



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 29 2013

Mr. Dennis K Bayer, P.A.
109 South 6th Street
Suite 200
Flagler Beach, Florida 32316

Re: Consent Agreement and Final Order
In the Matter of J & J Recycling & Demo, LLC.
Docket No. CAA-04-2013-1504(b)

Dear Mr. Bayer:

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 22.5(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding J & J Recycling & Demo, LLC.'s final payment on the penalty due. Any questions regarding the processing of J & J Recycling & Demo, LLC.'s penalty may be directed to Ms. Heather Russell, Financial Management Office, at (513) 487-2044.

If you have any other questions, please contact Chetan Gala of the South Air Enforcement Section at (404) 562-9746 or Ellen Rouch, Associate Regional Counsel, at (404) 562-9575.

Sincerely,

A handwritten signature in blue ink that reads "Beverly A. Spagg".

Beverly A. Spagg
Chief
Air and EPCRA Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
J & J Recycling and Demo, LLC.)
)
Jacksonville, Florida)
)
Respondent)
_____)

Docket No. CAA-04-2013-1504(b)

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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 or the Act), 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 Title 40 Code of Federal Regulations (40 C.F.R.) Part 22, for alleged violations of Section 183(e) of the Act, as amended, 42 U.S.C. § 7511b(e).
2. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is J & J Recycling and Demo, LLC. (hereinafter, "Respondent"). Respondent owns and operates a metal recycling facility located at 5072 Pickettville Road, Jacksonville, Florida 32254-1178.
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 re-delegated 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, and has the authority to sign consent agreements memorializing settlements between EPA and Respondent.
4. 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.
5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.152.
6. Respondent is a corporation whose main business is metals recycling including materials that may contain class I and/or class II substance(s), refrigerant(s) and/or substitute(s) and is therefore subject to the requirements of 40 C.F.R. Part 82, Subpart F, Recycling and Emission Reduction,

which includes requirements for the safe disposal of class I and class II substances (ozone depleting refrigerants and their substitutes).

7. Respondent is a person disposing of appliances, including small appliances and motor vehicle air conditioners (MVAC) as defined at 40 C.F.R. § 82.152, therefore, pursuant to 40 C.F.R. Part 82, Subpart F, § 82.150(b), the requirements of this Subpart are applicable to Respondent.
8. The federal regulations implementing Section 608 of the CAA describe required practices, recordkeeping and reporting requirements for any person servicing, repairing, maintaining and/or disposing appliances. The regulations at 40 C.F.R. § 82.156(f) require persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, MVACs, or MVAC-like appliances must either:
 - a. (1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section as applicable or;
 - b. (2) 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 paragraph (g) or (h) of § 82.156, 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.

The regulations at 40 C.F.R. § 82.156(g) require all persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal of these appliances must reduce the system pressure to or below 102 mm of mercury vacuum, using equipment that meets the standards set forth in § 82.158(l).

Additionally, the regulations at 40 C.F.R. § 82.156(h) contain a number of specific requirements for all persons recovering refrigerant from small appliances for purposes of disposal of these appliances.

9. 40 C.F.R. § 82.156(f)(3) requires persons complying with 40 C.F.R § 82.156(f)(2) to notify suppliers of the appliances that refrigerant must be properly removed before delivery of the items to the facility. The form of this notification may be warning signs, letters to suppliers, or other equivalent means.
10. 40 C.F.R. § 82.166(i) requires person(s) disposing of small appliances, MVACs, and MVAC-like appliances to maintain copies of signed statements obtained pursuant to 40 C.F.R. § 82.156(f)(2); and pursuant to 40 C.F.R. § 82.166(m) to retain records for three years.
11. 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 per day for each violation that occurred on or after January 31, 1997, not more than \$32,500 per day for each violation that occurred after March 15, 2004, and not more than \$37,500 per day for each violation that occurred after January 12, 2009.

