U. S. ENVIRONMENTAL PROTECTION AGENCY – NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100 (OES04-3)
BOSTON, MA 02109-3912

DEC 19 2019

BY HAND DELIVERY

Ms. Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Connecticut Scrap, LLC/EPA Docket No. CAA-01-2020-0019

Dear Ms. Santiago:

Attached for filing in the above-referenced matter are an original and one copy of an executed *Administrative Complaint and Notice of Opportunity for a Hearing* ("Complaint") for the above-referenced matter that the EPA has served on the Respondent. Also attached are an original and one copy of a Certificate of Service.

EPA has also sent copies of the Complaint, the Certificate of Service, and this letter to the Respondent by Overnight Mail.

Thank you for your assistance. Please call me if you have any questions.

Sincerely,

John W. Kilborn
Senior Enforcement Counsel

Cc: David Waddington, Manager, CT Scrap, LLC
Garon Camassar, Registered Agent for CT Scrap, LLC
Cindy J. Karlson, Counsel for CT Scrap, LLC
Christine Sansevero, EPA

Enclosures:

1. Original and Copy of Complaint
2. Original and Copy of Certificate of Service

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF	)	Docket No. CAA-01-2020-0019
Connecticut Scrap, L.L.C. **140 Route 32** **North Franklin, CT 06254**	)	**ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING**
Respondent	)	
Proceeding under Section 113 of the Clean Air Act	)	

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency – Region 1 ("EPA" or "Complainant") issues this *Administrative Complaint and Notice of Opportunity for a Hearing* ("Complaint") pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, to Connecticut Scrap, L.L.C. ("Respondent").

II. NATURE OF THE ACTION

2. This Complaint hereby notifies Respondent that EPA intends to seek a civil penalty as described below for each violation of (i) the *National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*, found at 40 C.F.R. Part 63, Subpart ZZZZ ("RICE NESHAP"); and (ii) the *Regulations for the Protection of Stratospheric Ozone – Recycling and Emission Reduction*, promulgated at 40 C.F.R. Part 82, Subpart F ("Subpart F"). The Complaint also describes Respondent's option to file an Answer to

the Complaint and to request a formal hearing. In support of this Complaint, EPA alleges the following:

III. STATUTORY AND REGULATORY AUTHORITY

3. EPA promulgated the RICE NESHAP and Subpart F pursuant to Sections 112 and 608 of the CAA, 42 U.S.C. §§ 7412 and 7671g, respectively. Regulations promulgated under these provisions of the CAA are enforceable by EPA in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

4. Respondent's violations described herein render Respondent liable for penalties under Section 113(d) of the Act.

5. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. §§ 3701 et seq., provide for the assessment of civil penalties of up to $47,357 per violation per day, as adjusted by the DCIA.

6. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§7413(a) and (d), provide for the assessment of penalties for violations of CAA Sections 112 and 608 and of any regulations promulgated thereunder. See 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4, Table 2 (civil penalties may be assessed of up to $47,357 per violation per day).

7. When the first alleged date of a CAA violation occurs more than twelve (12) months prior to the initiation of an administrative action and/or the amount of the penalty sought exceeds $378,852, EPA and the Department of Justice may jointly determine that an administrative, rather than judicial, forum is appropriate. 42 U.S.C. § 7413(d).

8. EPA has determined jointly with the Department of Justice that this matter is appropriate for an administrative penalty action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

IV. GENERAL ALLEGATIONS

9. Respondent is an incorporated entity under the laws of the State of Connecticut.

10. Respondent owns and/or operates a scrap metal shredding and/or recycling facility at 33 Pequot Road, Uncasville, Connecticut, which EPA inspected on July 28, 2017.

11. At its Uncasville facility, Respondent shreds metal materials and accepts, processes, and recycles metal materials such as motor vehicles, small appliances, and room air conditioners.

12. On November 14, 2017, EPA issued a CAA Reporting Requirement to Respondent. Respondent responded to the Reporting Requirement on January 2, 2018.

