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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of:) Docket No. CAA-05-2025-0036
)
Metalico Youngstown, Inc.) Proceeding to Assess a Civil Penalty
Girard, Ohio,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding commenced and concluded under Section 113(d) of the Clean Air Act (the CAA or the Act), 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. §§ 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3).
2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.
3. Respondent is Metalico Youngstown, Inc., a corporation doing business in Ohio. Respondent is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) without the adjudication of any issues of law or fact.
5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) and Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), on July 29, 2024, the EPA issued to Respondent a Notice of Violation/Finding of Violation (NOV/FOV) and provided a copy of the NOV/FOV to the Ohio Environmental Protection Agency (OEPA), providing notice to Respondent and OEPA that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On August 26, 2024, representatives of Respondent and the EPA conferred regarding the July 29, 2024 NOV/FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the consent agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

Ohio SIP

10. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

11. On March 7, 2019, EPA approved the latest revisions to the Ohio Administrative Code (OAC) Rule 3745-31-01 as part of the federally enforceable SIP for Ohio. 84 Fed. Reg. 8257.

12. "Best available technology" (BAT) means any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control devices that have been previously demonstrated to the OEPA to operate satisfactorily in Ohio or other states with similar air quality on substantially similar air pollution sources. OAC Rule 3745-31-01(B)(6).

13. On April 12, 2019, EPA approved the latest revisions to the OAC rule 3745-31-05 as part of the federally enforceable SIP for Ohio. 84 Fed. Reg. 14874.

14. OEPA shall issue a permit-to-install or permit-to-install and operate (PTIO) on the basis of the information appearing in the application, or information gathered by or furnished to the OEPA, or both, if OEPA determines that the installation modification or operation of the air contaminant source will employ BAT (Ohio BAT Rule). OAC Rule 3745-31-05(A)(3).

15. BAT shall be evaluated, determined and required in either the initial permit-to-install or PTIO issued for an air contaminant source or when a modification of the air contaminant source results in the issuance of a permit-to-install or PTIO. OAC Rule 3745-31-05(A)(3)(a).

16. BAT is not required if the air contaminant source was installed before January 1, 1974. OAC Rule 3745-31-05(A)(3)(a)(i).

17. BAT is not required if the air contaminant source was installed or modified on or after August 3, 2006, and has the potential to emit, taking into account air pollution controls installed on the source, less than ten tons per year of emissions of an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the Clean Air Act. OAC Rule 3745-31-05(A)(3)(a)(ii).

Title V

18. Title V of the Act established an operating permit program for major sources of air pollution. 42 U.S.C. §§ 7661-7661f. Section 502(d)(1) of the Act requires each state to develop and submit to EPA an operating permit program that meets the requirements of Title V. 42 U.S.C. § 7661a(d)(1). On September 21, 2001, EPA granted Ohio full approval of its Title V Clean Air Act Permit Program, effective November 30, 2001, and approved revisions on December 22, 2003. *See* Appendix A of 40 C.F.R. Part 70.

19. Ohio's Title V operating permit program regulations are codified at OAC Chapter 3745-77 and are federally enforceable pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

20. A "major source" is, among other things, any stationary source that directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation. 40 C.F.R. § 70.2.

21. In general, Title V requires each "major source" to obtain an operating permit setting forth all the air pollution requirements that apply to that source. *See* 42 U.S.C. §§ 7661-7661f.

22. A source subject to Title V may only operate in compliance with a permit issued by a permitting authority pursuant to Title V (Title V permit). 42 U.S.C. § 7661a(a); 40 C.F.R. § 70.7(b).

23. EPA retains the authority to enforce Title V operating permits issued by a state. 42 U.S.C. § 7661a(e).

24. A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. 40 C.F.R. § 70.5(a)(1)(i).

25. Under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413 (a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP. The

Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

26. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

D. Stipulated Facts

27. Metalico Youngstown, Inc., a wholly owned subsidiary of Metalico, Inc., owns and operates a scrap metal recycling facility located at 27 Furnace Lane, Girard, Ohio (the Girard Facility).

28. Metalico purchased the Girard Facility from Liberty Iron & Metal, Inc., in December 2020.

29. On July 1, 2021, EPA published an enforcement alert (Alert) titled “Violations at Metal Recycling Facilities Cause Excess Emissions in Nearby Communities.” The purpose of the Alert was to notify metal recycling facilities with shredders that volatile organic compound (VOC) emissions from their shredders may trigger regulatory applicability, and to inform these facilities of the air pollution control systems that are in use for shredders at similar facilities.

