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

AUG 17 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brad Serlin
President
United Scrap Metal, Inc.
1545 S. Cicero Avenue
Cicero, Illinois 60804

Dear Mr. Serlin:

Enclosed is a file-stamped Consent Agreement and Final Order ("CAFO") which resolves the United Scrap Metal, Inc. case, docket number **CAA-05-2016-0037**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 17, 2016.

Pursuant to paragraph 24 of the CAFO, United Scrap Metal, Inc. must pay the civil penalty within 30 days of the filing date. Your check must display the case name and the docket number.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel, at (312) 353-8912.

Sincerely,

Brian Dickens

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Branch, MN/OH Section

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0037**
United Scrap Metal, Inc. **Cicero, Illinois**	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
Respondent.	)	

REGIONAL HEARING CLERK
RECEIVED
AUG 17 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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 Act or 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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is United Scrap Metal, Inc. ("United Scrap"), a corporation doing business in the State of Illinois.

4. 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). 40 C.F.R. § 22.13(b).

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. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. 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

Illinois State Implementation Plan

9. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator for approval a state implementation plan (SIP) that provides for the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS).

10. On February 21, 1980, EPA approved 35 Ill. Adm. Code 212.301 as part of the federally enforceable SIP for Illinois. 45 Fed. Reg. 11493.

11. Illinois SIP at 35 Ill. Adm. Code 212.301 states no person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

Protection of Stratospheric Ozone

12. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances. The purpose of the regulations is to reduce emissions of class I and

class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. 40 C.F.R. § 82.150(a).

13. Under 40 C.F.R. § 82.156(f), persons who take the final step in the disposal process (including but not limited to scrap recyclers) of a small appliance, room air conditioning unit, Motor Vehicle Air Conditioner (MVAC), or MVAC-like appliance are required to either:

a. Recover any remaining refrigerant from the appliance in accordance with specific procedures described in 40 C.F.R. § 82.156(g) or (h); or

b. Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verifications 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 appliances or shipment of appliances. 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. 40 C.F.R. § 82.156(f)(2). Any signed statements must be maintained on-site for a minimum of three years. 40 C.F.R. §§ 82.166(i) and (m).

14. The Administrator of EPA ("Administrator") may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for violations of a NESHAP and/or a permit that occurred after March 15, 2004, through January 12, 2009, and may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations of a NESHAP and/or a permit that occurred after January 12, 2009, through December 6, 2013, with other adjustments to be published by July 1, 2016, and implemented thereafter, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Background and Alleged Violations

15. United Scrap owns and operates a copper reclamation facility at 1545 S. Cicero Avenue, Cicero, Illinois ("facility").

16. Fugitive particulate matter emissions from United Scrap's torching operation are subject to the requirements of the Illinois SIP at 35 Ill. Adm. Code 212.301.

17. On May 22, 2014, EPA inspected the facility to assess United Scrap's compliance with the Illinois SIP and regulations governing the handling of refrigerant under the CAA.

18. During the May 22, 2014, inspection, EPA observed emissions of visible fugitive particulate matter originating from the facility's torching operation and traveling beyond its property line.

19. During the May 22, 2014, inspection, EPA observed four room air conditioning units at the facility with severed refrigerant lines.

20. During the May 22, 2014, inspection, United Scrap failed to provide adequate contracts or verification statements from the supplier(s) of the four room air conditioner units verifying that refrigerant had been properly recovered prior to the delivery of appliances to the facility.

21. United Scrap failed to comply with the requirements of the Illinois SIP at 35 Ill. Adm. Code 212.301. Specifically, On May 22, 2014, emissions of visible fugitive particulate matter originated from the facility's torching operation and traveled beyond its property line.

22. United Scrap failed to comply with the regulations at 40 C.F.R. § 82.156. Specifically, on May 22, 2014, United Scrap failed to supply EPA with verification that included a signed statement from the person(s) from whom the four room air conditioner units were obtained that all refrigerant that had not leaked previously has been recovered from the appliances.

Civil Penalty

23. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and the cooperation of the Respondent, Complainant has determined that an appropriate civil penalty to settle this action is $8,750.

24. Within 30 days after the effective date of this CAFO, Respondent must pay a $8,750 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

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

Reza R. Bagherian (AE-17J)
Enforcement Officer
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Kathleen Schnieders (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

27. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 39 below, 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.

28. 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 attorney's 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).

