



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

APR 10 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Greg Anderson  
Anderson Henderson, LLC  
7750 Clayton Road, Suite 102  
St. Louis, Missouri 63117

Dear Mr. Anderson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. CAA-05-2014-0019. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 11 2014.

Pursuant to paragraph 25 of the CAFO, Top Metal Buyers, Inc. must pay the civil penalty within 30 days of APR 11 2014. Your check must display the docket number CAA-05-2014-0019.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Jose C. de Leon/C-14J  
E. Jones, Illinois Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2014-0019  
)  
Top Metal Buyers, Inc. ) Proceeding to Assess a Civil Penalty  
East St. Louis, Illinois, ) 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 and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent Top Metal Buyers, Inc. (Top Metal), a corporation doing business in 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**

9. 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 pursuant to EPA Region 5 Delegation 7-6-A.

10. 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 pursuant to EPA Region 5 Delegation 7-8.

11. 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.

12. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) 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 or MVAC. 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 or MVAC 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).

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 motor vehicle air conditioners (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.

**Factual Allegations and Alleged Violations**

15. Top Metal owns and operates a scrap metal recycling facility at 808 Walnut Street, East St. Louis, Illinois.
16. Top Metal is a corporation organized and doing business in Illinois.
17. Top Metal is a "person," as defined by 40 C.F.R. § 82.152.
18. On August 23, 2012, EPA inspected the facility to assess Top Metals' compliance with the CAA.
19. During the August 23, 2012 inspection, EPA observed many small appliances in bins throughout the business, many with cut copper tubing.
20. During the August 23, 2012 inspection, EPA observed white goods in the yard at Top Metal.
21. During the August 23, 2012 inspection, EPA was told by Top Metal representatives that it accepts refrigerators which are deposited in the iron pile outside. Top Metal representatives stated that the customer would be responsible for removing the copper.
22. During the August 23, 2012 inspection, EPA was told by Top Metal representatives that its policy is not to buy whole units, and directs customers to break down the unit prior to accepting the unit. Top Metal representatives stated it does not take verification statements at this facility.
23. Top Metal 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.

24. Top Metal has accepted small appliances and MVACs without recovering refrigerant. Top Metal has not obtained verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances and MVACs.

**Civil Penalty**

25. Based on an analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$14,871.

26. Within 30 days after the effective date of this CAFO, Respondent must pay the \$14,871 civil penalty in 2 installments with interest as follows: \$7,447.89 within 30 days of the effective date of this CAFO; \$7,497.46 within 180 days of the effective date of this CAFO.

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (4%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$ 7,447.89	\$ 7,435.50	\$ 12.39
Payment #2	Within 180 days of effective date of CAFO	\$ 7,497.46	\$ 7,435.50	\$ 61.96

Respondent must pay the installments 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

For checks sent by express mail (non-U.S. Postal Service which won't 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 Respondent's name, docket number of this CAFO and the billing document number.

27. 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:

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 C. de Leon (C-14J)  
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

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

29. If Respondent does not timely pay any installment payment as set forth in paragraph 26, above, the entire unpaid balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. 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.

30. 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 attorneys 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).

#### **General Provisions**

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

32. 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.

33. 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 31, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

34. Respondent certifies that it is complying fully with 40 C.F.R. § 82.156(f).

35. 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).

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

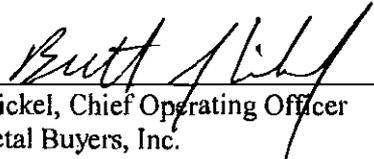
37. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

38. Each party agrees to bear its own costs and attorneys fees in this action.

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

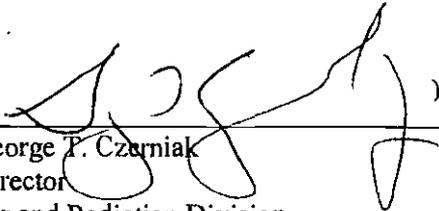
**Top Metal Buyers, Inc., Respondent**

3-7-14  
Date

  
Brett Nickel, Chief Operating Officer  
Top Metal Buyers, Inc.

**United States Environmental Protection Agency, Complainant**

4/8/14  
Date

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

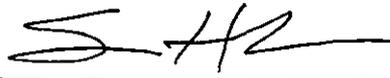
**Consent Agreement and Final Order**  
**In the Matter of: Top Metal Buyers, Inc.**  
Docket No. CAA-05-2014-0019



**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.

4/10/2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the Matter of: Top Metal Buyers, Inc.  
Docket No. CAA-05-2014-0019



Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number \_\_\_\_\_ with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Greg Anderson  
Anderson Henderson, LLC  
7750 Clayton Road, Suite 102  
St. Louis, Missouri 63117

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Eric Jones, Acting Manager  
Bureau of Air, Compliance Section  
Illinois Environmental Protection Agency  
P.O. Box 19506  
Springfield, Illinois 62794

On the 11 day of April 2014.

  
Doretta Shaffer; Administrative  
Program Assistant  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7676 2601