II. Factual Allegations

12. On April 03, 2012, the Air, Pesticides, and Toxics Management Division, EPA, Region 4 issued an Information Request letter pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a) to Respondent for the purpose of determining whether Respondent is in compliance with the requirements set forth at 40 C.F.R. Part 82, Subpart F.
13. On May 1, 2012, the Respondent submitted a response to EPA's Information Request in which Respondent indicated that Respondent did not comply with 40 CFR §§ 82.156(f)(1) or (f)(2).
 - a. Respondent did not collect signed statements in accordance with 40 C.F.R. § 82.156(f)(2) verifying that the refrigerant had been evacuated from the appliance or shipment of appliances, in accordance with 40 C.F.R. § 82.156 (g) or (h) as applicable. Each shipment of appliances received by Respondent for final disposal without the requisite information went through an incomplete verification process. Therefore, Respondent failed to comply with 40 C.F.R. § 82.156(f)(2) for the time period starting March 2012 through April 2012.
 - b. Furthermore, the information submitted indicated that Respondent did not recover any refrigerant from the appliances in accordance with 40 C.F.R. § 82.156(g) or (h) as applicable in accordance with 40 C.F.R. § 82.156(f)(1).
14. Based on Respondent's response to EPA's Section 114 Information Request, EPA determined that Respondent's existing signs were inadequate to meet the requirements of 40 C.F.R. § 82.156(f)(3) to notify suppliers of the appliances that refrigerant must be properly removed before delivery of the items to the facility. Respondent replaced the old signs with new signs on or about the date of the response to EPA's Section 114 Information Request. Therefore, Respondent failed to comply with 40 C.F.R. § 82.156(f)(3) for the period starting March 2012 through April 2012.
15. Based on Respondent's response to EPA's Section 114 Information Request, EPA determined that Respondent had not collected nor maintained copies of signed verification statements for the period starting March 2012 through April 2012. Therefore, Respondent failed to comply with 40 C.F.R. §§ 82.166(i) and (m), respectively for the said time duration.

III. Consent Agreement

16. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this CAFO, Respondent admits the jurisdictional allegations in paragraphs 1 through 11 set out above, but neither admits nor denies the factual allegations in paragraphs 12 through 15 above.
17. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this CAFO, Respondent waives any rights to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement. Accordingly, Respondent waives its right to a hearing on the allegations contained herein.

18. As provided in 40 C.F.R. § 22.18(b)(2), Respondent consents to the assessment of the civil penalty set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the compliance requirements of 40 C.F.R. Part 59, Subpart D.
20. As provided in 40 C.F.R. § 22.18(b)(2), compliance with this CAFO shall resolve Respondent's liability for Federal civil penalties for the violations alleged herein. This CAFO shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
21. 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.
22. The following individual is authorized to receive service for EPA in this proceeding:

Chetan Gala
 Air Enforcement and EPCRA Branch
 Air, Pesticides and Toxics Management Division
 U.S. EPA – Region 4
 61 Forsyth Street, S.W.
 Atlanta, GA 30303
 (404) 562-9746

IV. Final Order

23. Respondent shall pay a civil penalty of **SEVENTEEN THOUSAND FIVE HUNDRED (\$17,500)**.
24. Respondent may pay the penalty of **SEVENTEEN THOUSAND FIVE HUNDRED (\$17,500)** in thirteen monthly installments. If paid in installments, Respondent shall also pay **SIXTY SIX DOLLARS AND TWELVE CENTS (\$66.12)** in interest and make the installment payments in accordance with the following schedule:

PAYMENT NUMBER	PRINCIPAL	INTEREST	TOTAL PAYMENT	PAYMENT DATE
1	\$05,500.00	\$00.00	\$05,500.00	Within 30 days of the effective date of the CAFO
2	\$00,995.51	\$10.00	\$01,005.51	Within 60 days of the effective date of the CAFO
3	\$00,996.03	\$09.48	\$01,005.51	Within 90 days of the effective date of the CAFO
4	\$00,997.17	\$08.34	\$01,005.51	Within 120 days of the effective date of