13. In its January 2, 2018 response to EPA's Reporting Requirement, Respondent did not provide any signed agreements or contracts verifying that all refrigerant that had not leaked previously had been recovered from appliances or shipments of appliances. Such agreements or contracts are required to be kept in accordance with paragraph (a) of 40 C.F.R. §82.155.

14. Respondent has operated a Caterpillar, Model 3412, non-emergency, stationary, diesel, reciprocating internal combustion engine with a rating of at least 900 horsepower at its Uncasville facility (the "Engine"). This Engine powered a hammermill shredder and was manufactured prior to June 12, 2006. Respondent has provided information to EPA indicating that the Engine was taken out of service as of March 25, 2019 after the shredder was connected to an electric motor powered from the electrical grid.

15. On May 25, 2018, EPA issued a CAA Notice of Violation to Respondent.

16. On July 31, 2018, EPA issued a CAA Administrative Order to Respondent directing Respondent to comply with the requirements of the RICE NESHAP and Subpart F. See 42 U.S.C. § 7413(a)(3) (authorizing EPA to issue administrative orders for violations of Subchapter I of the CAA).

V. VIOLATIONS

17. Based upon EPA's compliance inspection described above and additional information, EPA has identified the following violations of the CAA and its implementing regulations:

Alleged Violations of RICE NESHAP

18. The RICE NESHAP applies to non-emergency, stationary, reciprocating internal combustion engines ("RICE") at major or area sources of hazardous air pollutant ("HAP") emissions. 40 C.F.R. § 63.6585.

19. The Engine at the Uncasville facility was a non-emergency, diesel, reciprocating internal combustion engine, had a horsepower rating of at least 900 horsepower, and remained in its location for more than twelve consecutive months.

20. The Uncasville facility was considered to be an "area source" of HAP emissions because the available evidence suggests that the facility did not have the potential to emit 10 tons or more of a single HAP nor the potential to emit 25 tons or more of a combination of HAPs. 40 C.F.R. §§ 63.6585(b) and (c).

21. The Engine was an existing RICE unit subject to the RICE NESHAP.

Count One – Failure to Comply with Emission Limitations

22. Complainant hereby incorporates by reference Paragraphs 1 through 21.

23. Under 40 C.F.R. § 63.6603, the owner or operator of a stationary, non-emergency, non-black start, compression ignition RICE greater than 300 horsepower located at an area source of HAP emissions must comply with the requirements in Table 2d of Subpart ZZZZ.

24. According to requirement 3 of Table 2d of Subpart ZZZZ, non-emergency, non-black start, compression ignition, stationary RICE greater than 500 HP, are required to:

a. Limit the concentration of carbon monoxide ("CO") in the stationary RICE exhaust to 23 parts per million, volumetric dry ("ppmvd") at 15% oxygen; or

b. Reduce CO emissions by 70 percent or more.

25. Respondent failed to either limit the concentration of CO in the Engine exhaust to 23 ppmvd at 15% oxygen or to reduce CO emissions from the Engines by 70 percent or more. These failures continued daily from May 3, 2013 (the date that Respondent was first required to comply with the Subpart ZZZZ emissions limitations) through March 25, 2019 (the date that Respondent has represented that it removed the Engine from service and connected to grid power).

26. Accordingly, Respondent violated 40 C.F.R § 63.6603 with respect to the Engine.

Count Two – Failure to Submit Semiannual Compliance Reports

27. Complainant hereby incorporates by reference Paragraphs 1 through 26.

28. Under 40 C.F.R. § 63.6650, the owner or operator of a stationary, non-emergency, non-black start, compression ignition RICE greater than 300 horsepower located at an area source of HAP emissions must submit semiannual compliance reports to EPA.

29. Respondent did not submit semiannual compliance reports for the Engine to EPA. These failures continued daily from July 31, 2013 (the date that Respondent was first required to submit a semi-annual compliance report) through August 31, 2018 (the date that Respondent submitted its first required update report under the Administrative Order).

