



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**OCT 27 2009**

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

M. Clark Spoden, Esq.  
Frost Brown Todd LLP  
424 Church Street  
Nashville, TN 37219

Re: Consent Agreement and Final Order  
In the Matter of Tennessee Aluminum Processors, Inc.  
Docket No. CAA-04-2009-1515(b)

Dear Mr. Spoden:

Enclosed, please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding Tennessee Aluminum Processors, Inc.'s (TAP's) final payment on the penalty due. Any questions regarding the processing of TAP's penalty may be directed to Ms. Lori Weidner, Financial Management Office, at (513) 487-2125.

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

Should you have any questions, please contact me at (404) 562-9536.

Sincerely,

  
Marlene J. Tucker

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:

Tennessee Aluminum Processors, Inc. )  
7207 Hoover Mason Road, )  
Mount Pleasant, Tennessee )  
 )  
 )  
Respondent )  
\_\_\_\_\_ )

Docket Number: CAA-04-2010-1506(b)

2009 OCT 27 AM 9:15  
EPA REGION IV  
RECEIVED  
CLEM

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 Acting Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Tennessee Aluminum Processors, Inc. (hereinafter, "Respondent" or "TAP").
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 redelegate 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 incorporated in the State of Tennessee.
5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).
6. TAP owns and operates a secondary aluminum production facility located at 7207 Hoover Mason Road, Mount Pleasant, Tennessee.

7. The TAP facility produces aluminum ingots by melting aluminum scrap and dross, and is subject to the CAA's implementing regulations at 40 C.F. R. Part 63, Subparts A and RRR.
8. TAP is an "area source" as defined in Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), which means any stationary source located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, less than 10 tons per year of any hazardous air pollutants (HAP) or less than 25 tons per year of any combination of HAPs.
9. In 1982, the Tennessee Department of Environment and Conservation (TDEC) issued a Conditional Major Permit (synthetic minor permit) No. 451399P, to TAP which was renewed on November 21, 2007. The terms of the permit limit sulfur dioxide and particulate matter emissions to less than 100 tons per year and limit HAPs to less than 10 tons per year.
10. 40 C.F.R. § 63.1500(c) provides that the requirements of 40 C.F.R. Part 63, Subpart RRR apply to an owner or operator of each "secondary aluminum production facility" that is an area source for each new and existing secondary aluminum processing unit (SAPU).
11. Pursuant to 40 C.F.R. § 63.1503, "secondary aluminum production facility" includes any facility using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes, scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations, recovery of aluminum from dross, in-line fluxing, or dross cooling.
12. Pursuant to 40 C.F.R. § 63.1503, a "SAPU" is defined as all existing Group 1 furnaces within a secondary aluminum production facility.
13. 40 C.F.R. § 63.1503 defines a "Group 1 furnace" as a furnace that melts, holds or processes aluminum that contains paint, coatings or other foreign materials with or without reactive fluxing.
14. TAP's existing furnaces numbers 1 and 3 are Group 1 furnaces, and therefore subject to Subpart RRR requirements.
15. On March 18, 2003, TAP submitted its Operation, Monitoring and Maintenance (OM&M) plan, stating its method for monitoring flux injection rates for furnaces 1 and 3.
16. Each year from 2003 through 2008, TDEC inspected TAP's facility and found TAP to be in compliance.

17. On November 8, 2007, EPA, in conjunction with TDEC, conducted a full compliance evaluation inspection at TAP's facility in Mount Pleasant, Tennessee.
18. On March 5, 2009, EPA issued a Notice of Potential Violation (NOPV) to TAP setting forth allegations of the Facility's non-compliance with the requirements of 40 C.F.R. Part 63, Subpart RRR. The first allegation in the NOPV concerned flux injection rate monitoring, and the second allegation in the NOPV concerned TAP's furnace hooding.
19. On April 6, 2009, TAP submitted a detailed brief to EPA pointing out that TAP interpreted this requirement as requiring the recordation and calculation of the flux injection rate for its Group 1 furnaces to be averaged because it was using the SAPU method since 2003 as specified in its OM&M plan.
20. On April 13, 2009, EPA held an informal, preliminary conference with TAP to discuss the violations alleged in the NOPV. During the conference, TAP also notified EPA of its plans to construct a new furnace. The new furnace will be larger in capacity and will replace furnace number 3.
21. On May 18, 2009, EPA held a show cause meeting with TAP at the EPA offices in Atlanta, Georgia. At this meeting, TAP's defenses to the NOPV were presented and the details related to modifications planned to TAP's furnaces were discussed. At that meeting, EPA also agreed TAP's capture and collection system met the requirements of 40 C. F. R. § 63.1506(c), and that EPA would not pursue the alleged violation pertaining to their capture and collection system.
22. On August 5, 2009, EPA issued an Administrative Order to TAP which set forth a schedule for TAP to attain compliance with the requirements of 40 C.F.R. Part 63, Subpart RRR, and to construct a new furnace.
23. The Secondary Aluminum Production MACT was proposed on December 31, 1998, and promulgated on March 23, 2000. The final compliance date for the Secondary Aluminum Production MACT was March 24, 2003.
24. Pursuant to 40 C.F.R. § 63.1506(m)(5), for each Group 1 furnace, the owner or operator must maintain the total reactive chlorine flux injection rate, for each operating cycle or time period used in the performance test, at or below the average rate established during the performance test.
25. Pursuant to 40 C.F.R. § 63.1510(j)(4), the owner or operator must calculate and record the total reactive flux injection rate for each operating cycle or time period used in the performance test using the procedure specified in § 63.1512(o). In addition, § 63.1510(b) requires the owner and operator to provide the details regarding the monitoring schedule for each affected source and emission unit in the OM&M plan. As stated above in paragraph 19, TAP interpreted this requirement as requiring the recordation and