Supplemental Environmental Project

29. Respondent must complete, by December 31, 2016, a supplemental environmental project (SEP) designed to protect the environment and public health by replacing an existing boiler with two energy efficient boilers at Cicero School District 99, which results in providing heat in a more sustainable manner, thus reducing emissions of volatile organic compounds and particulate matter. Respondent shall implement the SEP in accordance with the SEP Statement of Work (SOW) attached to this CAFO as Attachment A.

30. Respondent must spend at least $33,000 to complete the SEP as described above and in Attachment A to this CAFO.

31. Respondent certifies as follows:

> I certify that Respondent is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Respondent has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
>
> I certify that Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

32. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

33. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to the CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

34. Respondent must submit a SEP completion report within 60 days following completion of the SEP. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

35. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 25, above.

36. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

37. Following receipt of the SEP completion report described in paragraph 34 above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 39.

38. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 41 below.

39. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 29, Respondent must pay a penalty of $48,575.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 29 Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 30 Respondent must pay a penalty of the difference between the amount spent and $33,000.

d. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 34 Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$150	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

40. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

41. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 24 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

42. Any public statement that Respondent makes referring to the SEP must include the following language, "United Scrap undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against United Scrap for

violations of the Illinois State Implementation Plan and the regulations for the Protection of Stratospheric Ozone located at 40 C.F.R. Part 82, Subpart F."

43. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

44. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

General Provisions

45. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Schnieders.Kathleen@epa.gov (for Complainant),

and Mary.Gade@yahoo.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO, including the violations alleged by EPA in the Notice and Finding of Violation (NOV/FOV) dated June 30, 2014.

47. 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 other violation of law or Respondent's right to assert any defenses thereto.

48. 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 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. Respondent certifies that it is complying fully with those NESHAP requirements in the Protection of Stratospheric Ozone located at 40 C.F.R. Part 82, Subpart F, and the provisions of the Illinois State Implementation Plan that are identified in this CAFO.

50. 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).

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

52. 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.

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

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

Consent Agreement and Final Order
In the Matter of: United Scrap Metal, Inc.
Docket No. CAA-05-2016-0037

United Scrap Metal, Inc., Respondent

6/27/16
Date

Brad Serlin
President
United Scrap Metal, Inc.

United States Environmental Protection Agency, Complainant

8/11/16
Date

Edward Nam, PhD
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: United Scrap Metals, Inc.
Docket No. CAA-05-2016-0037

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.

8/15/15
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Attachment A
Supplemental Environmental Project
Statement of Work

At the Service Center for the Cicero School District 99 (CSD), United Scrap Metal, Inc. (the Respondent), must complete a Supplemental Environmental project (SEP) by financially supporting a portion of the cost of the replacement of an existing boiler with two energy efficient boilers, thereby providing heat in a more sustainable manner, as follows:

1. No later than thirty (30) days following the date of the Consent Agreement and Final Order (CAFO), Respondent shall provide the CSD with a payment of $33,000.00 (Thirty-Three Thousand Dollars) to be applied by CSD to the replacement of the existing 1979 Bryan model F-900 boiler with two (2) new Apex model APX525 boilers, each with a 500,000 BTU input, and a 475,000 BTU output.
2. CSD approved the boiler replacement project at an April 13, 2016 Board Meeting in which it authorized both internal funding of $75,000, and the seeking of an additional $50,000 from outside sources (e.g., local, state, and federal governments).
3. The existing boiler will operate until approximately May 2016, depending on weather conditions and necessity for hot water and heat.
4. The demolition and removal of the existing boiler will take place in June 2016 or shortly thereafter.
5. The two Apex APX525 boilers will be installed shortly thereafter in approximately June-July 2016.
6. The purpose of the boiler replacement project is to:
    a. Increase energy efficiency;
    b. Update technology throughout the CSD while reducing maintenance costs; and
    c. Provide ease of operation with digital system readouts and multifunction automatic settings for ambient temperature

UNITED SCRAP METAL
6/27/16

Consent Agreement and Final Order
In the Matter of: United Scrap Metal, Inc.
Docket No. CAA-05-2016-0037

Certificate of Service

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2016-0037 which was filed on August 17, 2016, in the following manner to the following addressees:

Copy by Certified Mail to the Respondent:

Brad Serlin
President
United Scrap Metal, Inc.
1545 S. Cicero Avenue
Cicero, Illinois 60804

Copy by E-mail to Attorney for Complainant:

Kathleen Schnieders
schnieders.kathleen@epa.gov

Copy by E-mail to Attorney for Respondent:

Mary Gade
mary.gade@yahoo.com

Copy by E-mail to Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: August 16, 2016

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6813