30. Accordingly, Respondent violated 40 C.F.R § 63.6650 with respect to the Engine.

Alleged Violations of Subpart F

31. Under 40 C.F.R. §82.155(b), the final processor—i.e., the person who takes the final step in the disposal process (including, but not limited, to scrap recyclers and landfill operators) of a small appliance, motor vehicle air conditioner ("MVAC"), or MVAC-like appliance—must either:

a. Recover any remaining refrigerant from the appliance in accordance with paragraph (a) of 40 C.F.R. §82.155; or

b. 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 paragraph (a) of 40 C.F.R. §82.155. 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 paragraph (a) of 40 C.F.R. §82.155 prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

32. 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 paragraph (b)(2) of 40 C.F.R. §82.155 on-site, in hard copy or in electronic format, for three years.

33. Respondent is a final processor of small appliances, MVACs, or MVAC-like appliances.

Count Three – Failure to Properly Recover Refrigerant or Verify Recovery

34. Complainant hereby incorporates by reference Paragraphs 1 through 33.

35. The Respondent failed to properly recover refrigerant and/or verify that refrigerant had been recovered from any materials containing refrigerant, using signed statements or contracts. These failures continued daily during business days at least from January 1, 2015 through December 31, 2017. (Respondent has represented that it began verifying that refrigerant had been recovered beginning on January 1, 2018.)

36. The Respondent has failed to keep copies of all the signed statements or contracts on-site, in hard copy or in electronic format, for three years. These failures continued daily during business days at least from January 1, 2015 through December 31, 2017. (Respondent has represented that it began maintaining verification statements beginning on January 1, 2018.)

37. Accordingly, the Respondent has violated 40 C.F.R. §§ 82.155(a), (b) and (c).

VI. PROPOSED CIVIL PENALTY

38. Complainant proposes a civil penalty against Respondent of $352,120 for the alleged violations.

39. In determining the amount of the penalty to be assessed under Section 113 of the CAA, EPA must take into consideration the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. See CAA Section 113(e), 42 U.S.C. § 7413(e).

40. In proposing a penalty for the violations set forth in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, the statutory penalty factors listed in CAA Section 113(e), and EPA's *Clean Air Act Stationary Source Penalty Policy* ("Penalty Policy"), dated October 25, 1991, a copy of which is attached to this Complaint. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component to recover the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation.

41. The penalty to be assessed may be considered in light of any evidence presented by Respondent that the proposed penalty would impair Respondent's ability to continue in business. To support such a claim, Respondent must provide Complainant with adequate financial documentation.

42. As required by 40 C.F.R. § 22.14(a)(4)(i), a brief explanation of the penalty sought for each violation is set forth below. Each Count described below constitutes a violation of the CAA subject to a civil penalty of up to $47,357 per day. 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4 (Table 2).

Proposed Penalty for Violations of RICE NESHAP

43. For Count One – failure to comply with emission limitations – Complainant proposes to assess an inflation-adjusted penalty of $147,377, calculated pursuant to the Penalty Policy. This amount is comprised of the following amounts: (i) $15,000 for importance of compliance with the requirement to achieving the goals of the Clean Air Act; (ii) $20,000 for actual or potential harm to the environment due to the emission of toxic pollutants in excess of the amount allowed by the regulatory scheme; (iii) $50,000 for the duration of the violation; and (iv) $62,377 to account for inflation of the penalty amounts, which are from 1991, the date of the Penalty Policy. For the purposes of the penalty calculation, the duration of the violation was assumed to be for 51 months from December 31, 2014 (which is a date based upon the five-year statute of limitations for penalty actions under 28 U.S.C. § 2462) through March 25, 2019 (which is the date that Respondent has represented that it removed the Engine from service and connected to grid power). The $20,000 amount for harm consists of $15,000 to represent the toxicity of the pollutants emitted and $5,000 to represent the percentage of the emissions above the regulatory standard. Based upon the emissions of other similar engines, EPA has assumed that the Engine (which was not tested for emissions) emitted pollutants between 1% and 30% above the standard, which is the lowest level of violation.

