maximum of 30% automobiles scrap feed per day during Air Quality Action Days); and
 - c. Average throughput rate of scrap shall not exceed 47 tons/hour (and maximum of 60 tons/hour during Air Quality Action Days).⁴
45. Respondent shall collect monitoring data and record daily operations including:
- a. Maintaining a daily operation hours log; and
 - b. Maintaining a daily scrap log (for feed ratio).
46. The reports described in paragraph 45 above, shall be submitted quarterly to the EPA providing both a summary of the operational hours and scrap feed ratio in addition to daily breakdowns.
47. Respondent shall comply with the operational limitations, monitoring and reporting

³ An Air Quality Action Day occurs in Philadelphia when the Air Quality Index (“AQI”) has exceeded the NAAQS for ozone or fine particulate matter, which is represented by an AQI of greater than 100. Pursuant to 40 C.F.R. § 58.50, “[t]he State or where applicable, local agency shall report to the general public on a daily basis through prominent notice an air quality index that complies with the requirements of appendix G to this part.” The AQI was developed by the EPA and can be found at 40 C.F.R. Part 58, App. G.

⁴ This throughput rate is based on the size of the motor on the shredder, which is 3500 HP.

requirements described in paragraphs 44-46 above, immediately upon the effective date of the Order to ensure compliance with the CAA.

48. If Respondent fails to comply with the operational limitations described in paragraph 44a- c above, Respondent shall notify the EPA in writing within seven (7) days of the date of non-compliance. Such notification shall include the date of non-compliance and describe, in detail, the cause of the non-compliance and actions Respondent will take to prevent future non-compliance. Any such deviation(s) shall be included in the quarterly report mentioned in paragraph 45.

49. Respondent reserves the right to supplement any submission to the EPA required by paragraphs 45-48 above.

50. If Respondent would like to request a modification of the terms of the Order, Respondent shall submit to the EPA such modification(s) for review, in writing, with an explanation of the reason for each modification. Upon acceptance by the EPA in writing, the proposed modification(s) will be incorporated in an Amended Order and will become effective upon signature by the parties.

E. OTHER TERMS AND CONDITIONS

51. Respondent admits the jurisdictional allegations contained in this Order and signs this Order on consent.

52. Respondent neither admits nor denies the findings in Section C of this Order.

53. In the event 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

54. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$102,638 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), or \$48,762 per day per violation, or both, as provided in Section 113(d)(1) of the Act, 42 U.S.C. § 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 this 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.
55. 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.
56. 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.

57. 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 as set out in paragraph 61 below, until the Termination Date as set out in paragraph 63 below, 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 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.

58. 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:

Kim Laufenberg
U.S. EPA, Region III (3ED23)
laufenberg.kim@epa.gov

Bruce Richman, President
S.D. Richman Sons, Inc.
2435 Wheatsheaf Lane
Philadelphia, PA 19137
bruce@sdrichmansons.com

All notices, documents, 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 unless arrangements are otherwise made by contacting Ms.

Laufenberg at (215) 814-2265 or laufenberg.kim@epa.gov.

59. 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.
60. 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

61. Pursuant to Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), 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

62. 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

63. 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 must comply with new operational limitations in lieu of paragraph 44;
- c. or 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 3
BEFORE THE ADMINISTRATOR

In the Matter of:

S.D. Richman Sons, Inc.
2435 Wheatsheaf Lane
Philadelphia, PA 19137

Administrative
Order on Consent
EPA Docket No. CAA-03-2021-
0124DA

Respondent.

For United States Environmental Protection Agency, Region 3:

Date

Karen Melvin, Director
Office of Enforcement and Compliance Assurance Division
U.S. EPA, Region III (3ED00)
Philadelphia, PA 19103-2029

In the Matter of: S.D. Richman Sons, Inc.

EPA Docket No. ~~CAA-003-21-0003~~

For S.D. Richman Sons, Inc.:

Bruce Richman

Signature

9-29-2021

Date

Printed Name: BRUCE RICHMAN

Title: PRESIDENT

Address: 2435 WHEATONHEAF LANE PHILA. PA 19137

CERTIFICATE OF SERVICE

I certify that the foregoing “Administrative Order on Consent” in the Matter of S.D. Richman Sons, Inc., Order No. CAA-03-2021-0124DA, was filed and copies of the same were served upon the parties as indicated below.

Via Electronic Mail:

Bruce Richman, President
S.D. Richman Sons, Inc.
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Philadelphia, PA 19137
bruce@sdrichmansons.com

Hannah G. Leone
Assistant Regional Counsel
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[Date]

[Name]
[Title]