

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

In the Matter of:	:	
	:	<b>U.S. EPA Docket No. CAA-03-2023-0016DA</b>
<b>Metalico Pittsburgh, Inc.</b>	:	
	:	<b>Proceeding under Sections 113(a)(1) and (4)</b>
<b>3100 Grand Avenue</b>	:	<b>of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1)</b>
<b>Pittsburgh, PA 15225</b>	:	<b>and (4)</b>
	:	
Respondent.	:	

**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. Respondent is a corporation 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 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 October 4, 2021, the EPA issued to Respondent a Notice of Violation and Opportunity to Confer (“NOVOC”) 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 of this Agreement and providing Respondent an opportunity to confer with the EPA. On December 2, 2021, representatives of Respondent and the EPA discussed the NOVOC.

## **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 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 at 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 December 17, 2001. *See*, 66 Fed. Reg. 55,112 (Nov. 1, 2001).
16. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), 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 Article XXI Part C, Subpart 1 (§§ 2103.01-2103.15).

18. “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.” Article XXI, § 2101.20.
19. “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.
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, § 2101.20.
22. Pursuant to the provisions of 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.

23. 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, § 2101.20; 25 Pa. Code § 121.1.

### **C. FINDINGS**

24. Respondent is the owner and operator of a metal scrap shredding facility (SIC Code 5093), located at 3100 Grand Ave. on Neville Island, Pittsburgh, Allegheny County, PA 15225 (hereinafter “the Facility”).
25. Metal shredding operations began at the Facility in about November 2004, under the ownership of Respondent’s predecessor, Neville Metals, LLC and Neville Recycling, LLC. In approximately May 2008, Respondent acquired the operations of the Facility.
26. At all times relevant to the violations alleged herein, the Facility operations have included the operation of a hammer-mill shredder (“Shredder”) to process ferrous materials, including scrap motor vehicles (“end of life vehicles” or “ELVs”), appliances and other scrap metal, for recycling and ultimate resale to steel manufacturers.
27. A Minor Source Operating Permit #0692 was issued for the Facility by ACHD on August 21, 2007 (“Minor Source Permit #0692”). At the time of issuance, Minor Source Permit #0692 did not include any enforceable limitation on the Shredder’s allowable annual hours of operation.

28. ACHD Minor Source Permit #0692 (Section IV, Condition 4) requires that the Facility “shall not conduct, or allow to be conducted, any material handling operation in such manner that emissions from such operation are visible at or beyond the property line,” pursuant to Article XXI, Section 2104.05. Article XXI, Section 2104.05 was approved by EPA as part of the PA SIP on November 14, 2002. 67 Fed. Reg. 68,935 (Nov. 14, 2002).
29. ACHD Minor Source Permit #0692 (Section IV, Condition 20) requires that “[n]o person shall transport, or allow to be transported, any solid or liquid material outside the boundary line of any source for which a permit is required by Article XXI Part C [Operating Permits] in such manner that there is any visible emission, leak, spill, or other escape of such material during transport,” pursuant to Article XXI, Section 2105.43. Article XXI, Section 2105.43 was approved by EPA as part of the PA SIP on November 14, 2002. 67 Fed. Reg. 68,935 (Nov. 14, 2002).
30. On August 8, 2018, EPA conducted a CAA inspection (“Inspection”) at the Facility to verify its compliance with applicable State and Federal regulations.
31. By a letter dated October 31, 2019, EPA issued to Respondent a Notice of Noncompliance/Opportunity to Show Cause, 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.
32. 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. Between November 2019 and September 2020, EPA provided to Respondent the emission values used by EPA to evaluate the Facility’s potential to emit VOCs and compliance with applicable CAA requirements.

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 of this Order, the Facility has a PTE more than 50 TPY VOC.
34. Respondent submitted to ACHD an application for a Synthetic Minor Permit for the Facility on October 31, 2019, and a revised application for a Synthetic Minor Permit on January 11, 2021. Based on EPA's review and information, neither of Respondent's applications for a Synthetic Minor Permit contained sufficient operational limitations and enforceable conditions, including, but not limited to, the use of an appropriate VOC emissions factor to calculate its potential to emit VOCs.
35. On October 4, 2021, EPA issued to Respondent an NOVOC describing violations identified by EPA, including Metalico's operation without a Title V Operating Permit and its alleged failure to conduct its material handling operations in accordance with the Facility's August 21, 2007 Minor Source Permit #0692.
36. On December 2, 2021, EPA met with Respondent to discuss the NOVOC and options to resolve the alleged violations described therein.
37. 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(a) 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.

38. 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.
39. The EPA alleges that Respondent's failure to comply with Section 502 of the CAA, 42 U.S.C. § 7661a, 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.
40. 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).
41. Based on the information currently available to the EPA, the Agency believes that the physical and/or operational limitations for the Facility's Synthetic Minor Operating Permit required in Paragraph 42 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**

42. Within sixty (60) days from the effective date of this Order, or by March 1, 2023, whichever is later, Respondent shall submit to the ACHD (for review and approval) and to EPA (for the Agency's information), a complete amended Permit Application for the Facility which requests ACHD's issuance of a CAA Synthetic Minor Permit ("Synthetic Minor Permit Application") containing the following limitations and conditions:

Shredder Operational Limitations:

- a. Maximum hours of operation of 10 hours in any calendar day, or eight hours per day during Air Quality Action Days<sup>1</sup> as determined by ACHD;

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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 § 2101.20. Air Quality Action Day alerts from ACHD can be requested at [www.alleghenycounty.us/alerts](http://www.alleghenycounty.us/alerts).

