



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 17 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dennis Rook
President
Benton Metal Recycling
1256 Milton Street
Benton Harbor, Michigan 49022

Re: Administrative Order EPA-5-14-113(a)-MI-04

Dear Mr. Rook,

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case. If you have any questions about the Order, please contact me at (312) 886-6797.

Sincerely,

A handwritten signature in black ink that reads "Sarah Marshall".

Sarah Marshall
Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure:

cc: Regional Hearing Clerk, E-19J
Louise Gross, C-14J
Mary Douglas, MDEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-14-113(a)-MI-04
)	
Benton Metal Recycling, LLC)	Proceeding Under Sections
Benton Harbor, Michigan)	113(a)(3) and 114(a)(1) of the Clean Air Act,
)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)
_____)	

Administrative Consent Order

1. The Director of the Air and Radiation Division (Director), U.S. Environmental Protection Agency, Region 5 (EPA), is entering into this Administrative Consent Order (Order) with Benton Metal Recycling, LLC (BMR), 1256 Milton Street, Benton Harbor, Michigan, under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Subchapter VI of the Act to any person who has violated or is violating any requirement of Subchapter VI. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated her order authority to the Director of the Air and Radiation Division, pursuant to EPA Region 5 Delegation 7-6-A.

3. 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 Act, 42 U.S.C. § 7414(a)(1). The Administrator of EPA has delegated

her information gathering authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region 5, has delegated her information gathering authority to the Director of the Air and Radiation Division pursuant to EPA Region 5 Delegation 7-8.

4. Subchapter VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners at 58 Fed. Reg. 28660 (May 14, 1993). These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance of the need to properly recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II

substance used as a 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 and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

II. Findings

7. BMR owns and operates a scrap metal recycling facility at 1256 Milton Street, Benton Harbor, Michigan (the Facility).

8. BMR is a corporation organized and doing business in Michigan.

9. BMR is a “person,” as defined by 40 C.F.R. § 82.152.

10. BMR is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

11. At the Facility, BMR has accepted small appliances without either recovering refrigerant or obtaining verification statements or contracts that meet the requirements of 40 C.F.R. § 82.156(f).

12. On September 14, 2012, EPA issued BMR a Finding of Violation alleging that BMR had violated 40 C.F.R. § 82.156(f), because it neither recovered refrigerant from small appliances nor obtained proper verification statements or contracts before accepting small appliances.

13. On March 6, 2013, BMR conferred with EPA concerning the violations referenced in paragraph 12.

III. Compliance Program

14. BMR must comply with 40 C.F.R. Part 82, Subpart F. Additionally, for any small appliance that it receives at the Facility, BMR must take the actions and maintain compliance as specified in paragraphs 15 through 22, below, for two years after the effective date of this Order.

15. BMR must not accept small appliances with visibly cut or dismantled refrigerant lines if it knows or has reason to know that the refrigerant has not been properly recovered in accordance with 40 C.F.R. § 82.156(g) and (h).

16. BMR must not accept small appliances with visibly cut or dismantled refrigerant lines from a supplier unless the supplier can certify, using the verification statement included as Attachment 1 to this Order, that all refrigerant that had not leaked previously has been properly recovered. For suppliers with whom BMR has had a long-standing business relationship, this requirement may be satisfied by BMR entering into the contract included as Attachment 2 to this Order.

17. BMR may accept small appliances that it reasonably believes to have intact refrigerant lines provided it uses refrigerant recovery equipment as described in paragraph 21, below, to remove any remaining refrigerant.

18. BMR must notify its suppliers in writing that it will not accept small appliances with cut or dismantled refrigerant lines, unless the suppliers can certify that the refrigerant was properly recovered prior to cutting or dismantling the refrigerant lines using the verification statement included as Attachment 1 to this Order or the contract included as Attachment 2 to this Order.

19. BMR must notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap.

20. BMR may satisfy the notice requirements of paragraphs 18 and 19 with a warning sign consistent with 40 C.F.R. § 82.156(f)(3) that is prominently displayed at its weigh station during the period of time that this Order is in effect.

21. BMR must use the equipment that it previously purchased to recover refrigerant from those small appliances, accepted pursuant to paragraph 17, from which refrigerant has not been recovered prior to delivery to BMR, or contract the services of an individual to recover refrigerant from such small appliances. BMR will ensure that the individual using this equipment has been properly trained to recover the refrigerant.

22. BMR must use the refrigerant recovery log included as Attachment 3 to this Order. BMR must retain copies of receipts for all refrigerant that it collects and sends to any other companies for reclamation or disposal. BMR must, to the extent reasonably practicable, also document the small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

23. Within six months after the effective date of this Order and at one year after the effective date of this Order, BMR must submit to EPA proof of its compliance with the notice requirements of paragraphs 19 and 20, and that it is using the equipment with an individual trained in recovering refrigerant as required by paragraph 21.

24. Within six months after the effective date of this Order and at one year after the effective date of this Order, BMR must submit to EPA copies of the following: all signed verifications statements, all signed contracts, if any, all refrigerant recovery logs and all other information required by paragraph 22, above.

25. BMR must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

IV. General Provisions

26. BMR agrees to the terms of this Order.

27. BMR waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that BMR may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the Act.

