



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8


1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2008-0016

IN THE MATTER OF:)
)
WASATCH METAL RECYCLING) FINAL ORDER
)
RESPONDENT)

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3rd DAY OF December, 2008.


Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. CAA-08-2008-0016

IN THE MATTER OF:)
)
Wasatch Metal Recycling)
401 West 900 South)
Salt Lake City, UT 84101)
)
Respondent.)
)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Wasatch Metal Recycling, ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. part 22. This Consent Agreement is entered into by the parties for the purpose of concluding this matter, as provided for in 40 C.F.R. section 22.18(b)(2).
2. The complaint filed in this matter alleges the Respondent violated the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et. seq.*, by disposing refrigerant without prior recovery of refrigerant or without verifying prior recovery of refrigerant.
3. This Consent Agreement (the "Agreement") applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
4. Respondent waives its right to a hearing on any issue of law or fact set forth in the Complaint.
5. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

II. TERMS OF SETTLEMENT

6. The complaint filed in this matter proposed a higher penalty assessment than the one agreed to herein. For good cause shown, specifically, Respondent's cooperation and agreement to perform a Supplemental Environmental Project as outlined in detail below, Complainant agrees to reduce the penalty proposed in the complaint to \$2,000.
7. Respondent has achieved compliance with the requirements that formed the basis of the counts alleged in the Complaint.
8. Respondent agrees to the issuance of a Final Order which incorporates the terms and conditions of this Consent Agreement, and to pay the civil penalty as set forth in Paragraph 9 below.
9. Respondent consents and agrees to pay a penalty in the amount of **TWO THOUSAND dollars (\$2,000.00)** in the manner described below in this paragraph:
 - a. Payment is due within 30 calendar days from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sf01.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

Mr. Jeffrey Kimes, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Ms. Tina Artemis, 8RC
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

III. ADDITIONAL CONDITIONS OF SETTLEMENT

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

- 10. In addition to the payment described in Paragraph 9 above, Respondent explicitly agrees to perform a Supplemental Environmental Project, described herein below.
- 11. Respondent shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to purchase and operate refrigerant recovery equipment at its place of business. This effort will occur on or before March 1, 2009. Respondent will purchase two pieces of refrigerant removal equipment together costing \$7,446.14; and also purchase an environmental rack, at a cost of approximately \$8,000. The total cost of the SEP, the two pieces of removal equipment and the rack, will be \$15,446.14.
- 12. Respondent shall expend **FIFTEEN THOUSAND FOUR HUNDRED FORTY SIX Dollars (\$15,446.00)** on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as specified in Paragraph 11 above.
- 13. Respondent hereby certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP described above nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements.
- 14. Respondent further certifies that it has not received, and is not presently negotiating

to receive, credit in any other enforcement action for the above-described SEP.

5. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall reside in the sole discretion of EPA, such discretion to be exercised reasonably and in good faith.
16. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP project and in any event no later than April 1, 2009, unless the deadline is extended by the mutual agreement of the parties. The SEP Completion Report shall contain, at a minimum, the following information:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and,
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Consent Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 19 below.

17. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within fifteen (15) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. Following receipt of the SEP Completion Report described in Paragraph 16 above, EPA will either:

- (i) Accept the SEP Completion Report;
- (ii) Reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies; or
- (iii) following the processes set out in subparagraph (ii) immediately above, if EPA must still reject the SEP Completion Report, EPA will so reject the SEP Completion Report in writing, and seek stipulated penalties in accordance with Paragraph 19 below.

If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Agreement. In the event the SEP is not completed as described herein, as determined by EPA and within the time period established with EPA's written statement, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 19 below. Any discretion exercised under this paragraph will be exercised reasonably and in good faith.

19. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 12 above, Respondent shall be liable for stipulated penalties as provided below.

- i. Except as provided in subparagraph (ii) immediately below, if Respondent willfully fails or refuses to complete the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of **FIFTEEN THOUSAND FOUR HUNDRED FORTY SIX Dollars (\$15,446.00)**
- ii. If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money

which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.

- iii. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of ONE THOUSAND FIVE HUNDRED Dollars (\$1,500.00).
- iv. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.
- v. For failure to submit a SEP Completion Report as required by Paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of FIFTY Dollars (\$50.00) for each day after EPA informs Respondent of such failure and after the due date that the report is submitted.

Stipulated penalties for subparagraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 9 above. Interest and late charges shall be paid as stated in Paragraph 9 above. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

20. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Clean Air Act.

IV. DELAYS

21. If any event occurs which causes or may cause delays in the completion of the SEP

as required under this Agreement, Respondent shall notify Complainant in writing within ten (10) days of the delay or date on which Respondent obtains knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of Respondent's obligation under this Agreement based on such incident.

22. If the Parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.
23. In the event that EPA, in the good faith exercise of its discretion, does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of EPA's decision and any delays in the completion of the SEP shall not be excused.
24. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

V. ADDITIONAL GENERAL PROVISIONS

25. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
26. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
27. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate

penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.

28. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.
29. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.
30. Each party shall bear its own costs and attorney fees in connection with this matter.
31. This Complaint and Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8.
Complainant.

Date: 11/26/08

By: Cynthia J. Reynolds
Cynthia J. Reynolds, Director
Technical Enforcement Program

Date: 11/26/08

By: Michael J. Dwyer
for David J. Janik, Director
Matthew D. Cohn, Supervisory Enforcement
Attorney
Legal Enforcement Program

Date: November 25, 2008

By: Dana J. Stotsky
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

WASATCH METAL RECYCLING, INC.

Respondent.

Date: Nov. 17, 2008

By: Mark Bond
NAME: Mark Bond
TITLE: President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8.
Complainant.

Date: 11/26/08

By: Michael T. Doshier
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: _____

By: _____
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

WASATCH METAL RECYCLING, INC.

Respondent.

Date: _____

By: _____
NAME:
TITLE:

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **WASATCH METAL RECYCLING; DOCKET NO.: CAA-08-2008-0016** was filed with the Regional Hearing Clerk was filed on December 3, 2008.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail and e-mailed on November 6, 2008, to:

Mark Bond, President
Wasatch Metal Recycling
401 West 900 South
Salt Lake City, UT 84101

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

December 3, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

