

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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U.S. EPA REGION 5
HEARING CLERK

In the Matter of:) Docket No. CAA-05-2024-0020
)
Ecology Tech Inc.) Proceeding to Assess a Civil Penalty
d/b/a S&S Metal Recyclers II) Under Section 113(d) of the Clean Air Act,
Aurora, Illinois,) 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 Ecology Tech Inc. (d/b/a S&S Metal Recyclers II), a corporation doing business in Illinois.
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. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F. As specified at 40 C.F.R. § 82.150(a), the purpose of the regulations is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level by maximizing the recapturing and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances.

10. Under 40 C.F.R. § 82.150(b), 40 C.F.R. Part 82, Subpart F applies to any person maintaining, servicing, or repairing appliances containing class I, class II, or non-exempt substitute refrigerants. It also applies to persons disposing of such appliances (including small appliances and motor vehicle air conditioners), refrigerant reclaimers, technician certifying programs, appliance owners and operators, manufacturers of appliances, manufacturers of recovery and/or recycling equipment, approved recovery and/or recycling equipment testing organizations, and persons buying, selling, or offering to sell class I, class II, or non-exempt substitute refrigerants.

11. Under 40 C.F.R. § 82.152, an appliance is 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 (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

12. Under 40 C.F.R. § 82.152, an MVAC is an 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. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

13. Under 40 C.F.R. § 82.152, an MVAC-like appliance is 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. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

14. Under 40 C.F.R. § 82.152, a small appliance is 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.

15. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration may knowingly vent or otherwise release into the environment any refrigerant from such appliances, with certain exceptions not relevant to this matter.

16. 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 a small appliance, MVAC, or MVAC-like appliance—must either:

- a. Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); 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 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.¹

17. 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, where penalties are assessed on or after January 6, 2023, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2023).

18. 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.

19. 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.

¹ In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: "EPA notes here that a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor." 81 Fed. Reg. 82,272, 82,309 (Nov. 18, 2016).

Factual Allegations and Alleged Violations

20. Ecology Tech owns and operates a scrap recycling facility (Facility) at 336 East Sullivan Road, Aurora, Illinois.
21. At its Facility, Ecology Tech accepts for recycling and disposal, among other things, small appliances and MVACs that contain or once contained refrigerant, and is therefore subject to requirements at 40 C.F.R. Part 82, Subpart F.
22. As a scrap recycler, Ecology Tech is the final processor of small appliances, MVACs, and MVAC-like appliances, and is therefore subject to 40 C.F.R. § 82.155(b).
23. EPA inspected the Facility on August 18, 2021.
24. At the time of the inspection, Ecology Tech stated that it accepted small appliances at its Facility only if the refrigerants were no longer in the units and rejected appliances with improperly cut lines.
25. At the time of the inspection, Ecology Tech accepted vehicle air conditioning radiators. Ecology Tech could determine approximately how many units it accepted based on the weight of the load.
26. Vehicle air conditioning radiators are MVACs as defined in 40 C.F.R. § 82.152.
27. At the time of the inspection, Ecology Tech accepted an estimated two to three refrigerators per day from both peddlers and commercial suppliers.
28. At the time of the inspection, Ecology Tech stated that commercial customer accounts made up approximately 80% of its business.
29. Between August 18, 2018 and August 18, 2021 Ecology Tech accepted refrigerators from peddlers.
30. Refrigerators are small appliances as defined in 40 C.F.R. § 82.152.

31. At the Facility, EPA inspectors observed a scrap pile containing several window air conditioning units.

32. Window air conditioning units are small appliances as defined in 40 C.F.R. § 82.152.

33. At the time of the inspection, Ecology Tech did not recover, and had never recovered, refrigerant from small appliances or MVACs accepted at its Facility.

34. At the time of the inspection, Ecology Tech could not provide EPA with documentation that a third party had recovered the refrigerant from any MVACs or small appliances.

35. At the time of the inspection, when peddlers sold MVACs or small appliances to Ecology Tech, Ecology Tech did not require them to verify, using a signed statement or a contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances.

36. As of the time of the inspection, Ecology Tech had never used a signed statement requiring the name and address of the person who recovered the refrigerant or the date refrigerant was recovered to verify compliance for individual transactions of small appliances or MVACs.

37. Between August 18, 2018 and August 18, 2021 Ecology Tech accepted small appliances and MVACs without recovering refrigerant and without verifying using signed statements or contracts that all refrigerant had been properly recovered prior to delivery.

38. By failing to recover refrigerant from appliances and MVACs during scrap recycling, and by failing to verify using signed statements or contracts that all refrigerant had been properly recovered prior to delivery of the appliances and MVACs, Ecology Tech has violated 40 C.F.R. § 82.155(b).

Civil Penalty

39. 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 and Ecology Tech’s cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$222,905.54.

40. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty of \$222,905.54 within 30 days after the effective date of this CAFO.
- b. 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	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	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 In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.
Payments made through Pay.gov Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account	<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

information to make payments.	
<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:</p> <p>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):</p> <p>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>

44. Within 24 hours of the payment of the civil penalty, Respondent must send a notice of payment and states 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

Lisa Frasco
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
frasco.lisa@epa.gov

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

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

46. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date of this CAFO, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of this CAFO; and
- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

47. If Respondent does not pay timely the civil penalty as set forth in paragraph 40, above, 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.

48. 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. See 42 U.S.C. § 7413(d)(5).

General Provisions

49. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: frasco.lisa@epa.gov (for Complainant), and francis.lyons@afslaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

51. 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.

52. 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 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. Respondent certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

54. 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).

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

56. 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.

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

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

Ecology Tech, Inc. (d/b/a S&S Metal Recyclers II), Respondent

1-2-2024

Date



Kevin Podraza, President
Ecology Tech, Inc.

36-4039757

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: Ecology Tech, Inc.
Docket No.**

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