



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 30 2009

4APT-PTSB

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Alan H. McConnell, Esq.  
Kilpatrick Stockton LLP  
Suite 400  
3737 Glenwood Avenue  
Raleigh, NC 27612

Re: Consent Agreement and Final Order  
In the Matter of Metal Recycling Services, LLC  
Docket No. CAA-04-2009-1510(b)

Dear Mr. McConnell:

Enclosed, please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act matter involving Metal Recycling Services, LLC (MRS). The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22, and became effective on the date of filing. Please note that pursuant to paragraph 17 of the CAFO, payment of \$35,000 is due within 30 days of the effective date. Further directions concerning the payment are set forth in paragraphs 18 and 19.

Also enclosed, is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceeding" (Notice). This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

If you have any further questions regarding this matter, please contact me at (404) 562-9536.

Sincerely,

A handwritten signature in black ink that reads "Marlene J. Tucker".

Marlene J. Tucker  
Associate Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:

Metal Recycling Services, LLC,	)	
Formerly, Metal Recycling Services, Inc.	)	Docket Number: CAA-04-2009-1510(b)
150 South Bivens Road	)	
Monroe, North Carolina 28112	)	
	)	
	)	
Respondent	)	
_____	)	

RECEIVED  
EPA REGION 4  
2009 MAR 30 PM 2:44  
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Metal Recycling Services, LLC, formerly Metal Recycling Services, Inc. (hereinafter, "Respondent").
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.
3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.
4. Respondent is a corporation doing business in the State of North Carolina.
5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Respondent operates three full service scrap metal recycling facilities in North Carolina: 150 S. Bivens Road, Monroe, NC 28111; 1563 Hwy 24/27 West Biscoe, NC 27209; and 5192 James B. White, Hwy 701 S. Whitesville, NC 28472.
7. Respondent's operation includes "disposal" as defined in 40 C.F.R. § 82.152, of materials including, but not limited to, scrap metal, small appliances, room air conditioners, motor vehicle air conditioning systems (MVACs) or MVAC-like appliances.
8. Section 608(b) of the CAA, 42 U.S.C. § 7671g, and the regulations promulgated at 40 C.F.R. § 82.156(f)(2), require persons who take the final step in the disposal process of a small appliance, room air conditioning, MVACs, or MVAC-like appliances to either recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.156(g) or (h) as applicable; or verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained 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. § 82.156(g) or (h) as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.
9. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 608 of CAA, 42 U.S.C. § 7671g, that occurred after March 15, 2004.

## II. Factual Allegations

10. EPA alleges that during the time period from February 1, 2006, through October 8, 2007, Respondent was involved in disposing small appliances, room air conditioners, MVACs and MVAC-like appliances at its three facilities located in Monroe, Biscoe, and Whitesville, North Carolina, and failed to obtain complete verification statement(s), from the person(s) from whom the appliance or shipment of appliances was obtained or failed to have contract(s) stating that the refrigerant will be removed prior to delivery, as required by 40 C.F.R. § 82.156(f)(2).

## III. Consent Agreement

11. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 9 above, but Respondent neither admits nor denies the factual allegations set forth in paragraph 10, above.

12. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.
13. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
14. Respondent certifies that, to the best of its knowledge, information and belief, as of the date of its execution of this CAFO, it is in full compliance with all the relevant requirements of Section 608 of the CAA, and the implementing regulations.
15. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of Section 608 alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
16. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

#### IV. Final Order

17. Respondent shall pay a civil penalty of **THIRTY FIVE THOUSAND DOLLARS (\$35,000.00)** which shall be paid **within thirty (30) days** from the effective date of the CAFO.
18. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**The check shall reference on its face the name of the Respondent and the Docket Number of the CAFO.**

19. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk	Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4	U.S. EPA - Region 4
61 Forsyth Street, S.W.	61 Forsyth Street
Atlanta, Georgia 30303	Atlanta, Georgia 30303

Mr. Chetan T. Gala  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

20. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim an expense or a deduction or a credit for the civil penalty payment made pursuant to paragraph 17.
21. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
22. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
23. This CAFO shall be binding upon the Respondent, its successors and assigns.

61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9746

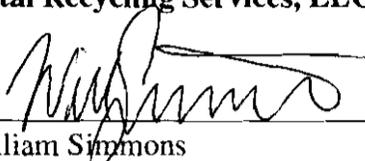
25. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

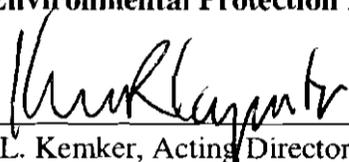
26. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

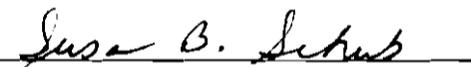
**Metal Recycling Services, LLC**

By:  Date: 3-20-09  
William Simmons  
Vice President & General Manager

**U.S. Environmental Protection Agency**

By:  Date: 3/27/09  
Carol L. Kemker, Acting Director  
Air, Pesticides and Toxics Management Division,  
Region 4

**APPROVED AND SO ORDERED** this day of Mar. 30, 2009. J/S

  
Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Metal Recycling Services, LLC, Docket No. CAA-04-2009-1510(b), on the parties listed below in the manner indicated:

Alan H. McConnell, Esq.  
Kilpatrick Stockton LLP  
Suite 400  
3737 Glenwood Avenue  
Raleigh, NC 27612

(Via FedEx  
Return Receipt Requested)

Marlene J. Tucker  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Chetan T. Gala  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Date:

3-30-09



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection  
Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404)562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/27/09  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Metal Recycling Services LLC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 35,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAK 04 2009-1510(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |