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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE SCRAP YARD, LLC, )  
 d/b/a CLEVELAND SCRAP, )  
 )  
 Defendant. )  
 )

Civil Action No.: 1:10cv1206  
Judge: O'Malley

CONSENT DECREE

WHEREAS, Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter against the Defendant, The Scrap Yard, LLC, d/b/a Cleveland Scrap ("Cleveland Scrap" or "Defendant"), seeking injunctive relief and civil penalties, and alleging, inter alia, that Cleveland Scrap violated the Clean Air Act (the "CAA") 42 U.S.C. § 7401 *et seq.*

WHEREAS, Cleveland Scrap is a scrap metal and iron recycler whose operations include the receiving, processing, and temporary storage of appliances, automobiles, and other items manufactured with metal. Cleveland Scrap's facility is located at 3018 East 55<sup>th</sup> Street, Cleveland, Ohio.

WHEREAS, the United States' Complaint alleges violations by Cleveland Scrap of Section 608(b)(1) of 42 U.S.C. § 7671g (National Recycling and Emission Reduction Program) and the regulations promulgated thereunder, 42 C.F.R. Part 82, Subpart F (Protection of Stratospheric Ozone) and seeks civil penalties for these alleged violations of the CAA;

WHEREAS, Title VI of the Act, 42 U.S.C. § 7671 *et seq.*, provides for the protection of stratospheric ozone; and 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.

WHEREAS, Class I and II substances include refrigerants containing chlorofluorocarbons (“CFCs”) and hydrochlorofluorocarbons (“HCFCs”) and EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicles at 40 C.F.R. Part 82, Subpart F;

WHEREAS, effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances, motor vehicle air conditioners (“MVACs”) and MVAC-like appliances must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly evacuated and recovered prior to receipt of the small appliance, MVAC or MVAC-like unit. *See* 40 C.F.R. § 82.156(f);

WHEREAS, Cleveland Scrap denies the allegations in the Complaint and denies that any violations occurred; and

WHEREAS, the United States and Cleveland Scrap (the “Parties”) recognize, and this Court by entering this Consent Decree, finds that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue) below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties.

2. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), (c) and 1395(a), because Defendant resides and conducts business in this district and because the majority of the alleged violations occurred within this district.

3. The Complaint states claims upon which relief may be granted pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. Notice of the commencement of this action has been given to the State of Ohio as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

## **II. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Cleveland Scrap, its agents, successors, and assigns.

5. Any transfer of ownership or operation of Cleveland Scrap's facility to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Cleveland Scrap shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Ohio, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or

operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented.

6. Cleveland Scrap shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Cleveland Scrap shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Cleveland Scrap shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. OBJECTIVES**

8. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the CAA. Specifically, under this Consent Decree, Defendant shall address how it recovers or verifies recovery of refrigerants (CFCs and HCFCs) from small appliances, MVACs and MVAC-like appliances. All obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of ensuring Cleveland Scrap's full compliance with the CAA and the regulations promulgated thereunder.

### **IV. DEFINITIONS**

9. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Act or in regulations promulgated pursuant to the Act, shall have the

meaning assigned to them in the Act and such regulations. The following definitions shall apply to the terms used in the Consent Decree:

- a. **“Appliance Log” or “Log” shall mean the refrigerant recovery log required under Paragraph 19 of this Consent Decree, an example of which is provided as Appendix B.**
- b. **“Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto.**
- c. **“Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Ohio pending public comment and Court action.**
- d. **“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.**
- e. **“Date of Entry” shall mean the date that this Consent Decree is entered as a judgment by the Clerk of the Court for the United States District Court for the Northern District of Ohio after being signed by a United States District Judge.**
- f. **“Defendant” shall mean Cleveland Scrap.**
- g. **“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.**
- h. **“Facility” shall mean Cleveland Scrap’s operation located at 3018 East 55<sup>th</sup> Street, Cleveland, Ohio.**
- i. **“Financial Information” shall mean the Financial Statement of Corporate Debtor (Form OBD-500C) dated July 1, 2009; Cleveland Scrap’s U.S. Return of Partnership Income for the years 2006, 2007 and 2008; and the financial statements for the year ended December 31, 2008. Defendant may assert that this information is protected as confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.**
- j. **“MVAC-Like Appliance” shall have the same meaning as assigned to it in 40 C.F.R. § 82.152.**

k. "Motor Vehicle Air Conditioner" or "MVAC" shall have the same meaning as assigned to it in 40 C.F.R. § 82.152.

l. "Plaintiff" shall mean the United States.

m. "Section" shall mean a portion of this Consent Decree identified by an upper case Roman numeral.

n. "Small Appliance" shall have the same meaning as assigned to it in 40 C.F.R. § 82.152.

#### **V. COMPLIANCE MEASURES**

10. Cleveland Scrap must comply with 40 C.F.R. Part 82.

11. Cleveland Scrap shall no longer accept small appliances, MVACs, and MVAC-like appliances with cut or dismantled refrigerant lines unless its supplier can provide written verification that all refrigerant that had not leaked previously was properly evacuated prior to cutting or dismantling the refrigerant lines.

12. Cleveland Scrap must notify its suppliers in writing that it will not accept small appliances, MVACs, and MVAC-like appliances with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant that had not leaked previously was properly evacuated prior to cutting or dismantling the refrigerant lines.

13. Cleveland Scrap must notify its suppliers that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap.

14. Cleveland Scrap may satisfy the notice requirements of Paragraphs 12 and 13 of this Decree with a sign that is prominently displayed at its facility and by sending notices to its 10 largest suppliers, by volume.

15. Cleveland Scrap's suppliers must use the verification statement included as Appendix A to this Decree whenever the supplier claims that refrigerant was previously evacuated from the appliance or MVAC.

16. Cleveland Scrap must purchase and use equipment to adequately recover refrigerant from small appliances, MVACs, and MVAC-like appliances or enter into an agreement with a contractor to provide refrigerant recovery services.

17. Cleveland Scrap must have the refrigerant recovered by a properly trained individual. If that individual is an employee of Cleveland Scrap, then Cleveland Scrap shall ensure that the individual is properly trained to use the equipment identified in Paragraph 16 of this Decree.

18. Within thirty (30) days after the date of entry of this Decree, Cleveland Scrap must provide EPA with proof that it purchased the equipment required by Paragraph 16 of this Decree and that it has an individual trained in recovering refrigerant as required by Paragraph 17 of this Decree.

19. During the term of this Decree, Cleveland Scrap must keep a refrigerant recovery log substantially similar to the log included as Appendix B to this Decree. The refrigerant recovery log shall document the following:

- a. The date the refrigerant was recovered;
- b. The type of item (e.g. fridge, A/C, MVAC, etc.) evacuated;
- c. The model number of the item evacuated;
- d. The serial number of the item evacuated;
- e. The type of refrigerant recovered;
- f. The amount of refrigerant recovered; and
- g. The name of the technician who recovered the refrigerant.

20. During the term of this Decree, Cleveland Scrap must retain copies of receipts documenting the reclamation, disposal, or other disposition of refrigerants, for all

refrigerant it collects through recovery from appliances, MVACs and MVAC-like appliances and sends to another company for reclamation.

21. During the term of this Decree, Cleveland Scrap must document the number of appliances, MVACs, and MVAC-like appliances it rejects and the reason for rejecting them.

22. During the term of this Decree, Cleveland Scrap shall submit to EPA on December 31<sup>st</sup> and June 30<sup>th</sup> of each year the following documents:

- a. Copies of any verification statements used by Cleveland Scrap pursuant to Paragraph 15 of this Decree;
- b. Copies of the refrigerant recovery log that Cleveland Scrap is required to keep pursuant to Paragraph 19 of this Decree;
- c. Copies of receipts for all refrigerants Cleveland Scrap collected and sent to another company for reclamation, disposal or other disposition as required by Paragraph 20 of this Decree; and
- d. Documentation of the number of appliances, MVACs, and MVAC-like appliances Cleveland Scrap rejected and the reasons for rejecting them as required by Paragraph 21 of this Decree.
- e. Cleveland Scrap shall also provide a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

23. Each set of documents submitted by Defendant under this Section shall be signed by an official of Cleveland Scrap and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

24. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

25. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### **VI. CIVIL PENALTY**

26. No later than thirty (30) days following entry of this Consent Decree, Cleveland Scrap shall pay to the United States a civil penalty in the amount of \$5,000.00. Payment shall be made by Fed Wire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice according to the instructions provided to Cleveland Scrap following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio. At the time of payment, Cleveland Scrap shall simultaneously send written notice of payment and a copy of the transmittal documentation to the United States in accordance with Section XVI of this Decree (Notices and Submissions) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

27. Cleveland Scrap shall pay interest on any unpaid balance of the civil penalty owed to the United States, which shall begin to accrue at the end of the 30-day period described

above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717.

28. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

**VII. STIPULATED PENALTIES**

29. Cleveland Scrap shall be liable for stipulated penalties in the amounts set forth in this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XII (Force Majeure). "Compliance" shall include completion of the activities under this Consent Decree, payment of the civil penalty, and meeting the reporting requirements in accordance with all applicable requirements of this Decree and within the specified time schedules established by and approved under this Decree.

a. The following stipulated penalties shall accrue per violation per day for any failure to meet any of the requirements identified in Subparagraph b and c:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

b. Payment of the Civil Penalty under this Decree.

c. Noncompliance with the compliance measures in set forth in Section V of this Decree.

30. Payment of stipulated penalties as set forth above shall be in addition to any other rights, remedies, or sanctions available to the United States for Cleveland Scrap's violations of this Decree or applicable law.

31. The payment of stipulated penalties shall not be construed so as to relieve Cleveland Scrap from specific compliance with this Decree or federal or state law, or to limit the authority of EPA to require compliance with such laws. The United States is specifically authorized to seek injunctive relief in this civil action to address any violation of this Decree.

32. Stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree, but shall not be payable until demand. Payment of stipulated penalties shall be made within thirty (30) days of the date of a written demand for payment. Cleveland Scrap shall not deduct any penalties paid under this Decree pursuant to this Section or Section VI (Civil Penalty) in calculating its federal income tax.

33. If any stipulated penalties payable under this Decree to the United States are not paid when due, interest shall accrue on any amounts overdue to the United States from the first day after the civil or stipulated penalties are due through the date of payment at the rate of interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

34. Cleveland Scrap shall pay any interest owed or stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 22 and 23 of this Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

#### **VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

35. This Consent Decree is entered into as full and final settlement of this action for

**all Parties to the following extent: the Consent Decree resolves the civil claims of the United States for the violations alleged in the United States' Complaint through the Date of Lodging of this Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Cleveland Scrap. If the Financial Information submitted by Cleveland Scrap is subsequently determined by EPA to be false or, in any material respect, inaccurate, Cleveland Scrap shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Cleveland Scrap's false or materially inaccurate information.**

**36. This Consent Decree in no way affects or relieves Cleveland Scrap of its responsibility to comply with any federal, state, or local law, regulation, or permit.**

**37. The Parties agree that Cleveland Scrap is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.**

**38. The United States expressly reserves all legal and equitable remedies available to it for all violations of the CAA not specifically addressed by Paragraph 35 of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 35. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed**

by, Cleveland Scrap's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

39. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including Cleveland Scrap, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

40. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Decree.

41. This Consent Decree does not limit or affect the rights of Cleveland Scrap or the United States as against any third parties. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

42. This Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from Cleveland Scrap or to seek access to the property of Cleveland Scrap.

43. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Cleveland Scrap's violations, Cleveland Scrap shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 35 of this Decree.

**IX. RIGHT OF ENTRY**

44. EPA and its representatives, contractors, consultants, and attorneys will have the right of entry into and upon Cleveland Scrap's facility at all reasonable times upon proper presentation of credentials for the purposes of:

- a. Monitoring the progress of activities required by this Consent Decree;
- b. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree; and
- c. Otherwise assessing Cleveland Scrap's compliance with this Consent Decree.

45. This Section in no way limits or affects any right of entry and inspection held by the United States and EPA pursuant to applicable federal laws or regulations.

**X. FAILURE OF COMPLIANCE**

46. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Cleveland Scrap's complete compliance with this Consent Decree will result in compliance with the provisions of the CAA, 42 U.S.C. § 7401 *et seq.* Notwithstanding EPA's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Cleveland Scrap shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CAA, and regulations promulgated under the CAA. This Consent Decree is not a permit.

**XI. NOTICES AND SUBMISSION**

47. Except as specified otherwise, when written notification or communication is required by the terms of this Consent Decree, it shall be addressed as follows:

**As to the United States Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference Case No. 90-5-1-1-08727

Steven J. Paffilas  
Office of the United States Attorney  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113

**As to Region 5 of EPA:**

George Czerniak  
Air and Radiation Division  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (AE-17J)  
Chicago, Illinois, 60604

Erik Olson  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**As to Cleveland Scrap:**

Cleveland Scrap  
3018 East 55<sup>th</sup> Street  
Cleveland, Ohio 44127

Diane Calta  
Joseph W. Diemert, Jr. & Associates  
1360 S.O.M. Center Road  
Cleveland, Ohio 44124-2189

All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail.

**XII. FORCE MAJEURE BETWEEN THE UNITED STATES AND DEFENDANT**

48. "*Force Majeure*" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Cleveland Scrap or the control of any entity controlled by Cleveland Scrap, including its agents, consultants, and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Cleveland Scrap's best efforts to fulfill the obligation. The requirement that Cleveland Scrap exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible.

Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered *force majeure* events. Failure to apply for a required-permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Cleveland Scrap to approve contracts, shall not, in any event, be considered *force majeure* events.

49. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a *force majeure* event, Cleveland Scrap shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when Cleveland Scrap first knew that the event might cause a delay. Within seven (7) days thereafter, Cleveland Scrap shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Cleveland Scrap's rationale for attributing

such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Cleveland Scrap, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Cleveland Scrap shall include with any notice all available documentation supporting the claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Cleveland Scrap from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Cleveland Scrap shall be deemed to know of any circumstance of which Cleveland Scrap, any entity controlled by Cleveland Scrap, or Cleveland Scrap's contractors knew or should have known.

50. If EPA finds that a delay in performance is, or was, caused by a *force majeure* event, it shall extend the time for performance, in writing, for a period equivalent to the delay resulting from such event, and stipulated penalties shall not be due to the United States for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIV (Dispute Resolution) shall apply, and Cleveland Scrap shall have the burden of proving that the delay is, or was, caused by a *force majeure* event and the amount of time equivalent to the delay resulting from such an event.

51. An extension of one compliance date based on a particular event shall not extend any other compliance date. Cleveland Scrap must make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

### **XIII. DISPUTE RESOLUTION**

52. Any dispute that arises between Cleveland Scrap and Plaintiff with respect to the meaning or application of any of the requirements of this Consent Decree shall be, in the first

instance, the subject of informal negotiations between Plaintiff and Cleveland Scrap in an attempt to resolve any such dispute. Such period of informal negotiations shall not extend beyond forty-five (45) days of the date when a written notice of a dispute is given by one Party to the other, unless the Parties have agreed in writing to extend that period. After informal negotiations, if Cleveland Scrap and Plaintiff are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Cleveland Scrap shall comply with the position taken by Plaintiff, subject only to Cleveland Scrap's right to petition the Court as set forth in Paragraph 53 of this Decree.

53. Within forty-five (45) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 52 above, Cleveland Scrap may petition the Court for relief. Such petition shall set forth the nature of the dispute and a proposal for its resolution. Plaintiffs will have forty-five (45) days to respond to the petition and propose an alternate resolution. In any such dispute, Cleveland Scrap will bear the burden of proof. The standard of review shall be determined by applicable principles of law.

54. The filing of a petition asking the Court to resolve a dispute shall not in and of itself extend or postpone any obligation of Cleveland Scrap under this Consent Decree, provided that payment of any stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Cleveland Scrap does not prevail on the disputed issue, stipulated penalties, if applicable and demanded, shall be assessed and paid as provided in Section VII (Stipulated Penalties).

55. If Defendant elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) with regard to a potential *force majeure* event, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 48 and 49, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **XIV. RETENTION OF JURISDICTION**

56. This Court will retain jurisdiction of this matter for the purposes of construing, implementing, administering, and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree.

#### **XV. MODIFICATION**

57. Any non-material modification of this Decree by agreement of the Parties shall be in writing and shall be filed with the Court. Any material modification of this Decree by agreement of the Parties shall be in writing and shall be filed with the Court for approval. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

## **XVI. TERMINATION**

58. After five years following the date of entry of this Consent Decree, and after Cleveland Scrap has maintained continuous compliance with the terms of this Consent Decree for a period of five years, Cleveland Scrap may make a written request to the United States and EPA to terminate this Consent Decree. Such request must include Cleveland Scrap's certification that Cleveland Scrap has complied with requirements of this Decree and that all civil penalties due and all stipulated penalties demanded under this Decree have been paid.

59. Following receipt by the United States of Cleveland Scrap's request for termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Cleveland Scrap has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

60. If the United States does not agree that the Decree may be terminated, Cleveland Scrap may invoke Dispute Resolution under Section XIII of this Decree. However, Cleveland Scrap shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 53 of Section XIII (Dispute Resolution), until 90 days after service of its request for termination.

## **XVII. FINAL JUDGMENT**

61. Entry of this Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure as the United States and Cleveland Scrap.

**XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

62. This Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Cleveland Scrap shall not withdraw its consent to this Decree during the period of governmental and judicial review that occurs between lodging and entry of this Decree, and Cleveland Scrap hereby consents to the entry of this Decree without further notice.

63. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XIX. SIGNATORIES**

64. The undersigned representative of Cleveland Scrap and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice or her designee each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally to this document the Party whom he or she represents. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of summons.

**XX. EFFECTIVE DATE**

65. The effective date of this Decree shall be the date of entry by this Court.

**XXI. COSTS**

66. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorney's fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

**XXII. APPENDICES**

Appendix A is the Appliance Log.

Appendix B is the Verification Statement.

SO ORDERED THIS 5<sup>th</sup> DAY OF August, 2010.

Kathleen M. O'Malley  
United States District Judge

The undersigned party hereby consents to the Consent Decree in the matter of United States v. The Scrap Yard, LLC, d/b/a Cleveland Scrap (N.D. Ohio).

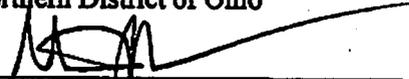
**FOR THE UNITED STATES:**

  
\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environment Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

  
\_\_\_\_\_  
CATHERINE BANERJEE ROJKO  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: (202) 514-5315  
Fax: (202) 616-6584  
Cathy.Rojko@usdoj.gov

STEVEN M. DETTELBACH  
United States Attorney  
Northern District of Ohio

By:

  
\_\_\_\_\_  
STEVEN J. PAFFILAS (0037376)  
Assistant United States Attorney  
Northern District of Ohio  
801 W. Superior Avenue  
Suite 400  
Cleveland, Ohio 44113  
Phone: (216) 622-3698  
Fax: (216) 522-4982  
steven.paffilas@usdoj.gov

The undersigned party hereby consents to the Consent Decree in the matter of United States v. The Scrap Yard, LLC, d/b/a Cleveland Scrap (N.D. Ohio).

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY:**



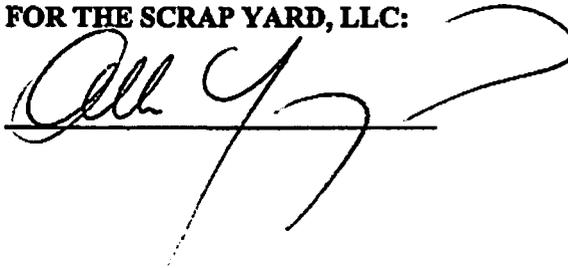
*for*  
BHARAT MATHUR  
Acting Regional Administrator  
U.S. Environmental Protection Agency Region 5



ERIK OLSON  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604

The undersigned party hereby consents to the Consent Decree in the matter of United States v. The Scrap Yard, LLC, d/b/a Cleveland Scrap (N.D. Ohio).

**FOR THE SCRAP YARD, LLC:**



**Clean Air Act Verification Statement**

**Directions:** Complete statements 1 & 2.

Complete, sign, and date Seller Information section.

1. On today's date \_\_\_\_ / \_\_\_\_ / \_\_\_\_, I sold the following materials to The Scrap Yard, LLC, d/b/a Cleveland Scrap (please check all that apply):

( ) refrigerator(s)

( ) air conditioning unit(s)

( ) automobile(s) containing air conditioning units

( ) other \_\_\_\_\_

2. I certify that all refrigerants as defined in section 608 of the Clean Air Act and 40 CFR 82 within these materials were (please check only one):

( ) removed from these materials prior to their coming into my possession as determined by (method of determination):

\_\_\_\_\_  
\_\_\_\_\_

( ) reclaimed prior to my delivery to The Scrap Yard, LLC, by a certified technician in accordance with 40 CFR 82 (please attach receipt):

on Date: \_\_\_\_\_

by: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

( ) neither removed nor reclaimed and need to be recovered by technicians employed by The Scrap Yard, LLC.

Buyer Information	Seller Information <i>(Please Print)</i>
<p>The Scrap Yard, LLC 3018 East 55<sup>th</sup> Street, Cleveland, Ohio</p> <p>Accepted by:</p> <p>_____</p> <p>[NAME]</p>	<p>Date: _____</p> <p>NAME: _____</p> <p>CORPORATION: _____</p> <p>STREET ADDRESS: _____</p> <p>CITY/STATE/ZIP: _____</p> <p>TELEPHONE NUMBER: _____</p> <p>SIGNATURE: _____</p>

APPENDIX A

