

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0043
)	
Dem-Con Metal Recycling, LLC)	Proceeding to Assess a Civil Penalty
Shakopee, Minnesota)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Dem-Con Metal Recycling, LLC (“DCMR”), a corporation doing business in Minnesota.

4. 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).

5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. 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

9. Under Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated the provisions for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances, on May 14, 1993. 58 Fed. Reg. 28660. EPA updated the applicable provisions on November 18, 2016. 81 Fed. Reg. 82272.

10. As stated at 40 C.F.R. § 82.150(a), the purpose of the Protection of Stratospheric Ozone provisions at 40 C.F.R. Part 82, Subpart F, is to reduce emissions of class I, class II, and non-exempt substitute refrigerants to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the disposal of appliances.

11. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners, that contain class I, class II, or non-exempt substitute refrigerants.

12. Under 40 C.F.R. § 82.152, a "person" means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

13. Under 40 C.F.R. § 82.152, an "appliance" means any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household

or commercial purposes, including any air conditioner, motor vehicle air conditioner, refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

14. Under 40 C.F.R. § 82.152, an “MVAC” means any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle.” The definition does not include the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.

15. Under 40 C.F.R. § 82.152, an “MVAC-like appliance” means a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. The definition includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles but is not intended to cover appliances using R-22 refrigerant.

16. Under 40 C.F.R. § 82.152, a “small appliance” means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

17. Under 40 C.F.R. § 82.152, “refrigerant” means, for purposes of 40 C.F.R. Part 82, Subpart F, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

18. Under 40 C.F.R. § 82.152, “class I” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, Appendix A. See also 42 U.S.C. § 7671(3).

19. Under 40 C.F.R. § 82.152, “class II” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, Appendix B. See also 42 U.S.C. § 7671(4).

20. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to, hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in 40 C.F.R. Part 82, Subpart F, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses that are specified in 40 C.F.R. § 82.154(a)(1) as exempt from the venting prohibition and the requirements of 40 C.F.R. Part 82, Subpart F, and the term “non-exempt substitutes” refers to all other substitutes and end-uses not so specified in 40 C.F.R. § 82.154(a)(1).

21. Under 40 C.F.R. § 82.152, “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if

it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

22. Under 40 C.F.R. § 82.152, “recover” means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

23. Under 40 C.F.R. § 82.154(a)(1), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter. See also Section 608(c) of the CAA, 42 U.S.C. § 7671g(c).

24. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of small appliances, MVACs, or MVAC-like appliances—must either:

- 1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a), which requires that persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must evacuate refrigerant to the levels in 40 C.F.R. § 82.156(b) through (d); or
- 2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover

any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

25. Under 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F, to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

26. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant (if not recovered by the final processor) must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

27. Under 40 C.F.R. § 82.155(b)(2)(iii), if all the refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

28. Under 40 C.F.R. § 82.155(c), the final processor of a small appliance, MVAC, or MVAC-like appliance must keep a copy of all the signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy, or in electronic format, for three years.

29. Under 40 C.F.R. § 82.156(b) persons must recover refrigerant, using a recovery and/or recycling machine certified pursuant to 40 C.F.R. § 82.158 before opening a small appliance or when disposing of a small appliance, according to specified conditions.

30. Under 40 C.F.R. § 82.156(c) persons may only open MVAC-like appliances while properly using, as defined at 40 C.F.R. § 82.32(e), recovery and/or recycling equipment certified pursuant to 40 C.F.R. § 82.158(f) or 40 C.F.R. § 82.36, as applicable. All persons recovering refrigerant from MVAC-like appliances for purposes of disposal of these appliances must evacuate the appliance in accordance with 40 C.F.R. Part 82, Subpart B or reduce the system pressure to or below 102 mm of mercury vacuum.

31. Under 40 C.F.R. § 82.156(d), all persons recovering refrigerant from MVACs for purposes of disposal of these appliances must evacuate the appliance in accordance with 40 C.F.R. Part 82, Subpart B or reduce the system pressure to or below 102 mm of mercury vacuum.

32. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

33. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

34. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

35. On December 21, 2020, EPA issued to DCMR a Finding of Violation (FOV) alleging that it did not follow the required practices in 40 C.F.R. § 82.156(b)–(d), as referenced in 40 C.F.R. § 82.155(a), when it failed to recover refrigerant from small appliances, MVAC-like appliances, and MVACs at its Shakopee Facility during scrap recycling or verify using a signed statement or a contract that all refrigerant that had not leaked previously had been recovered, and thus was in violation of 40 C.F.R. § 82.155(b) at the Facility.