28. This Order does not affect BMR's responsibility to comply with other federal, state, and local laws.

29. This Order does not restrict EPA's authority to enforce any requirement of the Act or its implementing regulations.

30. Failure to comply with this Order may subject BMR to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

31. BMR may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If BMR fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

32. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response(s) to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

33. The terms of this Order are binding on BMR, its assignees, and successors. BMR must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

34. EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

35. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that BMR has complied with all terms of the Order throughout its duration. Thereafter, BMR shall continue to comply with 40 C.F.R. Part 82, Subpart F.

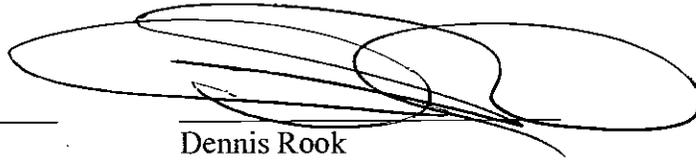
36. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

37. Each party agrees to pay its own costs and attorneys' fees in this action.

38. This Order constitutes the entire agreement between the parties.

2/22/14

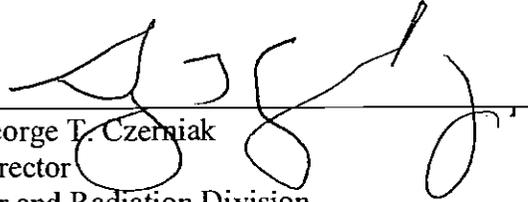
Date



Dennis Rook
President
Benton Metal Recycling, LLC

3/17/14

Date



George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

VERIFICATION STATEMENT

Supplier certifies, to the best of his or her knowledge, that all CFCs and other regulated refrigerants that had not leaked previously, have been recovered from scrap appliances in accordance with section 608 of the Federal Clean Air Act and its implementing regulations (40 CFR Part 82 Subpart F) prior to delivery of such appliances to Benton Metal Recycling.

Supplier further certifies that regulated refrigerants were removed from the appliance or shipment of appliances in accordance with applicable regulations on _____, _____ by: _____ (Month)
(Day) (Year)

(NAME OF CERTIFIED TECHNICIAN)

(ADDRESS OF CERTIFIED TECHNICIAN)

Supplier agrees to indemnify and hold Benton Metal Recycling harmless from any claim, penalty, fine, fee, cost, attorney's fees, or other liability resulting in whole or in part from Supplier's breach of this Verification Statement.

Supplier: _____
(COMPANY NAME HERE)

By: _____
Signature

(PRINT NAME HERE)

(PRINT TITLE HERE)

Date: _____

Attachment 2

Administrative Consent Order, EPA-5-14-113(a)- MI-04

VENDOR # _____

Benton Metal Recycling
1256 Milton Street
Benton Harbor, MI 49022
Phone: 269-926-1161
Fax: 269-926-1169

AGREEMENT BETWEEN BENTON METAL AND SUPPLIER

This Agreement is made and agreed to between Benton Metal Recycling (referred to herein as "Benton Metal") and the undersigned Supplier ("Supplier").

WHEREAS, Supplier desires to sell and Benton Metal desires to acquire certain materials pursuant to the terms and conditions identified herein.

NOW THEREFORE, the parties agree as follows:

1. Supplier may deliver to Benton Metal small appliances, room air conditioners and other recyclable metal appliances that may contain CFCs or other refrigerants. Benton Metal shall have the right, but not the obligation, to purchase these appliances. Benton Metal shall also have the right to refuse any appliance that does not conform to the terms of this Agreement or any other standards that may apply to such appliance.
2. Supplier agrees to comply with all applicable laws, including Section 608 of the Federal Clean Air Act and its implementing regulations at 40 CFR Part 82 Subpart F, relating to the removal of CFCs and any other refrigerants from the appliances, by either:
 - a. Removing CFCs or other refrigerants prior to delivery to Benton Metal, in which case Supplier certifies that it has removed all refrigerants in accordance with any applicable regulations prior to delivery; or
 - b. Notifying Benton Metal at the same time of delivery that such appliances may contain CFCs or any other refrigerants, in which case Benton Metal will properly recover such refrigerants.

Benton Metal Recycling

Supplier

(COMPANY NAME HERE)

By: _____

By: _____
Signature

Date: _____

(PRINT NAME HERE)

Address: _____

City State Zip Code

Date: _____

Attachment 3
Administrative Consent Order, EPA-5-14-113(a)- MI-04

**Benton Metal Recycling
Refrigerant Recovery Log**

<i>Date Refrigerant Recovered</i>	<i>Type of Appliance</i>	<i>Make of Appliance</i>	<i>Model Number of Appliance</i>	<i>Refrigerant Recovered (lbs)</i>	<i>Technician Name</i>



CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA-5-14-113(a)-MI-04, by certified mail, return receipt requested, to:

Dennis Rook
President
Benton Metal Recycling
1256 Milton Street
Benton Harbor, MI 49022

I also certify that I sent a copy of the Administrative Consent Order, EPA-5-14-113(a)-MI-04, by first-class mail to:

Mary Douglas
Supervisor, Air Quality Division
Michigan Department of Environmental Quality
7953 Adobe Road
Kalamazoo, MI 49009-5026

On the 20 day of March 2014.



Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT
NUMBER:

7009 1680 0000 7670 0559