UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2023-0002
	)	
Northern Metals LLC	)	**Proceeding to Assess a Civil Penalty**
Minneapolis, Minnesota	)	**Under Section 113(d) of the Clean Air Act,**
	)	**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 or Complainant), Region 5.

3. Respondent is Northern Metals LLC (NMR or Respondent), a limited liability company doing business in Minnesota.

4. According to 40 C.F.R. § 22.13(b), 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).

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. For purposes of this proceeding only, Respondent admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.

8. For purposes of this proceeding only, 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. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F.

10. According to 40 C.F.R. § 82.150(a), the purpose of 40 C.F.R. Part 82, Subpart F is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances.

11. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

12. Under 40 C.F.R. § 82.152, a "person" means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

13. 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.

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 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 appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

16. Under 40 C.F.R. §§ 82.155(b)(1) and (2), the final processor—i.e., any person who takes 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:

> (1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155 (a); or
>
> (2) 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.

17. Under 40 C.F.R. § 82.155(b)(2)(ii) the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of notification may be signs, letters to suppliers, or other equivalent means.

18. Under 40 C.F.R. § 82.155(b)(2)(iii) if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $51,796 per day of violation up to a total of $414,364 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(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.

21. 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.

Factual Allegations and Alleged Violations

22. At all times relevant to this CAFO, NMR owned or operated scrap recycling facilities at the following locations:

a. 1803 North 2nd Street, Minneapolis, Minnesota (2nd Street Facility);

b. 9025 Zachary Road North, Maple Grove, Minnesota (Zachary Road Facility); and

c. 521 Barge Channel Road, St. Paul, Minnesota (Barge Channel Road Facility).

(Collectively "Facilities").

23. NMR is a "person" within the meaning of 40 C.F.R. § 82.152.

24. At its Facilities, NMR accepts for recycling and disposal, among other things, small appliances that contain or once contained refrigerant, and is therefore subject to requirements at 40 C.F.R. Part 82, Subpart F.

25. EPA inspected the Facilities between May 1-3, 2019.

26. On September 30, 2020, EPA issued NMR a Finding of Violation (FOV) alleging that NMR violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at its Facilities.

27. NMR provided a written response to the FOV on November 23, 2020.

28. On November 30, 2020, representatives of NMR and EPA met via teleconference to discuss the allegations made in the FOV.

2nd Street Facility

29. At the time of the inspection, NMR representatives stated that NMR accepted small appliances at its 2nd Street Facility only if refrigerant was no longer in the units.

30. At the time of the inspection, NMR employees stated that the 2nd Street Facility did not recover refrigerant from small appliances at the 2nd Street Facility, and inspectors did not observe the presence of equipment needed to recover refrigerants, at the facility.

31. At the time of the inspection, EPA inspectors observed two air conditioning units near the facility's scale house with intact refrigerant lines, indicating to EPA that refrigerant had not been recovered from the units.

32. NMR has asserted that to the extent EPA observed appliances with intact refrigerant lines at the 2nd Street Facility, the company's practice is to reject such appliances and send them back to the supplier prior to taking the final step in disposing of the appliances.

33. At the time of the inspection, NMR employees stated that repeat customers are asked to sign a document referred to by NMR as a verification statement, once annually. EPA reviewed samples of signed documents provided by NMR and found the documents did not meet the requirements for a contract under 40 C.F.R. § 82.155(b)(2).

34. Based on EPA's observations and statements NMR made NMR failed to recover refrigerants from appliances during scrap recycling or properly verify using a signed statement or a contract that all refrigerant that had not leaked out previously had been recovered, in violation of 40 C.F.R. § 82.155(b) at the 2nd Street Facility.

35. Respondent's violation of 40 C.F.R. § 82.155(b) at its 2nd Street Facility is a violation of a requirement of Subchapter VI of the CAA, and consequently authorizes EPA to issue an administrative penalty order under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

Zachary Road Facility

36. At the time of the inspection, NMR representatives stated that NMR accepted small appliances at its Zachary Road Facility only if refrigerant was no longer in the units.

37. At the time of the inspection, NMR employees stated that it did not recover refrigerant from small appliances at the Zachary Road Facility.

38. At the time of the inspection, NMR employees stated that repeat customers are asked to sign a document, once, referred to by NMR as a verification statement. EPA reviewed

samples of signed documents provided by NMR and found the documents did not meet the requirements for a contract under 40 C.F.R. § 82.155(b)(2).

39. At the time of the inspection, NMR was unable to provide signed statements or contracts verifying proper recovery of refrigerants from non-repeat customers.

40. Based on statements NMR employees made and records that NMR provided to EPA, NMR failed to recover refrigerants from appliances during scrap recycling or properly verify using a signed statement or a contract that all refrigerant that had not leaked out previously or had been recovered, in violation of 40 C.F.R. § 82.155(b) at the Zachary Road Street Facility.

41. At its Zachary Road Facility, Respondent's violation of 40 C.F.R. § 82.155(b) is a violation of a requirement of Subchapter VI of the CAA, and consequently authorizes EPA to issue an administrative penalty order under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

Barge Channel Road Facility

42. At the time of the inspection, NMR representatives stated that it accepted small appliances at its Barge Channel Road Facility from suppliers and peddlers only if refrigerant was no longer in the units.

43. At the time of the inspection, NMR employees stated that the Barge Channel Road Facility did not recover refrigerant from small appliances at the Barge Channel Road Facility, and inspectors did not observe the presence of equipment needed to recover refrigerants, at the facility.

44. At the time of the inspection, NMR employees stated that repeat customers are required to have a contract with the facility requiring the refrigerant to be removed prior to

delivery to the Barge Channel Road Facility. EPA reviewed the document NMR provided and found it did not meet the requirements for a contract under 40 C.F.R. § 82.155(b)(2).

45. At the time of the inspection, EPA interpreted statements by NMR employees to mean that the facility did not require peddlers to sign a statement verifying that refrigerants had been properly recovered prior to delivery to NMR.

46. Based on statements NMR employees made and records that NMR provided to EPA, NMR has failed to recover refrigerants from appliances during scrap recycling or properly verify using a signed statement or a contract that all refrigerant that had not leaked out previously had been recovered, in violation of 40 C.F.R. § 82.155(b) at the Barge Channel Road Street Facility.

47. At its Barge Channel Road Facility, Respondent's violation of 40 C.F.R. § 82.155(b) is a violation of a requirement of Subchapter VI of the CAA, and consequently authorizes EPA to issue an administrative penalty order under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

Civil Penalty

48. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e) and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is $300,000.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a $300,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, Missouri 63197-9000

50. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch U.S. Environmental Protection Agency, Region 5 r5airenforcement@epa.gov

Christopher Grubb
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
grubb.christopher@epa.gov

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

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

52. If Respondent does not pay timely the civil penalty, 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.

53. 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. 42 U.S.C. § 7413(d)(5).

General Provisions

54. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant), and kcampbell@mankogold.com and mdillon@mankogold.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

56. 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.

57. 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 55 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

59. 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).

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

61. 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.

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

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

Consent Agreement and Final Order
In the Matter of: Northern Metals LLC
Docket No. CAA-05-2023-0002

Northern Metals LLC, Respondent

10/20/2022
Date

Scott Helberg
Chief Operating Officer
Northern Metals LLC

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Docket No. CAA-05-2023-0002

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS

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Date: 2022.11.18 16:38:19 -06'00'

Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

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.

ANN COYLE Digitally signed by ANN COYLE Date: 2022.11.22 11:49:45 -06'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5