				the CAFO
5	\$00,997.75	\$07.76	\$01,005.51	Within 150 days of the effective date of the CAFO
6	\$00,998.61	\$06.90	\$01,005.51	Within 180 days of the effective date of the CAFO
7	\$00,999.66	\$05.85	\$01,005.51	Within 210 days of the effective date of the CAFO
8	\$01,000.33	\$05.18	\$01,005.51	Within 240 days of the effective date of the CAFO
9	\$01,001.33	\$04.18	\$01,005.51	Within 270 days of the effective date of the CAFO
10	\$01,002.05	\$03.46	\$01,005.51	Within 300 days of the effective date of the CAFO
11	\$01,002.92	\$02.59	\$01,005.51	Within 330 days of the effective date of the CAFO
12	\$01,003.95	\$01.56	\$01,005.51	Within 360 days of the effective date of the CAFO
13	\$01,004.69	\$00.82	\$01,005.51	Within 390 days of the effective date of the CAFO
Total	\$17,500.00	\$66.12	\$17,566.12	

25. Respondent shall pay the penalty specified in paragraph 23 **within 30 days** of the effective date of the CAFO or in accordance with installment schedule including interest as specified in paragraph 24 by forwarding a cashier's or certified check payable to: "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO (J & J Recycling and Demo, LLC., Docket Number CAA-04-2013-1504(b)).** The payment shall be sent by one of the following methods below.

United State Postal Service using the following address:

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

Other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.) using the following address:

U.S. Bank
 1005 Convention Plaza
 Mail Station SL-MO-C2GL
 St. Louis, Missouri 63197-9000

Alternatively, Respondent shall make payment by wire transfer. **The wire transfer shall reference the name of the Respondent and the Docket Number of the CAFO (J & J Recycling and Demo, LLC., Docket Number CAA-04-2013-1504(b)).** The wire transfer shall be directed to the Federal Reserve Bank of New York, as described below.

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty St.
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

26. At the time of the payment, Respondent shall send a separate copy of the check or send a copy of the wire transfer authorization form and transaction record, 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
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Chetan Gala
Air and EPCRA Enforcement Branch
Air, Pesticides and Toxics Management Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960; and

Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

27. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500)** within thirty (30) days of the effective date of this CAFO and thereby, avoid the payment of interest pursuant to 4 C.F.R. § 102.13(c) and/or 40 C.F. R. § 13.11(a). In addition, Respondent may at any time after commencement of the payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

29. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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 payment referenced in paragraph 24, from the effective date of this CAFO, if any such payment is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c) and/or 40 C.F.R. § 13.11(a). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
31. The penalty described in paragraph 23 and/or 24, shall represent civil penalties assessed by Complainant within the meaning of section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax-deductible expenditure for purposes of federal law. Therefore, for the purposes of State and Federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
34. This CAFO shall be binding upon the Respondent, its successors and assigns.
35. 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 binds that party to this CAFO.

V. Effective Date

36. 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:

J & J Recycling and Demo, LLC.

By: Damir Lee McKee Jr Date: 3/23/13

Name: Damir Lee McKee Jr

Title: MGRA

U.S. Environmental Protection Agency

By: Franky A. Spigg Date: 3/27/2013

Beverly H. Banister
Director

Air, Pesticides & Toxics Management Division
EPA Region 4

APPROVED AND SO ORDERED this 28 day of March, 2013.

Susan B. Schub

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify 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: J & J Recycling and Demo, LLC, Docket Number: CAA-04-2013-1504(b), on the parties listed below, in the manner indicated:

Mr. Dennis K. Bayer, P.A.
109 South 6th Street
Suite 200
Flagler Beach, Florida 32316

(Via Certified Mail, Return Receipt Requested)

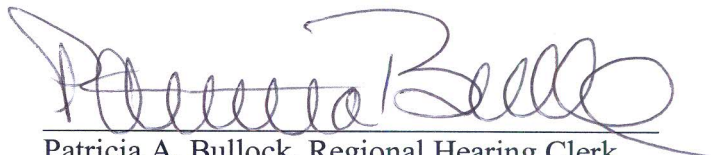
Chetan Gala
Air and EPCRA Enforcement Branch
Air, Pesticides, and Toxics Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Ellen Rouch
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Date: 3-29-13



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