44. For Count Two – failure to submit semiannual compliance reports -- Complainant proposes to assess an inflation-adjusted penalty of $103,464, calculated pursuant to the Penalty Policy. This amount is comprised of the following amounts: (i) $15,000 for importance of compliance with the requirement to achieving the goals of the Clean Air Act; (ii) $45,000 for the duration of the violation; and (iii) $43,464 to account for inflation of the previous penalty amounts. For the purposes of the penalty calculation, the duration of the violation was assumed to be for 44 months from December 31, 2014 (which is a date based upon the five-year statute of limitations for penalty actions) through August 31, 2018 (which is the date that Respondent submitted its first required update report under the Administrative Order).

45. For Counts One and Two, Complainant proposes to assess an additional amount of $10,780 to recover the economic benefit that Respondent gained though its delay in making the expenditures necessary to achieve compliance with the RICE NESHAP. Complainant calculated that amount using the "Methodology for Computing the Economic Benefit of Noncompliance" and the BEN computer model, which model is available to the public at https://www.epa.gov/enforcement/penalty-and-financial-models.

Proposed Penalty for Violations of Subpart F

46. For Count Three – failure to properly recover refrigerant or verify recovery -- Complainant proposes to assess an inflation-adjusted penalty of $90,449, calculated pursuant to the Penalty Policy. The amount is comprised of the following amounts: (i) $15,000 for importance of compliance with the requirement to achieving the goals of the Clean Air Act; (ii) $35,000 for the duration of the violation; (iii) and $35,449 for inflation for the previous amounts; and (iv) $5,000 to represent the size of the violator. For the purposes of the penalty calculation,

the duration of the violation was assumed to be for 36 months between January 1, 2015 and December 31, 2017.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

47. In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

48. Respondent shall serve copies of the Answer and any subsequent pleadings that Respondent files in this action to the following address:

John W. Kilborn, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code 04-3)
Boston, Massachusetts 02109-3912
Kilborn.john@epa.gov
617-918-1893

49. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy attached). See 40 C.F.R. § 22.15 for the required contents of the Answer.

50. Respondent has a continuing obligation to comply with the CAA, with the terms and conditions of any applicable permits, the Administrative Order, and with any other order issued under Section 113 of the CAA, 42 U.S.C. § 7413.

VIII. DEFAULT ORDER

51. Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings after the default order becomes final under 40 C.F.R. § 22.27(c).

IX. SETTLEMENT CONFERENCE

52. Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

53. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter, Respondent should contact John W. Kilborn, Senior Counsel, at (617) 918-1893. Pursuant to 40 C.F.R. § 22.5(c)(4), John W. Kilborn is authorized to receive service on behalf of EPA at the

address listed above in Paragraph 48. Pursuant to 40 C.F.R. § 22.5(b)(2), EPA consents to service by email at Kilborn.john@epa.gov.

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

December 17, 2019
Date

Attachments: *Clean Air Act Stationary Source Penalty Policy*
Consolidated Rules of Practice: 40 C.F.R. Part 22

In re: Connecticut Scrap, LLC/EPA Docket No. CAA-01-2020-0019

CERTIFICATE OF SERVICE

I hereby certify that an *Administrative Complaint and Notice of Opportunity for a Hearing* has been sent to the following persons on the date and in the manner noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3812

Copy, by Overnight Mail:

David Waddington, Manager
Connecticut Scrap, LLC
140 Route 32
North Franklin, CT 06254

David Waddington, Manager
Connecticut Scrap, LLC
33 Pequot Road,
Uncasville, CT 06382

Garon Camassar, Registered Agent
181 Broad Street
New London, CT 06320

Date: 12/19/19

John W. Kilborn
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3812
(617) 918-1893
Kilborn.john@epa.gov