36. On January 19, 2021, representatives of Respondent and EPA discussed the FOV for the Facility.

37. During the January 19, 2021 discussion, DCMR agreed to implement a program to recover refrigerant, notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) and verify proper refrigerant recovery for small appliances, MVACs, and MVAC-like appliances at the Facility.

38. At all times relevant to this CAFO, Respondent owned and operated a scrap metal recycling facility at 13142 Dem Con Drive, Shakopee, Minnesota (the Facility).

39. At all times relevant to this CAFO, DCMR was a “person” within the meaning of 40 C.F.R. § 82.152.

40. At all times relevant to this CAFO, DCMR accepted for recycling and disposal “small appliances” and “MVACs” within the meaning of 40 C.F.R. § 82.152 that contain or once contained ozone depleting substances or substitutes.

41. At all times relevant to this CAFO, any ozone depleting substances or substitutes in the small appliances, MVACs, and MVAC-like appliances DCMR accepted for recycling were “refrigerants” within the meaning of 40 C.F.R. § 82.152.

42. At all times relevant to this CAFO, DCMR's recycling of small appliances and/or MVACs as described in paragraph 40 constituted "disposal" within the meaning of 40 C.F.R. § 82.152.

43. At all times relevant to this CAFO, the Facility was a final processor in the disposal process for vehicles and appliances, including small appliances and MVACs, within the meaning of 40 C.F.R. § 82.155(b).

44. As a person who disposes of small appliances and MVACs that contain refrigerant, DCMR is subject to Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F.

45. EPA conducted an unannounced inspection of the Facility on May 2, 2019 to assess compliance with Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F.

46. At the time of the inspection of the Facility, DCMR's representatives stated that Dem-Con itself did not recover refrigerant from small appliances or MVACs. At the time of EPA's Facility inspection, DCMR did not have refrigerant recovery equipment for small appliances or functioning recovery equipment for MVACs at the Facility. DCMR stated that small appliances received with intact refrigerants were placed in a segregated staging area, and recyclers would then transfer the appliances from the storage area off-site for refrigerant recovery, and when completed, drop off the small appliances at the Facility. DCMR did not have on file contracts from any recyclers or third-party recovery services.

47. At the time of the inspection, DCMR's representatives could not produce verification statements from customers asserting that the small appliances and/or MVACs had the refrigerant properly recovered prior to drop-off.

48. At the time of the inspection, EPA inspectors observed small appliances with intact refrigerant lines in a segregated staging area awaiting removal by recyclers and observed a car processing rack.

49. At the time of the inspection, EPA inspectors observed refrigerant recovery equipment for MVACs. DCMR representatives were unable to turn the refrigerant recovery equipment on to verify it was operable.

50. On September 7, 2021, EPA issued a CAA Section 114 Information Request to obtain information relating to company structure and additional information regarding compliance with verification, recovery, and disposal practices at DCMR.

51. On November 9, 2021, EPA received a response to the CAA Section 114 Information Request from DCMR.

52. Based on EPA's inspection, statements made by DCMR during the inspection at the Facility, and DCMR's response to the CAA Section 114 Information Request, during at least the period of May 3, 2016 to July 18, 2019 DCMR did not follow the required practices in 40 C.F.R. § 82.156(b)–(d), as referenced in 40 C.F.R. § 82.155(a), when it failed to recover refrigerant from small appliances, MVAC-like appliances, and MVACs during scrap recycling or verify using a signed statement or a contract that all refrigerant that had not leaked previously had been recovered, and thus was in violation of 40 C.F.R. § 82.155(b) at the Facility.

Civil Penalty

53. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$140,000.

54. Penalty Payment. Respondent agrees to:

1) Pay the civil penalty of \$140,000 within 30 days after the effective date of this CAFO.

2) Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979077 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

55. Within 24 hours of the payment of the civil penalty respondent must send a notice of payment and state Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Cathleen Martwick
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
martwick.cathleen@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

57. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

58. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

59. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: martwick.cathleen@epa.gov (for Complainant), and markpahl@dem-con.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

61. The effect of the settlement described in paragraph 60, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 46 of this CAFO.

62. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

63. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 60, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

64. Respondent certifies that it is complying fully with Section 608 of the CAA and the provisions of 40 C.F.R. Part 82, Subpart F.

65. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

67. Each person signing this consent 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.

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

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

Dem-Con Metal Recycling, LLC, Respondent

Date

Mark Pahl
Chief Operating Officer
Dem-Con Metal Recycling, LLC

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Dem-Con Metal Recycling, LLC
Docket No. CAA-05-2023-0043**

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 L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5