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

MAY - 6 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles Clark, Owner and President
Clark Iron & Metal, Inc.
217 Hillard Street
Murfreesboro, Tennessee 37133

Dear Mr. Clark:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number. CAA-04-2015-1511. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on May 6, 2015.

Pursuant to paragraph 28 of the CAFO, Clark Iron & Metal, Inc. must pay the civil penalty within 30 days of the date the CAFO was filed. Your check must display the case docket number CAA-04-2015-1511.

Please direct any questions regarding this case to Jose de Leon, Associate Regional Counsel, (312) 353-7456.

Sincerely,

Sara Breneman

Sara Breneman, Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Carol F. Baschon, Acting Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Jose de Leon/C-14J
Chris Moran, Tennessee Department of Environment & Conservation

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

REGIONAL HEARING CLERK
RECEIVED
MAY - 6 2015
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-04-2015-1511
Clark Iron & Metal, Inc.	)	**Proceeding to Assess a Civil Penalty**
Murfreesboro, Tennessee,	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	
	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency (EPA), Region 4.

3. Respondent is Clark Iron & Metal, Inc. (Clark), a corporation doing business in Tennessee.

4. Where the Respondent and EPA 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. Respondent and EPA 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

9. 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.

10. 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 any remaining refrigerant in accordance with specific procedures or verify, including by the use of signed statements or contracts, that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements or contracts are used, the scrap recycler must notify the suppliers of the small appliance, MVAC, or MVAC-like 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 and contracts on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

11. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define "person" to include any individual or legal entity, including an individual or corporation. See 40 C.F.R. § 82.152.

12. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define "disposal" as "the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or (3) the disassembly of any appliance for reuse of its component parts." See 40 C.F.R. § 82.152.

13. 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.

14. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define "MVACs" as mechanical vapor compression refrigeration equipment

used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

15. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations that occurred between January 12, 2009, and December 6, 2013, and up to a total of $320,000 for violations that occurred after December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Clark owns and operates a scrap metal recycling facility at 217 Hillard Street, Murfreesboro, Tennessee (the Facility).

17. Clark is a corporation doing business in Tennessee.

18. Clark is a "person," as defined by 40 C.F.R. § 82.152.

19. Clark is a person who takes the final step in the disposal process of small appliances, MVACs, and MVAC-like appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

20. On May 7, 2014, EPA inspected the Facility to assess Clark's compliance with the CAA. During this inspection, Clark Iron & Metal representatives stated that Clark Iron & Metal did not own or operate refrigerant recovery equipment at the facility.

21. During the May 7, 2014, inspection, Clark Iron & Metal representatives stated that Clark Iron & Metal did not collect written statements from its vendors or suppliers verifying that refrigerant had been properly recovered prior to the delivery of appliances or MVACs to its facility.

22. During the May 7, 2014, inspection, Clark Iron & Metal representatives stated that Clark Iron & Metal does not have contracts or agreements in place with suppliers stating that refrigerant will be properly recovered prior to the delivery of appliances or MVACs to its facility.

23. Clark has accepted small appliances and MVACs without either recovering refrigerant or obtaining verification statements that met the requirements of 40 C.F.R. § 82.156(f).

24. In the weeks after the May 7, 2014, inspection, Clark purchased refrigerant recovery equipment, and put into place a program to recover refrigerant from appliances, MVACs, and MVAC-like appliances. These actions have brought Clark into compliance with applicable EPA regulations set forth at 40 C.F.R. §§ 82.156 and 82.166.

25. On September 15, 2014, EPA issued to Clark a Finding of Violation alleging that it has violated 40 C.F.R. § 82.156(f) because it did not recover refrigerant from small appliances and MVACs and did not obtain proper verification statements.

26. On October 16, 2014, Clark and EPA discussed the Finding of Violation.

Civil Penalty

27. 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, Clark's cooperation and willingness to perform a Supplemental Environmental Project, and Clark's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $9,000.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a $9,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail (non-U.S. Postal Service will not deliver mail to P.O. Boxes), sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note the Respondent's name and the docket number of this CAFO.

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

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

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

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

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

31. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. 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 Environment Project

33. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing energy use and, as a result, reducing the emissions of harmful air pollutants.

34. Respondent must complete the SEP by providing partial funding for the installation of energy efficient LED lighting at a school in the Rutherford County School District based in Murfreesboro, Tennessee. The Rutherford County School District will be responsible for selecting the equipment and installing it on the school grounds.

35. Respondent must provide at least $27,000 towards the purchase of the equipment.

36. Respondent certifies as follows:

> I certify that Clark Iron & Metal 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 Clark Iron & Metal has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

> I certify that Clark Iron & Metal 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.

37. Respondent must submit a SEP completion report to EPA by December 31, 2015. This report must contain the following information:

a. Documentation that a payment was made by Clark to the Rutherford County School District; and

b. Statement from the Rutherford County School District certifying that the money was received and has been put towards the LED lighting project.

38. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 29, above.

39. 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.

40. Following receipt of the SEP completion report described in paragraph 37, 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 42.

41. 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 42, below.

42. 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, Respondent must pay a penalty of $27,000.

b. If Respondent did not submit timely the SEP completion report, 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
$50	1st through 14th day
$75	15th through 30th day
$100	31st day and beyond

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

44. 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 28, above, and will pay interest and nonpayment penalties on any overdue amounts.

45. Any public statement that Respondent makes referring to the SEP must include the following language: "Clark Iron & Metal undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Clark Iron & Metal for violations of the Clean Air Act."

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

General Provisions

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

48. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

49. 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 47, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

50. Respondent certifies that it is complying fully with 40 C.F.R. §§ 82.156(f) and 82.166(i).

51. 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).

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

53. 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.

54. Respondent agrees to bear its own costs and attorney's fees in this action.

55. This CAFO constitutes the entire agreement between Respondent and the EPA.

Clark Iron & Metal, Inc., Respondent

4-13-15
Date

Mr. Charles Clark
Owner and President
Clark Iron & Metal, Inc.

United States Environmental Protection Agency, Complainant

4/24/15

Date

Beverly H. Banister
Director
Air, Pesticides, and Toxics Management Division
U.S. Environmental Protection Agency, Region 4

Consent Agreement and Final Order
In the Matter of: Clark Iron & Metal, Inc.
Docket No. CAA-04-2015-1511

Final Order

This Consent Agreement and Final Order, as agreed to by Respondent and EPA, 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.

5/1/2015
Date

Carol F. Baschon
Acting Regional Judicial Officer
U.S. Environmental Protection Agency
Region 4

In the Matter of: Clark Iron & Metal, Inc.
Docket Number: CAA-04-2015-1511

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on May 6, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

Mr. Charles Clark, Owner and President
Clark Iron & Metal, Inc.
P.O. Box 771
Murfreesboro, Tennessee 37133

Copy by E-mail to
Complainant:

Jose de Leon
deleon.jose@epa.gov

Copy by E-mail to
Acting Regional Judicial Officer:

Carol F. Baschon
baschon.carol@epa.gov

Dated: May 6, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7469