calculation of the flux injection rate for its Group 1 furnaces averaged because it was using the SAPU method.

26. 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 \$27,500 for each violation that occurred on or after January 31, 1997, not more than \$32,500 for each violation that occurred after March 15, 2004, and not more than \$37,500 for each violation that occurred after January 12, 2009.

## II. Factual Allegations

27. EPA alleges that since the compliance date of March 24, 2003, TAP has been in violation of 40 C.F.R. §§ 63.1506(m)(5), 63.1510(j)(4) and 63.1512(o), by not establishing a total reactive flux rate for each Group 1 furnace.

## III. Consent Agreement

28. For the purposes of this CAFO and arriving at a compromise and settlement of EPA's allegations, Respondent has agreed to the relief sought herein, and admits the jurisdictional allegations set out in Paragraphs 1 through 26 above, but Respondent neither admits nor denies specific factual allegations set out in paragraph 27 above.
29. 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.
30. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
31. Respondent certifies that as of the date of its execution of this CAFO, it is undertaking pursuant to the Administrative Compliance Order issued on August 5, 2009, to come into compliance with the requirements of 40 C.F.R. Part 63, Subparts A and RRR.
32. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of 40 C.F.R. Part 63, Subparts A and RRR 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.
33. 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

34. Respondent is assessed a civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)** which shall be paid **within thirty (30) days** after the date Respondent receives a copy of the fully executed CAFO.
35. 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.**

36. 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:

Patricia Bullock	Saundi Wilson (OEA)
Regional Hearing Clerk	Office of Environmental Accountability
U.S. EPA - Region 4	U.S. EPA - Region 4
61 Forsyth Street, S.W.	61 Forsyth Street, S.W.
Atlanta, Georgia 30303	Atlanta, Georgia 30303

Stephen Rieck  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

37. 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 34.
38. 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.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent, its successors and assigns.
41. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Stephen Rieck  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9177

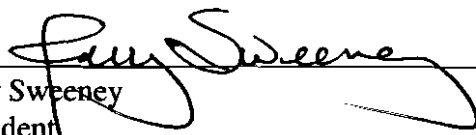
42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

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

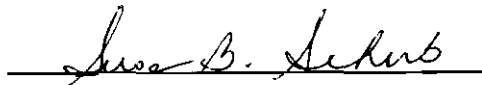
**AGREED AND CONSENTED TO:**

**Tennessee Aluminum Processors, Inc.**

By:  Date: 10-20-09  
Jerry Sweeney  
President

~~CACHE COUNTY BOARD OF SUPERVISORS~~  
Air, Pesticides and Toxics Management Division,  
Region 4

**APPROVED AND SO ORDERED** this day of Oct. 27<sup>th</sup>, 2009.



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: Tennessee Aluminum Processors, Inc., Docket No. CAA-04-2010-1506(b), on the parties listed below in the manner indicated:

M. Clark Spoden, Esq.  
Frost Brown Todd LLP  
424 Church Street  
Nashville, TN 35219

(Via FedEx  
Return Receipt Requested)

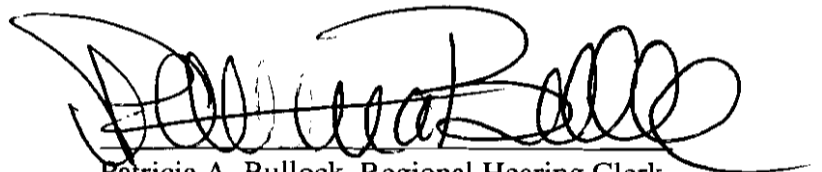
Marlene J. Tucker  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Stephen Rieck  
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: 10-27-09



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 10/23/09  
(Name) (Date)

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

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                      | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                              | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|  | <input type="checkbox"/> This is a modification  |

PAYEE: Tennessee Aluminum Processors, Inc.  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 10,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2010 1506 (6)

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)    |