- b. Maximum shred feed rate of 120 ton/hour;
- c. Maximum throughput rate of 240,000 tons per year of shred feed;
- d. Maximum annual hourly operating limit, such that the Facility will not exceed a PTE of 50 TPY VOCs<sup>2</sup>, inclusive of all other VOC emitting sources located at the Facility.
- e. An emission factor of 0.39 lb 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 of Hours of Operation

- f. The total number of hours per day in which the Facility Shredder operates at an amperage draw equal to or greater than 200 amps<sup>3</sup> shall be recorded using the Shredder's existing, or a functionally equivalent, amperage monitoring system. These recorded hours shall define the number of hours that the Shredder is emitting VOCs, for purposes of calculating annual VOC emissions from the Shredder.
  - i. The amperage monitoring system shall collect data before, during, and after the Shredder's operation at an amperage draw equal to or greater than 200 amps, for a minimum period of 12 hours/day. For example, if the Shredder's hours of operation are 7:00am to 3:30pm, the monitoring system could begin collecting data at 5:00am and cease collecting data at 5:00pm each day.
- g. The total number of hours per day in which the Shredder amperage is equal to or greater than 200<sup>3</sup> amps shall be reported to ACHD in a manner and frequency proposed by the permittee for approval by ACHD.
- h. Data from the amperage monitoring system shall be maintained on a central server so that it can be accessed at both the Facility and Respondent's other offices, to provide to ACHD or EPA upon request.

Requirement to Document and Record Shredder Feed

- i. 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.

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<sup>2</sup> At the maximum shred feed rate of 120 tph, 240,000 tons/year correlates to 2,000 hours/year shredder operating hours. Metalico shall use the annual operating hours as a basis to ensure that the total quantity of VOC emissions at the Facility, including those from the Shredder and all other Facility sources, does not exceed the 50 TPY VOC limitation on potential to emit.

<sup>3</sup> This 200 amp value represents the typical amperage draw when the Shredder is mechanically shredding material, therefore, these hours are presumed to be the hours that the unit is generating VOCs.

Requirement for Best Management Plan

- j. A Best Management Practices Plan (“BMP Plan”) shall be submitted to ACHD annually following the date of submission of Respondent’s amended Synthetic Minor Permit Application, for review and comment. The BMP Plan shall include, at minimum, the following elements, and shall describe how they will be implemented at the Facility:
    - i. Fire Prevention, including, but not limited to: use of an infrared (“IR”) camera (or other temperature gauging equipment) to scan the Facility and scrap piles as a means of reducing the potential for fires; on-site trainings on the use of equipment and fire response; fire hydrant map and maintenance activities; and the use and installation of “water cannon” or other fire suppression systems;
    - ii. Visible Emissions Reduction, including, but not limited to, water suppression and other means to prevent dust and other visible emissions from leaving the Facility boundary;
    - iii. Vehicle Handling and Depollution, including, but not limited to, draining engine fluids and fuels, removing batteries and switches, and handling of electric vehicles (e.g., Toyota Prius, Tesla, etc.), if accepted for shredding by the Facility;
    - iv. Hazard Reduction, including, but not limited to, sorting and removal of pressurized tanks, handling of fuel-containing materials to minimize explosions in the shredder, and removal of lithium and other batteries.
43. Respondent shall submit to EPA and ACHD, within sixty (60) days from the effective date of this Order, or by March 1, 2023, whichever is later, a report of practices it currently conducts at the Facility to address fire prevention, visible emissions reduction, vehicle handling and depollution, and hazard reduction, as those activities are described in Paragraph 42.j. above.
44. 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 Paragraphs 42-43 is restitution, remediation, or required to come into compliance with the law.

**E. OTHER TERMS AND CONDITIONS**

45. Respondent admits the jurisdictional allegations contained in this Order.
46. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.
47. 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**

48. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$109,024 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.

49. 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.
50. 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.
51. 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 55) until the Termination Date of this Order (Paragraph 57), 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.
52. 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:

Erin Willard, Environmental Scientist  
U.S. EPA, Region III, Enforcement and Compliance Assurance Division (3ED21)  
Willard.ErinM@epa.gov

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

Michael Drury, President and CEO  
Metalico Pittsburgh, Inc.  
135 Dermody Street  
Cranford, NJ 07016  
[mjdrury@metalico.com](mailto:mjdrury@metalico.com)

Kevin Whalen  
Metalico Pittsburgh, Inc.  
135 Dermody Street  
Cranford, NJ 07016  
kwhalen@metalico.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 Willard.ErinM@epa.gov unless arrangements are otherwise made by contacting Ms. Willard via email.

53. 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.

54. 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**

55. 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**

56. 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**

57. 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:

**Metalico Pittsburgh, Inc.**

Respondent.

Administrative Compliance Order on Consent  
EPA Docket No. CAA-03-2023-0016DA

For United States Environmental Protection Agency, Region III:

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*[digitally signed and dated]*

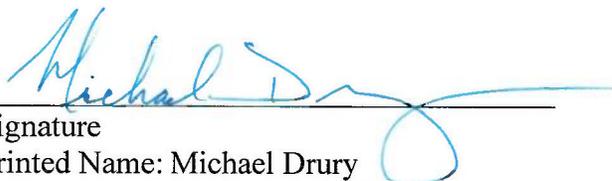
Karen Melvin

Office of Enforcement and Compliance Assurance Division

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

Philadelphia, PA 19103

For Metalico Pittsburgh, Inc. :

  
\_\_\_\_\_  
Signature  
Printed Name: Michael Drury  
Title: President and CEO

Date December 9, 2022