30. At the Girard Facility, Metalico operates a metal shredder to process scrap automobiles and other scrap metal materials (Shredder).

31. On October 25, 2023, EPA inspected the Girard Facility to investigate compliance with the Act (2023 Inspection) and collected information, including information about the Shredder’s operations, emissions, and permit status.

32. During the inspection, representatives from the Girard Facility stated that the Shredder processes a mixture of scrap automobiles and sheet metal, and that the percentage of automobiles is

30-50% of the total. Facility representatives also stated that the maximum shredder infeed rate is approximately 108 gross tons per hour.

33. On January 11, 2024, Metalico provided EPA with several permit renewal applications for the Girard Facility as a follow-up to the 2023 inspection.

34. According to a July 22, 2019 permit application and two subsequent corrected applications (2019 permit applications) the Shredder was installed on April 2, 2009.

35. The 2019 permit applications identified the potential to emit VOC from the Shredder as zero (0) tons per year.

36. On June 8, 2020, Ohio EPA issued a final air pollution permit-to-install and operate to the Girard Facility (2020 PTIO). The 2020 PTIO is currently active and lists an expiration date of June 8, 2030.

37. The 2020 PTIO for the Shredder does not include a production limit, a requirement to operate any VOC control device, a VOC emission limit pursuant to the Ohio BAT Rule, or any other VOC emission limit.

38. No air permit applications have been submitted for the Girard Facility since the 2020 PTIO was issued.

39. Using an emission factor of 0.39 lbs of VOC per gross ton of scrap processed and actual scrap infeed rates provided by Metalico, EPA computed that actual VOC emissions did not exceed 100 tons of VOC per year from 2021 to 2024.

E. Alleged Violations of Law

40. EPA evaluated VOC emission test results from a multitude of scrap metal shredders across the United States that demonstrated adequate capture during stack testing. Based on an analysis of these test results, the maximum scrap infeed rate and the maximum percentage of

automobiles processed, the Shredder at the Girard Facility has the potential to emit over 100 tons of VOC per year.

41. Metalico has operated and continues to operate the Facility with a potential to emit in excess of 10 tons per year of VOC without obtaining a permit that requires BAT for controlling VOC in violation of OAC Rule 3745-31-05(A)(3).

42. Metalico has operated and continues to operate the Facility with an unlimited potential to emit in excess of 100 tons per year of VOC without obtaining a Title V permit in violation of Section 502 of the Act. 42 U.S.C. § 7661a(a); 40 C.F.R. § 70.7(b).

F. Terms of Consent Agreement

43. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits to the jurisdictional allegations in this CAFO;
 - b. admits to the stipulated facts stated above and neither admits nor denies the alleged violations of law stated above;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to any conditions specified in this CAFO;
 - e. waives any right to contest the alleged violations of law set forth in Section E of this CAFO; and
 - f. waives its right to appeal this CAFO.
44. For the purposes of this proceeding, Respondent:
- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any

issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); and

- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

45. 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 Respondent’s cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$25,000.

46. Respondent agrees to pay a civil penalty in the amount of \$25,000 (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

47. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

48. When making a payment, Respondent shall:

- a. Identify every payment with Respondent’s name and the docket number of this Agreement, CAA-05-2025-0036,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

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

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Tasia Kastanek
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
kastanek.tasia@epa.gov

Ian Cecala
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
cecala.ian@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

49. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the

Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

50. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

51. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

52. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

53. 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 does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

54. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

55. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal capacity to bind the party they represent to this CAFO.

56. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

57. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Attached Final Order

58. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: kastanek.tasia@epa.gov and cecala.ian@epa.gov (for the EPA), and gwehrli@metalico.com (for Respondent).

59. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

60. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter with the exception of the administrative compliance order, docket number EPA-5-25-113(a)-OH-6, issued April 16, 2025.

61. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

62. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

63. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

64. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

65. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

H. Effective Date

66. This CAFO will be effective after the Regional Judicial Officer executes the attached Final Order, on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Metalico Youngstown, Inc., Respondent

Date

Kevin Whalen, President
Metalico Youngstown, Inc.

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: Metalico Youngstown, Inc.
Docket No. CAA-05-2025-0036

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